The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

A38 Derby Junctions

Examining Authority's Report
of Findings and Conclusions
and
Recommendation to the
Secretary of State for Transport

Examining Authority

Stuart Cowperthwaite and Simon Warder

8 October 2020

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Examining Authority's findings and conclusions and recommendation in respect of an application by Highways England for an Order granting Development Consent for A38 Derby Junctions.

File Ref TR010022

The application, dated 23 April 2019, was made under section 37 of the Planning Act 2008 (as amended) and was received in full by the Planning Inspectorate on 23 April 2019.

The Applicant is Highways England.

The application was accepted for Examination on 21 May 2019.

The Examination of the application began on 8 October 2019 and was completed on 8 July 2020.

The Proposed Development is to provide a comprehensive upgrade to the capacity of the A38 in Derby, to comprise the creation of three new grade separated junctions at the three existing roundabout junctions at the A38/A5111 at Kingsway, the A38/A52 at Markeaton and the A38/A61 at Little Eaton, with road widening in either direction from two to three lanes between Kingsway junction and Kedleston Road junction.

Summary of Recommendation:

The Examining Authority recommends that, subject to satisfying themself on the points set out in Section 9.3.1, the Secretary of State for Transport makes the A38 Derby Junctions Development Consent Order in the form attached at Appendix D to this report.

Report Contents

ERRATA SHEET – A38 Derby Junctions - Ref. TR010022

Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport, dated 8 October 2020

Corrections agreed by the Examining Authority prior to a decision being made

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59	4.6.5	…during the of the Examination…	…during the course of the Examination…
61	4.6.16	WE are content that…	We are content that…
66	4.7.30	B5111	A5111
67	4.7.34	its'	its
71	4.7.63	B5111	A5111
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74	4.7.83	Marketon	Markeaton
83	4.7.124	daily flow restrictions	daily flow reductions
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202	4.13.54	COVID19	Covid-19 (correct for consistency's sake)
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1 INTRODUCTION

1.1 BACKGROUND TO THE EXAMINATION

1.1.1 The application for the A38 Derby Junctions Highway Improvement Scheme (the Proposed Development) (PINs Ref TR010022) was submitted by Highways England (the Applicant) to the Planning Inspectorate (PINs) on 23 April 2019 under s31 of the Planning Act 2008 (PA2008) and accepted for Examination under s55 of the PA2008 on 21 May 2019 [PD-001][1].

1.1.2 The main components of the Proposed Development comprise the replacement of three roundabouts on the A38 in Derby known as the Kingsway, Markeaton and Little Eaton junctions with grade-separated interchanges. The components of the proposal are described in more detail in Section 2.2 below.

1.1.3 The location of the Order land is shown in the Site Location Plans [APP-005] and Land Plans, final updated versions of which were received on 26 March 2020 [REP9-003]. The site is wholly in England and lies within the administrative areas of Derby City Council, Erewash Borough Council and Derbyshire County Council.

1.1.4 The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State for Housing, Communities and Local Government (SoSHCLG) in its decision to accept the application for Examination in accordance with s55 of the PA2008.

1.1.5 PINs agreed with the Applicant's view stated in the application form [APP-003] that the Proposed Development is an NSIP as it would comprise the alteration of a highway which is located wholly within England, Highways England (HE) (a strategic highways company) would be the highway authority, the area of the development exceeds 12.5 hectares (ha) and the speed limit would be in excess of 50mph [PD-001]. The application is, therefore, for highway-related development within the scope of s22(h)(b) of the PA2008. As such, it requires development consent in accordance with s31 of the PA2008. Therefore, we agree that the Proposed Development meets the definition of an NSIP as set out in s14(1)(h) of the PA2008.

1.1.6 The legislative tests for the adequacy of public consultation were considered by the SoSHCLG during the acceptance stage of the application as set out in s55 of the PA2008. The SoSHCLG also took into account the views of relevant local authorities (LAs) on the adequacy of consultation [AoC-001, AoC-002, AoC-003, AoC-004, AoC-005 and AoC-006]. The SoSHCLG concluded that compliance with public consultation requirements was of a satisfactory standard and decided to accept the application for Examination [PD-001].

[1] References to documents in the Examination Library for this report are enclosed in square brackets [] and hyperlinked to the original electronic documents held online. A full index to the Examination Library can be found in Appendix B.

1.1.7 Following acceptance of the application, PINs provided advice to the Applicant under s51 of the PA2008. This advice suggested taking a precautionary approach to consultation, updates to the submission documents [OD-001] and specific advice on air quality matters [OD-002].

1.2 APPOINTMENT OF THE EXAMINING AUTHORITY

1.2.1 On 16 August 2019, Stuart Cowperthwaite (lead panel member) and Simon Warder (panel member) were appointed as the Examining Authority (ExA) for the application under s65 of the PA2008 [OD-003].

1.3 PERSONS INVOLVED

1.3.1 The persons involved in the Examination were:

- persons who were entitled to be Interested Parties (IPs) because they had made a relevant representation (RR), were a statutory party who requested to become an IP or were Affected Persons (APs) by virtue of being affected by compulsory acquisition (CA) proposals made as part of the application; and
- other persons, who we invited to participate in the Examination because they were either affected by it in some other relevant way or because they had expertise or evidence that we considered necessary to inform the Examination.

1.4 THE EXAMINATION AND PROCEDURAL DECISIONS

1.4.1 The Examination began on 8 October 2019 and was originally intended to end on 8 April 2020. However due to the public health situation arising from Covid-19 an extension of time was sought from, and granted by, the Secretary of State for Transport (SoST) [OD-005]. The Examination concluded on 8 July 2020. The need for the extension of time and the other components and events in the Examination are set out below. A description, timescales and dates of the events can be found in Appendix A.

The Preliminary Meeting

1.4.2 On 23 August 2019 we wrote to all IPs, Statutory Parties and other persons under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) (The Rule 6 Letter) [PD-029] inviting them to the Preliminary Meeting (PM) and outlining:

- the arrangements and agenda for the PM;
- notification of hearings to be held in the early stage of the Examination;
- our Initial Assessment of Principal Issues (IAPI);
- the draft Examination Timetable;
- availability of RRs and application documents; and
- our procedural decisions.

1.4.3 The PM took place on 8 October 2019 at the Best Western Stuart Hotel, 119 London Road, Derby DE1 2QR. An audio recording of the PM [EV-001] and a note of the PM [EV-002] were published on the PINs National Infrastructure website.

1.4.4 Our procedural decisions and the Examination Timetable took full account of matters raised at the PM. They were provided in the Rule 8 letter dated 11 October 2019 [PD-006].

Key Procedural Decisions

1.4.5 Most of the procedural decisions set out in the Rule 8 letter related to matters that were confined to the procedure of the Examination and did not bear on our consideration of the planning merits of the Proposed Development. Further, they were generally complied with by the Applicant and relevant IPs. The decisions can be obtained from the Rule 8 letter [PD-006] and so there is no need to reiterate them here.

1.4.6 Submissions were made by the Applicant on 17 February 2020 regarding, firstly, an oversight in the advertisement of the Issue Specific Hearing (ISH) and Compulsory Acquisition Hearing (CAH) on 18 and 19 February 2020 [EV-016] and, secondly, a request to remove air quality from the agenda of the Issue Specific Hearing (ISH) [EV-015]. We issued a letter on 20 February 2020 under EPR Rules 8(3), 9 and 13 [PD-016]. We took the decision to hold additional ISHs and CAHs in order to address the matters raised in the Applicant's submissions.

1.4.7 Those hearings were scheduled to take place on 19 March 2020. However, given the public health situation surrounding Covid-19 at that time, the hearings were postponed. We issued a Rule 17 letter and table requesting written submissions based on the original hearing agendas [PD-018 PD-019].

1.4.8 We then reviewed the effect of the postponed hearings on the Examination. We concluded that in order to examine the remaining issues and address matters of fairness, more time was needed than the original examination end date of 8 April 2020 would have allowed. Therefore, on 25 March 2020, a request was made to the SoST to extend the Examination. On 27 March 2020, and in accordance with s98(4) of the PA2008, the SoST set a new deadline for completion of the Examination on or before 8 September 2020. These matters were set out in a letter to the parties dated 31 March 2020 [PD-020]. A written statement confirming the new Examination deadline was made to Parliament on 12 May 2020 [OD-005]. An updated Examination Timetable was issued on 3 April 2020 which, among other things, reserved dates for further hearings [PD-021].

1.4.9 In the light of the public health situation at that time we sought the views of the Applicant, IPs, APs and other interested parties on whether further hearings were indeed required and, if so, on the use of virtual hearings in order to complete the Examination [PD-022]. Some parties, including the Applicant, considered that the Examination could be completed using written submissions only. Various parties said that they would like to participate in further hearings. We concluded that, in the interests of

fairness, it was necessary to hold further ISHs and CAHs to replace those which were due to take place on 19 March 2020.

1.4.10 Our letter issued on 5 May 2020 under EPR Rules 13 and 14 reported our consideration of the responses regarding virtual hearings and gave formal notification of the dates of the new hearings [PD-024]. The letter explained that we intended to cover all matters in ISHs 6 to 9 and CAH 4 but that dates for further hearings were reserved (ISHs 10 to 17 and CAHs 5 to 7) in the event that more time was needed due to disruption or technical issues. We issued a further letter setting out the agendas and detailed arrangements for the hearings [PD-026]. Additional guidance and advice on the procedures and technology to be used in the hearings was subsequently provided to the parties participating in the hearings [OD-004].

Site inspections

1.4.11 Site Inspections were held to ensure that we had an adequate understanding of the Proposed Development within its site and surroundings and its physical and spatial effects.

1.4.12 Site inspections may be accompanied or unaccompanied. In this case, there were no requests for an Accompanied Site Inspection and all the relevant matters could be viewed from the public domain. Nor were there other considerations such as personal safety or a need for the parties to identify particular features or processes. Therefore, all of the site inspections were Unaccompanied Site Inspections (USIs).

1.4.13 We held the following USIs:

- USI1 took place on 19 and 20 August 2019 and USI2 took place on 7 October 2019. The main purpose of these USIs was to allow us to become familiar with the sites and settings for the Proposed Development, including from the representative viewpoints used in the Applicant's Environmental Statement (ES); and
- USI3 took place on 19 February 2020 in response to concerns expressed at ISH3 [EV-017] regarding flooding in the area. It enabled us to obtain views of the application sites and surrounding areas at a time when flooding had recently occurred.

1.4.14 Site notes providing procedural records of each of the USIs can be found in the Examination Library under the references [EV-005] and [EV-020]. We have had regard to the information and impressions obtained during the site inspections in all relevant sections of this report.

Hearings

1.4.15 Hearings may be held in order to respond to specific requests from persons who have a right to be heard or to address matters where we consider that a hearing is necessary to enquire orally into matters under examination.

1.4.16 We held an Open Floor Hearing (OFH) in response to requests from IPs, and several CAHs and ISH to ensure the thorough examination of the issues raised by the application and other submissions.

1.4.17 ISH1, in respect of the draft Development Consent Order (dDCO), was held at the Best Western Stuart Hotel, 119 London Road, Derby DE1 2QR on 8 October 2019. The location is close to the city centre and railway station, some 3.5 kilometres (km) from the Markeaton junction and within 5km of the residences of many of the IPs. The agenda for the hearing is available [PD-004] along with an audio recording [EV-003] and a note of action points [EV-004].

1.4.18 We had initially intended to hold further ISHs on 11 and 12 December 2019. However, a General Election was subsequently called for 12 December and the ISH planned for that day was, therefore, cancelled. The letter cancelling that hearing (Rule 13) and revising the agenda for ISH2 on 11 December hearing (Rule 14) appears at [PD-009].

1.4.19 ISH2 was held at the Derby Conference Centre, London Road, Derby DE24 8UX. This location is some 2km further away from the application sites than the Best Western Hotel but was the closest suitable and available venue to the Proposed Development. It is accessible by car and is reasonably well located for public transport. The matters considered at ISH2 were as follows:

- the dDCO, transport networks and traffic, land use, social and economic, air quality, noise and vibration, landscape and visual, the historic environment, other policy and factual issues, biodiversity and ecological conservation and the water environment. The agenda for the hearing is available [PD-011] along with the audio recordings [EV-011 EV-012 EV-013].

1.4.20 ISH3 and ISH4 were held at the Best Western Stuart Hotel on 18 and 19 February 2020. ISH3 considered the dDCO. The agenda for the hearing is available [EV-014] and an audio recording [EV-017]. ISH4 dealt with transport networks and traffic, noise and vibration, the water environment, biodiversity and ecological conservation, landscape and visual, land use, social and economic and other policy and factual issues. Air Quality was considered only briefly for the reasons set out in our letter of 20 February 2020 [PD-016]. We also exercised our discretion to hear from others with an interest in the Proposed Development at the hearing. The agenda for the hearing is available [EV-014] along with an audio recording [EV-019].

1.4.21 As explained above, the ISH which was due to take place on 19 March 2020 (ISH5) was cancelled due to the public health situation surrounding Covid-19. It was replaced by ISHs 6 to 9 which took the form of virtual hearings on 9 and 10 June 2020. In order to address the outstanding matters requiring discussion, ISHs 6 to 8 considered transportation and networks, land use, social and economic, biodiversity and ecological conservation, landscape and visual, air quality and climate change. ISH9 dealt with the dDCO. The agendas for the hearings are available [PD-026] as well as video recordings [EV-024 EV-025 EV-026 EV-027].

1.4.22 The following CAHs were held:

- CAH1 was held at the Derby Conference Centre on 10 December 2019. The agenda for this hearing [PD-011] along with an audio recording [EV-007 EV-008 EV-009] and a note of action points [EV-006] are available;

- CAH2 was held at the Best Western Stuart Hotel on 18 February 2020. The agenda appears at [EV-014] together with the audio recording [EV-018]; and
- CAH3 was cancelled as explained above and replaced by CAH4 which took the form of a virtual hearing on 9 June 2020. The agenda appears at [PD-026] together with the audio recording [EV-023].

1.4.23 All persons affected by CA and/or Temporary Possession (TP) proposals were provided with an opportunity to be heard. We also used the CAH to examine the Applicant's case for CA and TP in the round.

1.4.24 An OFH was held at the Derby Conference Centre at 6pm on 10 December 2019. All IPs were provided with an opportunity to be heard on any important and relevant subject matters that they wished to raise. We also exercised our discretion to hear from others with an interest in the Proposed Development at the event. An audio recording is available [EV-010].

1.4.25 All parties who expressed a wish to be heard at the virtual hearings (ISHs 6 to 9 and CAH4) were given the opportunity to participate. Parties had the choice of participating by video using a computer, tablet or smart phone or aurally using a telephone. The hearings were hosted in Microsoft Teams. There were no significant interruptions to the hearings and all agenda items were covered. Therefore, the dates reserved for further hearings in our letter of 5 May 2020 [PD-024] (ISHs 10 to 17 and CAHs 5 to 7) were not required. Oral notification of this was given at ISH9 and subsequently posted on the project website.

Written processes

1.4.26 Examination under the PA2008 is primarily a written process in which the ExA has regard to written material forming the application and arising from the Examination. All of this material is recorded in the Examination Library (Appendix B) and published online. Individual document references to the Examination Library in this report are enclosed in square brackets [] and hyperlinked to the original document held online. For this reason, this report does not contain extensive summaries of all documents and representations, although full regard has been had to them in our conclusions. We have considered all important and relevant matters arising from them.

Relevant Representations

1.4.27 Thirty-one RRs were received by PINs [RR-001 to RR-031]. All makers of RRs received the Rule 6 Letter [PD-029] and were provided with an opportunity to become involved in the Examination as IPs. We have fully considered all RRs. The issues that they raise are considered throughout this report.

Written Representations

1.4.28 The Applicant, IPs and other persons were given opportunities to:

- make written representations (WRs) (Deadline 1 (D1));

- comment on WRs made by the Applicant and other IPs (D2);
- summarise their oral submissions at hearings in writing (D1, D3, D6, D14);
- make other written submissions requested or accepted by us (D4, D5, D6, D7, D8, D9, D10, D13 and D15);
- comment on documents issued for consultation by us including Written Questions (D1, D4 and 12); and
- comment on the use of virtual hearings (D11).

1.4.29 We also used our discretion to accept several Additional Submissions. These comprised submissions from the Applicant and statutory parties as well as submissions from persons not otherwise engaged in the Examination. We have fully considered all WRs and other Examination documents. The issues that they raise are considered throughout this report.

Written questions

1.4.30 We asked three rounds of written questions:

- first written questions (FWQ) [PD-005] were published alongside the Rule 8 letter [PD-006], dated 11 October 2019;
- second written questions (SWQ) [PD-014] were issued on 14 January 2020; and
- further written questions were issued on 5 May 2020 [PD-025].

1.4.31 The following requests for further information and comments under Rule 17 of the EPR were issued:

- 12 November 2019 regarding queries on Schedules 5 and 7 of the dDCO [PD-007];
- 19 March 2020 regarding matters on the dDCO, CA and environmental topics [PD-018]; and
- 21 April 2020 regarding virtual hearings [PD-023].

1.4.32 All responses to our written questions have been fully considered and taken into account in all relevant chapters of this report.

Local Impact Reports

1.4.33 A Local Impact Report (LIR) is a report made by a relevant local authority (LA) giving details of the likely impact of the Proposed Development on the authority's area. LIRs were received from the following relevant LAs:

- Derbyshire County Council (DCC) [REP1-031];
- Derby City Council (DCiC) [REP1-035]; and
- Erewash Borough Council (EBC) [REP1-050].

1.4.34 We have taken full account of the LIRs in all relevant chapters of this report.

Statements of Common Ground

1.4.35 A Statement of Common Ground (SoCG) is a statement agreed between the Applicant and one or more IPs, recording matters either agreed or not agreed between them.

1.4.36 By the end of the Examination, the following parties had concluded SoCGs with the Applicant:

- DCiC dated 10 March 2020 [REP7-020];
- DCC dated 3 March 2020 [REP6-010];
- EBC dated 5 November 2019 [REP1-008];
- Environment Agency dated 10 February 2020 [REP5-008];
- Natural England dated 5 November 2019 [REP1-009];
- Historic England dated 5 November 2019 [REP1-012];
- Derbyshire Wildlife Trust dated 5 November 2019 [REP1-010];
- Virgin Media dated 3 February 2020 [REP4-014];
- Breadsall Parish Council dated 17 March 2020 [REP8-005];
- Royal School for the Deaf Derby (RSfD) dated 17 March 2020 [REP8-003]; and
- Sutton Turner Houses dated 17 March 2020 [REP8-004].

1.4.37 The Applicant submitted an unsigned SoCG with Derby Cycling Group (DCG) and Sustrans dated 2 April 2020 [REP10-007]. SoCGs dated 18 June 2020 with McDonald's Restaurants Limited [REP14-014] and Euro Garages Limited [REP14-015] were also submitted. Whilst they are described as 'final' and signed by the Applicant, they have not been signed by the respective parties.

1.4.38 We accord some weight to each of the unsigned SoCGs insofar as they record factual matters. However. there were unresolved issues between the Applicant and each of the parties at the end of the Examination. Those issues are considered further at Section 4.13.

1.4.39 We have fully considered the SoCGs (other than the draft ones referred to above) in all relevant chapters of this report.

The draft Development Consent Order

1.4.40 On 12 March 2020 we published a schedule of changes to the dDCO [PD-017]. This was based on the version of the dDCO submitted by the Applicant on 3 March 2020 [REP6-002]. The Applicant, IPs and other persons were given the opportunity to comment on the schedule by D8. The Applicant's final version of the dDCO was submitted on 25 June 2020

[REP15-005] and forms the basis of our considerations in Chapter 8. Our recommended DCO (rDCO) is in Appendix D.

Report on the Implications for European Sites

1.4.41 The Examination must include a process that provides sufficient information to enable the SoST to meet its statutory duties as the competent authority under the Conservation of Habitats and Species Regulations 207 (the Habitats Regulations) relating to European protected sites. The Applicant provided a Habitats Regulations Assessment – No Significant Effects Report (NSER) [APP-179][2] with its application. This includes matrices which exclude the potential for likely significant effects (LSEs) to arise alone or in combination with other plans and projects.

1.4.42 Our Examination Timetable nevertheless reserved time for the publication of a Report on the Implications for European Sites (RIES) and for comments upon it by D8. However, by the end of the Examination, it had become apparent that there was no disagreement relating to the conclusions of the NSER. Consequently, the flexible provisions of the timetable were used to dispense with the publication of a RIES.

Requests to join and leave the Examination

1.4.43 The following parties who were not already IPs asked to participate in the Examination at or after the PM:

- Derby Climate Coalition;
- DCG;
- Friends of the Earth Derby (FoED);
- Friends of Markeaton Park (FoMP); and
- Intu Derby.

1.4.44 Derby Climate Coalition and FoED offered relevant contributions on matters which gained wider prominence during the Examination, in particular, climate change. The other parties were able to contribute relevant local knowledge that we wanted to hear and therefore we accepted their submissions.

1.4.45 Several individuals, who were not IPs, made WRs, which we accepted as Additional Submissions.

1.4.46 During the Examination David and Marion Gartside (AP) [REP12-018] confirmed that they no longer wished to pursue the representations they submitted at D11 and no longer wished to participate in CAH4. However, no persons wrote to us to formally record the full settlement of their issues and the withdrawal of their representations.

[2] The Applicant submitted this report as ES Appendix 8.2 [APP-179] and as a free-standing document [APP-247]

1.5 ENVIRONMENTAL IMPACT ASSESSMENT

1.5.1 The Proposed Development is development for which an Environmental Impact Assessment (EIA) is required (EIA development).

1.5.2 On 15 March 2018, the Applicant submitted a Scoping Report to the SoSHCLG under Regulation 10 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations) in order to request an opinion as to the scope, and level of detail, of the information to be provided in the Environmental Statement (ES) (a Scoping Opinion)[3]. It follows that the Applicant is deemed to have notified the SoS under Regulation 8(2)(b) of the EIA Regulations that it proposed to provide an ES in respect of the Proposed Development.

1.5.3 On 25 April 2018 PINs provided a Scoping Opinion [APP-166]. Therefore, in accordance with Regulation 6(2)(a) of the EIA Regulations, the Proposed Development was determined to be EIA development, and the application was accompanied by an ES.

1.5.4 On 7 August 2019 the Applicant provided PINs with certificates confirming that it had complied with s56 and s59 of the PA2008 and with Regulation 17 of the EIA Regulations.

1.5.5 Consideration is given to the adequacy of the ES and matters arising from it in Chapter 4.

1.6 HABITATS REGULATIONS ASSESSMENT

1.6.1 The Proposed Development is development for which a Habitats Assessment Regulations (HRA) Report [APP-247] has been provided. In this case the HRA Report takes the form of a No Significant Effects Report, as discussed in paragraphs 1.4.41 and 1.4.42 above.

1.6.2 Consideration is given to the adequacy of the HRA Report, associated information and evidence and the matters arising from it in Chapter 5.

1.7 UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

1.7.1 During the Examination, the Applicant provided updates on discussions regarding side agreements with Statutory Undertakers (SUs) including Network Rail, Severn Trent Water and Western Power Distribution and voluntary agreements regarding CA or TP with several APs. Those matters are considered further in Chapter 7.

1.7.2 We have taken appropriate account of all agreements, and particularly of the evidence that they provide of whether any matters were in contention at the close of the Examination. All relevant considerations and the bearing of the agreements on the DCO are addressed in this report, including in Chapter 7 and Section 8.6.

[3] Highways England A38 Derby Junctions Environmental Assessment Scoping Report

1.8 OTHER CONSENTS

1.8.1 The application documentation and questions during this Examination have identified the consents that the Applicant must obtain, in addition to Development Consent under PA2008. The latest position on these is recorded in the Applicant's Consents and Agreements Position Statement [REP14-004]. In summary they comprise:

Natural England:

- licence under s10 of the Protection of Badgers Act 1992; and
- bats - European Protected Species Licence under the Habitats Regulations; Wildlife and Countryside Act 1981.

Environment Agency (EA):

- permit to 'catch the fish': an application for authorisation to use fishing instruments other than rod and line in England under the Salmon and Freshwater Fisheries Act 1975 (as amended);
- permit to 'move the fish' under the Keeping and Introduction of Fish Regulation 2015;
- water abstraction: licence under s24 and s25 of the Water Resources Act 1991 (restrictions on abstraction and impounding; restrictions on impounding);
- an environmental permit for the disposal of waste materials under the Environmental Permitting Regulations as amended (2016);
- discharge to controlled water and/or groundwater under the Environmental Permitting (England and Wales) Regulations 2016; and
- environmental permit for flood risk activity under the Environmental Permitting (England and Wales) Regulations 2016.

Health and Safety Executive:

- Control of Asbestos Regulations 2012.

Severn Trent Water:

- trade effluent discharge consent under the Water Industry Act 1991.

DCiC and EBC:

- s61 of Part III of the Control of Pollution Act 1974 (COPA).

1.8.2 Further consideration of these consents is provided under the relevant topics in Chapter 4 and, particularly with regard to whether they represent a potential impediment to the Proposed Development, in Chapter 7 and Section 8.6.

1.9 THE STRUCTURE OF THIS REPORT

1.9.1 The structure of this report is as follows:

- Chapter 1 introduces the reader to the application, the processes used to carry out the Examination and make this report;
- Chapter 2 describes the site and its surroundings, the Proposed Development, its planning history and that of related projects;
- Chapter 3 records the legal and policy context for the SoST's decision;
- Chapter 4 sets out the planning issues that arose from the application and during the Examination;
- Chapter 5 considers effects on European Sites and the Habitats Regulations Assessment – No Significant Effects Report;
- Chapter 6 considers the case for making the DCO and sets out the balance of planning considerations arising from Chapter 4, in the light of the factual, legal and policy information in Chapters 1 to 3;
- Chapter 7 sets out our examination of CA and TP proposals;
- Chapter 8 considers the drafting of the DCO and relevant matters arising from the application and during the Examination; and
- Chapter 9 provides our conclusions on all relevant and important matters and sets out our recommendation to the SoST.

1.9.2 This report is supported by the following Appendices:

- Appendix A – the Examination Events
- Appendix B – the Examination Library
- Appendix C – List of Abbreviations
- Appendix D – the rDCO

2 THE PROPOSAL AND THE SITES

2.1 THE PROPOSED DEVELOPMENT SITES AND SETTINGS

2.1.1 The Proposed Development involves land in the administrative areas of DCiC and EBC. DCC is the local highway authority (LHA) for the part that falls within EBC's administrative area. The setting for the Proposed Development is shown in the Location Plan [APP-005] and the land take is shown in detail in the Land Plans [REP9-003].

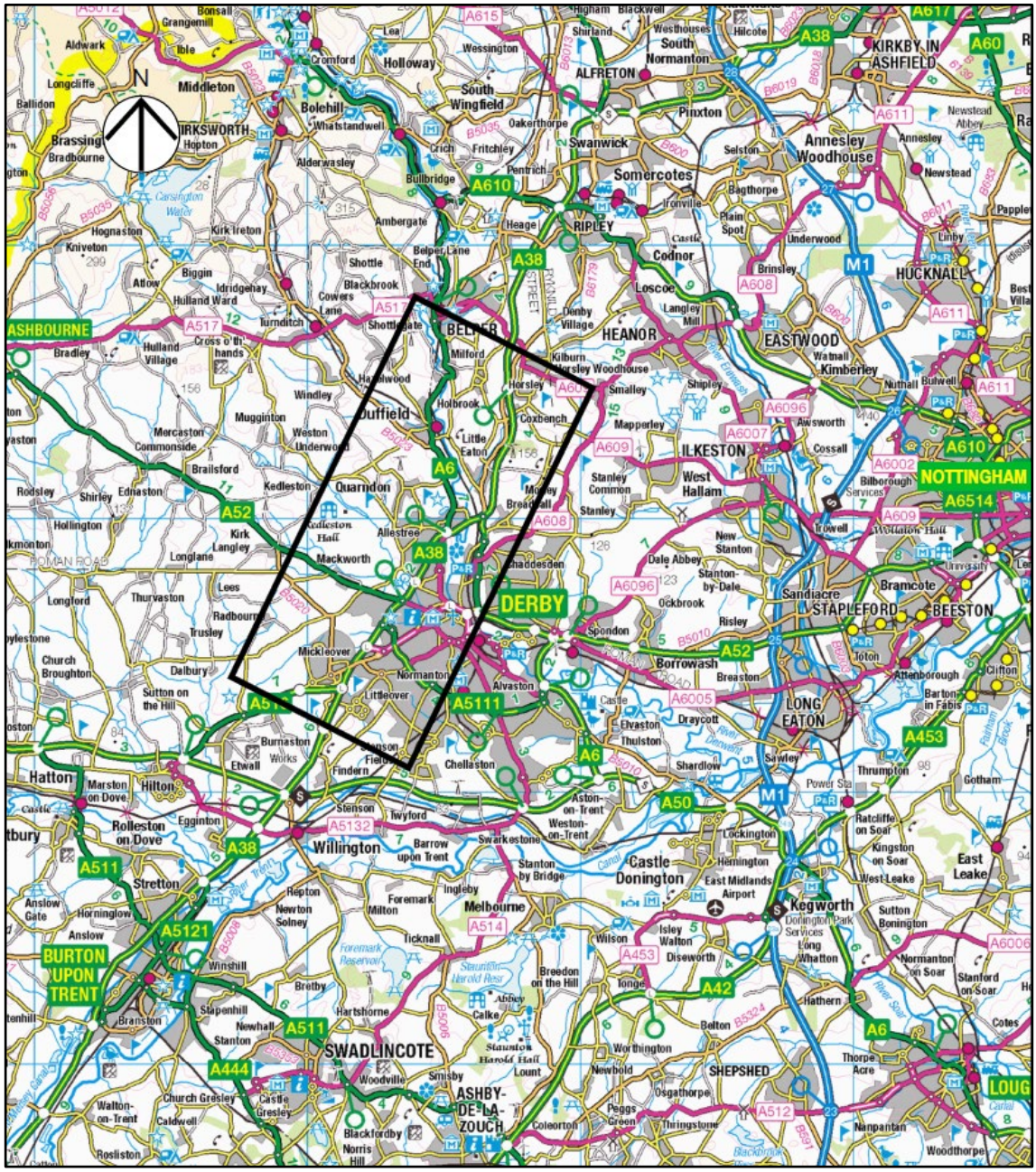

Figure 2.1.1: Location plan [extract from APP-005]

2.1.2 The A38 is part of the Strategic Road Network (SRN) and provides a connection between Birmingham and the M1 at junction 28, thereby providing a route for north-south long-distance journeys by road. Where the A38 passes through the western and northern parts of Derby, local

intra-urban trips cross the A38 on roads into the city or use the A38 to travel around Derby. The interaction between strategic and local trips results in delays and queues at the Kingsway, Markeaton and Little Eaton junctions. These are the only three roundabouts remaining on the 63km (39 miles) length of the A38 between the A38/A5148 Swinfen junction (near Lichfield) and the M1.

Figure 2.1.2: Junction locations [REP3-005 page 1]

Kingsway junction

2.1.3 Kingsway junction is in a predominantly suburban environment and is adjoined by housing along Greenwich Drive South and Brackensdale Avenue to the west. Mackworth Park lies to the south-west and open space adjacent to Greenwich Drive South to the north-west. To the east is a mix of large-scale retail, commercial and health care establishments connected to the junction via the A5111 Kingsway. The Royal Derby Hospital is located around 1km to the south of the junction off Uttoxeter New Road.

Figure 2.1.3: Kingsway junction (existing) [REP3-005 page 9]

2.1.4 The existing junction takes up a fairly extensive area, with the north and south bound carriageways diverging on both sides of the roundabout. The land either side of the diverging carriageways, between the carriageways, and within the roundabout is well planted with mature trees and grassland. The setting for the junction is, therefore, verdant and attractive.

2.1.5 The land generally falls from east to west across the junction. Consequently, the carriageways on the west side of the junction sit above the adjoining ground level on embankments. Bramble Brook runs generally south-west to north-east, passing through the junction in culverts [APP-150]. Part of the land within the junction and the Bramble Brook and margins are designated as a Local Wildlife Site (LWS) [APP-098]. There are no statutorily designated heritage assets within or immediately adjoining the junction. Part of the Order land to the east of the existing roundabout and north of the A5111 Kingsway comprises an historic landfill site known as Rowditch tip [APP-137].

2.1.6 The dDCO includes TP of areas of open space to the west (including part of Mackworth Park) and east of the A38 [APP-059]. This would be used to provide flood storage and environmental mitigation measures [APP-068].

Markeaton junction

2.1.7 The Markeaton junction has a somewhat more urban setting. It is bounded by a mix of residential, institutional and education uses to the south and

east. These include properties proposed for CA at Queensway and Ashbourne Road as well as the RSfD and the Army Reserve Centre. Immediately to the west of the existing roundabout are the McDonald's Restaurant and Esso petrol filling station[4] (PFS), beyond which are further residential properties along Enfield Road and Greenwich Drive North. Markeaton Park lies to the north of the junction. The edge of Markeaton Park is characterised by open grassland and mature tree planting which provides an open and green backdrop to the junction. This character extends north along the west side of the A38.

Figure 2.1.4: Markeaton junction (existing) [REP3-005 page 10]

2.1.8 The junction itself is more compact than Kingsway, with the centre of the roundabout laid to amenity grass with no distinguishing features. On its approach from the south the A38 falls fairly steadily towards the roundabout, although the land at the roundabout itself is essentially flat. North of the roundabout, but within the Order land, Markeaton Lake is located on the west side of the A38 and Mill Pond to the east. These water bodies are connected by a culvert under the road. A further culvert connects Markeaton Lake to Middle Brook [APP-151]. Markeaton Park and the Markeaton Brook System are LWSs [APP-098]. There are no statutorily designated heritage assets within or immediately adjoining the junction.

2.1.9 As well as CA of the 17 properties at Queensway and Ashbourne Road and parts of Markeaton Park, the RSfD and the Army Reserve Centre, the dDCO includes TP of areas of open space to the west of the A38, including part of Markeaton Park, Markeaton Lake, Mill Pond and part of the Army Reserve

[4] Submissions noted in this report as being by Euro Garages Ltd are in relation to the Esso petrol filling station site (PFS) at the Markeaton junction.

Centre [APP-059], which would be used to provide environmental mitigation measures [APP-068].

Little Eaton junction

2.1.10 The Little Eaton junction has a more rural setting. It is separated from the northern edge of the built-up area of Derby by the River Derwent and the Midland mainline railway. Built development immediately adjoining the junction comprises the Ford Farm Mobile Home Park, the property Fourways and commercial and retail facilities including a Starbucks café to the north. Derby Garden Centre sits between the A38 and the B6179 to the north of the junction. The western edge of Breadsall village is located some 400m to the south-east of the existing junction and the southern edge of Little Eaton village is located approximately 900m to the north.

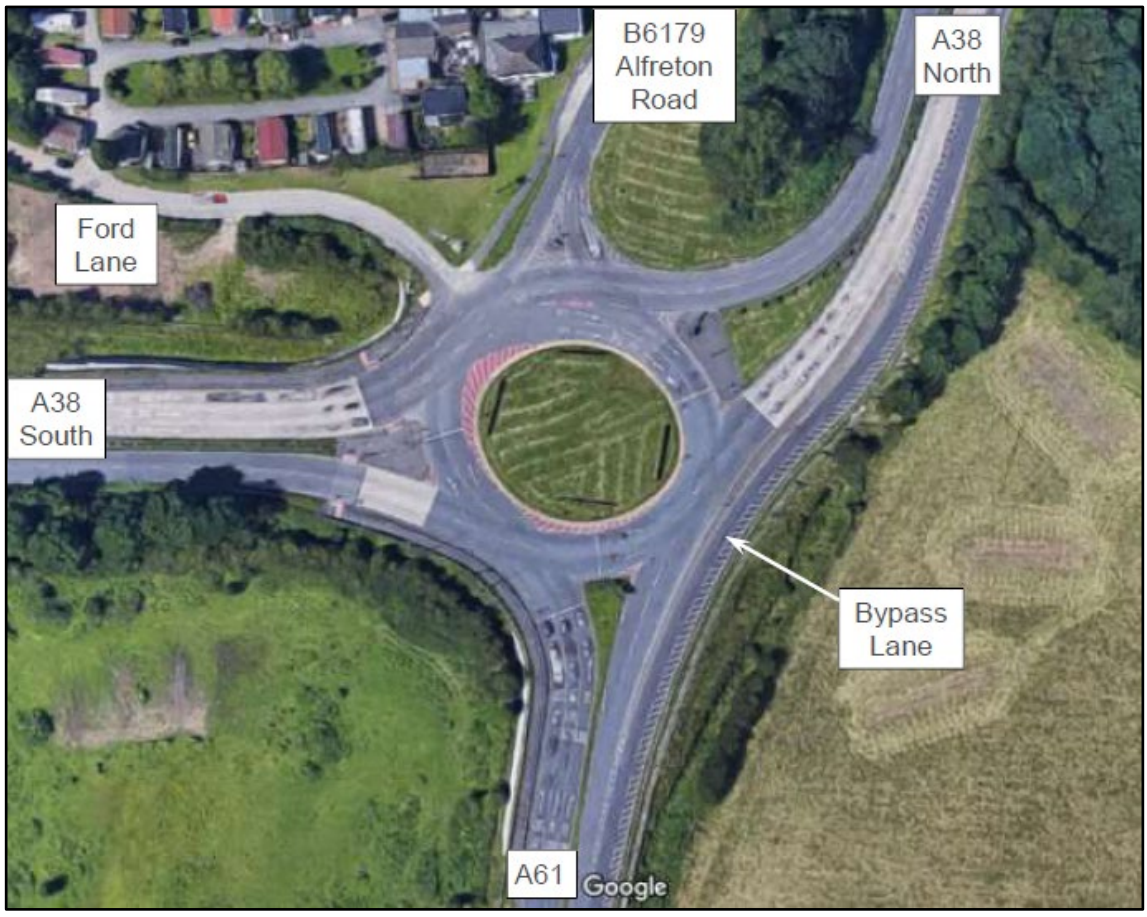

Figure 2.1.5: Little Eaton junction (existing) [REP3-005 page 11]

2.1.11 To the west of the junction the A38 crosses over the River Derwent and the railway line before falling gently to the existing roundabout. The land rises again to the east and north over a significant distance. A large part of the Order land falls within the flood plain. The River Derwent is a Water Framework Directive (WFD) classified watercourse and an LWS. In addition, Dam Brook runs to the east and south of the existing roundabout and the former Derby Canal runs to the north [APP-152]. Part of the Order land to the south west of the existing roundabout is designated as Alfreton Road Rough Grassland LWS [APP-099].

2.1.12 The land at Little Eaton junction is designated as Green Belt (GB), whilst parts of the Order land to the west of the railway line are located within the boundary of the Derwent Valley Mills World Heritage Site (DVMWHS). There are no other statutorily designated heritage assets within or immediately adjoining the junction, although part of Breadsall is designated as a Conservation Area [APP-080].

2.1.13 The dDCO includes TP of a former landfill site to the north of the existing roundabout. It would become a construction compound before being used for environmental mitigation. TP would also be taken of land to the north-east and south of the roundabout and west of the River Derwent (north and south of the A38) to undertake environmental mitigation. To the south of this land, TP would be taken of a further area to be used to create a floodplain compensation area [APP-060 APP-068].

2.2 THE APPLICATION AS MADE

2.2.1 The Applicant submitted an application under s37 of the PA2008 for an Order granting development consent for what was described as the 'A38 Derby Junctions scheme' [APP-001 APP-002 APP-003]. The Applicant is appointed and licensed by the SoST as the strategic highways company for England. It is responsible for operating, maintaining and improving the SRN in England on behalf of the SoST.

2.2.2 The Applicant's high-level objectives for the Proposed Development include improving economic competitiveness, the environment and quality of life by reducing congestion in the surrounding urban areas and on the A38 inter-regional road. In addition, the proposal is intended to increase the capacity of the SRN and facilitate housing and employment growth within Derby City. The Proposed Development seeks to achieve these objectives whilst also being affordable and delivering high value for money.

2.2.3 Chapter 2 of the ES [APP-040] provides a full description of the Proposed Development, which we have summarised below.

Overview

2.2.4 The Proposed Development would provide grade separation of the existing Kingsway, Markeaton and Little Eaton junctions of the A38 as it passes to the west and north of Derby city centre. The development would, therefore, mainly take place at three distinct locations spanning some 6km.

2.2.5 The A38 would be widened to three lanes from the Kingsway junction to the Kedlestone Road junction (some 700m north of Markeaton junction) and the speed limit for this section increased from 40mph to 50mph. The existing speed limit of 70mph would be retained from the Kedleston Road junction to Little Eaton. However, there would be an advisory speed limit of 50mph through the Little Eaton junction.

2.2.6 Lighting at the Kingsway and Markeaton junctions would comprise 15m high light-emitting diode (LED) luminaires along the mainline A38 and 12m high lighting columns on the junction and associated slip roads. These junctions would be provided with signage which, due to limited verge widths and to

provide clarity of lane allocation through an area of closely spaced junctions, would be in the form of gantry mounted direction signs.

2.2.7 At Little Eaton, the new at-grade roundabout and the approaching slip-roads lighting would comprise approximately 12m high LED luminaires. The elevated A38 mainline would not have overhead lighting in order to minimise visual intrusion. To ensure drivers are aware of the bend in the road at this location, signing would be installed along with solar powered studs integrated within the road pavement to indicate the alignment of the road.

2.2.8 In addition, works comprising the installation of advanced directional signage, safety barriers and associated equipment would take place on the approaches to the three junctions on the A38 and on the A61 to the north of the Little Eaton junction. Reconfiguration of the junction between the A6 Duffield Road and Ford Lane to the west of the Little Eaton junction is also proposed. Other works included in the dDCO take in alterations to vehicular access points and cycle/footpaths in the vicinity of the junctions, utilities diversions and the creation of surface water drainage attenuation features and environmental mitigation areas.

Kingsway junction

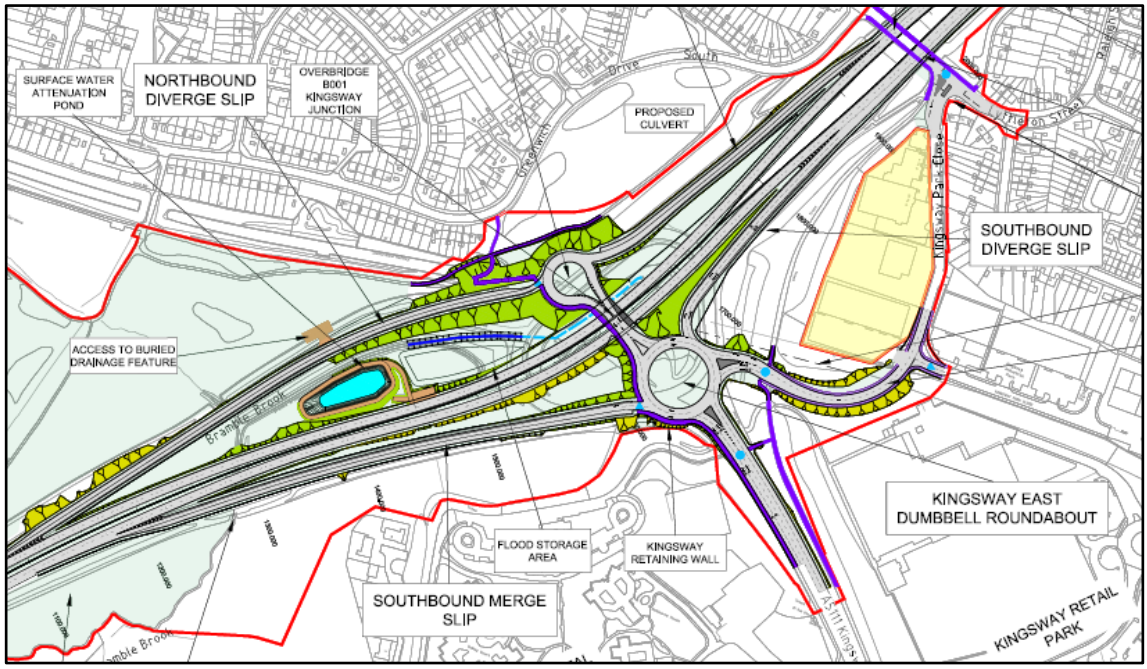

Figure 2.2.1: Kingsway junction (proposed) [extract from REP2-006 sheet 1 of 4]

2.2.9 The proposed Kingsway junction would comprise a dumbbell roundabout arrangement and linkages at existing ground level, with the A38 passing beneath the junction in an underpass. The low point of the proposed mainline A38 would be approximately 6.5m below the level of the existing junction roundabout. Two existing bridges over Brackensdale Avenue would be widened to cater for the provision of the additional lane on each carriageway. The existing accesses from and to the A38 at Brackensdale Avenue and Raleigh Street would be closed for safety reasons. The existing section of carriageway associated with the left in, left out access onto the A38 from Brackensdale Avenue would be closed and landscaped. The

existing A38 carriageways would form the northbound and southbound slip roads. Local access would be provided by a side road link to Kingsway Park Close from the eastern roundabout. The junction onto the Kingsway Park Close link road from Brackensdale Avenue would be signalised.

2.2.10 The junction would be provided with a highway drainage system that would incorporate a surface attenuation pond, underground storage tanks and treatment area. Provision would be made for additional flood storage within the junction. Existing culverts on Bramble Brook would be replaced or extended as required, whilst the brook would also be diverted within the junction.

2.2.11 Footpath and cycleway proposals at Kingsway junction include:

- a new perimeter footpath and seating around the flood storage areas within the Kingsway hospital site, traversing Bramble Brook;
- National Cycle Route NR54/NR68/RR66 would be subject to a minor diversion due to the need to acquire a small section of public open space for the proposed western roundabout embankment;
- a new pedestrian/cyclist route across Kingsway junction from Mackworth Park, which would link Mackworth from Greenwich Drive South to the A5111 Kingsway;
- a signalised crossing on Brackensdale Avenue (east of the A38) at the A38 underbridge and a controlled crossing on the proposed link road from Kingsway junction to Kingsway Park Close; and
- uncontrolled crossings of side roads would be provided at Raleigh Street and Thurcroft Close on the eastern side of the A38, while the uncontrolled pedestrian crossing of the A38 from Greenwich Drive North to Thurcroft Close would be closed permanently for safety reasons.

Markeaton junction

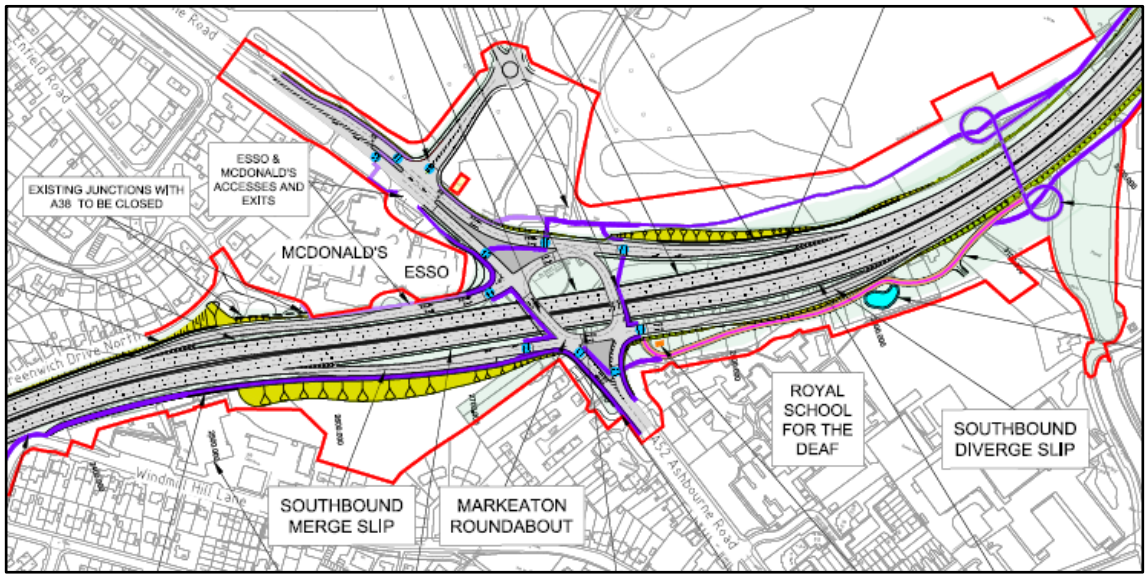

Figure 2.2.2: Markeaton junction (proposed) [extract from REP2-006 sheet 2 of 4]

The proposed Markeaton junction would comprise an enlarged two-bridge roundabout at existing ground level with the A38 passing beneath in an underpass to the south-east of the existing roundabout (maximum depth approximately 7.6m below existing ground level) with slip roads connecting the A38 to the new roundabout. Retaining walls would be constructed between the A38 and the slip roads to reduce the footprint of the junction. The northbound slip roads would be approximately on the line of the existing northbound A38 carriageway. Markeaton junction would be signalised at all four approaches.

2.2.12 The existing access into Markeaton Park from the Markeaton roundabout would be closed, although it would be retained for emergency vehicles. The existing park exit onto the A52 would be reconfigured to create the new park access. This would require the relocation of the existing park boundary wall, together with some rearrangement of Markeaton Park's internal road infrastructure to facilitate a bus turning circle. Access to Markeaton Park would be from the A52 which would be signalised and provided with a pedestrian crossing.

2.2.13 A closed toilet block within Markeaton Park would be removed. The existing electrical substation near the existing park exit would not be affected, although an existing mobile phone mast at the junction would need to be relocated.

2.2.14 The existing left in, left out access from the A38 onto Enfield Road would be closed for safety reasons. The existing access to the McDonald's Restaurant and the Esso PFS off the A38 northbound carriageway to the south of the junction would be closed. Traffic accessing these facilities would use a revised signalised access off the A52, with an additional exit onto the new A38 northbound diverge slip road. Access would be maintained during the construction phase until the new arrangements were in place.

2.2.15 The Proposed Development would involve the demolition of 15 detached residential properties on Queensway and two semi-detached properties on the A52 Ashbourne Road. The existing access to Sutton Close off Ashbourne Road would also be closed, and a revised access further to the east on Ashbourne Road would be provided which would require land from further residential properties. There would also be a need to alter the access into the RSfD off Ashbourne Road.

2.2.16 The existing culverts beneath the A38 (connecting Markeaton Lake to Mill Pond and Middle Brook) would remain in situ and would not need to be extended. The highway drainage system would incorporate a pumping station, two underground storage tanks, a surface attenuation pond and treatment area. Drainage would outfall into the existing highway drainage system, including continued discharges into Mill Pond (following attenuation and treatment).

2.2.17 Footpath and cycleway proposals at Markeaton junction include:

- closure and diversion of the existing footpath and cycleway (route of RR66) from Raleigh Street to the A52, east of the A38. The combined footway and cycleway would be signed and widened to 3m;

- controlled crossings on all arms of the junction and on the A52 west of the Esso PFS to provide access into Markeaton Park from the west;
- the existing footbridge to the north of the junction would be demolished and replaced in a similar location with a new footbridge (extended to allow for the additional A38 lanes); and
- realignment and widening of the existing footpath and cycleway (route of RR66) from the A52 to Kedleston Road.

Little Eaton junction

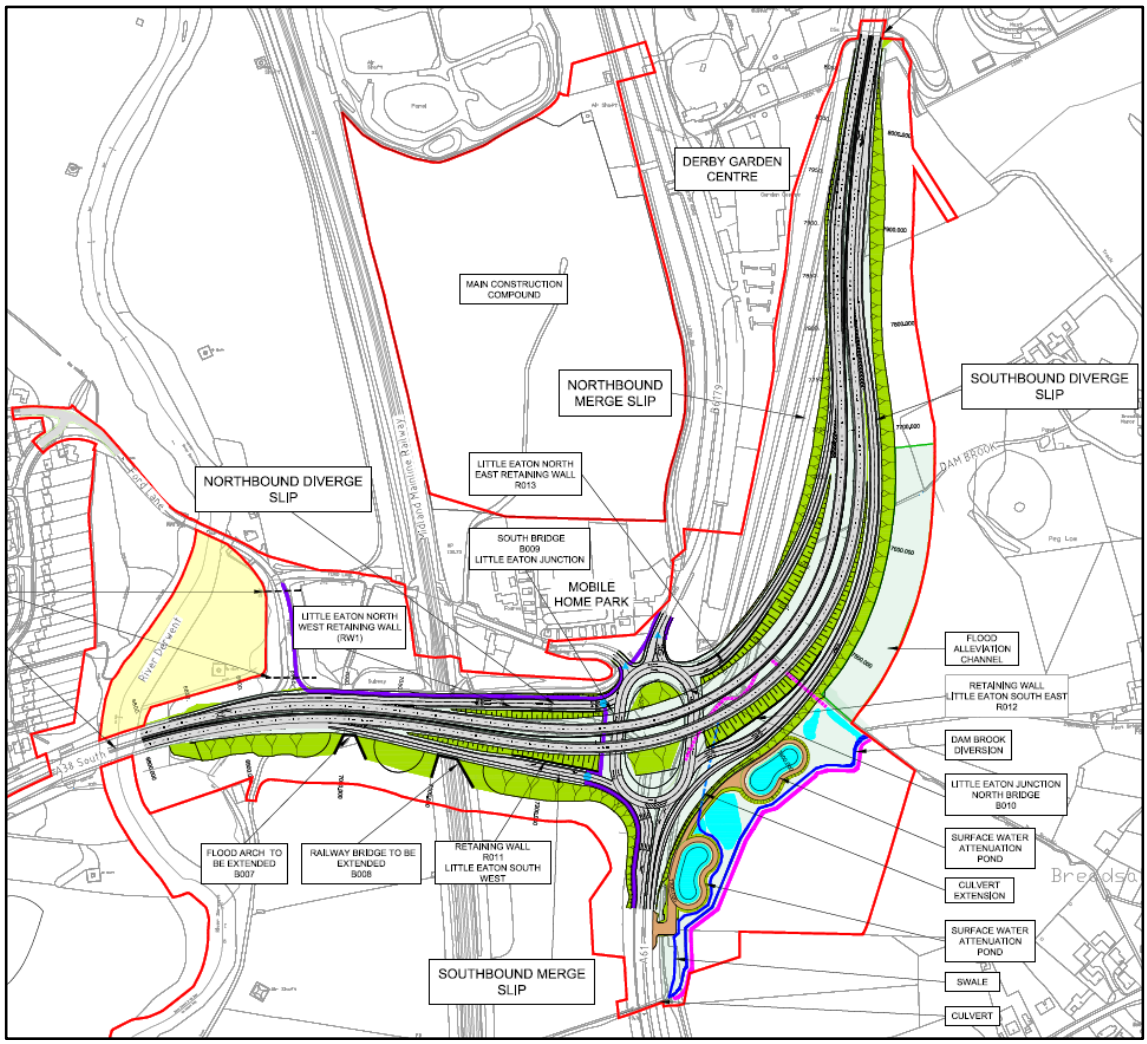

Figure 2.2.3: Little Eaton junction (proposed) [extract from REP2-006 sheet 3 of 4]

2.2.18 The proposed Little Eaton junction would comprise an enlarged roundabout at existing ground level with the mainline of the A38 being raised on an embankment and passing above the roundabout on two overbridges to the east and south of the existing roundabout. The new carriageway would be approximately 11m above existing ground level at the highest point on the north side of the junction, before dropping down to around 3m above existing ground level. It would be up to around 9m above the existing roundabout carriageway level. The A38 mainline would continue to the west of the existing A38 before re-joining immediately south of the existing Water Treatment Works Accommodation Bridge.

2.2.19 The existing northbound A38 carriageway would form the northbound slip road. Commencing at the southern tie in, the proposed A38 would swing to the south of the existing A38 immediately after crossing the River Derwent bridge and pass over an extended flood relief arch. Continuing north, the existing railway bridge would be extended to carry the widened A38. The existing northbound carriageway would be retained on the railway bridge and form the northbound diverge slip road.

2.2.20 The Ford Lane access onto the A38 (located between the River Derwent bridge and the flood relief arch), would be closed for safety reasons. Vehicles accessing the turf production site to the south of the existing A38 would use Ford Lane from the A6 Duffield Road. These arrangements would also enable Severn Trent Water (STW) to access its facilities in the vicinity of the River Derwent. These access arrangements may require some strengthening works to the Ford Lane bridge over the River Derwent. In the worst-case the bridge may need to be closed in order to complete such bridge strengthening works. In addition, Ford Lane would be realigned and its junction with Lambourn Drive reconfigured. These arrangements are considered in more detail in Section 4.7 of this report.

2.2.21 The proposed highway drainage system would incorporate two attenuation ponds and a runoff treatment area. A section of Dam Brook located adjacent to the east of the existing A38 would be diverted. A flood alleviation channel would be provided to connect a surface watercourse downstream of Breadsall Manor with the realigned Dam Brook. New sections of swale ditch would connect existing drainage ditches to the realigned Dam Brook.

2.2.22 Since the new A38 embankment would result in the loss of part of the River Derwent floodplain, a floodplain compensation area [APP-066 REP4-020] would be provided to the south of the A38 and to the west of the River Derwent.

2.2.23 Footpath and cycleway proposals at this junction include:

- NR54 crossing the new proposed southern slip roads (using a controlled toucan crossing) and passing under the mainline A38 using the new bridge. An uncontrolled crossing would be provided from the section of the NR54 that runs along the B6179 to provide access to the other side of the road;
- the footpath and cycleway (FP23) from Ford Lane to the junction along the northern side of the A38 would be retained;
- the Derwent Valley Heritage Way (FP7) would pass beneath the A38 via the flood relief arch; and
- Breadsall FP3 would be subject to a diversion line and join Breadsall FP1.

Open space loss and replacement

2.2.24 The Kingsway junction proposal would require permanent land take from an area of public open space adjacent to Greenwich Drive South as well as losses from the eastern edge of Mackworth Park (totalling approximately 1,521m^2). In addition, the Proposed Development would permanently

occupy an area of approximately 529m^2 that has been proposed as public open space. Therefore, the Kingsway junction proposals would result in the total permanent loss of approximately 2,050m^2 of existing and proposed public open space [APP-064]. An area of approximately 5,738m^2 of public open space would be permanently lost at Markeaton junction [APP-065]. This would include land from within Markeaton Park, at Mill Pond, and the additional space occupied by the replacement Markeaton footbridge.

2.2.25 The total permanent public open space loss (including proposed public open space) would amount to approximately 7,788m^2. Replacement public open space offered in exchange would be provided using the area vacated by the buildings to be demolished on Queensway, areas of the existing A38 at Markeaton junction that would be removed and landscaped, and the area left vacant by the closure of the Brackensdale Avenue access. These have a combined area of approximately 7,832m^2, which would result in a surplus of approximately 44m^2 [APP-065]. The new area of public open space at Queensway would be integrated with facilities for pedestrians and cyclists connecting the A52 Ashbourne Road with the proposed new footbridge.

2.2.26 Open space and replacement land are addressed in Sections 4.13 and 7.10.

2.3 THE APPLICATION AT THE CLOSE OF THE EXAMINATION

2.3.1 There were no material changes to the application proposal during the of the Examination. However, several supporting documents, including parts of the ES, were updated. Clarifications to the ES documents included:

- Chapter 7: Landscape and Visual [REP2-008];
- Chapter 8: Biodiversity [REP9-009];
- Chapter 12: People and Communities [REP9-011];
- Figure 7.1A: Kingsway and Markeaton Zone of Theoretical Visibility (ZTV) [REP2-010];
- Figure 7.5: Representative Viewpoints 1–24 [REP9-013];
- Appendix 2.2: Environmental Mitigation Schedule [REP14-006];
- Appendix 7.2: Arboricultural Impact Assessment Report [REP9-014];
- Appendix 8.20: Summary of Biodiversity Effects [REP9-015];
- Appendix 13.2A: Kingsway Flood Risk Assessment [REP9-017]; and
- Appendix 13.2B: Markeaton Flood Risk Assessment [REP9-018].

2.3.2 In addition the OEMP [REP14-008] and Traffic Management Plan (TMP) [REP14-011] were updated several times in response to matters raised by parties during the Examination.

2.3.3 Other submissions were made by the Applicant during the Examination which clarified the findings of the ES. They are collated in an ES Addendum [REP14-010] and comprise:

- Cross section of Kingsway Junction Northern Dumbbell [REP2-022];

- Additional Air Quality Information Submitted to DCiC [REP3-019];
- Updated Air Quality Compliance Risk Assessment [REP6-020];
- Supplement to Air Quality Compliance Risk Assessment [REP7-009];
- WHS Photomontages [REP3-018];
- Additional Photomontages [REP2-021];
- Technical Note on Loss of Veteran Tree T358 [REP7-008];
- Hedgerows within the Order limits [REP3-021];
- Ecological Impact Assessment of Alfreton Road Local Wildlife Site [REP4-023];
- Technical Note on Noise Assessment – The Averaging Time (T) and the Duration of Impact [REP6-021];
- Additional Soil and Groundwater Contamination Information submitted to the EA [REP3-020];
- Technical Note on Controlled Waters Quantitative Risk Assessment [REP4-019];
- Little Eaton Junction Existing and Proposed Rights of Way Plan [REP3-016]; and
- Floodplain Compensation Area – Contours Before and After Excavation Works [REP4-020].

2.3.4 We have had regard to these clarifications and, where necessary, further reference is made to them in Chapter 4. Schedule 10 of the rDCO (Appendix D), which specifies the documents to be certified, reflects these changes.

Further details, mitigation and consultation

2.3.5 The Examination also resulted in changes to the proposed mitigation measures. These measures are detailed and secured through the rDCO (Appendix D) requirements, the OEMP [REP14-008] and the TMP [REP14-011]. The OEMP would be succeeded by Construction Environmental Management Plans (CEMP) and a Handover Environmental Management Plan (HEMP).

2.3.6 The rDCO requirements are set out at Schedule 2. Requirement 1 defines terms used in the rDCO, including the CEMP and the HEMP. Requirement 2 secures the approval of the CEMP and HEMP by the SoST and requires the development to be constructed in accordance with the CEMP and operated and maintained in accordance with the HEMP. It also requires the CEMP to be substantially in accordance with the certified OEMP [REP14-008]. Nevertheless, the OEMP also recognises that the CEMP and the HEMP would need to be revised annually at least in order to remain up to date and makes provision for consultation and approval of that process. Requirement 11 requires the approval of the TMP by the SoST.

2.3.7 Where a requirement requires further details to be approved, the rDCO sets out the provisions for consultation with the local planning or highway authority or other relevant body prior to the submission of the details to the SoST. Requirement 4 sets out the procedure for reporting those consultations.

2.3.8 The TMP [REP14-011] outlines the measures for the management of traffic and temporary road layouts during the construction phase of the Proposed Development. The TMP [REP14-011] would be revised to provide greater detail of these measures during the detailed design phase. It recognises the need for on-going consultation during that process and identifies a range of stakeholders, including the local highway authorities (LHAs), who would be engaged in the review and agreement of the document.

2.3.9 The OEMP [REP14-008] sets out the roles and responsibilities of the project team and the detailed mitigation measures in the form of a Record of Environmental Actions and Commitments (REAC). The REACs are divided into the Preliminary Works and Main Works stages of the Proposed Development in order to reflect the differing contractual arrangements. Separate CEMPs are anticipated for each stage.

2.3.10 As well as specific mitigation measures, the OEMP [REP14-008] requires the preparation and approval of the following:

- Biosecurity Management Plan;
- Asbestos Management Plan;
- Site Waste Management Plan;
- Emergency Preparedness and Response Plan;
- Heritage Management Plan;
- Arboricultural Mitigation Strategy;
- Landscape and Ecology Management Plan;
- Noise and Vibration Management Plan;
- Noise Insulation and Temporary Rehousing Policy;
- Soils Management Plan;
- Water Management Plan;
- Groundwater Management Plan;
- Materials Management Plan (MMP);
- Traffic Management Plan; and
- Construction Workforce Travel Plan.

2.3.11 Where the OEMP [REP14-008] requires further details to be approved, it also sets out any requirements for consultation with the relevant bodies, prior to submission of the details to the SoST.

2.4 RELEVANT PLANNING HISTORY

2.4.1 The history of the Proposed Development is set out in Chapter 3 of the ES [APP-041]. In 2001 the Highways Agency (now HE) undertook a Road Based Study (RBS) to consider options for dealing with congestion and safety, environmental impacts, economic, accessibility and integration problems associated with the three roundabout junctions on the A38 through Derby. We note that concerns have been expressed that the process of developing the Proposed Development was flawed in not giving enough consideration to the potential for solutions which would be less reliant on private car use. This is dealt with in Section 4.5 of this report.

2.4.2 A public consultation on short-term and long-term options was held in 2001. The RBS recommended that the long-term improvements should involve grade-separation of each of the three junctions. A range of option studies and public consultation events took place between 2002 and 2005. However, work on the proposals was suspended in 2005 and effectively remained on hold until 2013 when it was considered as part of the Government's 2013 spending review.

2.4.3 Thereafter, in January 2014, the Highways Agency commissioned a review of the inclusion of A38 Derby Junctions into the planned programme of improvement works. The review indicated that significant delays were occurring at each of the three junctions and that the interim proposals (known as the Pinch Point Programme at Markeaton and Little Eaton junctions) were providing a measure of relief, but did not replace the need for long-term grade-separation. Therefore, further work was commissioned to take the Proposed Development to the Preferred Route Announcement stage.

2.4.4 In 2015 the Proposed Development was included in the first Road Investment Strategy (RIS1) to be delivered over the course of the first Road Period (2015/16 to 2019/20). Following the Preferred Route Announcement in January 2018, the design progressed towards the preparation of the submission of the application under the PA2008.

2.4.5 During this period a variety of route options were considered for each of the junctions. The consideration of these options is set out in detail in the ES [APP-041 APP-162 APP-163] and is summarised below.

2.4.6 The 2002-2005 exercise identified preferred options for each of the junctions. These options, and the rejected options, were taken forward for further consultation and development when work on the Proposed Development re-commenced. The consultation exercise generated further options, and these were assessed using the methods detailed in the Department for Transport's Transport Analysis Guidance (TAG) - The Transport Appraisal Process (DfT, 2014). Options which passed this initial sift were subject to further assessment based on cost, engineering, environmental, traffic and economic criteria. None of the further options for the Markeaton junction passed the initial sift. Three options for Kingsway and four for Little Eaton were subject to further assessment.

2.4.7 The options for the Kingsway junction comprised the preferred option with two local access variations and proposals suggested by a consultee. The

evaluation found that Option K2 (with local access via a link road to Kingsway Park Close) ranked the highest in all criteria, providing better road safety and reassigning traffic more efficiently. The consultee's option ranked as the worst option in each of the traffic and economic assessment criteria.

2.4.8 The options for the Little Eaton junction comprised:

- Option 1 (the option presented in the 2015 exercise). This would provide full grade separation of the junction, with the A38 realigned to the south of the existing roundabout. The option would avoid any land take at Fourways, the Ford Farm Mobile Home Park, Starbucks and the Derby Garden Centre. However, the resulting alignment would move the junction south and east of the current dual carriageway and would be closer to Breadsall to the east, but further from Allestree to the west.
- Option 2. This option would provide full grade separation of the junction with the A38 realigned along a sinuous horizontal alignment to minimise the impact on Fourways, Ford Farm Mobile Home Park, Starbucks, and the Derby Garden Centre. Extensive widening would be required both in the central reserve and the northbound verge to provide the minimum desirable stopping sight distances.
- Option 3A. This option would provide full grade separation of the junction, with the A38 following the existing alignment as closely as possible, but still maintaining the horizontal alignment standards that have been adopted for Option 1.
- Southern Sweep. This solution would provide full grade separation of the junction. This was a variant of Option 3A with the A38 following the existing alignment through the centre of the existing Little Eaton junction roundabout. This would result in the option swinging south of its current alignment to cross the railway, then swinging back before crossing the River Derwent.

2.4.9 The evaluation exercise indicated that Option 1 would be the most beneficial option in transport terms. That was because it would maintain the existing traffic routeing and was considered the best option in terms of its transport economic efficiency benefits. Although second to Option 2 in terms of minimising delays during the construction phase, overall Option 1 was found to be the most beneficial in transport terms.

2.4.10 The Southern Sweep and Option 2 were found to be very closely matched with Option 1. The Southern Sweep was not preferred due to the increased durations of delays and diverting trips during the construction phase. By comparison, Option 2 would require longer distances to be travelled overall after its opening due to the layout of the two-roundabout design. Option 3A was ranked last for all four traffic objectives, although this was attributed to the lack of ability to turn right from the B6179 to the A38 south.

2.4.11 Following the options assessment outlined above, further alternative options for Little Eaton junction were received from local residents in 2016. These options were reviewed and developed by the project design team in order to ensure that the layouts complied with designs standards as appropriate and that land impacts were fully understood. They comprised:

- Options 2A and 2B. These variants of Option 2 (above) would place the mainline A38 embankment to the north of the existing Little Eaton junction thereby requiring a new bridge over the railway line. They would take the car park from the Derby Garden Centre, which would need to be relocated. Two engineering interpretations were generated by the Applicant from the submitted hand annotated design. Option 2A re-used the existing roundabout and existing carriageways to provide entry slips from the south. Option 2B dispensed with the existing roundabout and provided new slip roads from the south.
- Option X would place the mainline A38 to the north of the existing Little Eaton junction, but at existing ground level. This option would require a link road from a roundabout to the south of the A38 (connecting with the A61) along the eastern side of the A38 and then turning west through a tunnel to connect to the B6179.
- Option X1 would create new roundabouts to the north-east of Ford Farm Mobile Home Park and south of the existing roundabout, maintain the A38 at ground level and provide a link road from the A61 to the B6179 on a flyover above the A38. An engineering interpretation drawing for this option was not prepared as the option was not considered to support the defined objectives for the Proposed Development.

2.4.12 Options 2 and 2B were found to have no additional feasibility benefits or drawbacks when compared with Option 1. Option X was found to have several technical challenges meaning that it was not likely to be feasible without significant redesign and alteration and would have a substantially lower economic benefit/cost ratio. Challenges posed by this option included the creation of large areas of severed land, Ford Lane access off the junction slip road and significant technical issues associated with constructing a new underbridge. The access arrangements for the Starbucks café site would potentially impact on the viability of the business. Option X1 was found to have several technical challenges such that it was not likely to be feasible without significant redesign and alteration. It would also have a substantially lower economic benefit/cost ratio. There would be significant technical challenges to install the two new roundabouts as they would need to be sufficiently far away from the new bridge to allow an acceptable vertical alignment. The issues associated with Ford Lane and access to the Starbucks café would be like those for Option X.

2.4.13 In the light of these considerations, none of the further alternative options passed the initial sifting process and were not subject to further assessment. Subsequently, however, a meeting took place in January 2017 between the then Transport Minister (John Hayes, the MP for Mid Derbyshire which includes Little Eaton and Breadsall), HE, Breadsall Parish Council (BPC) and AECOM. The purpose of the meeting was to hear the concerns of the residents of Breadsall village in relation to the proposals for the Little Eaton junction. Following the meeting, it was decided to further assess an option that would result in the A38 being re-aligned to the north side of the existing roundabout. The project team was advised to consider the best alternative options as previously discounted, but to disregard previous constraints (that is, Ford Farm Mobile Home Park and other businesses) as these could potentially be relocated. This resulted in a new option known as Option 2C.

2.4.14 This option was developed with the assumption that the Ford Farm Mobile Home Park and its residents would be relocated, and the site demolished. Fourways and its associated businesses would also be acquired and demolished. The Derby Garden Centre car park would also need to be relocated. Option 2C was compared to Option 1 in terms of engineering, traffic and economics, environment, stakeholders and land-take.

2.4.15 Option 2C had several advantages over Option 1 in terms of engineering design and potential environmental impacts on Breadsall village (in terms of noise, air quality and visual intrusion). It would also reduce the impact on agricultural land within the GB. However, the main disadvantages would be the impacts on Fourways and associated businesses and the Ford Farm Mobile Home Park. It was considered to have socio-economic impacts upon the residents of Ford Farm Mobile Home Park, many of whom are elderly, with some residents considered to be vulnerable.

2.4.16 In addition, Option 2C would increase the construction costs by an estimated £24.5m, as well as introduce several additional adverse environmental effects, such as increased flooding risks, land contamination, and impacts upon the DVMWHS. Given these findings, Option 2C was not considered preferable to Option 1.

3 LEGAL AND POLICY CONTEXT

3.1 INTRODUCTION

3.1.1 As understood by the Applicant, the legal and policy context for the Proposed Development is described primarily in ES Chapter 1 [APP-039] and in the Planning Statement and National Policy Statement Accordance Table [APP-252].

3.2 PLANNING ACT 2008 AND NATIONAL POLICY STATEMENT

3.2.1 The PA2008 provides different decision-making processes for NSIP applications where a relevant National Policy Statement (NPS) has been designated (s104) and where there is no designated NPS (s105). Paragraphs 1.1.4 and 1.1.5 above identify that the application is for highways-related NSIP development. Consequently, it is an application to which s104 is applicable because it is subject to policy in the designated National Policy Statement for National Networks (NPSNN). Therefore, the matters that the SoST must consider are:

- any NPS which has effect in relation to development of the description to which the application relates (a 'relevant National Policy Statement');
- the appropriate marine policy documents (if any), determined in accordance with s59 of the Marine and Coastal Access Act 2009;
- any LIR (within the meaning given by s60(3) of the PA2008) submitted to the SoS before the specified deadline for submission;
- any matters prescribed in relation to development of the description to which the application relates; and
- any other matters which the SoST thinks are both important and relevant to the decision.

3.2.2 Section 104(3) of the PA2008 requires the SoST to decide the application in accordance with any relevant NPS. This creates a presumption in favour of NPS compliant development, unless one or more of the exceptions in subsections (4) to (8) applies. The exceptions are that the SoST is satisfied that:

- deciding the application in accordance with any relevant NPS would lead to the United Kingdom (UK) being in breach of any of its international obligations;
- deciding the application in accordance with any relevant NPS would lead to the SoST being in breach of any duty imposed on her/him by or under any enactment;
- deciding the application in accordance with any relevant NPS would be unlawful by virtue of any enactment;
- the adverse impact of the proposed development would outweigh its benefits; and/or

- any condition prescribed for deciding an application otherwise than in accordance with a NPS is met.

3.2.3 All of these matters are addressed in detailed terms, with references to individual paragraphs in the NPSNN, in Chapter 4. The NPSNN sets out the need for, and Government's policies to deliver, development of NSIPs on the national road and rail networks in England. It provides planning guidance for promoters of NSIPs and the basis for the examination by the ExA and decisions by the SoST. No other NPSs are directly applicable to the Proposed Development.

3.2.4 The NPSNN states that applicable policies from relevant development plans can be important and relevant matters. Such policies are identified later in this chapter and addressed further in Chapter 4.

3.3 UK LEGISLATION

Wildlife and Countryside Act 1981

3.3.1 The Wildlife and Countryside Act 1981 is the primary legislation which protects animals, plants, and certain habitats in the UK. It provides for the notification and confirmation of Sites of Special Scientific Interest (SSSIs). In England, these sites are identified for their flora, fauna, geological or physiographical interest by Natural England (NE). The Wildlife and Countryside Act contains measures for the protection and management of SSSIs.

3.3.2 The Act is divided into four parts: Part l relating to the protection of wildlife, Part ll relating to designation of SSSIs and other designations, Part lll on public rights of way and Part lV containing miscellaneous provisions. If a species protected under Part l is likely to be affected by development, a protected species licence would be required from NE.

3.3.3 The Act is relevant to the Proposed Development in view of the sites and species identified in the Biodiversity chapter of the ES [REP9-009]. Relevant considerations are discussed in Chapter 4.

Natural Environment and Rural Communities Act 2006

3.3.4 The Natural Environment and Rural Communities Act 2006 makes provision for bodies concerned with the natural environment and rural communities, in connection with wildlife sites and SSSIs. It includes a duty that every public body must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions, to the conservation of biodiversity (the biodiversity duty). In complying with the biodiversity duty, regard must be had to the United Nations Convention on Biological Diversity of 1992.

3.3.5 We have had regard to the Natural Environment and Rural Communities Act 2006 and the biodiversity duty in all relevant sections of Chapter 4.

OTHER RELEVANT LEGAL PROVISIONS

3.3.6 The following legislative provisions have been taken into account in the Examination of the Proposed Development.

United Nations Convention on Biological Diversity 1992

3.3.7 The UK Government ratified the Convention in June 1994. Responsibility for the UK contribution to the Convention lies with the Department for Environment, Food and Rural Affairs (DEFRA) who promote the integration of biodiversity into policies, projects and programmes within Government and beyond. The Convention is of relevance to biodiversity, ecology, landscape and visual matters, which are discussed in Chapter 4.

3.3.8 As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, we have had regard to this Convention in our consideration of the likely impacts of the Proposed Development and appropriate objectives and mechanisms for mitigation and compensation. In particular, we find that compliance with the UK provisions on EIA and transboundary matters (referred to below) satisfy the requirements of Article 14 with regard to impacts on biodiversity.

The UK Biodiversity Action Plan

3.3.9 Priority habitats and species are listed in the UK Biodiversity Action Plan, which is relevant to the Proposed Development in view of the biodiversity considerations discussed in Section 4.11.

Flood and Water Management Act 2010

3.3.10 NPSNN (paragraph 5.100) advises that where construction work has drainage implications, approval for the project's drainage system will form part of any development consent issued by the SoST. The SoST will, therefore, need to be satisfied that the proposed drainage system complies with the National Standards published by Ministers under Paragraph 5(1) of Schedule 3 to the Flood and Water Management Act 2010.

OTHER ENVIRONMENTAL LEGISLATION

3.3.11 Other relevant environmental legislation has been considered for this report, including:

- the Protection of Badgers Act 1992;
- the Environment Act 1995;
- the Hedgerows Regulations Act 1997;
- the Salmon and Freshwater Fisheries Act 1975;
- the COPA;
- the Pollution Prevention and Control Act 1999; and
- the Land Drainage Act 1991.

Marine legislation and policy

3.3.12 Having had regard to the application documents and evidence submitted during the Examination, we have considered whether the Proposed Development could affect the coastal or marine environment in a manner sufficient to invoke this body of legislation and policy, including with respect to the marine and coastal change matters identified in the NPSNN. Given the inland location of the Proposed Development there would be no pathway to the marine environment. Consequently, we conclude that the Proposed Development would not have such an effect. Therefore, no further consideration has been given to marine or coastal change legislation or policy in this report.

Climate change

3.3.13 Section 10(3)(a) of the PA2008 requires the SoST to have regard to the desirability of mitigating, and adapting to, climate change in designating an NPS.

3.3.14 The United Nations Framework Convention on Climate Change (UNFCCC) is an international environmental treaty that was adopted in 1992 with the objective to "*stabilise greenhouse gas concentrations in the atmosphere at a level that would prevent anthropogenic interference with the climate system*". The Paris Agreement 2015 was adopted by the parties to the UNFCCC, including the UK, at a conference in Paris in December 2015 with the purpose of strengthening the global response to the threat of climate change. It provides a framework for keeping global warming well below 2°C and was ratified by the UK Government in November 2016.

3.3.15 The Climate Change Act 2008 establishes statutory climate change projections and carbon budgets. The Climate Change Act 2008 (2050 Target Amendment) Order 2019 came into force after the application was submitted.

3.3.16 Climate change is considered in Section 4.15.

Equalities Act 2010

3.3.17 The Equalities Act 2010 establishes a Public Sector Equality Duty (PSED) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The PSED is applicable to us in the conduct of this Examination and reporting to the SoST in decision-making. We had particular regard to the PSED, including in our decision to hold virtual hearings during the extended Examination period as well as in producing the guidance for, and conducting, those hearings.

The historic built environment

3.3.18 When deciding an application which is likely to affect a listed building, a conservation area, a scheduled monument or their settings, the SoST must comply with the duties set out in Regulation 3 of The Infrastructure Planning (Decisions) Regulations 2010. Part of the Proposed Development falls within the core area of the DVMWHS and the remainder within its

setting. The Convention Concerning the Protection of the World Cultural and Natural Heritage 1972 (the World Heritage Convention) is the main international agreement controlling the protection of such cultural and natural heritage sites. The Convention was ratified by the UK in 1984 and is fulfilled through the statutory planning system, the designation of heritage assets and the use of WHS Management Plans. We have had regard to these matters in Section 4.14.

OTHER RELEVANT LEGISLATION

3.3.19 Other relevant legislation has been considered for this report, including:

- the Highways Act 1980;
- the Town and Country Planning Act 1990;
- the Countryside and Rights of Way Act 2000;
- the Health and Safety at Work Act 1974; and
- the Neighbourhood Planning Act 2017.

3.4 EUROPEAN LAW AND RELATED UK REGULATIONS

Leaving the European Union

3.4.1 The UK left the European Union (EU) as a member state on 31 January 2020. The European Union (Withdrawal Agreement) Act of January 2020 gave effect to the transition arrangements until the 31 December 2020. This provides for EU law to be retained as UK law unless excepted and also to bring into effect obligations which may come in to force during the transition period. This report has been prepared on the basis of retained law and references in it to European terms such as 'Habitats' have also been retained for consistency with the examination documents. It will be a matter for the SoST to satisfy themself as to the position on retained law, obligations and equivalent terms at the point of their decision.

The EIA Directive and the EIA Regulations

3.4.2 The EIA Directive defines the procedure by which information about the environmental effects of a development is collected and considered by the relevant decision-making body before consent can be granted. It applies to a wide range of public and private projects, which are defined in Annexes I and II of the Directive. The most recent EIA Directive is 2014/52/EU, which came into force on 15 May 2014.

3.4.3 The EIA Directive is transposed into law for NSIPs in England and Wales by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations), which came into force on 16 May 2017.

3.4.4 The EIA Regulations establish the minimum information to be supplied by an applicant within an ES, as well as information that can be requested as being reasonably justified in the circumstances of the case. Regulation 14 and Schedule 4 of the EIA Regulations set out the information required in an ES. This is reinforced by Regulation 4(2), which sets out the core duty

of the decision maker in deciding on EIA development. It states that the decision maker *"must not … make an order granting development consent or … grant subsequent consent unless an EIA has been carried out in respect of that application."*

3.4.5 The Proposed Development is EIA development under Schedule 2 of the EIA Regulations. The Applicant submitted a notification to PINs of its intention to submit an ES under Regulation 8(1)(b) and has provided an ES [APP-039 to APP-240] as part of the submitted application. As set out in Section 2.3 above, parts of the ES have been updated during the Examination.

3.4.6 All the submitted environmental information has been taken into consideration, as defined in Regulation 4 of the EIA Regulations including the ES and all other information received during the Examination. The ES is addressed in Chapter 4.

The Habitats Directive, the Birds Directive and the Habitats Regulations

3.4.7 The Habitats Directive (92/43/EEC) and the Birds Directive (2009/147/EC) form a cornerstone of Europe's nature conservation policy. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) are the principal means by which they are transposed into the law of England and Wales. The Habitats Directive is built around two pillars: a network of protected sites, and a system of species protection.

3.4.8 Habitat types requiring the designation of Special Areas of Conservation (SACs) are listed in Annex I of the directive. Animal and plant species of interest whose conservation requires the designation of SACs are listed in Annex II. SACs form part of the Natura 2000 ecological network of protected sites. Annex IV lists animal and plants species of interest in need of legal protection. All species listed in these annexes are identified as European Protected Species.

3.4.9 The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the EU. It requires classification of areas as Special Protection Areas (SPAs) comprising all the most suitable territories for these species. All SPAs form part of the Natura 2000 ecological network.

3.4.10 Assessment processes taking place pursuant to the Habitats Regulations are referred to as Habitats Regulations Assessment (HRA). When determining this application, the SoST must consider whether the Proposed Development may have a significant effect on a European site of nature conservation importance alone or in combination with other plans or projects.

3.4.11 The Habitats Directive, Birds Directive and Habitats Regulations have been taken into account in considering the application and are discussed in Chapters 4 and 5.

The Water Framework Directive and the WFD Regulations

3.4.12 Directive 2000/60/EC establishes a framework for Community action in the field of water policy (the WFD). It includes objectives such as preventing and reducing pollution, environmental protection, improving aquatic ecosystems and mitigating the effects of floods. The WFD requires Member States to identify River Basin Districts.

3.4.13 The WFD is transposed into law in England and Wales by the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. They require the 'appropriate agency' to prepare River Basin Management Plans for each River Basin District. The Order land is covered by the Humber River Basin District River Basin Management Plan 2015.

3.4.14 Regulation 3 places a general duty on the SoST and the EA to exercise their 'relevant functions' to secure compliance with the WFD. The PA2008 is not a 'relevant function' for this purpose. However, these bodies, together with public bodies, also have a specific duty to have regard to the relevant River Basin Management Plan and any supplementary plans made under it in exercising their functions, which would include functions under the PA2008.

3.4.15 The Applicant has prepared Water Framework Directive Assessment Reports for Kingsway Junction [APP-232] and Little Eaton Junction [APP-233]. A WFD assessment for Markeaton junction was screened out as the Proposed Development would not require any physical changes to watercourses or water bodies which would pose a risk to WFD objectives.

3.4.16 The WFD is addressed in Section 4.10.

The Air Quality Directive, the UK Air Quality Strategy and the Clean Air Strategy

3.4.17 Directive 2008/50/EC on ambient air quality and cleaner air for Europe came into force on 11 June 2008. It sets limit values (LVs) for compliance and establishes control actions where the LVs are exceeded for ambient air quality with respect to sulphur dioxide (SO_2), nitrogen dioxide (NO_2) and mono-nitrogen oxides (NO_x), particulate matter (PM_{10} and $PM_{2.5}$), lead, benzene and carbon monoxide. The Air Quality Standards Regulations 2010 give direct statutory effect to the Air Quality Directive (AQD).

3.4.18 The UK Air Quality Strategy (AQS) establishes the UK framework for air quality improvements. It establishes a long-term vision for improving air quality in the UK and offers options to reduce the risk to health and the environment from air pollution. Individual plans prepared beneath its framework provide more detailed actions to address LV exceedances for individual pollutants. In turn, these plans set the framework for action in specific local settings where LV exceedances are found, including the designation of Clean Air Zones and more localised Air Quality Management Areas (AQMAs) where Air Quality Management Plans are prepared by LAs.

3.4.19 The Clean Air Strategy 2019, published on 14 January 2019, sets out actions required across government and society to improve air quality.

3.4.20 Air Quality is considered in Section 4.8.

3.5 MADE DEVELOPMENT CONSENT ORDERS

3.5.1 There is nothing in the application documents or other submissions made to the Examination to indicate that the Proposed Development would substantively affect, or be affected by, other made DCOs.

3.6 NATIONAL PLANNING POLICY FRAMEWORK

3.6.1 The National Planning Policy Framework (February 2019) (NPPF) and its accompanying National Planning Practice Guidance (NPPG) set out the Government's planning policies for England and how these are expected to be applied for the particular purposes of making development plans and deciding applications for planning permission and related determinations under the Town and Country Planning Act 1990 (as amended).

3.6.2 The NPPF does not contain specific policies for NSIPs. These are determined in accordance with the decision-making framework in the PA2008 and relevant NPSs for major infrastructure, as well as any other matters that are relevant, which may include the NPPF.

3.6.3 Paragraphs 1.17 to 1.20 of the NPSNN further describe the relationship between the NPPF and the NPSNN. In summary, these paragraphs provide that:

- the NPPF may be an important and relevant consideration in decisions on NSIPs, but only to the extent relevant to a project;
- the NPPF is not intended to contain specific policies for individual NSIPs, where particular considerations can apply. The NPSNN performs that function; and
- the NPPF provides a framework within which responses to individual project effects can be considered, but that in relation to tests or standards to be met, these are normally derived from the NPSNN.

3.6.4 NPPF policies have been considered in respect of all planning issues addressed in Chapter 4. They are typically drawn out only where they identify different considerations from those arising through the NPSNN.

3.7 DEVELOPMENT PLANS

3.7.1 When deciding applications, s104(2)(d) of the PA2008 requires the SoST to have regard to any other matters considered both important and relevant. The NPSNN requires consideration to be given to policies and information in the development plan with regard to matters including other developments which may give rise to cumulative impacts, non-designated heritage assets, the GB, impacts on land use and the preclusion of other development, local transport networks and the management of travel demand.

3.7.2 Since the Order land extends into the administrative areas of DCiC and EBC, the development plans of both Councils are relevant. The LIRs identify the development plans considered to be relevant to the Proposed Development. The development plans comprise the following documents.

Derby City Local Plan - Part 1 Core Strategy (2017)

3.7.3 The Derby City Core Strategy (DCCS) sets out the strategic policies for the City to 2028. A Site Allocations and Development Management Policies document will form the second part of the Local Plan in due course. Amongst other things, the DCCS sets out a requirement for 11,000 new homes and 199ha of employment land over the plan period 2011 to 2028. The strategy for the Derby Housing Market Area also makes provision for in the region of a further 8,000 new homes around the edge of the City in the Derby Urban Area but within two other LA areas. Growth in the Urban Area is intended to meet Derby's residual housing needs as well as a proportion of the housing needs of the other areas. Strategic housing sites to the west and south of Derby are identified.

3.7.4 The DCCS aims to make best use of existing transport assets while also investing in measures to support sustainable transport modes other than the private car. Policy CP23 seeks to deliver a sustainable transport network and states that the Council will ensure that people living, working and travelling within Derby will have viable travel choices and an effective, efficient and sustainable transport network which meets the needs of residents and businesses while supporting economic growth.

3.7.5 Nevertheless, the DCCS also recognises that there will be a need for capacity increases and new road infrastructure. Several schemes are identified, including the A38(T) Grade Separation Scheme. This equates to the A38 Derby Junctions proposal and is considered necessary to deliver a safe, sustainable and efficient transport network. Policy CP24 states that:

"*The Council will work with partners to deliver the Council's long-term transport strategy in association with the Local Transport Plan and support the implementation of strategic proposals and initiatives that help create an economically and environmentally sustainable transport network. Initiatives will include:*

(a) supporting the implementation of Highways England's A38 Derby Junctions Grade Separation Scheme."

3.7.6 The supporting text recognises that *"the A38 carries heavy flows of north-south long-distance traffic. Also, where it passes through Derby, significant volumes of local traffic cross or join and leave the A38. This results in congestion and delays at the A38/A5111 Kingsway roundabout, the A38/A52 Markeaton roundabout and the A38/A61 Abbey Hill roundabout (now named Little Eaton Junction)."* It goes on to acknowledge previous improvements to the junctions, that grade separation is proposed in the longer term, and that the Council will ensure that any land needed to implement these proposals will be protected.

3.7.7 Other DCCS policies for specific topics are considered in Chapter 4.

Saved Policies of the City of Derby Local Plan Review (2006)

3.7.8 Several policies in the City of Derby Local Plan Review have been saved pending the adoption of the Site Allocations and Development Management Policies document. Whilst the saved policies do not refer specifically to the

Proposed Development, unsaved Policy T3 did presume against development that would prejudice implementation of the A38 Derby Junctions scheme. Overall, this plan has limited relevance to the Proposed Development and is not considered further.

Erewash Core Strategy 2011-2028 (2014)

3.7.9 The policies of the Erewash Borough Core Strategy (EBCS) address matters including the presumption in favour of sustainable development, climate change, new housing, regeneration, economic development, GB protection, green infrastructure and the positive management of the built and natural environment. Amongst other things, the plan provides for a minimum of 6250 new homes over the plan period.

3.7.10 With regard to transport, the EBCS envisions *"Improved road links and integrated public transport infrastructure and networks will have created improved access to excellent public services. The Borough will be easily accessible by a choice of modes of travel, with the creation of enhanced opportunities increasing usage of local cycling and walking facilities, helping to enhance recreational and leisure opportunities resulting in a healthier population."*

3.7.11 Policy 1 requires all development proposals to mitigate and adapt to climate change and comply with national targets on reducing carbon emissions and energy use. It also deals with flood risk and the use of sustainable urban drainage systems.

3.7.12 Along with much of the countryside area of the Borough, the Little Eaton junction falls within the GB. Policy 3 states that:

"*The principle of the Nottingham-Derby Green Belt will be retained. Within Erewash, when considering proposals for development within the GB, regard will be given to:*

a) the statutory purposes of the GB;

b) maintaining the strategic openness of the GB between the towns of Ilkeston and Long Eaton and the Derby urban area;

c) ensuring the continued separation of neighbouring towns and rural settlements within Erewash Borough;

d) safeguarding valued countryside; and

e) preserving the setting and special character of Erewash towns and rural settlements."

3.7.13 Other relevant policies for specific topics are considered in Chapter 4.

Saved Policies; Erewash Borough Council Local Plan (2005) (amended 2014)

3.7.14 This Plan pre-dates the NPSNN and the NPPF and this limits the weight to be attached to its policies. Relevant policies include:

- T6 Cycling;
- EV6 Listed Buildings;
- EV9 Scheduled Ancient Monuments and sites of archaeological significance;
- EV10 Sites of Special Scientific Interest, Regionally Important Geological Sites and Geomorphological Sites, local nature reserves and sites of importance for nature conservation;
- EV11 Protected species and threatened species;
- EV14 Protection of trees and hedgerows;
- EV16 Landscape character;
- EV19 World Heritage Site and buffer zone;
- R2 Rights of way;
- R3 Cyclepaths/cycle parking;
- DC7 Development and flood risk; and
- GB1 Green Belt.

3.7.15 To the extent that these policies add anything to the requirements of the NPSNN, the NPPF and the EBCS, they are covered in the relevant sections of Chapter 4. However, it is deemed unnecessary to give them further specific consideration.

3.8 OTHER RELEVANT POLICY STATEMENTS

NATIONAL POLICIES

Road Investment Strategy

3.8.1 The RIS sets out a long-term programme for motorways and major roads with the stable funding needed to plan effectively. RIS1 announced 127 major schemes to be delivered over the course of the first Road Period (2015/16 to 2019/20). One of the schemes was the Proposed Development, which was referred to as "*replacement of three roundabouts on the A38 in Derby with grade-separated interchanges, raising the A38 in the East Midlands to Expressway standard and removing congestion*".

3.8.2 Since the application was made RIS2, covering the second Road Period 2020 to 2025, has been published. The vision for RIS2 seeks a SRN which supports the economy and is greener, safer and more reliable, more integrated and smarter. Amongst the environmental actions identified are reducing the impact of noise pollution, ensuring no net loss (NNL) of biodiversity, measures to reduce NO_2 exceedances and respect for protected wildlife sites. The Proposed Development is included as a project to be delivered during the second Road period.

3.8.3 Other relevant national policy statements include:

- National Infrastructure Delivery Plan (2016);

- Department for Transport Single Departmental Plan 2015–2020 (2015);
- Highways England Delivery Plan 2015-2020 (2015); and
- Noise Policy Statement for England (NPSE) (2010).

LOCAL POLICIES

Derbyshire County Council Local Transport Plan (2011-2026)

3.8.4 This Local Transport Plan (LTP) sets out the transport goals and challenges for Derbyshire, which comprise:

- "*Supporting a resilient local economy*
- *Tackling climate change*
- *Contributing to better safety, security and health*
- *Promoting equality of opportunity*
- *Improving quality of life and promoting a healthy natural environment.*"

3.8.5 The Proposed Development is identified in the LTP, which finds that:

"*These A38 junctions represent a major constraint for the County, and their improvement is important to the County's wider economic prosperity, as well as linking with possible housing developments in the Derby Housing Market Area.*"

Derby Local Transport Plan LTP3 (2011-2026)

3.8.6 The Derby Local Transport Plan (LTP3) recognises the need to grade separate the A38 Derby Junctions. It finds that *"It is important that proposals for a Scheme to grade separate junctions along the A38 at Abbey Hill (now named Little Eaton junction), Markeaton and Kingsway are implemented in the future. The A38 Derby Junctions Scheme will separate local and long-distance traffic reducing delays and congestion allowing us to better manage our local network and improve linkages across the A38 for public transport, pedestrians and cyclists. If the Scheme cannot be funded and delivered it is likely that any future development to the west of the city will be severely restricted."*

3.8.7 Nevertheless, LTP3 identifies the significant economic price associated with climate change and the role that domestic road transport plays in contributing to CO_2 emissions. As such, the principle set out is to only support new infrastructure that is targeted and makes best use of the available road capacity. LTP3 finds that the Proposed Development would improve the efficiency of the highway network by reducing congestion from both the trunk road and local network.

Derwent Valley Mills World Heritage Site Management Plan (2014-2019)

3.8.8 The Government has decided to protect the Outstanding Universal Value (OUV) of WHSs through the planning system. It is Government policy that

all UK sites have agreed management plans in place in order to provide a holistic approach to their overall management by ensuring effective and active involvement of all key stakeholders. These plans are prepared on a participatory basis by a Steering Group or Committee made up of the key stakeholders in each site, are subject to full public consultation and reviewed every five years.

3.8.9 The overarching mission of the current DVMWHS Management Plan is *"To maintain the Outstanding Universal Value of the Derwent Valley Mills World Heritage Site by protecting, conserving, presenting, enhancing and transmitting its unique culture, heritage, economy and landscape in a sustainable manner."* The Management Plan identifies nine specific objectives and actions. Aim 1 seeks to *"protect, conserve and enhance the Outstanding Universal Value of the Site."*

3.8.10 The Management Plan is in the process of being updated to cover the period 2020–2025. The current and emerging Management Plans address the key values and principal physical attributes of the OUV of the DVMWHS. Local planning authorities (LPAs) in the DVMWHS consult the DVMWHS Partnership as a non-statutory consultee through the planning process.

Derby and Derbyshire Minerals Local Plan (as amended 2002)

3.8.11 Whilst many policies are of little relevance to the Proposed Development, Policy MP17 Safeguarding Resources seeks to resist proposals for development that would sterilise or prejudice the future working of important economically workable mineral deposits except in certain circumstances.

Adopted Derby and Derbyshire Waste Local Plan (2005)

3.8.12 Chapter 11 of the ES on Material Assets and Waste [APP-049] makes reference to the adopted Waste Local Plan as being relevant to the Applicant's assessment of the impacts of the generation and disposal of waste materials from the Proposed Development.

3.9 LOCAL IMPACT REPORTS

3.9.1 Section 104 of the PA2008 states that in deciding the application the SoST must have regard to any LIR within the meaning of s60(3). There is also a requirement under s60(2) to give notice in writing to each LA falling under s56A inviting them to submit LIRs. This notice was given on 11 October 2019 [PD-006].

3.9.2 As set out at paragraph 1.4.33, LIRs were submitted by DCC, DCiC and EBC. Summaries of matters raised in the LIRs are set out in Section 4.3.

3.10 'IMPORTANT AND RELEVANT' MATTERS

3.10.1 Based on the above, apart from legislation, 'other matters' that we consider to be 'important and relevant' for the purposes of s104(2)(d) of the PA2008 are:

- the NPPF, to the extent relevant to the Proposed Development;
- the development plans referred to in Section 3.7; and
- the national and local policies referred to in Section 3.8.

3.11 THE SECRETARY OF STATE'S POWERS TO MAKE A DCO

3.11.1 Throughout the Examination we have remained aware of the need to consider whether revisions to the application documents have changed the proposal to a point where it became a different application and, therefore, whether the SoST would have the power under s114 of the PA2008 to make a DCO having regard to the development consent applied for.

3.11.2 Planning Act 2008: Guidance for the examination of applications for development consent (March 2015), provides guidance at paragraphs 109 to 115 in relation to changing an application post acceptance. The view expressed by the Government during the passage of the Localism Act was that s114(1) places the responsibility for making a DCO on the decision-maker and does not limit the terms on which it can be made.

3.11.3 Having regard to this context, we consider that the changes to the application (primarily consisting of clarifications or changes to the proposed mitigation measures) have not resulted in any significant changes to the proposals for which the application was originally made. The changes taken into account in reaching this conclusion include those documented in Section 2.3.

3.11.4 It follows that we consider that the SoST has the power to make the DCO as recommended in Chapter 8 and provided in Appendix D to this report.

4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES

4.1 INTRODUCTION

4.1.1 This chapter considers the main planning issues in the Examination. First, our identification of the IAPI is considered. The chapter then deals with topics in turn and sets out conclusions in relation to them. The only topics not dealt with in this chapter are HRA, CA and the DCO which are dealt with in Chapters 5, 7 and 8 respectively.

4.2 MAIN ISSUES IN THE EXAMINATION

4.2.1 Our IAPI, prepared in accordance with s88 of the PA2008 and Rule 5 of the IPR, was published with the letter inviting all IPs to the PM [PD-029]. We had regard to the application documents, the NPSNN and any relevant Ministry of Housing, Communities and Local Government (formerly Department for Communities and Local Government (DCLG)) guidance together with RRs submitted by IPs. It was made clear in Annex B that the list was not comprehensive or exhaustive and that regard would be had to all relevant matters in reaching a recommendation after the conclusion of the Examination. The issues identified in that initial assessment were as follows:

- the dDCO and other consents, permits and licenses;
- legislation and policy, the need for development and alternatives;
- impact assessment and mitigation methodology and good design;
- transport networks and traffic;
- air quality;
- noise and vibration;
- the water environment;
- biodiversity and ecological conservation;
- landscape and visual;
- land use, social and economic;
- the historic environment;
- other policy and factual issues; and
- compulsory acquisition and funding.

4.2.2 Our IAPI was discussed at the PM and there were no objections to them from any of the parties. For the most part, the main issues in the Examination turned out to be broadly consistent with those identified in the IAPI. That said, the issue of climate change gained prominence during the Examination. This is dealt with in Section 4.15.

4.2.3 The matters of impact assessment and mitigation methodology identified in the IAPI are dealt with as part of individual topic areas. Following this section, the chapter considers issues arising in the LIRs, RRs, written and oral submissions and the EIA. It then considers in principle conformity with national, development plan and other policies. This section takes in the need for the Proposed Development, alternatives and good design. The remainder of the chapter covers the following planning issues, although no significance should be attached to their order:

- transport networks and traffic;
- air quality;
- noise and vibration;
- the water environment;
- biodiversity and ecological conservation;
- landscape and visual;
- land use, social and economic;
- the historic environment;
- climate change; and
- other policy and factual issues.

4.2.4 In accordance with paragraphs 4.18 to 4.20 of the NPSNN, we also considered how to handle matters where details of the Proposed Development are still to be finalised. This was particularly relevant in this case, given the Applicant's approach to the preparation of the Proposed Development, where many of the detailed design elements were not fully resolved. The NPSNN requires that appropriate development consent requirements are secured in the DCO in the event of deciding to grant development consent for an application where details are still to be finalised.

4.2.5 The Applicant explained that its approach to the design was due to the nature of the highway design process in which the precise details of the Proposed Development and its construction would necessarily evolve from the preliminary design. As such, the exact detail of what was required and how it could be delivered, in the Applicant's view, would only be determined through the subsequent development of the detailed design, which would follow on from the consenting of the proposal. The Applicant supported this approach by identifying limits of deviation (LoD) from the preliminary design (which are secured through the rDCO) together with controls set out in Environmental Masterplans, Environmental and Traffic Management Plans (which are secured through the rDCO). This process was relevant to establishing the Rochdale Envelope for the purposes of the EIA.

4.2.6 Given the scale of the Proposed Development and the advice in the NPSNN, we accept that not all details would be resolved during the Examination. Consequently, the our approach has been to satisfy ourselves that all details would be capable of resolution within the envelope defined in the ES and secured by rDCO requirements where necessary. In large part, the

changes to the dDCO and supporting application documents reviewed in Section 2.3 arose from this process. Specific instances relating to individual topic areas are also considered further in the later sections of this chapter.

4.3 ISSUES ARISING IN THE LOCAL IMPACT REPORTS

4.3.1 The general matters raised in the LIRs were:

- relevant national and local policies;
- the need for the Proposed Development having regard to its role in providing additional capacity on the highway network, which would facilitate local housing and economic development;
- environmental effects including the impacts on the GB, the highway network, flood risk, landscape and visual, ecology, air quality, heritage and minerals and waste implications; and
- the economic, social and environmental sustainability of the Proposed Development.

4.3.2 Specific concerns raised in the LIRs included the following:

- DCC [REP1-031]: the effect of the Little Eaton junction on the DVMWHS, the landscape setting and the GB; maintenance of the surface water drainage structures; the weight restriction on the Ford Lane bridge; the proposed re-alignment of the Dam Brook; selected provisions of the dDCO;
- DCiC [REP1-035]: air quality having regard to Derby's AQMAs and Roadside Nitrogen Dioxide Scheme; noise, particularly during the construction phase; impacts on nearby highway junctions; the effect of the proposals to stop up existing roads; the proposed signalisation of the A6/Ford Lane junction; construction phase impacts on vehicle and public transport movements and non-motorised users (NMUs) and the adequacy of the TMP; and
- EBC [REP1-050]: the balance between economic development and the potential for the proposal to increase car use; compensation for the partial loss of the Alfreton Road Rough Grassland LWS; loss of GB openness.

Conclusion on issues arising from the LIRs

4.3.3 We have had regard to all matters raised in the LIRs, as required by s104(2) of the PA2008. The overall support for the proposal and its benefits in easing congestion and facilitating housing and economic development are noted. The other concerns expressed are discussed later in this chapter and in Chapters 6 and 8.

4.4 ISSUES ARISING IN WRITTEN AND ORAL SUBMISSIONS

Introduction

4.4.1 At the outset of the Examination there was a relatively limited level of opposition to the Proposed Development and a fair degree of public support. However, during the Examination, several issues gained prominence. The matters raised are summarised below.

Relevant Representations

4.4.2 Concerns at the RR stage can be summarised as:

- flawed consideration of the options for the siting and design of the Little Eaton junction, lack of screen planting, inappropriate routeing of footpath diversions and impact on the Little Eaton Canal (BPC [RR-001] and others, Friends of Little Eaton Canal [RR-014]);
- noise and air quality impacts on the living conditions of nearby residential occupiers (Caron Fellows [RR-023] and others);
- impacts of the operational phase on adjoining residential institutions and the wellbeing of residents (Haven Care Group [RR-015] and RSfD [RR-019]);
- effects on the operation of local businesses (Euro Garages [RR-013], McDonald's Restaurants [RR-016], Millennium Isle of Man [RR-017] and the occupiers of 12 Queensway [RR-018]);
- lack of justification for CA and the adequacy of Protective Provisions (PPs) for SUs (Cadent Gas [RR-002], Network Rail [RR-007], Severn Trent Water [RR-009] and Western Power Distribution [RR-010]); and
- the Proposed Development was not bold enough and would not adequately separate local and through traffic (Alan Bradwell [RR-021]).

4.4.3 Other RRs referred to the delays and congestion at the three junctions and welcomed the relief that the Proposed Development would bring.

Written and oral submissions

4.4.4 The Examination process offered the opportunity for IPs to supplement their RRs and to respond to submissions by other IPs. We also exercised our discretion to accept additional written submissions from others who were not registered as IPs and to hear from others at the OFH and ISHs. The substantive new matters to emerge from these contributions are set out below (together with the section of this report where they are addressed):

- climate change. This was identified in the IAPI under the heading of 'Other policy and factual issues.' The Government's carbon emissions target changed (see paragraph 3.3.14), after the application was submitted. These matters featured in submissions that were made during the later stages of the Examination. Allied concerns included whether the cost of the Proposed Development would be better spent on improving bus, cycling and pedestrian provision and whether the

proposals would induce more car travel and lead to congestion elsewhere on the network (Section 4.15);

- traffic congestion, noise and air quality impacts and disruption to public transport services during the construction phase. Concern was expressed that the TMP was not sufficiently detailed or comprehensive to provide assurance regarding such impacts. There was also concern regarding the adequacy of the traffic modelling of changes in driver behaviour (use of alternative routes) while construction works take place (Section 4.7);
- the impact on bus (Section 4.7) and cycle (Section 4.13) travel from the closure of the Ford Lane junction with the A38;
- pedestrian and cycle safety during the construction phase. Again, concern was expressed that the TMP did not provide adequate safeguards in these matters (Section 4.13);
- whether adequate provision is made for NMUs (Section 4.13);
- disruption to businesses and the Royal Derby Hospital during the construction phase. Intu Derby and others considered that disruption to traffic during the construction phase would discourage shoppers from visiting the city centre and other retail locations close to the Proposed Development (Section 4.13), as well as impacting on visitor and emergency vehicle access to the Royal Derby Hospital (Section 4.7);
- the loss of trees, particularly of one veteran tree at Markeaton Park, and whether the proposals provide enough replacement planting. The landscape and visual effects of the Little Eaton junction proposals (Section 4.12);
- whether the proposal makes adequate use of sustainable urban drainage solutions. Whether the proposed drainage strategy adopts appropriate discharge rates and provides satisfactory controls to prevent pollution and siltation. Increased flood risk as a result of climate change and a specific risk associated with the diversion of Dam Brook (Section 4.10);
- whether the noise assessment properly deals with short term exceedances in the assessed noise levels (Section 4.9);
- the air quality impacts of the proposal on public health, particularly in the light of Covid-19 (Section 4.8);
- the effect of the proposal on biodiversity. Whether it offers sufficient biodiversity enhancement and whether the assessment methodology used in the ES is transparent and robust (Section 4.11);
- the ground contamination assessment methodology (Section 4.16); and
- whether the need for the development and the use of a road-based solution has been adequately justified (Section 4.5).

Conclusion on issues arising from the RRs and written and oral submissions

4.4.5 We have considered all issues raised in the RRs and written and oral submissions. The matters are addressed in detail later in this chapter.

4.5 POLICY CONFORMITY

Introduction

4.5.1 This section deals with whether the proposal complies, in principle, with the requirements of the NPSNN, the development plans and other relevant policies. In doing so, it covers whether the need for the development has been established through the NPSNN and whether alternatives to the Proposed Development have been properly considered. Compliance with detailed policies on specific topic areas is dealt with in the subsequent sections of this chapter.

Conformity with the NPSNN

4.5.2 Paragraph 4.2 of the NPSNN advises that, subject to its detailed policies and protections, and the legal constraints set out in the PA2008, *"there is a presumption in favour of granting development consent for national networks NSIPs that fall within the need for infrastructure established in this NPS"*.

4.5.3 The Applicant evaluates the Proposed Development against relevant NPSNN policies in its Planning Statement and National Policy Statement Accordance Table [APP-252]. It sets out the need for the Proposed Development assessed against the provisions of the NPSNN and in the context of its inclusion within the RIS.

Need for the Proposed Development

4.5.4 Paragraph 2.13 of the NPSNN establishes the importance of the national road network which *"provides critical links between cities, joins up communities, connects our major ports, airports and rail terminals. It provides a vital role in people's journeys, and drives prosperity by supporting new and existing development, encouraging trade and attracting investment"*. Paragraph 2.21 and Table 1 go on to find that, whilst there are a range of options for meeting the identified need, including maintenance and management, demand management and modal shift, relying solely on these alternatives is not viable or desirable.

4.5.5 Paragraph 2.22 advises that improvements to the road network will help to support further economic development, employment and housing. As such, the Government concludes that, at a strategic level, there is a compelling need for development of the national road network. Paragraph 2.23 finds that works may take the form of *"junction improvements, new slip roads and upgraded technology to address congestion and improve performance and resilience at junctions, which are a major source of congestion."*

4.5.6 The Applicant considers that the Proposed Development would improve traffic flow and reduce congestion at the three A38 junctions, thereby offering journey time benefits to all vehicles. Through traffic on the A38 would not need to negotiate each of the three roundabouts and traffic signals. Many local trips would benefit from the overall increase in the capacity of the junctions, which would also resolve conflicts between local traffic and strategic movements using the A38. The proposal would also offer the potential to improve segregation and remove conflicts between

pedestrians and cyclists and vehicles using the A38, as well as improving the facilities for pedestrians and cyclists [APP-252]. The Transport Assessment Report (TAR) [REP3-005] finds that the Proposed Development would avoid 1,396 collisions across the highway network over a 60 year period.

4.5.7 The LIRs do not disagree with the Applicant's assessment of the scale or nature of the existing congestion and delays at the three junctions. Moreover, although some objectors have suggested amendments to the siting and layout of elements of the Proposed Development, and others consider that investment should take the form of improvements to NMU travel options, the need to address the problems at the junctions has not been disputed by substantive evidence.

4.5.8 The Applicant considers that the Proposed Development would provide additional capacity along the A38, making journey times more reliable. This would assist in facilitating regeneration, development and economic growth on the west side of Derby [APP-252]. This benefit is recognised in the DCCS and the LTPs which consider that the A38 is an important regional route and that if the Proposed Development cannot be funded and delivered, it is likely that any future development to the west of the city would be severely restricted.

4.5.9 Moreover, the DCCS makes provision for a minimum of 11,000 new homes and 199ha (gross) of new employment land. Much of the planned housing is in the Littleover, Mackworth and Mickleover areas close to the A38 corridor to the west of Derby. The Proposed Development would provide more capacity in the highway network serving these locations. Without the additional capacity the planned growth aspirations are likely to be adversely affected. Indeed, several extant housing schemes are subject to a cap on the number of houses that can be completed before the implementation of the Proposed Development.

4.5.10 Some objectors to the proposal cast doubt on the efficacy of road improvement schemes in supporting economic growth. However, in this case there is substantive evidence, supported by the LPAs' LIRs [REP1-031 REP1-035 REP1-050], that the constrained capacity of the existing junctions is holding back development which would otherwise come forward. Completion of the Proposed Development would, therefore, have a direct effect by facilitating planned housing and economic growth.

4.5.11 The Proposed Development has been the subject of an economic assessment which considered its economic, environmental and social benefits and disbenefits. The Applicant advised that the assessment followed the DfT's WebTAG guidance and HM Treasury's Green Book. It was based on the assignment of a forecast core growth scenario, with sensitivity tests using low growth and high growth assumptions for the volume of traffic using the Proposed Development. Benefits and disbenefits were monetized to provide a benefit cost ratio (BCR). The DfT benchmarks a BCR of 2 as high value for money. In comparison, the BCR for the Proposed Development was calculated to be 2.6 [REP1-005 REP7-007 REP10-009]. We are satisfied that the approach taken to the economic assessment is consistent with the advice at paragraph 4.5 of the NPSNN.

4.5.12 Concern was expressed that the methodology used to justify the case for the Proposed Development in the RIS was biased towards road schemes (for example Derby Climate Coalition [REP6-030]). However, the RIS assessment process prioritized between potential road schemes rather than between road schemes and other forms of investment in transport infrastructure. As such, output of the process would inevitably be the prioritization of a road scheme, regardless of the methodology used. Moreover, paragraph 4.6 of the NPSNN is also clear that the ExA and the SoST do not need to be concerned with the national methodology and national assumptions around the key drivers of transport demand.

4.5.13 We are, therefore, satisfied that the Proposed Development would be likely to result in significant reductions to delays and congestion at the three junctions and would improve highway safety. As such it would also help to release constraints on housing and economic development to the west of Derby. We are also content that the costs and benefits of the proposal have been assessed appropriately. Overall, therefore, we conclude that the need for the Proposed Development has been established in accordance with the requirements of the NPSNN and that the presumption in favour of development is engaged.

Consideration of alternatives

Policy context

4.5.14 Paragraphs 4.26 and 4.27 of the NPSNN deal with alternatives to the application proposals and require Applicants to comply with relevant legal and policy requirements on the assessment of alternatives. These matters are covered in Sections 4.6 (Environmental Impact Assessment) and 4.10 (the WFD and the sequential test for flooding) and Chapter 5 (Habitats Regulations Assessment).

4.5.15 Paragraph 4.27 of the NPSNN states that all projects should also be subject to an options appraisal, which should consider viable modal alternatives. It goes on to advise that national road schemes will have been subject to a proportionate options appraisal as part of the investment decision making process. Further, that it is not necessary for the ExA to reconsider that process if it is satisfied that the assessment has been undertaken. Paragraph 2.21 also advises that relying solely on alternatives such as demand management and modal shift *"is not viable or desirable as a means of managing need"*. Paragraph 3.23 states that Government policy is not to introduce road pricing to manage demand on the SRN.

Alternatives to a road-based scheme

4.5.16 The Proposed Development is included in RIS1 and RIS2 and the Applicant confirmed [REP7-007] that the Proposed Development was appraised using the DfT's transport appraisal guidance (TAG) which follows HM Treasury Green Book guidance. Objectors to the Proposed Development have suggested that the appraisal methodology used biased cost/benefit metrics which placed too much emphasis on reduced journey times and gave insufficient weight to the cost of increases in carbon emissions [AS-060]. However, paragraph 4.27 of the NPSNN is clear that it is not our role, or that of the SoST, to reconsider that process, if we are satisfied that the

assessment has been undertaken. Based on the available evidence, we are satisfied that an assessment has been undertaken as required by the NPSNN.

4.5.17 It was also asserted by Derby Climate Coalition [REP14-034 AS-060] that the appraisal process did not give proper consideration to alternatives to a road-based scheme, such as public transport, walking and cycling improvements. This was considered contrary to the TAG, which advises it is important that as wide a range of options as possible should be considered, including all modes, infrastructure, regulation, pricing and other ways of influencing behaviour. The Applicant advised that the proposals were delivered based on a road-based study which focussed on the options open to HE as the strategic highway authority. Nevertheless, it did consider alternatives to a road-based scheme at stage 2 of the TAG appraisal but they were found to be not affordable. The Applicant also referred to its consideration of possible complementary transport initiatives [REP12-007]. Elsewhere reference is made to LA transport initiatives to tackle journey time delays in the area [REP10-009].

4.5.18 As the Applicant has acknowledged, the options appraisal for the Proposed Development was primarily concerned with a road-based solution [REP12-007]. To that extent, it appears not to have taken full account of the TAG advice on considering as wide a range of options as possible. However, the objectives of the Proposed Development include reducing delays to journey times and reducing the conflict between traffic on local routes around Derby and strategic traffic on the A38.

4.5.19 Improvements to facilities for NMUs at and around the junctions have the potential to reduce travel demand, although it is also relevant that the TAR [REP3-005] finds that the Proposed Development would lead to relatively low levels of induced travel demand and that it would have a beneficial effect in re-routeing traffic away from local roads. There is no substantive evidence to dispute these findings. Moreover, improvements to facilities for NMUs would be unlikely to have a significant effect in reducing strategic traffic movements such as the long-distance movements which the Proposed Development is predicted to facilitate. We have no reason to doubt the Applicant's advice that initiatives which may have more effect on strategic travel movements, such as rail infrastructure improvements, would be costly compared with the Proposed Development.

4.5.20 During the Examination FoED asserted that homeworking will become more common, particularly as a result of Covid-19 and that this eliminates the need for the Proposed Development [REP10-010]. However, whilst new technology can make homeworking easier, the extent to which Covid-19 will change working arrangements in the long term has yet to be established. The limited evidence on this point presented at the Examination does not lead us to believe that the need for the proposal has been eliminated or even substantially reduced.

4.5.21 The road-based form of the Proposed Development would tackle the problems in and around the three A38 Derby junctions directly. Whilst Government policy places increasing emphasis on walking, cycling and public transport, it also continues to support investment in the SRN.

Insufficient evidence has been presented to the Examination to demonstrate that investment in those modes on a comparable scale to that of the Proposed Development would offer a viable alternative means of achieving the travel benefits of the proposal. Furthermore, it has not been adequately demonstrated that the Proposed Development would hamper the implementation of schemes to encourage travel by foot, cycle or public transport. The allocation of funding for such schemes is not a matter for this Examination.

4.5.22 We have some reservations regarding the Applicant's initial approach to the consideration of non-road-based alternatives to the Proposed Development. Nevertheless, we are mindful of NPSNN advice that relying solely on alternatives such as demand management and modal shift is not viable or desirable to manage need. Therefore, we are satisfied that the appraisal of alternatives to a road-based scheme was undertaken and sufficient to meet the requirements of the NPSNN.

Alternatives to the proposed junction layouts

4.5.23 Chapter 3 of the ES [APP-041] reviews the history of the Proposed Development and the alternative layout proposals considered at each of the junctions. These matters are also summarised in Section 2.4 of this report.

4.5.24 BPC [REP1-027 REP3-028], Simon Morris [RR-026] and others considered that the options appraisal for the Little Eaton junction was fundamentally flawed on the basis that it did not give appropriate weight to a petition submitted in response to a 2003 consultation. The petition opposed the option which subsequently became the Preferred Route. The Parish Council also considered that the consultation exercise placed too much weight on responses from people not residing close to the junction. Further, that the appraisal did not adequately consider the potential to relocate Ford Farm Mobile Home Park which would have allowed the implementation of one of its preferred options.

4.5.25 The Applicant [REP2-020] responded by, amongst other things, advising that the signatories to the petition did not respond individually to the consultation exercise and, therefore, although the number of signatories to the petition was noted, it was counted as a single response. It considered that public opinion was an important element of any consultation process, however, it did not consider that the outcome of an appraisal should necessarily be determined in accordance with the popularity of a given option. It is also relevant that the Proposed Development is an NSIP and, therefore, although Breadsall residents may be potentially more directly affected than others further afield, any assessment must consider the overall balance of positive and negative effects. Specific local effects are considered in more detail in the Noise, Air Quality, Landscape and Visual and Land Use, Social and Economic sections of this chapter.

4.5.26 The assessment of options carried out for the Little Eaton junction was broadly based and there is nothing to suggest that it did not meet the requirements of the investment decision making process for national road schemes. This included consultations with the occupiers of Ford Farm Mobile Home Park, most of whom objected to being relocated. Since those

people would be directly and significantly affected by relocation, it was considered reasonable for the assessment to give considerable weight to their views. Moreover, although the appraisal identified environmental impacts associated with the Preferred Route, it was found that these could be mitigated more effectively (this matter is considered in later sections of this chapter) than relocation from a person's home. It is also evident that the appraisal exercise was extended in order to give due consideration to further options put forward by an Action Group opposed to the Preferred Route. As such, we consider that adequate consideration was given to alternative layouts of the Little Eaton junction.

4.5.27 It has also been suggested that the Proposed Development is not bold enough and would not adequately separate local and through traffic [RR-021]. However, the options appraisal considered alternative layouts for each of the junctions and assessed them against economic, environmental, social and value for money criteria. The options were also the subject of several consultation exercises before the Preferred Route was finalised. The objector has not provided substantive evidence to demonstrate that this process was inadequate or that the bolder scheme proposed would have significant benefits over the Preferred Route.

Conclusion on the consideration of alternatives

4.5.28 Overall, we are satisfied that the options appraisal for the Proposed Development was properly undertaken and that due consideration has been given to alternatives to the submitted proposals.

Good Design

4.5.29 Paragraphs 4.28 and 4.29 of the NPSNN advise that Applicants should include design as an integral consideration from the outset and that visual appearance should be a key factor in considering the design of new infrastructure, as well as functionality, fitness for purpose, sustainability and cost. The outcome should be *"sustainable infrastructure sensitive to place, efficient in the use of natural resources and energy used in their construction, matched by an appearance that demonstrates good aesthetics as far as possible"*. Applicants should be able to demonstrate how the design process was conducted and how the proposed design evolved (paragraph 4.35).

4.5.30 The Applicant has advised that the design of the Proposed Development has been developed considering the Highways Agency's Principles of Good Design. These Principles seek good road design which makes roads safe and useful, inclusive, understandable, fit their context, restrained, environmentally sustainable, thorough, innovative, collaborative and long-lasting. The Applicant has also applied the advice in Design Manual for Roads and Bridges (DMRB) standards for functionality. The design, including the form, appearance and detailed siting of its components, has been developed through an iterative process in parallel with the EIA. It is also evident from the history of the Proposed Development (see ES Chapter 3 [APP-041] and Section 2.4 above) that the Proposed Development has evolved in response to consultation and a series of option appraisals. Changes were also made to the lighting scheme, noise barriers, signage and

the replacement Markeaton footbridge before the application was submitted.

4.5.31 The proposal comprises linear development which is required to integrate with the existing network at three separate locations. This constrains its siting and, to a degree, its layout. The settings for the three junctions also vary from fairly urban to semi-rural environments. In this context, we consider that the form of each of the junctions responds reasonably positively to its setting. Environmental Masterplans have been submitted which show embedded mitigation and enhancement measures to achieve further integration.

4.5.32 In terms of the highway functionality of the proposal, the concerns regarding the detailed design of the access to McDonald's Restaurant and the Esso PFS are covered in Section 4.13. Concerns regarding provision for NMUs are covered in the same section. Other highways-related design matters are dealt with in Section 4.7.

4.5.33 Overall, little concern has been raised regarding the appearance of the Proposed Development. The exceptions are the forms of the flyover and the flood compensation storage area at the Little Eaton junction. In both cases the concerns related to the effect of these elements on the landscape and the DVMWHS. These are dealt with in Sections 4.12 and 4.14.

4.5.34 As discussed in Section 4.2 above, the application as submitted left some details to be finalized. These include matters affecting the appearance of development. However, we are satisfied that the rDCO (Appendix D) and the OEMP [REP14-008] provide sufficient controls and safeguards to ensure that the further details to be submitted would meet the NPSNN requirements for good design.

4.5.35 With these measures in place therefore, we find that the Proposed Development accords with the NPSNN in terms of good design.

Green Belt

4.5.36 Paragraphs 5.170, 5.171 and 5.178 of the NPSNN deal with proposals in the GB and, therefore, apply to the Little Eaton junction proposals. There is a general presumption against inappropriate development in the GB. Such development should not be approved except in very special circumstances. Applicants should determine whether any part of their proposal is within the GB and, if so, whether it may be considered inappropriate development within the meaning of GB policy in the NPPF. Paragraph 146(c) of the NPPF states that local transport infrastructure which can demonstrate a requirement for a GB location is not inappropriate development, if it preserves openness.

4.5.37 The NPSNN also recognises that linear infrastructure may need to pass through GB land. The identification of a policy need for such infrastructure will take account of the fact that there will be an impact on the GB and as far as possible, of the need to contribute to the achievement of the objectives for the use of land in GBs.

4.5.38 The Proposed Development is an NSIP, rather than local, infrastructure project. The NPSNN is clear that the NPPF is not intended to contain specific policies for NSIPs but that it should be applied to the extent that it is relevant to the project. In this case, the Proposed Development requires a GB location because it comprises the upgrading of existing linear infrastructure in the GB. It would frustrate the aims of NPSNN policy on the importance of improving the SRN if the exception for local infrastructure provided by paragraph 146(c) of the NPPF did not also apply to this NSIP. The effect of the Proposed Development on the openness of the GB is dealt with in Section 4.12 below. However, in summary, it concludes that openness would be preserved. On this basis we find that the Proposed Development would not be inappropriate development and, therefore, accords with NPSNN policies on the GB.

Conclusions on conformity with the NPSNN

4.5.39 We consider that the need for the Proposed Development has been established in accordance with the NPSNN. We find that proper consideration has been given to alternatives to the Proposed Development and that the proposal meets the requirements for Good Design and development in the GB. The performance of the Proposed Development against the requirements of specific topic areas set out in the NPSNN is considered later in this chapter.

CONFORMITY WITH THE DEVELOPMENT PLANS

4.5.40 The policies of the DCiC and EBC development plans relevant to the 'in principle' consideration of the Proposed Development are identified in Section 3.8.

Derby City Local Plan - Part 1 Core Strategy (2017)

4.5.41 The Proposed Development is given direct support by DCCS Policy CP24 which seeks to deliver the Council's transport strategy, including the implementation of a scheme for the grade separation of the three junctions. Policy CP23 aims to deliver a sustainable transport network which meets the needs of residents and businesses while supporting economic growth. Specific issues relating to sustainability are dealt with later in this chapter. However, the Proposed Development would allow the implementation of a range of planned housing and employment development sites in Derby and the surrounding area. Therefore, we are satisfied that it conforms with the broad thrust of the DCCS.

4.5.42 The relationship of the Proposed Development to DCCS policies on the historic environment, the landscape Green Wedges and biodiversity are covered later in this chapter.

Erewash Core Strategy 2011-2028 (2014)

4.5.43 Policy A of the EBCS requires the Council to take a positive approach to wide-ranging aspects of sustainable development as set out in the NPPF. To the extent that the Proposed Development would reduce congestion and improve the reliability of journey times on the SRN, help facilitate housing and employment development and improve safety, it would meet the

economic and social aims of sustainability. In its LIR [REP1-050], EBC found that the Proposed Development would not comply with EBCS policies for climate change but considered that this conflict would be outweighed by the wider benefits of the Proposed Development.

4.5.44 The EBCS's spatial strategy is based on urban concentration and regeneration. It also encourages sustainable alternatives to the use of the private car to address the impacts of growth and identifies three initiatives in this regard. The Proposed Development would not directly support these initiatives, although nor would it frustrate them. Nevertheless, it would help to fulfil the Plan's wider growth objectives. Environmental concerns, including climate change and travel demand, are dealt with in detail in subsequent sections of this chapter and they are balanced against the need for, and benefits of the proposal in Chapter 6. Based on these findings, we consider that the Proposed Development meets the EBCS's aims for sustainable development.

4.5.45 Policy 3 of the EBCS deals with proposals in the GB and is directly relevant to the Proposed Development. The EBC's LIR REP1-050] notes that the fundamental aim of GB policy is to prevent urban sprawl and refers to paragraph 146(c) of the NPPF. We have already concluded in paragraph 4.5.38 above that the Proposed Development accords with that provision. The proposal is linear in nature and clearly distinct in form and setting from nearby built development. As such, it would not lead to urban sprawl and would not conflict with EBCS Policy 3. In principle therefore, we find that the Proposed Development would conform with the broad thrust of the EBCS.

4.5.46 The relationship of the Proposed Development to EBCS policies on the historic environment, managing travel demand, transport infrastructure and biodiversity are covered in the relevant sections of this chapter.

CONFORMITY WITH OTHER RELEVANT POLICY STATEMENTS

Road Investment Strategy

4.5.47 The Proposed Development was included in RIS1 and has been re-confirmed in the recently published RIS2 as a scheme that the Government expects to be built and funded in the period to 2025. Concern has been raised regarding the approach to assessing investment decisions in the RIS. However, it is not for this Examination to review the methodology or assumptions underlying nationally published policies.

4.5.48 We therefore find that the Proposed Development is supported by the RIS. Its contribution to the environmental aims of the RIS are considered in the later sections of this chapter.

Local Transport Plans

4.5.49 Both the Derbyshire County Council Local Transport Plan 2011-2026 and the Derby Local Transport Plan 2011-2026 identify the Proposed Development as an important strategic scheme that would relieve congestion and facilitate housing and economic development in Derby and the wider region. As such, they firmly support the Proposed Development.

4.6 THE ENVIRONMENTAL STATEMENT

Policy context

4.6.1 Paragraph 4.15 of the NPSNN states that *"All proposals for projects that are subject to the European Union's Environmental Impact Assessment Directive and are likely to have significant effects on the environment, must be accompanied by an environmental statement, describing the aspects of the environment likely to be significantly affected by the project".* Paragraph 4.16 deals with significant cumulative effects and advises that *"any environmental statement should provide information on how the effects of the Applicant's proposal would combine and interact with the effects of other existing or consented development."*

The application

4.6.2 As set out in Section 1.5 above, the application was supported by an ES, the scope of which had previously been agreed. The Environmental Statement (ES) comprises 17 chapters [APP-039 to APP-055] together with supporting Figures [APP-056 to APP-157], Appendices [APP-158-240] and a Non-Technical Summary [APP-241].

4.6.3 The DMRB, whilst not statutory policy, was relied on by the Applicant in the preparation of many of the assessments in the ES. The DMRB was updated following the preparation of those assessments. We sought clarification of the Applicant's approach to the updated document at ISH2 EV-011 EV-012 EV-013. It considered that it was not appropriate to retrofit the Proposed Development to the new guidance. The Applicant stated that it would not be undertaking a new assessment of the proposals against the new DMRB guidance and we consider that approach is reasonable. The SoST may wish to satisfy themself that they agree. More information was provided to the Examination in respect of specific matters related to the updated guidance on air quality (DMRB LA105), which is considered further in Section 4.8.

4.6.4 As discussed in Section 4.2 above, the ES uses the Rochdale Envelope approach to assessment of environmental effects where there are design uncertainties. In particular, the Works Plans [REP2-005] and rDCO (Appendix D) Article 8 define LoD for the horizontal and vertical alignment of the proposed carriageways. The ES assumes a worst-case scenario for environmental effects within these limits. This approach is supported by PINs Advice Note 9: Using the Rochdale Envelope and the reasons for its use in this case are explained in Section 4.2. The effects assessed in the ES are also defined through the use of Environmental Masterplans [APP-068], which detail the visual, landscape, built environment, biodiversity, noise and water quality measures incorporated into the Proposed Development. In response to our questions regarding the methodology used in the Landscape and Visual chapter of the ES [PD-005], an update to this chapter was submitted during the Examination [REP2-008].

4.6.5 Section 2.3 details the clarifications made to the ES during the of the Examination and explains how the environmental effects of the Proposed Development would be controlled, and mitigation measures secured, through the rDCO (Appendix D), the TMP [REP14-011] and the OEMP [REP14-008]. Amongst other things, the revisions made to these

documents addressed our queries regarding the use of the Rochdale Envelope and how it would be ensured that the Proposed Development would have no materially new or materially worse adverse environmental effects in comparison with those reported in the ES.

4.6.6 There were no substantive challenges to the overall scope or validity of the ES from IPs or other parties during the Examination. The concerns raised regarding specific findings of the ES are dealt with later in this chapter.

4.6.7 Chapter 3 of the ES [APP-041] reviews the notable alternatives which were considered during design development. These comprised:

- location of Markeaton footbridge;
- configuration of the Esso PFS and McDonald's access at Markeaton junction;
- locations of construction compounds;
- locations for borrow pits;
- Little Eaton floodplain compensation area options;
- Ford Lane access provisions;
- noise barriers along both sides of the A38 between Kingsway junction and Markeaton junction;
- noise barriers along Kingsway Park Close;
- closure of the existing uncontrolled pedestrian crossing of the A38 between Thurcroft Close and Greenwich Drive North;
- lighting options at Little Eaton junction;
- visual and noise barriers at Little Eaton junction; and
- public open space losses and replacement land options.

4.6.8 In some cases, these options are considered in greater detail in later sections of this chapter. Moreover, Section 4.5 above considers alternatives to a road-based scheme and the layout of the Little Eaton junction. Chapter 7 deals with alternatives to the layout of the Markeaton junction and access to Sutton Turner Close in the context of seeking to minimise the need for CA. However, there were no other challenges to the options reviewed in the ES or suggestions that other elements of the Proposed Development should have been the subject of review.

Cumulative effects

4.6.9 Cumulative effects with other projects in the locality are considered in ES Chapter 15 [APP-053]. An initial long list of fifty developments was sifted [APP-238] to produce a short list of ten developments [APP-239] which were considered in greater detail.

4.6.10 The Applicant, DCiC and DCC also reviewed the potential for interaction with other highway schemes. It was found that there were no relevant schemes

within 5km of the Order land and, therefore that there would be no cumulative environmental effects with other highways schemes.

4.6.11 Cumulative effects are considered in the following sections of this chapter, as necessary.

Transboundary impacts

4.6.12 On behalf of the SoSHCLG, PINs carried out a screening exercise to determine whether the Proposed Development would result in any LSEs on the environment in another European Economic Area State. The screening on 23 May 2018 followed the Applicant's request for a scoping opinion.

4.6.13 Under Regulation 32 of the EIA Regulations and based on the information provided by the Applicant, PINs considered that the Proposed Development would be unlikely to have a significant effect either alone or cumulatively on the environment in another European Economic Area State.

4.6.14 In reaching this conclusion PINs identified and considered the Proposed Development's likely impacts including consideration of potential pathways and the extent, magnitude, probability, duration, frequency and reversibility of the impacts. PINs considered that the likelihood of transboundary effects resulting from the Proposed Development is so low that it does not warrant completion of a formal transboundary screening matrix.

4.6.15 We have had regard to the ongoing duty of the SoSHCLG under Regulation 32 to have regard to transboundary matters throughout the Examination. We find that no new information came to light during the Examination which gives rise to the need to reconsider the SoSHCLG's transboundary screening opinion.

Conclusions on the EIA and ES

4.6.16 WE are content that the ES, together with the other information submitted by the Applicant during the Examination, is adequate and meets the requirements under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. Full account has been taken of all environmental information in the assessment of the application and in the recommendation to the SoST.

4.6.17 Considering the EIA process, the submitted and updated ES, the Works Plans and Environmental Masterplans, we conclude that:

- the Proposed Development is EIA development;
- the submitted documents, as supplemented by the subsequent submissions, provide an adequate assessment of the environmental effects of the Proposed Development;
- the Rochdale Envelope has been properly defined and considered in the ES; and
- the ES gives enough consideration to alternatives to the Proposed Development.

4.7 TRANSPORT NETWORKS AND TRAFFIC

Introduction

4.7.1 This section considers the effect of the Proposed Development on transport networks and traffic, including public transport.

4.7.2 Section 4.13 considers effects on NMUs; public rights of way; community severance; the McDonald's Restaurant and Esso PFS sites at Markeaton junction; and other businesses, including retail.

4.7.3 Alternative options are addressed in Sections 2.4 and 4.5 and Chapter 7. Safety is covered in Section 4.16.

Policy context

4.7.4 Paragraphs 2.2, 2.3, 2.4 and 2.6 of the NPSNN identify an overarching need for development of the SRN to address existing congestion points and the forecast rise in road traffic of 30% from 2014 to 2030, and to facilitate economic growth.

4.7.5 Paragraphs 2.12 to 2.14 highlight the importance of the SRN for providing links between cities, communities and other transport modes and for supporting national and regional economies.

4.7.6 Paragraph 2.23 identifies policy support for enhancements to the SRN to meet the underlying growth in demand, including:

- junction improvements and new slip roads to address congestion and improve performance and resilience at junctions, which are a major source of congestion; and
- improvements to trunk roads, particularly additional lanes on existing dual carriageways to increase capacity and to improve performance and resilience.

4.7.7 Paragraph 2.24 highlights that policy favours schemes that tackle specific issues rather than simply meeting unconstrained traffic growth.

4.7.8 Paragraph 5.204 notes that Applicants should consult the relevant highway authority, and LPA, as appropriate, on the assessment of transport impacts. Paragraphs 5.211 and 5.212 make it clear that the SoS must consider impacts on the local transport network and local transport policies, including those in local plans, and that account should be taken of local models. However, the NPSNN is intended to prevail unless a legislated exception arising from s104(4) to s104(8) of the PA2008 applies.

4.7.9 Relevant local plans and policies are set out in Sections 3.8 and 3.9.

4.7.10 Paragraph 5.215 of the NPSNN states that mitigation measures should be proportionate, reasonable and focussed on promoting sustainable development.

The application

4.7.11 The main sections of the application relevant to the transport networks and traffic matters considered in this section are:

- Consultation Report [APP-023]
- Chapter 12 - People and Communities [APP-050];
- Chapter 15 – Assessment of Cumulative Effects [APP-053];
- Chapter 16 – Residual Effects [APP-054];
- OEMP [APP-159 updated to REP14-008 during the Examination];
- TAR [APP-253 updated to REP3-005 during the Examination]; and
- TMP [APP-254 updated to REP14-011 during the Examination]

Overall transport assessment

4.7.12 The TAR [REP3-005] sets out the transport issues related to the Proposed Development and the measures proposed to mitigate the anticipated impacts. A baseline traffic computer model (SATURN model) was developed, based on a model commissioned by DCiC and continuously developed since 2006. The Applicant extended that model to include a broader area of the SRN that might be affected and updated it with further data on traffic signals, traffic counts and anonymised data from survey vehicles and mobile phone records.

4.7.13 Future year traffic forecasts with and without the Proposed Development were prepared for an opening year (2024), intermediate year (2031) and a design year (2039). The forecasts took account of planned changes to the highways network and changes in trip demand, which included consideration of specific development sites.

4.7.14 The forecasts with the Proposed Development were used for the development of the design options. The differences between the forecasts with and without the Proposed Development were used for the economic justification and to identify the impacts arising from the Proposed Development.

4.7.15 Fourteen representative local routes, seven northbound sections of the A38 and six southbound sections of the A38 were identified for the consideration of impacts on journey times. In each case baseline times were compared with times with and without the Proposed Development during the opening and design years.

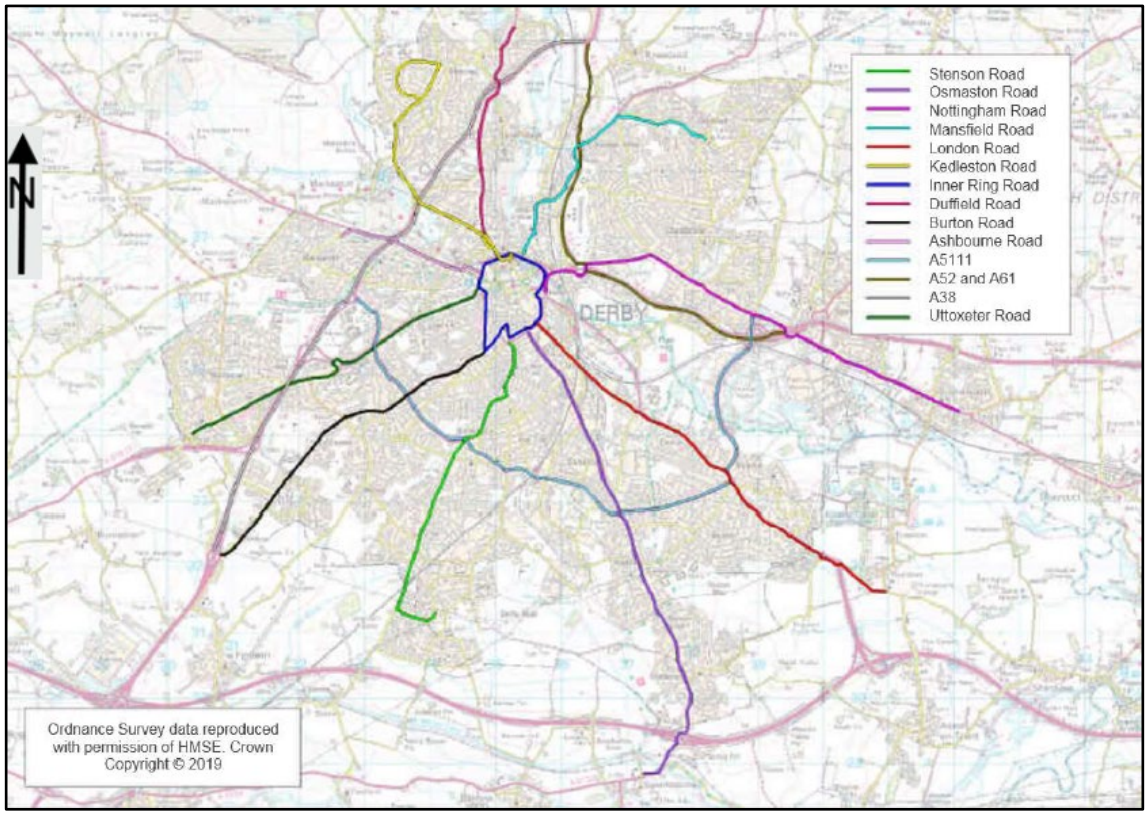

Figure 4.7.1: Journey time routes [REP3-005 page 16]

4.7.16 Following consultation, more detailed assessments of traffic impacts were carried out for Ford Lane and Mackworth.

4.7.17 The Applicant concluded that:

- the Proposed Development would operate satisfactorily and result in an improvement in journey times;
- no at-grade improvement existed that would provide enough capacity to accommodate the future year traffic forecasts; and that
- the development of the proposals followed appropriate consultation.

4.7.18 The Applicant summarised its overall construction strategy, which was developed from its wider strategic approach to roadworks. A high-level draft programme, the phasing of the works and traffic management constraints were identified for each of the three junctions during the 42-month construction phase. These were used as the basis for the traffic modelling and environmental assessments during the construction phase. The proposals would be subject to later development by the Contractor, when appointed.

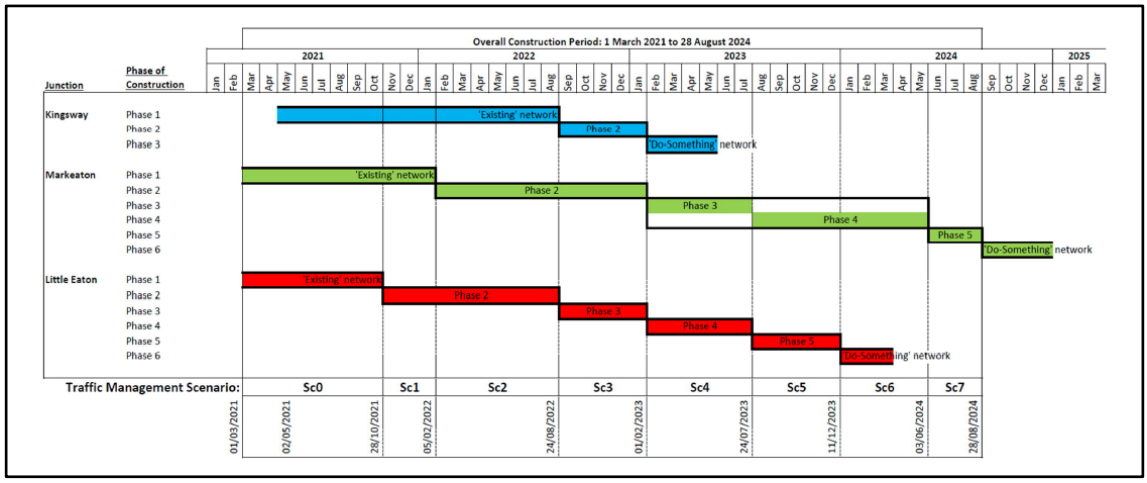

Figure 4.7.2: Construction phases [REP14-011 page 22]

4.7.19 The Applicant concluded that:

- the construction of the Proposed Development would lead to short-term disruption; and that
- the disruption would be minimised by traffic management and the development and implementation of the TMP.

4.7.20 The appraisal of public transport considered journey times to key destinations, service frequencies and the provision of accessible boarding at bus stops. Bus services and stops were identified in the vicinity of each junction. The permanent changes required due to the Proposed Development were modifications to the access to Markeaton Park and relocation of waiting facilities at four locations, all of which the Applicant considered to be minor or very minor.

4.7.21 The Applicant concluded that:

- bus services would face an inevitable increase in journey times during the construction phase;
- after completion, all services would be able to follow the same routes, subject to minor distance changes due to the new road layout; and that
- there would be benefits from the grade separation of junctions where bus routes cross the A38.

Driver stress assessment

4.7.22 Chapter 12 - People and Communities [APP-050] provides the Applicant's consideration of driver stress, which is defined by the DMRB as "*the adverse mental and physiological effects experienced by a driver while travelling along a road network*". Relevant factors included lane flow, travel speed, junction frequency, road surface, layout and geometry.

4.7.23 It was stated that, where possible, the assessment was based on DMRB guidance. It was also noted that there is no specific guidance for the determination of significant effects for some aspects of the assessment and that in those cases professional judgement was used.

4.7.24 Different levels of sensitivity were not assigned to different motorised users. The methodology for the assessment was for low, moderate or high levels of driver stress to be defined according to journey speed and peak hourly flow for single and dual carriageways. Judgements of significance were then made according to differences in driver stress with and without the Proposed Development in the design year (2039).

4.7.25 Key mitigation aimed at reducing driver stress during the construction phase is included in a TMP and includes measures to reduce impacts from construction traffic, minimisation of closures and diversion, durations, and communication with users to help them to plan their journeys.

4.7.26 The Applicant's assessment was that with the appropriate design of construction phase traffic management systems, existing journey times along the A38 would be maintained, although they would be increased by approximately two minutes during the 'most active' construction phases. There would be an increase in driver stress during the construction phase due to construction traffic, construction activities and construction traffic management measures that would increase driver frustration, uncertainty and fear of accidents. A temporary minor adverse effect was identified that was not considered significant.

4.7.27 Key mitigation during the operational phase would include grade separation of the junctions and the introduction of additional lanes and increase in speed limits along sections of the A38.

4.7.28 The Applicant's assessment for A38 users during the operational phase identified driver stress based on predicted traffic flows, which was then adjusted to allow for traffic no longer being required to reduce its speed or stop to pass through the three signalised junctions. A moderate beneficial effect was identified that was considered significant.

4.7.29 The Applicant's assessment for the users of other routes in the surrounding area was based on predicted traffic flows and then adjusted to take account of reduced volumes of traffic using the roundabouts at the three junctions. A minor beneficial effect on driver stress was identified for most surrounding routes that was considered not significant.

4.7.30 However, increases in peak traffic flows from 338 to 1183 were identified on the westbound carriageway of the B5111 Kingsway during the operational phase, which were identified as contributing to a minor adverse effect that was assessed as not significant. This is considered further below.

4.7.31 Chapter 15 – Assessment of Cumulative Effects [APP-053] explains that as other development projects have been included in the traffic forecasts, cumulative effects are included in the assessment of driver stress during the operational phase by default.

Factual issues considered during the Examination

4.7.32 Transport networks and traffic issues considered during the Examination included:

- baseline conditions and overall assessment methodology;

- driver stress assessment;
- construction traffic and temporary road closures and diversions;
- operational traffic and permanent road closures; and
- public transport.

Baseline conditions, growth assumptions and the traffic model

Baseline conditions, surveys and study area

4.7.33 In their responses to our FWQ [PD-005] the LHAs, DCC [REP1-033] and DCiC [REP1-034], both confirmed that:

- they had no comments on the baseline conditions and surveys; and that
- they were content with the study area used in relation to transport networks and traffic, including for the assessment of driver stress.

Local plans and other local projects

4.7.34 DCC confirmed [REP1-033] that impacts on their local transportation networks and policies set out in local plans, including local policies on demand management, had been addressed sufficiently. DCiC stated [REP1-034] that its' LTP supported new infrastructure that is targeted and makes best use of available road capacity, noting that the Proposed Development "*will improve the efficiency of the highway network by reducing congestion, from both the trunk road and local network*". EBC [REP1-051] was *"satisfied that the impact on local transport networks and policies have been addressed sufficiently*".

4.7.35 Chapter 9 – Noise and Vibration [APP-047 paragraph 9.3.9] notes that the assessment is based on DCiC having clean air zone traffic management measures in place for Stafford Street during the construction of the Proposed Development, but not during the operational phase. Responding to our FWQ [PD-005], DCiC [REP1-034] confirmed that the traffic management measures were not anticipated to be required after the opening of the Proposed Development, although that was subject to ongoing monitoring and evaluation.

4.7.36 In its RR [RR-003], DCiC said that change in flows through the Kedleston Road traffic signals would need to be managed, potentially including the reconfiguration of the signal timings. It anticipated that the Kedleston Road corridor and the Five Lamps junction would require some changes following completion of the Proposed Development. DCiC later stated [REP1-034] that it was not proposing any changes. Responding to our FWQ [PD-005], the Applicant [REP1-005] said that the traffic model assumed that the traffic signals at the Kedleston Road corridor and the Five Lamps junction would be adjusted and that if they were not then the model would have over-estimated the local road network capacity in that area and there could be more congestion. The Applicant clarified that the changes in traffic volumes if the signal optimisation did not proceed were not anticipated to lead to significant worsening of air quality or traffic noise.

4.7.37 Paragraph 15.10.2 of the ES [APP-053] refers to two potential designated fund projects at Markeaton junction / Markeaton Park, which would be of a small scale in comparison with the Proposed Development and had been scoped out of the assessment on the basis that they did not form part of the Proposed Development and "*there is no certainty that they will progress*". Replying to our FWQ [PD-005], the Applicant [REP1-005] clarified that any cumulative effects with the Proposed Development would be considered during the planning application process for those projects. It also said that the resulting changes to traffic volumes during their construction would be minimal and there would be no implications for traffic on the local network during the operational phase.

Growth assumptions

4.7.38 We queried [PD-005] the potential for the Proposed Development to attract traffic onto the A38. Christian Murray-Leslie [AS-054] suggested that there would be a steady increase in local usage of the A38 over a time and said that a study of similar projects referred to "*increased road traffic with 7% increase over first 3 to 5 years and an increase of 47% over the subsequent 8 to 20 years*".

4.7.39 The Applicant [REP1-005 REP12-007] explained that the potential to attract traffic was addressed by consideration of induced trips and reassignment using the traffic model. This included consideration of suppression of trips in competing corridors that would experience future traffic growth, new trips on the A38 in response to faster journey times and reassignment by users preferring the A38 corridor.

4.7.40 Replying to our question [PD-005] about whether 'low demand', 'central', or 'high demand' scenario traffic forecasts had been considered, the Applicant [REP1-005] said that a 'central' or 'core scenario' traffic forecast had been used, consistent with TAG advice that this "*should represent the best basis for decision-making given current evidence*".

Traffic model

4.7.41 The LHAs, DCC [REP1-033] and DCiC [REP1-034], both confirmed that the Applicant had taken account of local models.

4.7.42 DCC [REP1-033] noted that, although the model may not have picked up some nuances on the less trafficked part of the network, it was "*… satisfied with the traffic modelling and its 'fitness for purpose'.*" Similarly, DCiC [REP1-035] said that "*when considering local issues a judgement needs to be taken in terms of the accuracy of the model in a specific local area*".

4.7.43 DCiC [REP1-035] was of the view that the model would "*only provide a generalised view of the real world and an assessment tool that is used to provide predictions to help understand impacts*". DCiC also expressed confidence in the Applicant's professional organisation and judgement in relation to their ratification of the model.

Conclusions on baseline conditions, growth assumptions and the traffic model

4.7.44 We have no reason to doubt that the Applicant's consideration of baseline conditions, surveys and study area is appropriate for the purposes of the assessment.

4.7.45 There is no evidence of any material conflict between the Proposed Development and the LTPs. Indeed, in Section 4.5 we conclude that the Proposed Development is firmly supported by both relevant LTPs.

4.7.46 Although DCiC's traffic management measures for Stafford Street are subject to ongoing review, we are satisfied that the Applicant's assumptions are consistent with DCiC's advice about their anticipated duration and that the Applicant has therefore considered a reasonable worst-case scenario by including these measures in its assessment for the construction phase.

4.7.47 The Applicant has assumed that the Kedleston Road traffic signals would be adjusted, whereas DCiC stated that it was not proposing any changes. Consequently, local congestion could be greater than identified in the assessment. We note the Applicant's comments that this would not lead to significant changes to air quality or road noise. Also, it would appear to be in DCiC's interests to adjust the signals in the manner assumed by the Applicant should congestion increase appreciably. We are also mindful of the comments made by the LAs about the accuracy of the model in a specific local area. Taking this all into account we consider that the current differences between the Applicant and DCiC about the modelling of the traffic signals is unlikely to result in any material change to the significance of the congestion identified in the assessment.

4.7.48 It is clear to us that the nature and relatively small scale of the two potential designated fund projects at Markeaton junction/Markeaton Park is such that they would be unlikely to result in any change in the significance of any cumulative impacts with the Proposed Development.

4.7.49 We are satisfied that the Applicant has considered growth in demand and that the appropriate scenario has been considered, consistent with relevant guidance. Although alternative figures have been suggested for growth, we note that the LHAs have not raised any concerns about the growth considered by the Applicant and therefore accept that the Applicant's approach of modelling the specific local circumstances is appropriate.

4.7.50 There is clear evidence that the Applicant has taken account of local models. Although both LHAs have cautioned about the accuracy of the traffic model in certain local situations, they have both expressed confidence in its suitability for the purposes of the assessment, which we have no reason to disagree with.

Driver stress assessment

Sensitivity

4.7.51 Replying to our FWQ [PD-005] about the low sensitivity of driver stress receptors in table 12.19 of the ES [APP-050], the Applicant [REP1-005] responded that this was an error; that no sensitivity had been assigned, consistent with paragraph 12.3.10; and provided a revised table 12.19 with its response.

Driver stress during the construction phase

4.7.52 We queried [PD-005 EV-014] the methods used to quantify driver stress changes during the construction phase and whether this was evidence-based and robust. The Applicant [REP1-005] said that there was no set guidance for assessing driver stress during the construction phase. It clarified that the assessment of driver stress during the construction phase was based on a qualitative consideration of increase in frustration, fear of accidents and uncertainty of routes using professional judgement and best practice that had been applied in assessments for other comparable schemes. It also said that the assessment was informed by construction modelling results, speed limit restrictions, accident rates and journey times, and the presence of traffic management measures.

4.7.53 Responding to our observation [PD-005] that the driver stress assessment did not consider significance at different locations and that this was at odds with the methodology adopted for other ES topics, the Applicant [REP1-005] stated that "*it was not considered proportionate to undertake a more detailed assessment for such temporary effects*".

4.7.54 DCC [REP1-033] and DCiC [REP1-034] both said that they did not have any comments on the driver stress assessment. When questioned further [PD-014], DCC [REP4-030] said that it "*does not believe an assessment of impacts during construction would serve any useful purpose. The County Council considers that the needs of the travelling public would be better served by a 'live' Construction Management Plan (CMP) that enabled its 'owners' to react to issues as they arise.*" DCiC [REP4-029] responded that "*we have never seen the assessment methodology before and (are) not sure of its value. The LHA's concern would be the impact of construction on the operation of the network, road safety and the provision that the construction phases provides for pedestrian and cycle movement through the scheme.*"

4.7.55 DCC [REP1-033] was of the opinion that "*increases in driver stress are more likely to be temporary during the construction phase of the scheme*".

4.7.56 DCiC [REP4-029] suggested that "*the local road network currently operates at capacity during peak periods and is vulnerable to severe congestion when events create minor capacity losses. There will be sustained periods of severe congestion as a result of construction*". We questioned [EV-014] the Applicant about whether their assessment of a temporary minor adverse effect was consistent with DCiC's comments.

4.7.57 The Applicant's [REP6-018] view was that "*there will be no sustained periods of congestion because of the mitigation that will be put in place*". It said that the level of modelling, consideration of construction scenarios and discussions with the Councils were all consistent with its internal processes and that the assessment had been "*substantially based on quantitative assessment through its modelling work*". It considered that more detailed modelling was not appropriate when it did not know the construction process to the level of detail required for individual assessment of junctions, but that further modelling, consultation with the Councils and refinement of

the mitigation proposals would be carried out during the later stages of the Proposed Development.

4.7.58 DCiC [REP6-027] did not question the Applicant's approach and noted that the development of the modelling methods was well established. It said that that "*there is an expectation that the construction phasing of this large scheme, in an urban location, will be complicated and cause some local congestion problems that can't be predicted".* DCiC went on to say that "*it has been the content of the TMP and uncertainty over the exact construction phasing, until the detailed design is complete, which raised questions for DCiC*". It then set out several updates that had been provided in the TMP to address its concerns. Towards the end of the Examination DCiC [REP9-030] confirmed that "*Most comments made by DCiC* (on the TMP) *have been included in the latest draft. As such, there are no outstanding issues.*"

Driver stress during the operational phase

4.7.59 We raised further queries [PD-005 PD-014 EV-014] about the clarity and transparency of the application of the methodology in the assessment for the operational phase [APP-050]. In reply, the Applicant [REP1-006] resubmitted ES Tables 12.14, 12.16 and 12.17 to clarify how the baseline driver stress levels and changes in driver stress level were derived from the predicted average speeds and traffic flows for each carriageway.

4.7.60 The Applicant [REP1-005 REP4-024] explained how, together with the quantitative factors of average speeds and traffic flows, professional judgement had been applied to take account of more qualitative factors such as congestion, route uncertainty, journey reliability, journey times and fear of accidents. This included consideration of A38 users no longer having to pass through signals at the junctions.

4.7.61 DCC [REP1-033] and DCiC [REP1-034] both said that they did not have any comments on the application of professional judgement.

4.7.62 DCC [REP1-033] "*raised no specific issues or concerns with regard to the Applicant's assessment of the likely impacts of the scheme on driver stress*" and commented that "*once complete the likely improvement in journey times and reduced delays and congestion on the network would be likely to have a beneficial impact on driver stress*".

4.7.63 We questioned [PD-005] the significance of effect at B5111 Kingsway west bound where peak flows were predicted to increase from 338 to 1183 vehicles per hour. DCiC [REP1-034] suggested that there were some local issues with the base year traffic model, but not with the model during the operational phase. The Applicant [REP1-005] confirmed that the assessment of a slight adverse effect was consistent with the methodology. It further explained [REP2-020] that the base year flow of 338 vehicles per hour predicted by the model was less than the observed 570 vehicles per hour.

Conclusions on the driver stress assessment

4.7.64 The clarification of receptor sensitivity provided by the Applicant leaves us content that the assessment is robust in this respect.

4.7.65 We note the explanation provided by the Applicant that the professional judgement used for the assessment of driver stress during the construction phase is supported by the quantitative traffic modelling. However, we consider that an overall, rather than more granular location-specific, assessment could have been provided for the construction phase when compared with the assessment for other topics and when the nature and duration of the works are considered. However, the approach does appear to be consistent with current industry practice and we are satisfied that the TMP [REP14-011] would ensure that the mitigation of local issues would be addressed appropriately as the proposals would be developed further.

4.7.66 The LHAs did not have any detailed comments on the driver stress assessment. They were unfamiliar with the Applicant's methodology and were focussed on making sure that appropriate mitigation was in place, rather than on ensuring that the significance of effect had been identified appropriately.

4.7.67 DCiC's initial opinion that there would be severe periods of congestion during the construction phase was somewhat tempered by the measures added to the TMP during the Examination. This was consistent with the Applicant's view that severe congestion would be avoided due to the mitigation measures.

4.7.68 There is clearly some uncertainty about the level of accuracy provided in the construction traffic model, but this does not appear unusual for this stage and our overall view of the evidence is that the figures provided are likely to represent a reasonable worst-case scenario. The Applicant has clearly relied on a high degree of professional judgement for the assessment of driver stress during the construction phase, but we are satisfied that this has been provided in a considered manner and have no reason to doubt it. On balance, we therefore find that the Applicant has carried out a satisfactory assessment of driver stress during the construction phase.

4.7.69 The updated tables provided by the Applicant for the assessment of driver stress during the operational phase give us confidence that this assessment is substantially quantitative and that it follows an appropriate methodology. There is, again, some reliance on professional judgement, which we have no cause to question.

4.7.70 There does appear to be an inaccuracy in the traffic model in the vicinity of the B5111 Kingsway but the comparison with observed figures strongly suggests that the model is likely to have underestimated the base year traffic flows and therefore overestimated the impacts of the Proposed Development during the operational phase.

4.7.71 We are therefore satisfied with the Applicant's assessment of driver stress during the construction and operational phases.

Construction traffic and temporary closures and diversions

Junction modelling and the potential for gridlock

4.7.72 Both DCiC [REP1-034 REP4-029] and DCC [REP4-030] referred to limited engagement with the Applicant about the results of the construction traffic modelling.

4.7.73 DCiC [REP3-027] was of the view that the SATURN traffic modelling software used by the Applicant was appropriate for determining the routes that traffic would take and for providing the inputs to environmental models. However, DCiC [REP3-027 REP4-029] raised concerns about the model's ability to address signalled junctions, peak traffic levels and queues. It suggested that LINSIG software was more appropriate for those purposes and should therefore be used to help understand impacts during the construction phase. Noting that there were no signalised junctions on their part of the network, DCC [REP6-029] considered that the use of the SATURN model was acceptable at this stage in the process.

4.7.74 Following DCiC's comments, we questioned [PD-018 PD-025] whether enough consideration had been given to the potential for queues at one junction on the local road network to affect other junctions and potentially lead to gridlock.

4.7.75 The Applicant [REP4-024] replied that the queues simulated at a signalised junction in SATURN were the maximum queue lengths for the average-hour demand and that it "*accounts for the potential for long queues at one junction to affect the operational capacity of other junctions*". The Applicant [REP3-026 REP6-018] further stated that "*the traffic model's specification was the appropriate level of detail to traffic model the Scheme's environmental impacts*"; that "*it had gone further in its assessment in respect of its modelling of the junctions than it usually would due to the urban nature of this scheme*" and that "*the detailed information required for enhanced traffic modelling was not available at this stage*".

4.7.76 The Applicant [REP5-010 REP9-029] said that more assessment of the junctions would be carried out during the detailed design phase and noted that it had added measures to the TMP, including further modelling, to address outstanding concerns.

4.7.77 DCiC [REP9-030 REP12-019] welcomed the inclusion of junction modelling in the TMP to refine the traffic management scenarios during the detailed design phase and confirmed that it was happy with the Applicant's approach. The provisions for junction modelling are set out in paragraph 3.1.10 of the TMP [REP14-011].

Impacts on local roads, communication and council resources

4.7.78 Concerns about the potential for widespread congestion across the city road network and significant disruption in the vicinity of the Markeaton junction were raised by DCiC in its RR [RR-003] and LIR [REP1-035]. The Applicant [REP3-015] considered that its assessment provided the appropriate level of assurance about predicted congestion and disruption at this stage and referred to more analysis and development of the TMP being carried out

during the detailed design phase. The process of updating mitigation measures during the detailed design phase in consultation with key stakeholders is secured in paragraph 1.1.7 of the TMP [REP14-011].

4.7.79 We questioned [PD-010] whether any other any measures were likely to be required to ensure that impacts would be in line with those identified in the ES. The Applicant [REP3-026] then suggested additional provisions for the OEMP to ensure that environmental effects arising from the developed traffic management proposals aligned with those identified in the ES. Those are provided for in the OEMP [REP14-008 MW-AIR4].

4.7.80 DCiC [REP1-034 REP1-035] considered it "*desirable that the scheme is managed to ensure that traffic remains in the A38(T) whilst providing adequate opportunity for local traffic entering and exiting the city to be able to maintain reasonable journey times*". It said that [RR-003 REP1-034] "*communication and flexibility will be key in managing the movement of traffic through and around Derby*" during construction. DCiC [REP3-027] recommended that "*the process needs to include the local highway authorities and their intelligence of impact, tolerance levels of the local network, and the identification of opportunities* "; that "*it will also be DCiC's ability to respond to requests from the HE/contractor that will be critical*"; and that appropriate measures should be included in the TMP. The need to agree traffic management measures with the LHAs is set out in paragraph 2.6.2 of the TMP [REP14-011].

4.7.81 DCiC [REP4-029 REP6-027] went on to suggest that it would be the first port of call for many parties during the works; that there were advantages in the Applicant's Customer and Stakeholder Manager (CSM) being based locally; and that the person could be hosted in DCiC's offices. As well as assisting with communications, DCiC felt that this would help to provide DCiC with necessary resource support. DCiC [REP9-030] advised that it would provide space for the CSM in their offices, and that it was sensible for the CSM to split their time between there and the site office.

4.7.82 The Applicant [REP1-006 REP2-020 REP5-010 REP6-018 REP6-042] provided for a liaison person, initially suggesting that they would be based in the Project Offices and then confirmed that they would be based locally. The Applicant [REP12-007] then confirmed that the person (CSM) would spend a minimum of one day per week in DCiC's offices. DCiC [REP12-019] accepted this as "*the absolute minimum*". This is secured in the CSM responsibilities set out on page 16 of the OEMP [REP14-008].

4.7.83 Alan Bradwell [RR-021] suggested that delays at Marketon junction could be reduced by constructing the new junction off-road to the west of the junction. The Applicant [REP1-005] referred to the process by which alternatives had been considered and assessed before recommendations had been made for the preferred route. David Clasby [REP3-032] and DCG [REP3-033] raised concerns about congestion during the construction phase that the Applicant [REP4-025] responded to.

Maintenance of access

4.7.84 Royal Derby Hospital [REP3-041] asked how the Applicant would prevent traffic diverting from the A38 to avoid the signal controls at roadworks

during the construction phase, thereby creating congestion on roads near the entrance to the Hospital. It said that the Applicant would need to discuss issues with them, for example through the A38 Behavioural Change Working Group (BCWG) meetings. During ISH4 [EV-019] it was suggested that there were already delays of up to two hours to get into the Hospital and DCiC said that it manually controlled signals in the area to manage the delays.

4.7.85 Carol Leak [AS-029] suggested that patients and staff were currently experiencing severe traffic issues. Phil Moss [AS-034] thought that it would be difficult to access the Hospital during the construction phase as traffic would be diverted along routes leading to the Hospital that were already congested at peak times. Anne Morgan [AS-056] suggested that a dedicated passage for emergency vehicles should be established.

4.7.86 DCiC [REP9-030] considered that the main risks would be from traffic using Uttoxeter New Road to avoid the Markeaton junction and from traffic backing up from the Kingsway junction onto the A5111 / Uttoxeter New Road. It suggested that the key management methods should be to maintain flows on the A38 and to change temporary signal phasing to prioritise the A5111 / Uttoxeter New Road route when necessary. DCiC had met with the Applicant's prospective Contractor, who it said was sensitive to the issues and willing to work with DCiC to manage them. It noted measures in the TMP to refine traffic management scenarios during the detailed design phase and for ongoing engagement with the Hospital and for signed diversion routes and emergency access routes to be agreed with them. DCiC [REP12-019 REP14-032] said that it was content with the approach set out in the TMP, including with respect to maintaining two lanes on the A38, carrying out more detailed junction modelling and ensuring that there would be communication and flexibility to deal with problems. Maintaining two lanes on the A38 is covered in Table 2.2 of the TMP [REP14-011] and more detailed junction modelling is set out in paragraph 3.1.10.

4.7.87 The Applicant [REP4-024 REP5-010] said that its overall approach was to maintain two lanes of the A38 and journey times through the works to provide no reason for drivers to seek alternative routes. It stated that the requirements of different types of road users, including blue light services, would be considered during the development of the temporary traffic measure layouts in consultation with Royal Derby Hospital. The Applicant [REP14-020] advised that there was a legal requirement to maintain access to the Hospital. While suggesting that maintaining access was a key priority, the Applicant [REP6-018] noted that DCiC was aware of the existing problems and considered that it was not the role of the Proposed Development to solve all issues on the existing network.

4.7.88 The Applicant [REP9-029] referred to the OEMP provisions for access to the Hospital not to be affected and for liaison with all key stakeholders. It clarified [REP14-020] that there was no bus lane or dedicated lane for blue light vehicles on the A38 and that no such lane would be provided because there was no capacity within the highway. Provisions not to affect access to the Hospital are included in the OEMP [REP14-008 MW-TRA2]. Specific requirements for Emergency Services and the Hospital with respect to

closures and diversions are set out in Table 3.1 of the TMP [REP14-011] and in paragraphs 7.4.1 and 7.4.2.

4.7.89 Responding to our question [PD-005], the Applicant [REP1-005] anticipated that there would be minimal impact to the businesses on Kingsway Park Close with the potential to have signal control and single lane working for some periods, and potential overnight closures for surfacing works. It said that suitable timing could be agreed with all the businesses that might be impacted. Provisions for review of the TMP with businesses are set out in paragraph 1.3.3 of the TMP [REP14-011]. The need to liaise with the community, to minimise disruption and to provide them with advance warning of closures is set out in Table 3.1, while the need to agree overnight closures with the LA in advance is set out in paragraph 1.3.8.

4.7.90 The RSfD [RR-019 AS-022] raised concerns about the need to maintain continuous access to the school at all times. The Applicant [REP1-005] said that access would be kept open during the construction phase with any necessary short-term closures being timed at night time or school holidays. It said that the alternative access to the school via Markeaton Street would not be impacted. The access provisions were agreed in an SoCG [REP8-003] and are covered in paragraph 7.4.3 of the TMP [REP14-011].

4.7.91 Concerns [RR-015] were expressed about delays impacting young people and staff getting to and from Cherry Lodge children's residential care home during the construction phase. The Applicant [REP1-005] responded by referring to provisions in the TMP to keep traffic moving and to liaise with residents during the construction phase. Community liaison is provided in Table 3.1 of the TMP [REP14-011].

4.7.92 Responding to our questions [PD-005] about maintaining access to properties and businesses in the vicinity of the Little Eaton junction, the Applicant [REP1-005] referred to provisions in the TMP to develop access proposals during the detailed design phase, in consultation with stakeholders. Consultation with key stakeholders during the detailed design phase is identified in paragraph 1.1.7 of the TMP [REP14-011].

Car parking

4.7.93 The Applicant [REP1-004 REP3-025 REP3-026 REP4-024] recognised that there would be some temporary loss of car parking during the construction phase but was not able to determine the extent until the detailed design phase. It felt that the losses would be most likely for the road widening between Markeaton and Kingsway, such as Greenwich Drive North, and in relation to the construction of retaining walls at locations such as Greenwich Drive North and Ashbourne Road. The Applicant said that any temporary losses would be identified in advance as part of the traffic management planning; that the residents would be informed of the reasons and durations; and that it would liaise and agree with the residents about how their needs could be accommodated. The Applicant said that this could be achieved through provision of alternative areas as part of the revised site layout or temporary changes when parking was not in use.

4.7.94 Diane Bruce [AS-039] suggested that the Markeaton Island car park would be closed, meaning that hundreds of university-connected vehicles would be

displaced. The Applicant [REP7-007] explained that the car park would not be closed as the replacement access would be constructed before the existing access was decommissioned.

Traffic Management Plan

4.7.95 DCiC [RR-003 REP1-034 REP3-027] and DCC [REP1-033 REP4-030] both noted several specific areas where more detail was required in the TMP and asked for the Applicant to have more detailed discussions with them and other stakeholders. We [PD-005] noted that the Applicant considered the TMP provided with the application to be conjectural and encouraged the Applicant to provide an update to the TMP during the Examination.

4.7.96 The Applicant [REP1-005] explained that the detailed TMP would be developed after the contractor had been appointed and after design, the construction planning, the development of traffic management temporary layouts and control arrangements had all been developed in detail. It noted [REP2-020] that Requirement 11 the dDCO provided for the SoST to provide written approval of the detailed TMP following consultation with the LHAs. The Applicant [REP4-024 REP5-010] set out that further meetings were being held with DCiC and the BCWG, which included key stakeholders, and that the TMP was updated accordingly. TMP updates [REP5-004 REP7-003 REP14-011] were submitted to the Examination. Towards the end of the Examination both DCiC [REP9-030] and DCC [REP6-029 REP9-047] advised that they had no outstanding issues with the TMP.

4.7.97 We questioned [PD-005] how it could be assured that the ES represented a reasonable worst-case scenario when the TMP was to be updated by the contractor. The Applicant [REP1-005] explained that the TMP benefitted from input from a suitably experienced buildability advisor who had assisted with the development of the construction scenarios considered in the TMP. The Applicant considered that the position set out in the ES represented a worst-case and that the constraints were such that there was very limited ability to change the proposals. It also said that "*in the unlikely event that the assessment indicates that the traffic management proposals give rise to materially new or materially worse adverse environmental effects, this would indicate the need for the contractor to amend the traffic management proposals or propose additional mitigation*".

Significance of effects

4.7.98 We asked [PD-005] whether the LHAs had any comments on:

- the assessment of construction traffic, temporary closures and diversions;
- likely effects on receptors;
- the secured mitigation measures; whether they are proportionate, reasonable and focussed on promoting sustainable development; and whether they are enforceable, precise, sufficiently secured and likely to result in the identified residual impacts; or on
- whether all significant effects had been identified.

4.7.99 DCC [REP1-033] had no further comments to make. DCiC [REP1-034] referred to its SoCG and said that it was "*satisfied that, provided we are involved in the design and approval of the development of the CEMP/TMP, this should be an appropriate level of control at this outline stage and the OEMP is a good basis for the CEMP design*". DCiC [REP3-027] further commented that "*There will be impacts on the operation of the local road network during construction. The design and phasing of construction will be an important process to maintain capacity through the system. However, predicting the location and scale of queuing and delays on the local road network will be difficult. As such, the robustness of the TMP is important and the ability of the Applicant to manage issues will be critical.*"

4.7.100 Responding to our questions, [PD-010 PD-014], the Applicant [REP1-005 REP3-015] explained that "*the ES uses construction phase traffic data to assess environmental effects associated with noise and vibration, air quality, water quality and severance*" and stated that there would be no significant environmental effects. It noted [REP3-015] that the journey lengths for some local users would increase and that delays were inevitable given the nature of the works proposed and their location. It also said [REP4-024] that "*the ES does not assess the significance of traffic delays per se as delays are not an environmental effect. The ES does consider how such delays can affect drivers (as relevant receptors) through the consideration of driver stress and impacts upon the users of public transport*".

Conclusions on construction traffic and temporary closures and diversions

4.7.101 DCiC's concerns about the modelling of signalised junctions appeared to be focussed on the need for more accuracy when the traffic management proposals would be developed during the detailed design phase. That provision has been included in the TMP [REP14-011] and we note that DCiC was content with the Applicant's approach. With respect to the adequacy of the modelling for the purposes of the ES, on balance we accept the Applicant's comparison of the level of detail compared with other similar projects and its view that the modelling undertaken was enough for those purposes. We are therefore content that the junction modelling was appropriate for this stage of the Proposed Development.

4.7.102 It appears likely that there would be increased congestion and delays to parts of the local road network during the construction phase and there is a degree of uncertainty about what the precise extent of that would be. Reflecting on the comments provided by the Applicant and the LHAs, we accept that some degree of uncertainty is inevitable and are satisfied that an appropriate level of assessment has been carried out. We note the provisions in the OEMP [REP14-008] and TMP [REP14-011] for the future detailed assessments, ongoing consultation on the development of the traffic management proposals, engagement with the local authorities to deal with any unforeseen issues, engagement with the BCWG, and the commitments to ensuring no materially new or different impacts. We are satisfied that the results of the traffic assessment are a reasonable worst-case for the purposes of the identification of environmental impacts and that the potential impacts are mitigated appropriately.

4.7.103 There are existing congestion issues in the vicinity of the Royal Derby Hospital that require occasional intervention by DCiC, and concerns have been expressed about the potential for more problems during the construction phase. The potential causes of further issues and the mitigation options appear to be well understood and agreed between the Applicant and DCiC. The need to maintain access is clearly established in the OEMP [REP14-008] and TMP [REP14-011], as is the development of traffic management proposals in consultation with DCiC, the Hospital and blue light services. Given the other mitigation and that there is currently no dedicated lane for blue light services we find that there is not a compelling case for one to be provided.

4.7.104 The Applicant has engaged with several other organisations about the potential for disruptions to access during the construction phase. A strategy to keep traffic moving, to avoid disruption and measures for further consultation and liaison are provided in the TMP [REP14-011]. Specific measures for the RSfD include liaison and arrangements for the on-going maintenance of access through the construction phase provided in the OEMP [REP14-008 MW-COM6].

4.7.105 Based on the above, we find that the access issues addressed in this section of the report have been assessed and mitigated appropriately. Severance; and access matters with respect to the McDonald's Restaurant and Esso PFS sites at Markeaton junction; and other businesses, including retail, are considered in Section 4.13.

4.7.106 Some impacts are anticipated to car parking during the construction phase, but the evidence suggests that those are unlikely to be significant and we are satisfied that appropriate mitigation would be identified during the detailed design phase as part of traffic management planning.

4.7.107 The OEMP [REP14-008] and TMP [REP14-011] were developed during the Examination following consultation with the LHAs and other key stakeholders and include for further consultation and development during the detailed design phase. Noting the comments made by DCiC and DCC, and the provisions for the further development of the CEMP and TMP during the detailed design phase, we are satisfied that those documents provide appropriate mitigation for construction traffic and temporary closures and diversions with respect to motorised users. NMUs are considered in Section 4.13.

Operational traffic and permanent road closures

Impacts on the local road network

4.7.108 Several times during the Examination, DCiC [RR-003 REP1-034 REP1-035 REP3-027 REP6-027] suggested "*significant changes in traffic patterns as a result of the development*" and a lack of consideration of impacts to the local road network. DCiC set out several junctions where major traffic flow changes (increases in traffic) had been identified and said that it may be necessary to reconfigure signal timings and carry out physical changes to the highways to manage them. DCiC [REP3-027 REP4-029] accepted that the Proposed Development would provide benefits to the local road network but considered it unlikely that they would be adequately mitigated by traffic

signals adapting automatically. It said that significant effects should be mitigated to an acceptable degree, particularly where there were safety and capacity issues. DCiC [REP6-027] reported comments from the Applicant that "*funding for the A38 Derby Junctions Scheme does not include funding for wider mitigation*" but wanted to see a commitment to a mechanism to monitor impacts during the operational phase so that DCiC could use the results to petition for funding.

4.7.109 Responding, the Applicant [REP1-005] referred to the forecast changes to traffic flows in the TAR [REP3-005]. It said [REP3-015 REP3-026 REP4-024] that the assessment was based on a worst-case of junctions not being upgraded; and that it "*does not assess the traffic impacts at local road network junctions per se as these are not an environmental effect*". The Applicant also stated that "*increases would be balanced by reductions in flows on less suitable local roads*"; that it proposed to make improvements at two junctions; and that "*overall, the local highway network within DCiC's remit would be simpler and cheaper to maintain with the Scheme*".

4.7.110 The Applicant [REP2-020] considered that "*demand responsive traffic signals will automatically adapt themselves to the altered traffic patterns*" and that "*operational efficiency gains might be achieved through further physical interventions*" and suggested [REP7-007] that "*appropriate solutions may not necessarily be road-based*". It stated [REP3-026] that improvement to local roads were not in its remit or budget for the Proposed Development but noted [REP4-025] that "*there are potential funding gaps and there will be a need to find this funding. Highways England will work with all stakeholders involved over the coming months to establish this gap and look at funding avenues that may be available to all parties.*"

4.7.111 In the SoCG between the Applicant and DCiC [REP7-020] it was agreed that optimising the operation and efficiency of the local junctions of its highway was part of DCiC's remit. It was further agreed that the Applicant would continue to discuss with DCiC adjustments to the local network after opening; whether they are over-and-above the usual remit of the LHA; and how the adjustments should be funded, noting that the funding was outside the Applicant's control.

The Kingsway, Markeaton and Little Eaton junctions and immediate vicinity

4.7.112 Responding to our FWQ [PD-005] the Applicant [REP1-005] described how it had incorporated feedback from DCiC and DCC in its proposals for Kingsway, Markeaton and Little Eaton junctions. DCiC [REP1-034] expected that outstanding questions such as those mentioned in paragraphs 4.2.11-12 of the Consultation Report [APP-023] would be addressed during the detailed design phase and made a further suggestion about access to 56 Brackensdale Avenue. The Applicant [REP2-020 REP3-027] confirmed that those matters would be addressed during the detailed design phase. DCC [REP1-033] said that it had "*not raised any issues or concerns with the Applicant's approach to this matter through the previous consultation process and has not raised any fundamental concerns"*.

4.7.113 Anne Morgan [AS-045] raised concerns about a danger of collisions as "*the slip road from Kedleston Road has no sight lines either for the driver on the*

slip road or for drivers already on the A38". The Applicant [REP7-007] responded that the Kedleston Road junction slip roads would be amended to be a 'lane gain and lane drop' arrangement and that the "*proposed design provides the required sight distances for vehicles in both the northbound and southbound directions on both the slip roads and those vehicles already travelling on the A38*".

4.7.114 Concerns [RR-015] were expressed about loss of car parking, the closer proximity of the A38 to Cherry Lodge children's residential care home, and the associated "*risks diminishing the perception of a stable and safe environment of the Home impacting on the quality of care provision and wellbeing of the children in care.*" The Applicant [REP1-005 REP3-026] replied that retaining walls had been used to keep the A38 as far away as possible; that "*appropriate boundary treatment for the Care Home at 255 Ashbourne Road will be agreed with the property owner and tenant to ensure their privacy and security are maintained*"; and that a large part of the land currently used as car parking could be retained, leaving space to park three to five cars.

Mansfield Road

4.7.115 We queried [PD-005] the large increases in journey time predicted on the Mansfield Road route [REP3-005 tables 4.5 and 4.6]. The Applicant [REP1-005 REP2-020] said that there was a large increase in traffic from a planned housing development but suggested that the large scale of increases in the journey time were "*not an impact of the Scheme but a random instability in the traffic model assignments*", noting that the "*2039 traffic forecasts show no change in the A608 Mansfield Road traffic flows, between the 'Do-Minimum' and the 'Do-Something' cases.*" DCiC [REP1-034 REP1-035] suggested errors with the model in this location and suggested that this "*could be causing unrealistic delays along the journey time route used to measure changes on Mansfield Road.*"

Ford Lane/A6 Junction

4.7.116 DCiC [RR-003 REP1-035] questioned whether it was desirable or necessary to signalise the A6 at the Ford Lane junction, given that it was a Primary A Route. It further noted [REP3-027] the Applicant's [REP2-020] proposal to review the issues during the detailed design phase, but suggested that a joint decision was required following further analysis to allow a fuller understanding of the impacts on the local and national road network. Following its own survey and calculation, DCiC [REP4-029] agreed that some improvement was required but still had concerns about the proposals to signalise. The Applicant [REP3-026] said that there were arguments for and against signalisation. DCiC [REP7-020 REP9-030] accepted that the Applicant's [REP10-009] proposals would be defined and agreed through the detailed design process. The Applicant added provisions for this to the OEMP, which DCiC [REP12-019] advised that it was content with. The OEMP [REP14-008 MW-TRA14] states that "*a scheme is needed to address this issue and this will be agreed in consultation with DCiC through the detailed design process.*"

4.7.117 Network Rail [REP5-013 REP7-019] noted the need for the junction to be able to accommodate articulated low loader vehicles that were capable of delivering 60 feet long lengths of rail to the Midland Mainline and had not seen a swept path analysis to demonstrate that could be achieved. Arguing that the OEMP did not have a direct effect and provided a weak level of control, it further asked [REP9-036 REP14-041] for a DCO Requirement "*to provide for DCiC to approve the detailed design of the Ford Lane/A6 Junction works, in consultation with Network Rail, before works commence.*"

4.7.118 The Applicant [REP6-018 REP6-042] recognised Network Rail's requirements and confirmed that "*discussions are continuing with DCiC to determine the final form of this junction, however, all options being considered will accommodate the swept path of an articulated low-loader*". It further referred [REP8-007 REP10-009] to the need to accommodate heavy goods vehicles (HGVs) for other businesses; that the concerns of all affected businesses had been logged for the detailed design phase that DCiC would be consulted on; and that this was appropriate recognising that DCiC was responsible for these highways. The OEMP [REP14-008 MW-TRA14] states that "*the revised layout needs to accommodate the swept path of articulated lowloaders (60ft / 18.3m length) to facilitate Network Rail's continued access to their infrastructure.*"

4.7.119 Carol Leak [AS-048] suggested that the A6/Derwent Avenue junction would also require mitigation as it was ¼ mile from the Ford Lane junction and that traffic lights at one junction would affect the other. The Applicant [REP7-007] said that the trips would be locally generated; that local residents would have the option of using either junction; and that "*drivers will choose to use the junction that they perceive to provide the shortest journey*".

Ford Lane closure and bridge strengthening

4.7.120 The closure of the direct access from Ford Lane to the A38 for safety reasons [REP1-005] would result in some vehicles requiring local access being re-routed over the existing Ford Lane bridge. DCC [AoC-003 RR-004 REP1-031 REP1-033 REP4-030] raised concerns about the impacts on local businesses and their need for access with 40T HGVs when the existing limit was 7.5T, and about future liabilities for the bridge. The Applicant carried out further assessments and considered [REP6-018 REP6-042 REP9-029] that, subject to another verification survey, the bridge would be capable of carrying a 40T vehicle if it was restricted to one lane. The Applicant [REP14-020 REP15-007] later reported that a verification survey had been completed but that further clarifications sought by DCC potentially required more surveys. DCC [REP14-033] considered that the OEMP should require the bridge to be made capable of carrying a 40T vehicle. The OEMP [REP14-008 MW-TRA12] requires consultation with DCC to confirm that the bridge is capable of carrying a 40T vehicle; to agree methods to restrict vehicles to a single lane; to propose solutions such as strengthening if the bridge was found not to have a capacity of 40T; and to make any necessary provisions for DCC to undertake the future management of the structure.

4.7.121 Network Rail [REP5-013] referred to the need for the bridge to accommodate a 40T vehicle for their maintenance purposes. Noting its

obligation to safeguard its statutory undertaking, it again argued that the OEMP did not have a direct effect and provided a weak level of control and asked [REP9-036 REP12-016 REP14-041] for a DCO Requirement "*to provide for DCiC to approve the detailed design of the Ford Bridge works, in consultation with Network Rail, before works commence.*"

Traffic regulation measures and stopping up

4.7.122 DCiC [RR-003 REP1-034 REP1-035 REP3-027] raised concerns regarding the stopping up process, how it would fit with DCiC's format and the need to discuss residual land ownerships and responsibilities during the detailed design phase. The Applicant [REP1-005 REP2-020 REP3-026 REP4-025] provided clarifications to the Examination and referred to ongoing discussions with DCiC and DCC. The matter was discussed at an ISH [EV-019] where the Applicant offered further in-depth discussions around the issues, as a result of which DCC and DCiC were reported by the Applicant as having no further comments.

A38 speed limits

4.7.123 Noting that that the proposals were for an advisory 50mph speed limit, BPC [RR-001 REP1-027 REP1-028] suggested a 50mph speed limit on the A38 in the vicinity of Little Eaton junction to tighten the radius and thereby allow it to be moved further from Breadsall and mitigate its effects on the village. Simon Morris [RR-026] raised some of the same points. The Applicant [REP1-005 REP2-020] said that the 70mph speed limit for new dual carriageways was normal; that it would not be desirable to have a 50mph limit through the junction when the limit was 70mph to either side of it; that the advisory limit was part of the safety mitigation for the horizontal and vertical radius of the carriageway; and that "*reducing the speed limit to a mandatory 50mph through Little Eaton junction would have little effect on noise levels and air pollution.*"

Wide area impacts

4.7.124 Responding to our question [PD-005], the Applicant [REP1-005] considered the wider area impacts of the Proposed Development to be daily flow restrictions of about 2% in the A42/M42 corridor and increases in traffic elsewhere on the A38 corridor that would not cause detrimental impacts.

4.7.125 Pauline Inwood [AS-042] thought that any mitigation of congestion in Derby would only be pushed elsewhere, such as to junction 38 of the M1. The Applicant [REP7-007] responded that the traffic model simulated the operation of adjacent junctions and fed into the benefits appraisal, which concluded that the Proposed Development would provide value for money.

Other Interested Party issues and concerns

4.7.126 Several parties, including Alan Bradwell [RR-021 REP3-030], Jordanne Romanos [RR-030], Stephanie Dobson [AS-035], Jane Temple [AS-036] and R.L. Dodd [AS-037] suggested alternatives or raised concerns about congestion. Others, including Ken Pendle [RR-028] and Ian Evans [AS-033] supported the Proposed Development. The Applicant responded [REP1-005 REP4-025 REP7-007] to the matters raised.

Operational traffic and permanent road closures assessment, impacts and mitigation

4.7.127 DCiC [REP1-035] said that the Proposed Development would reduce journey times on the A38 and on several local roads.

4.7.128 DCC [REP1-030 REP1-031] considered that the Proposed Development was being proposed due to an acknowledged problem with traffic congestion on the A38 as a result of conflict between strategic traffic movements passing through the area and local trips; that it would be likely to reduce journey times and congestion on the network; and that it would re-route some traffic from minor roads onto the A38. It was satisfied that the Proposed Development would operate satisfactorily.

4.7.129 EBC [REP1-050] thought that the Proposed Development would bring significant benefits in respect of relieving traffic congestion.

Conclusions on operational traffic and permanent road closures

4.7.130 Although a general decrease in traffic levels and congestion on local roads during the operational phase is expected, it does appear likely that there would be increases on some local roads and at certain junctions. The Applicant has proposed interventions to mitigate effects at a small number of junctions. We find insufficient evidence of any significant environmental effects or safety issues that would require further mitigation to other parts of the local road network. However, it does appear likely that the local network would benefit from some adjustments after opening and we welcome the Applicant's undertaking to work with DCiC to identify those and to help it to source funding for projects that would fall outside DCiC's usual remit.

4.7.131 There are several locations where local access matters would require further development during the detailed design phase and we are not aware of any such locations where a satisfactory resolution is not capable of being delivered. Appropriate measures have been secured in the rDCO (Appendix D) for consultation during the detailed design phase and for approval by the SoST.

4.7.132 We are satisfied that concerns about sight lines at the Kedleston Road slip road were addressed by the Applicant's changes to the arrangement and that it is reasonable to expect that these would be incorporated into the detailed design, in consultation with DCiC.

4.7.133 There would be a permanent loss of car parking at Cherry Lodge children's residential care home and other environmental effects on it arising from the proximity of the Proposed Development. We note that there are limited options for any adjustment to the positions of the highways in this vicinity. Nevertheless, the OEMP [REP14-008 MW-TRA2] requires the Applicant to liaise with the care home and provide temporary replacement car parking if necessary. Therefore, we consider that reasonable mitigation measures would be provided which have regard to the PSED.

4.7.134 Although the assessment indicates large increases in traffic flows in Mansfield Road, we note that the Applicant and DCiC agreed that this was

largely explained by errors in the model. Noting that no evidence has been provided to the contrary, are content that there are unlikely to be any significant effects along this route.

4.7.135 The Applicant and DCiC have had extensive discussions about design options for the A6/Ford Lane junction during the examination. A preferred solution does not appear obvious and we consider it reasonable that the solution should be developed during the detailed design phase. We note that all options being considered would accommodate the vehicles needed by Network Rail for their maintenance activities and consider that appropriate provisions for this have been included in the OEMP [REP14-008]. We do not consider it necessary for a requirement for DCiC to approve the detailed design in consultation with Network Rail to be added to the rDCO (Appendix D) given that that Network Rail's safeguarding requirements are well understood and given that the detailed design would be subject to approval by the SoST in consultation with DCiC.

4.7.136 We do not find enough evidence to support the view that further mitigation is required at the A6/Derwent Avenue junction for any adverse effects arising from changes to the A6/Ford Lane junction.

4.7.137 Requirements for increased weight restrictions on the Ford Lane bridge to cater for revised access for Network Rail and other businesses appear well understood and we are satisfied that appropriate measures have been secured in the OEMP [REP14-008] for those to be further investigated and resolved during the detailed design phase. We do not consider that a requirement needs to be added to the rDCO (Appendix D), for the same reasons as those noted above in respect to the A6/Ford Lane junction.

4.7.138 DCiC's and DCC's concerns with respect to Traffic Regulations and Stopping Up appear to be focussed on the coordination of their processes with the Applicant's. Noting the Applicant's offers of further discussions and that DCiC and DCC have raised no further concerns, we are satisfied that these matters would be likely to be dealt with appropriately.

4.7.139 We note the suggestions to reduce the speed limits and adjust the alignment of the A38 at the Little Eaton junction but have no cause to disagree with the Applicant's view that there would be little benefit of this in terms of any environmental effects and that it would be desirable to maintain the same speed limit as there would be either side of the junction.

4.7.140 The evidence before us suggests that wider area impacts during the operational phase have been considered appropriately and that no further mitigation is necessary for those impacts. We are content with the Applicant's approach in this respect.

4.7.141 We are mindful of the other matters raised by other parties and, having reviewed those and the Applicant's responses, are satisfied that they have been addressed appropriately. We note the comments made by DCiC, DCC and EBC regarding the overall benefits of the Proposed Development with respect to journey times and congestion on the A38 and on the local network.

4.7.142 The OEMP [REP14-008] was developed during the Examination following consultation with the LHAs and other key stakeholders and it provides for further consultation and development during the detailed design phase. Noting the comments made by all parties, and the provisions for the further development of the CEMP during the detailed design phase, we are satisfied that the OEMP [REP14-008] and the rDCO (Appendix D) provide appropriate mitigation for operational traffic and permanent road closures with respect to motorised users. NMUs, severance and access matters with respect to the McDonald's and Esso PFS sites at Markeaton junction; and other businesses, including retail, are considered in Section 4.13.

Public transport

Bus services

4.7.143 DCC [REP1-030 REP1-033] said that it was satisfied with the Applicant's assessment and agreed that the Proposed Development would be likely to have a significant beneficial impact on users of local buses due to improved journey times and journey reliability. It also agreed that during the construction phase there would be temporary changes to journey length and reliability for users of public transport. DCC [REP4-030] felt that, in so far as was reasonable and practical, enough consideration had been given to the support of public transport and encouraging changes in transport modes.

4.7.144 DCiC [REP1-034 REP1-035] thought that the bus services assessment appeared to be comprehensive, but sought further information on any journey time delays. It also raised the need for liaison with DCiC, transport providers and user groups through detailed design. DCiC [REP3-027] further commented that there wasn't enough detail to comment on mitigation measures during the construction phase, but supported the approach of effective engagement during the later development of the TMP [REP14-011] and suggested the BCWG as the appropriate vehicle for this. The OEMP [REP14-008 MW-TRA2] and the TMP [REP14-011] include provisions for liaison with the BCWG when considering priorities for bus movements during the construction phase. DCiC [REP3-027 REP4-029] did not comment on whether enough consideration had been given to the support of public transport or encouraging changes in transport modes.

Bus stop locations

4.7.145 DCC [REP1-030 REP1-031 REP1-033] highlighted that improvements were required to a bus stop on the eastern side of the A61 to the south of the Little Eaton junction and queried whether, in light of requirements to consider reasonable support for other transport modes, those might be included in the Proposed Development. The Applicant [REP2-020] considered that this was outside the scope of the Proposed Development and that it would remain unaffected by the final layout.

4.7.146 Responding to our question [PD-005], DCiC said that the changes proposed to bus stop locations and the route into Markeaton Park during the operational phase seemed to work, but thought that this should be discussed further with the bus operator during the detailed design phase. The Applicant [REP2-020] agreed.

Conclusions on public transport

4.7.147 Noting the comments from DCC and DCiC, we are content that the Applicant has provided a satisfactory assessment of potential impacts on bus services due to the Proposed Development.

4.7.148 Although DCiC didn't comment, we find no reason to disagree with DCC's view that enough consideration been given to the support for public transport and to encouraging changes in transport mode.

4.7.149 We are satisfied that the key mitigation suggested by DCiC of engagement with BCWG in the further development of proposals has been embraced by the Applicant and is appropriately secured in the OEMP [REP14-008] and the TMP [REP14-011].

Conclusions on transport networks and traffic policy and factual issues

4.7.150 We have had particular regard to the policies set out in the NPSNN in our consideration of the transport networks and traffic impacts of the Proposed Development. As required by paragraph 5.211 of the NPSNN, consideration has been given to local transport policies and local plans, as set out in Sections 3.8 and 3.9 of this report.

4.7.151 Effects on NMUs; public rights of way; community severance; the McDonald's Restaurant and Esso PFS sites at Markeaton junction; and other businesses, including retail, are considered in Section 4.13. Alternative options are addressed in Sections 2.4 and 4.5 and Chapter 7. Safety is covered in Section 4.16.

4.7.152 We are satisfied that the Proposed Development tackles a specific problem with traffic congestion on the A38 as a result of conflict between strategic traffic movements passing through the area and local trips, rather than simply meeting unconstrained traffic growth. This is consistent with the requirements of paragraph 2.24 of the NPSNN.

4.7.153 The LHAs and LPAs have confirmed that the Applicant has consulted with them on the assessment of transport impacts, in accordance with paragraph 5.204 of the NPSNN.

4.7.154 There is clear evidence that the Applicant has taken account of local models, consistent with paragraph 5.212 of the NPSNN. Although both LHAs have cautioned about the accuracy of the traffic model in certain local situations, they have both expressed confidence in its suitability for the purposes of the assessment, which we have no substantive reason to disagree with.

4.7.155 We find no evidence of any material conflict between the Proposed Development and the LTPs. Indeed, in Section 4.5 we conclude that the Proposed Development is firmly supported by both relevant LTPs.

4.7.156 We have no reason to doubt that the consideration of baseline conditions, surveys and study area are appropriate for the purposes of the assessment.

4.7.157 We are content that cumulative effects are included by default as other development projects, the scope of which had been agreed with the LHAs, have been included in the traffic forecasts used in the assessments.

4.7.158 We are satisfied that the traffic modelling, consideration of traffic flows, delays, congestion and associated mitigation for the construction and operational phases are appropriate for the consideration of environmental effects, including the driver stress assessment, noise and vibration, air quality, climate change, safety and social and economic. Satisfactory consideration and mitigation have been provided for certain key aspects including the potential for gridlock, maintenance of access to Royal Derby Hospital, mitigation measures for existing junctions on the local road network, the strengthening of the Ford Lane bridge, and public transport. Appropriate processes have been defined and agreed for the updating of the key mitigation measures during the detailed design phase and for the supporting consultation and approval processes. We are satisfied that the concerns raised by several parties have been addressed appropriately.

4.7.159 In our view, appropriate mitigation has been secured in the rDCO (Appendix D); the OEMP [REP14-008] and the TMP [REP14-011], consistent with the paragraph 5.215 of the NPSNN. We also consider that the mitigation measures are proportionate in having regard to the characteristics of persons at RSfD and Cherry Lodge children's residential care home as required by the PSED.

4.7.160 We are satisfied that during the operational phase the Proposed Development would be likely to reduce journey times and release capacity in the network.

4.7.161 A driver stress assessment has been carried out to consider the adverse mental and physiological effects experienced by a driver while travelling along the road networks during the construction and operational phases. In our view the assessment relied on an acceptable blend of quantitative assessment and professional judgement. We are content with the Applicant's assessment of a temporary minor adverse effect during the construction phase that was not considered significant; with their assessment of a moderate beneficial effect for users of the A38 during the operational phase that was considered significant; and with their assessment of a minor beneficial effect for the majority of surrounding routes during the operational phase that was considered not significant.

4.7.162 Based on the above, we are satisfied that the Proposed Development complies with relevant policy and that, subject to the provisions of the rDCO (Appendix D), it would be unlikely to result in any unacceptable effects in terms of transport networks and traffic. Our view is that these matters do not weigh significantly for or against the DCO being made. We consider that the moderate driver stress benefits to A38 users during the operational phase weigh significantly in favour of the DCO being made.

4.8 AIR QUALITY

4.8.1 This section addresses the effect of the Proposed Development in relation to air quality.

4.8.2 Air quality effects in relation to biodiversity and designated sites are covered in Section 4.11. Climate change, CO_2 and other greenhouse gas emissions are dealt with in Section 4.15. Nuisance and health are discussed in Section 4.16 and traffic levels in Section 4.7.

Policy and legal context

4.8.3 Paragraph 2.16 of the NPSNN identifies that traffic congestion causes "*environmental problems, with more emissions per vehicle and greater problems of blight and intrusion for people nearby*".

4.8.4 Paragraphs 3.6 to 3.8 consider the contribution of transport to the meeting of legally binding environmental targets. Paragraph 3.7 says that the government is committed to supporting the switch to ultra-low emission vehicles, which are anticipated to reach mass market volumes. Paragraph 3.8 states that the impact of road developments on aggregate emission levels is likely to be very small and that they need to be seen in the context of policies to meet legally binding air quality LVs. It guides that:

"*Total PM_{10} and NO_X might be expected to increase slightly, but this needs to be seen in the context of projected reductions in emissions over time. PM_{10} and NO_X are expected to decrease over the next decade or so as a result of tighter vehicle emission standards, then flatten, with further falls over time due to greater levels of electric and other ultra-low emission vehicles."*

4.8.5 Paragraph 4.50 says that the ExA and the SoS should assess the potential impacts of processes, emissions or discharges to inform decision making, but should work on the assumption that, in terms of the control and enforcement, the relevant pollution control regime would be properly applied and enforced. Paragraph 4.55 refers to a need to ensure that the relevant pollution control authority is satisfied that potential releases can be adequately regulated under the pollution control framework; and that the pollution effects with the project would not make that development unacceptable, particularly in relation to statutory environmental quality limits. Paragraph 4.56 says that consent should not be refused based on regulated impacts unless there is good reason to believe that relevant control permits, licenses or other consents will not subsequently be granted.

4.8.6 Paragraph 5.10 requires consideration of air quality effects over the wider area likely to be affected. It requires account to be taken of relevant statutory air quality thresholds set out in domestic and European legislation. Paragraph 5.11 notes that air quality considerations are likely to be particularly relevant in relation to AQMAs. Paragraph 5.12 requires air quality considerations to be given substantial weight where a project would lead to a significant air quality effect or where they lead to a deterioration in air quality in a zone/agglomeration.

4.8.7 Paragraph 5.9 requires the SoS to be provided with a judgement on the risk as to whether the project would affect the UK's ability to comply with the AQD. Paragraph 5.13 states that:

"*The Secretary of State should refuse consent where, after taking into account mitigation, the air quality effects of the scheme will:*

- *result in a zone/agglomeration which is currently reported as being compliant with the Air Quality Directive becoming non-compliant; or*
- *affect the ability of a non-compliant area to achieve compliance within the most recent timescales reported to the European Commission at the time of the decision.*"

4.8.8 Paragraph 5.14 of the NPSNN requires consideration of whether the mitigation measures are acceptable. Paragraph 5.15 notes that:

"*Mitigation measures may affect the project design, layout, construction, operation and/or may comprise measures to improve air quality in pollution hotspots beyond the immediate locality of the scheme. Measures could include, but are not limited to, changes to the route of the new scheme, changes to the proximity of vehicles to local receptors in the existing route, physical means including barriers to trap or better disperse emissions, and speed control. The implementation of mitigation measures may require working with partners to support their delivery.*"

4.8.9 The AQD, AQS and the Clean Air Strategy (Department for the Environment, Food and Rural Affairs, 2019) are described in Section 3.4 of this report. The AQD sets LVs for compliance and control actions in case of exceedance, including for NO_2 and PM_{10} and $PM_{2.5}$. The AQS sets objectives for key pollutants and sets the framework for detailed local plans to address exceedances, including the designation of Clean Air Zones and AQMA.

4.8.10 Relevant local plans and other policies are set out in Sections 3.7 and 3.8 of this report.

The application

4.8.11 The main sections of the application relevant to the air quality matters considered here are:

- Chapter 5 – Air Quality [APP-043];
- Appendix 5.1 – Air Quality Monitoring [APP-170];
- Appendix 5.2 – Air Quality Methodologies [APP-171];
- Appendix 5.3 – Air Quality Results [APP-172];
- Chapter 15 – Assessment of Cumulative Effects [APP-053];
- Chapter 16 – Residual Effects [APP-054]; and
- OEMP [APP-159 updated to REP14-008 during the Examination].

4.8.12 Chapter 5 – Air Quality [APP-043] provides the Applicant's assessment of potential air quality effects during the construction and operational phases and compliance with the AQD. It states that the methodology for the air quality assessment follows the guidance set out in the DMRB and associated Interim Advice Notes (IANs).

Baseline and study area

4.8.13 Reference was made to Stafford Street, which is in the Derby Ring Roads AQMA, was non-compliant with the AQD, and for which DCiC would introduce measures to manage the flow of traffic in that area to reduce NO_2 concentrations. The Proposed Development would have the potential to impact on air quality in Stafford Street, where exceedances of annual objectives and LVs were predicted without the Proposed Development.

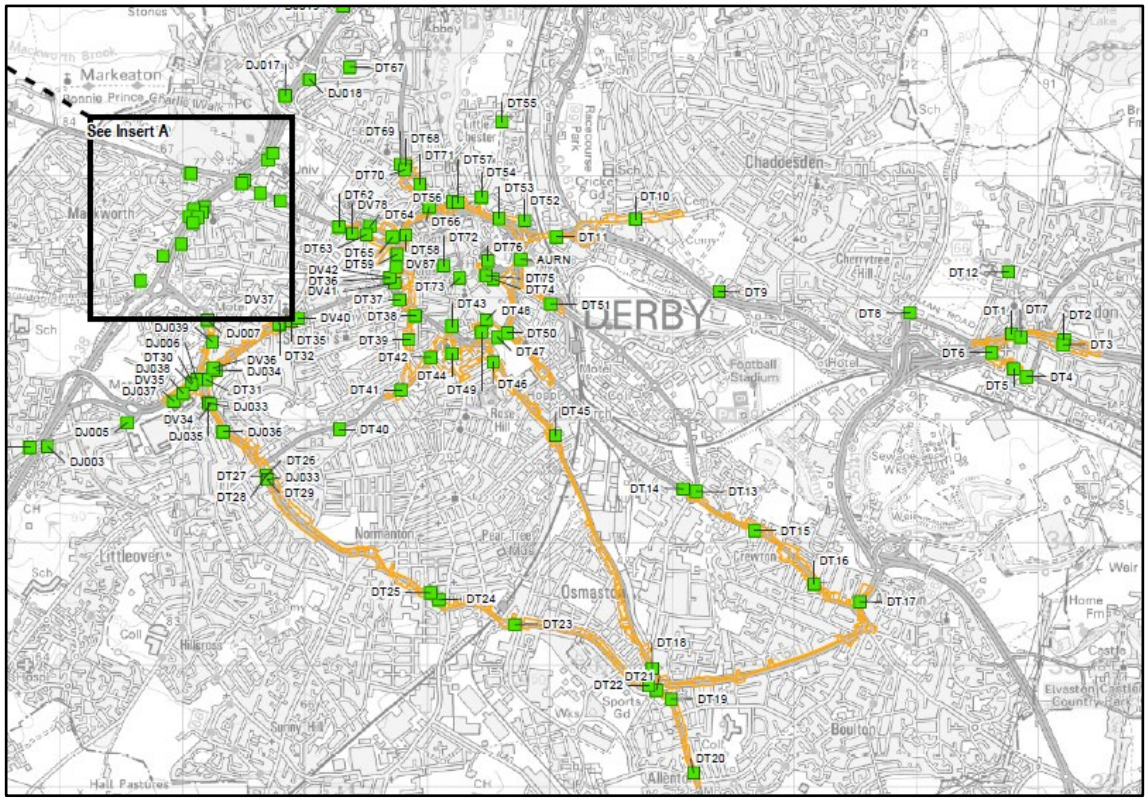

Figure 4.8.1: AQMA and monitoring locations [extract from APP-074]

4.8.14 The construction risk assessment considered key sensitive receptors within 200m of the works. Receptors for construction and operational traffic effects were also considered in a study area of 200m from affected road links, which were identified by comparing road alignment and predicted traffic data with and without the Proposed Development. The study area for the regional assessment was also identified by comparing predicted traffic data with and without the Proposed Development. CO_2 emissions were considered for the whole traffic model study area.

4.8.15 Baseline air quality and receptor sensitivity data were gathered from various sources and included information on roadside areas exceeding the LV for NO_2, information from existing air quality monitoring locations, and the results from a passive NO_2 diffusion tube monitoring survey. Mapped estimates were obtained for NO_2 and PM_{10} up to 2030.

4.8.16 Dispersion modelling was carried out to assess baseline conditions in 2015 and baseline conditions without the Proposed Development in 2021 (construction year) and in 2024 (opening year). Exceedances of annual NO_2 mean objectives and LV reduced from ten receptors in 2015, to one receptor (Stafford Street) in 2021 and 2024. There were no predicted exceedances of hourly NO_2, annual PM_{10} or hourly PM_{10} mean objectives and LVs.

4.8.17 Carbon monoxide, 1,3-butadiene, benzene, lead and SO_2 were scoped out of the assessment as they were considered very unlikely to be present at levels that would result in significant effects.

The construction phase

4.8.18 Construction activities with the potential to generate significant air quality effects were identified. These included construction dust and emissions from construction traffic, plant and machinery, and changes in traffic flows as a result of temporary traffic management measures and construction traffic. The assessment addressed the three construction scenarios that were considered to represent the likely worst-case. Significant air quality effects associated with emissions from construction machinery were not anticipated.

4.8.19 Dispersion modelling was carried out to predict concentrations of NO_2 and PM_{10} with the Proposed Development in 2021 (construction year) and compared with the 2021 baseline. The likelihood of a significant air quality effect was assessed with reference to the risk of breaching standards, the probability of occurrence, the magnitude of change in concentrations, durations, number of people affected, and the potential for an effect to be mitigated.

4.8.20 Dust impacts on air quality were assessed through consideration of the number and sensitivity of properties near dust generating activities.

4.8.21 Mitigation considered for the construction phase included a range of Best Practicable Means (BPM) measures and a range of "*good industry standard practice construction phase dust mitigation measures*", as set out in the OEMP [REP14-008]. Dust monitoring would be implemented for locations with higher dust risks. Other mitigation would include measures to minimise the impacts of construction traffic, as set out in the TMP [REP14-011].

4.8.22 With the implementation of the proposed mitigation measures detailed in the OEMP, dust impacts during the construction phase were anticipated to be slight adverse at worst, and not significant.

4.8.23 Predicted changes in annual mean NO_2 concentrations during the construction phase ranged from -4.4 to +5.0 $\mu g/m^3$, which were large changes according to the significance criteria.

4.8.24 In two of the construction scenarios considered in detail, the Proposed Development was predicted to increase NO_2 concentrations by 0.1 $\mu g/m^3$ at the receptor in Stafford Street, where it was predicted that annual objectives and LVs would be exceeded without the Proposed Development. This was considered "*an imperceptible change and is not of concern*". Otherwise all receptors were expected to achieve the annual and hourly NO_2 LVs.

4.8.25 The NO_2 predictions at Stafford Street were made using the "*conservative*" gap analysis method described in IAN 170/12 v3. If the DEFRA forecasting method was used, the predicted concentrations would be slightly lower and below the objectives and LVs.

4.8.26 No significant effects on air quality during the construction phase were anticipated with respect to NO_2.

4.8.27 Predicted changes in annual mean PM_{10} concentrations ranged from -0.5 to +1.4 $\mu g/m^3$, which were small changes according to the significance criteria. The number of days with PM_{10} concentrations exceeding $50\mu g/m^3$ was not expected to change at any receptor due to the Proposed Development.

4.8.28 All the predicted PM_{10} concentrations during the construction phase were well within the objectives and LVs, and therefore no significant effects on air quality were anticipated with regard to PM_{10}.

4.8.29 It was considered that there was a low risk of non-compliance with the AQD in the 2021 construction year, and therefore that an Air Quality Action Plan was not required for the construction phase.

4.8.30 Overall, the Applicant considered that there would be a slight deterioration in local air quality at properties within the study area, but this deterioration would be temporary during the construction phase.

The operational phase

4.8.31 Changes in vehicle emissions were anticipated as having the potential to generate significant air quality effects during the operational phase. Dispersion modelling was carried out to predict concentrations of NO_2 and PM_{10} with the Proposed Development in 2024 (opening year) and compared with the 2024 baseline. Significance was assessed by consideration of factors including risk of breaching standards, probability of occurrence, magnitude of change, duration, number of people affected and the difficulty of mitigating effects.

4.8.32 The Proposed Development was predicted to decrease NO_2 concentrations by 1.2 $\mu g/m^3$ at the first floor of the receptor in Stafford Street that was predicted to exceed the annual objectives and LVs without the Proposed Development. This was considered a small improvement at this receptor. A risk of an exceedance was identified at ground floor level, although the Proposed Development was expected to result in a small improvement. Concentrations at first floor level were predicted to achieve the objectives and LVs, so the area at risk of and exceedance was considered small. Otherwise all receptors were expected to achieve the annual and hourly NO_2 LVs. As the area at risk was small and a small magnitude of improvement was expected with the Proposed Development, no significant effects on air quality were anticipated regarding NO_2.

4.8.33 The NO_2 predictions at Stafford Street were made using the "*conservative*" Highways Agency gap analysis method. If the DEFRA forecasting method was used, the predicted concentrations would be lower and below the objectives and LVs. The modelling assumed that the traffic management measures would not be in operation in 2024, but it was said that if such measures were to be continued then NO_2 concentrations would be further reduced in Stafford Street.

4.8.34 Predicted changes in annual mean PM_{10} concentrations rangeD from -0.3 (negligible decrease) to +0.7 µg/m^3 (small increase). PM_{10} concentrations were predicted to be within the long term and short-term objectives and LVs.

4.8.35 All the predicted PM_{10} concentrations in the opening year were predicted to be well within the objectives and LVs, and therefore no significant effects on air quality were anticipated with regard to PM_{10}.

4.8.36 It was considered that there was a low risk of non-compliance with the AQD in the 2024 operation year, and therefore that an Air Quality Action Plan was not required for the operational phase.

4.8.37 Overall, it the Applicant stated that there would be a slight improvement in local air quality at properties within the study area.

4.8.38 Regional emissions of NO_X, PM_{10} and CO_2 during the operational phase were expected to increase with the Proposed Development, due to an increase in vehicle kilometres travelled. It was considered that much of this increase would be on roads outside densely populated areas.

Factual issues considered during the Examination

4.8.39 Air quality matters considered during the Examination included:

- baseline conditions and overall assessment methodology;
- construction dust, plant and vehicle emissions and vehicle emissions during the operational phase; and
- AQD compliance.

Baseline conditions and overall assessment methodology

Study area, receptors and baseline data

4.8.40 Following the Applicant's [AS-006 AS-013] provision of a detailed explanation and updated figures to illustrate affected road links, we requested [PD-005] clarification of the screening process for receptors in the assessment. In reply the Applicant [REP1-006 Appendix D] provided details of roads exceeding DMRB screening criteria for the scenarios considered in construction year 2021 and for the operational phase opening year of 2024.

4.8.41 Responding to our question [PD-005] the Applicant [REP1-005] stated that "*All receptors where members of the public could be regularly present are considered to be of equal sensitivity. The sensitivity of the receptors to human health impacts is not subdivided as the public includes the most vulnerable members of society (the young, the elderly and the sick) who could be present at the vast majority, if not all, of the receptor locations.*"

4.8.42 Both DCiC [REP1-034 REP7-020] and EBC [REP1-008 REP1-051] were content with the consideration given to study areas, to the identification and sensitivity of receptors and to baseline conditions in the assessment.

Consideration of emissions

4.8.43 In reply to our questions [PD-005], DCiC [REP1-034] and EBC [REP1-051] advised that they were both content with the Applicant's conclusion that there was no risk of carbon monoxide, 1,3-butadiene, benzene, lead or SO_2 concentrations exceeding the relevant national objectives and that they were not aware of any local factors that might lead to an exceedance.

4.8.44 With respect to the Applicant's assessment [APP-043 paragraph 5.35] that $PM_{2.5}$ concentrations would be well below the objective and LV under all scenarios, DCiC [REP1-034] considered that the only measures that could assist with $PM_{2.5}$ mitigation measures would relate to non-road mobile machinery and the use of diesel generators. DCiC was happy that suitable measures were in place for those to be addressed at a later stage, during the development of the CEMP. EBC [REP1-051] was content with the assessment and did not require any additional mitigation measures.

4.8.45 We asked [PD-005] the Applicant for justification of their assertion [APP-043 paragraph 5.5.8] that emission rates and background concentrations would be lower after 2024. The Applicant [REP1-005] provided evidence in the form of references to IAN 185/15 showing the year on year reductions in emission factors of NO_x and PM_{10} from 2015 and DEFRA background concentration maps that showed year on year decreases in NO_x, NO_2 and PM_{10}.

Cumulative impacts with designated fund projects

4.8.46 Replying to our FWQ [PD-005], the Applicant [REP1-005] said that any cumulative effects with two potential designated fund projects at Markeaton junction / Markeaton Park [APP-053 paragraph 15.10.2] would be considered during the planning application process for those projects. It also stated that the nature of those projects was such that there were not anticipated to be any significant cumulative effects with regards to air quality during the construction or operational phases.

Definition of significant effect

4.8.47 Replying to our FWQ [PD-005], the Applicant [REP1-005 REP3-026] provided clarifications that:

- a change in concentrations of less than or equal to 1% of the objectives and LVs was considered to result in an imperceptible impact;
- changes in pollutant concentrations that did not exceed the objectives and LVs were not considered significant;
- perceptible changes in pollutant concentrations at levels that exceed an objective and LV could be significant; and that
- the seven questions [APP-053 paragraphs 5.3.9-11] used to determine whether an air quality effect would be significant were derived from Table 2.3 in IAN 174/13.

4.8.48 DCiC [REP3-027] and EBC [AS-028] were both satisfied that changes in pollution concentration should only be considered significant when they

exceeded objectives and LVs. DCiC "*further noted that this work is not fully compliant with the latest DMRB Guidance (LA105), but acknowledged that this guidance has only very recently been released and therefore not applicable to the current examination.*"

Overall assessment methodology

4.8.49 Both DCiC [REP3-027 REP7-020] and EBC [REP1-008 REP1-051 AS-028] were content with Applicant's assessment methodology. Although DCiC considered that the information on construction works was not detailed and was subject to change, it agreed that the methodology was fit for purpose.

Conclusions on baseline conditions and overall assessment methodology

4.8.50 The Applicant set of the sensitivity of receptors where the public would be regularly present at a level to include the most vulnerable in terms of human health. We are satisfied that is consistent with the Applicant's health-based methodology and with a reasonable worst-case approach.

4.8.51 We have no reason to doubt that the Applicant's consideration of the study area, receptors or baseline conditions is appropriate for the assessment.

4.8.52 DCiC pointed out that specific mitigation measures would need to be considered for $PM_{2.5}$ but were content for those to be addressed later during the development of the CEMP. No material concerns have been raised regarding the $PM_{2.5}$ assessment and no suggestion has been made that the matters identified by DCiC would not be successfully mitigated through the secured provisions or that there would be any significant effects. The general approach of later consideration of detailed mitigation when more detailed construction information is available is appropriate and well-established. We are therefore content with the approach for $PM_{2.5}$.

4.8.53 Robust evidence has been provided to support the assumption that vehicle emission rates and background concentrations would be lower after 2024 and that leaves us satisfied with that assumption being made in the assessment.

4.8.54 The factors that have been considered for the identification of significant effects derive from best practice guidance and clearly recognise the objectives and the LVs. DCiC and EBC were content with the criteria and with the overall assessment methodology and we have no reason to demur. Detailed construction, operation and AQD matters, including the updated DMRB (LA105), are addressed below.

Construction dust, plant and vehicle emissions and vehicle emissions during the operational phase

Construction scenarios

4.8.55 Responding to our question [PD-005] about the potential for large or medium magnitude changes in NO_2 or PM_{10} during the construction scenarios which were not considered in detail in the assessment, the Applicant [REP1-005] argued that it had taken a proportionate approach appropriate to the information available. To demonstrate that it had chosen

the scenarios likely to represent the likely worst-case, the Applicant provided a qualitative assessment of the other scenarios in comparison with the assessed scenarios. This was in terms of factors including volumes of construction traffic on the network, traffic re-routing and the proximity of traffic to receptors. The Applicant [REP1-005] concluded that:

- no large or medium magnitude changes in NO_2 concentrations were expected during the preliminary works or construction scenario 1;
- large or medium magnitude increases in NO_2 concentrations may occur at some receptors near Markeaton junction during scenarios 2, 3, 4, 5 and 6, however, pollutant concentrations predicted at the receptors were within the air quality objectives and LVs;
- no significant air quality effects were expected; and
- no large or medium magnitude changes in PM_{10} concentrations were predicted at any location in any construction scenario.

Emissions from construction machinery

4.8.56 We asked [PD-005] for justification of the assertion [APP-043 paragraph 5.3.16] that "*significant air quality effects are not anticipated to be associated with emissions from construction machinery and have thus been scoped out of the assessment*". The Applicant [REP1-005] referred to Institute of Air Quality Management (IAQM) guidance that "*exhaust emissions from on-site plant … and site traffic suggests that they are unlikely to make a significant effect on local air quality, and in the vast majority of cases they will not need to be assessed*" and provided evidence that a potential slight increase in concentrations due to on-site plant was unlikely to cause a significant effect.

NO_2 impacts and mitigation during the construction phase

4.8.57 We questioned [PD-005] whether predicted NO_2 increases in Stafford Street could be reduced or avoided through alternative traffic management measures. The Applicant [REP1-005 REP2-020] said that DCiC's measures to reduce traffic flows in Stafford Street were the most appropriate way to improve air quality in this area. On the basis that either imperceptible changes or improvements in air quality were predicted, it considered that alternative construction traffic management methods would not be required.

4.8.58 DCiC [REP1-034] suggested that:

- detailed consideration be given to alternative construction measures after the construction contractor was appointed;
- it would need to be involved in the design of the CEMP and TMP;
- air quality effects on Stafford Street would need to be monitored during the construction phase and the construction contractor will need to liaise with DCiC to ensure that adverse effects were avoided;
- agreement should be sought from DCiC before each phase of construction and in connection with any remedial actions taken to address problems that arise; and that

- as DCiC would a first point of contact for complaints in most cases, a robust 'receive, respond and act' system would need to be in place, co-ordinated by the Applicant, but with significant DCiC input.

4.8.59 The Applicant [REP2-020 REP3-015 REP3-026] referred to OEMP measures to consult with DCiC for the preparation of the CEMP and TMP and made a series of updates, including to the OEMP [REP14-008 MW-AIR5] for the Applicant to "*maintain close communications with DCiC regarding the Scheme air quality effects as associated with the construction traffic management proposals. Highways England will work with DCiC to define appropriate solutions should any unexpected air quality effects associated with construction traffic management be encountered.*" DCiC [REP4-029 REP7-020] said that it was satisfied with the OEMP provisions.

4.8.60 We queried [PD-010 PD-014] whether DCiC or the SoST should have the power to require action for changes to be made to the construction arrangements if monitoring suggests that construction methods could be putting compliance with the AQD at risk. The Applicant [REP3-026] was of the view that DCiC would be able to reduce traffic flows on Stafford Street further, if necessary, using its own traffic management measures and that it would not be reasonable for HE to change its construction arrangements when the Proposed Development was expected to have a minimal effect on traffic flows in Stafford Street. Noting that DEFRA was responsible for assessing compliance, DCiC [REP4-029] thought that the suggestion was unlikely to be practical and that "*the most sensible approach would be to plan construction works in such a way as to minimise air quality effects 'as far as practically possible' from the outset*".

4.8.61 EBC [AS-028] said that it had no outstanding concerns relating to the questions raised.

Dust impacts and mitigation during the construction phase

4.8.62 We raised questions [PD-005 PD-010] in relation to receptor sensitivity, dust deposition quantities, how sensitivity and magnitude contributed to the identification of significant effects, and impacts on receptors closest to the works.

4.8.63 The Applicant [REP1-005 REP3-026] replied that:

- receptors with high, medium and low sensitivities were considered with reference to IAQM guidelines;
- small, medium and large magnitudes of dust deposition were identified with reference to dust generating activities and relevant factors such as number of vehicle movements and material quantities;
- the assessment of potential dust impacts was qualitative;
- dust impacts were expected to be greatest closest to dust generating activities, decreasing to 60% at 20m from the source and to 10% at 100m;
- receptors of most concern, due to their high sensitivity and closeness to the works, were residential properties, schools and residential care

homes located within 20m of the construction site boundary in built up areas, for example near Markeaton junction;

- those areas would benefit from further additional mitigation measures as set out in the OEMP [REP14-008 MW-AIR2]; and that
- dust effects on those receptors during the construction phase were anticipated to be slight adverse at worst, and not significant.

4.8.64 With respect to dust monitoring, the Applicant [REP1-005 REP3-026] referred to OEMP [PW-AIR1, MW-AIR2 and MW-AIR3] provisions for measures to be implemented for high risk sites and air quality monitoring requirements, noting that these would be discussed with the LAs during the detailed design phase. DCiC [REP1-034] set out the circumstances in which it felt that dust monitoring would be required, including in response to any complaints about dust, and said that those should be outlined later, in the CEMP. EBC [REP1-051] said that dust monitoring should be a firm requirement and had no other comments to make.

4.8.65 Both DCiC [REP3-027 REP7-020] and EBC [REP1-008 REP4-031] were content with the dust mitigation and monitoring provisions in the OEMP.

Construction phase assessment methodology and mitigation

4.8.66 DCiC [REP1-034 REP1-035 REP4-029] agreed with the assessment methodology. It was of the view that some degree of construction dust impact was inevitable but that it was hard to predict accurately as there were many unknown variables involved. It agreed with the approach used to identify where the most significant effects might occur but cautioned that the predictions should not be taken to provide certainty.

4.8.67 EBC [REP1-008 REP4-031] was content with the assessment of air quality effects and with the proposed mitigation.

NO_2 and PM_{10} impacts and mitigation during the operational phase

4.8.68 With respect to the worst-case year, the Applicant [AS-013] said that the opening year was the year in which NO_2 concentrations would be greatest as vehicle emissions would decrease in the future as indicated in IAN 185/15. It also stated that PM_{10} emissions would be slightly higher in the design year (2039) than in the opening year because the year on year improvements in PM_{10} emissions due to cleaner vehicles entering the vehicle fleet would occur more slowly than the increases due to traffic growth. It further noted that predicted PM_{10} concentrations would be well within the objectives and LVs and was therefore of the view that no further air quality assessment was required.

4.8.69 DCiC [REP1-034 REP1-035] was of the view that the main causes for concern in air quality terms were impacts upon receptors located close to the A38 (of which it considered there were very few) due to the significant increase in traffic, and impacts at some other locations expected to see an increase in traffic volumes post-completion. It singled out a house at the end of Kedleston Old Road where the façade is only 5m from the kerb of the A38 as one location of concern. The Applicant [REP2-020] provided details

of an assessment that predicted NO_2 concentrations at the house at the end of Kedleston Old Road would be within the LV and so would be compliant during both the construction and operational phases.

4.8.70 Responding to our question [PD-005] with respect to paragraph 5.15 of the NPSNN, the Applicant [REP1-005] summarised the consideration given to mitigation measures such as changes to the route, changes to the proximity of vehicles to local receptors in the existing route, physical means including barriers to trap or better disperse emissions, and speed control. It argued that specific mitigation measures such as barriers to shield properties and speed control were not considered necessary as significant effects on local air quality were not anticipated with respect to NO_2 or PM_{10}.

4.8.71 DCiC [REP1-034] considered that, overall, the air quality effects resulting from the Proposed Development would be beneficial to local emissions. It accepted that the modelling did not predict any significant effects on local air quality during the operational phase and therefore did not consider that further mitigation measures were necessary.

4.8.72 EBC [REP1-008 REP4-031] was content with the assessment of air quality effects and with the proposed mitigation.

NO_2 monitoring

4.8.73 Given that the assessment identifies cases where NO_2 levels would be close to LVs and that there were instances of large increases in NO_2 concentrations, we questioned [PD-005 PD-010 PD-014] whether NO_2 monitoring should be considered.

4.8.74 The Applicant [REP1-005 REP3-026] said that DCiC was already monitoring NO_2 at the one residential receptor (in Stafford Street) where annual mean objective values could be exceeded and considered that it was not necessary to secure further NO_2 monitoring during the construction or operational phases.

4.8.75 DCiC [REP1-034 REP3-027] confirmed that it "*already carries out a fairly extensive network of NO_2 diffusion tube monitoring within the area of most concern*" and that it did not see additional NO_2 monitoring as an essential requirement in relation to the Proposed Development. EBC [REP4-031] said that it was content with the provisions for monitoring.

Other matters

4.8.76 Public Health England [RR-008] said that "*overall, there would be a slight deterioration in local air quality at properties within the air quality study area, but this deterioration would be temporary during the Scheme construction phase. The Applicant should work closely with Derby City Council (DCiC) to ensure that impacts are kept to a minimum during both the construction and operational phase of the works.*" Referring to those comments, the Applicant [REP1-005] highlighted the mitigation measures proposed during the construction phase and said that it had worked closely with DCiC and that it would continue to do so. It considered that the Proposed Development would not affect DCiC's ability to put in place and operate traffic management measures to improve local air quality.

4.8.77 Responding to our questions [PD-005], the Applicant [REP1-005] said that it had been in discussion with both the RSfD and Cherry Lodge children's residential care home about air quality. It referred to measures to control dust; that air quality would be further considered as detailed construction traffic management proposals were developed; the consideration given when decisions were made about the alignment and design of the carriageway; and that "*placing the A38 mainline in an underpass through the junction maximises the distance between traffic and nearby sensitive receptors, while the underpass retaining walls form effective screens/ barriers*". The Applicant [REP1-005] stated that air quality criteria had been set to protect the most vulnerable members of society; that mitigation measures set out in the OEMP were appropriate; and that air pollutant concentrations were currently achieving the national and European air quality criteria set to protect human health and would continue to do so during both the construction and operational phases.

4.8.78 During ISH4 [EV-019] FoED raised concerns about air quality in the vicinity of the Royal Derby Hospital, and later [REP7-018 REP9-030] went on to question whether the Applicant was going to put more traffic and increase its speeds, "*onto the most polluted site in the East Midlands*", the A38 Kingsway Island NHS Hospital site. The Applicant [REP6-042 REP8-007 REP10-009] responded that:

- the A516 Uttoxeter New Road from Uttoxeter Old Road to the Royal Derby Hospital was within an AQMA;
- DCiC found that NO_2 concentrations exceeded the annual mean objective and LV at the corner of Manor Road and Uttoxeter New Road;
- traffic flows were expected to change during the construction phase;
- the Proposed Development would attract traffic away from the A516 Royal Derby Hospital roundabout during the operational phase;
- NO_2 concentrations at relevant receptors were predicted to be within the NO_2 objectives and LVs during the construction and operational phases; and that
- air quality at the A38 Kingsway Island Hospital site would be within the criteria set to protect human health during the construction and operational phases.

4.8.79 David Clasby [REP3-032] and DCG [REP3-033] raised concerns, providing references, about:

- the justification for increasing speed limits to 50mph, which they said would increase air pollution;
- increases in traffic usage that would lead to a deterioration in air quality as there was no sign of a mass increase in electric cars and that larger, more polluting, cars were increasing in sales;
- air quality on local roads worsening during the construction phase as cars sought alternative routes and that this "*will see NO_X levels in the city become illegal once again*";

- diffusion tubes for air quality monitoring being inaccurate; and about
- increasing evidence of poor air quality affecting health.

4.8.80 The Applicant [REP4-025] replied that:

- NO_X and CO_2 were lowest at around 40 – 50 mph and then increase with increasing speeds, that with the Proposed Development journeys through Kingsway and Markeaton junctions would be smooth flowing and at speeds up to 50 mph which would result in the lowest emissions per vehicle, and that as the majority of the A38 traffic would no longer use the roundabouts at the Kingsway, Markeaton and Little Eaton junctions there would be a reduction in emissions from queuing traffic in those areas;
- emissions per vehicle were expected to decrease in the future due to increasingly stringent emission standards for new vehicles and the emission forecasts for future years considered changes in fuel type and size of vehicles based on the latest government forecasts;
- it was proposed to maintain two lanes on the A38 during peak periods during the construction phase, that this would minimise the amount of traffic taking alternative routes, and that, except for Stafford Street, air quality was predicted to stay within the objectives and LVs; and that
- diffusion tubes were a recognised and accepted technique by DEFRA to measure NO_2 concentrations, that DCiC had bias adjusted its diffusion tube results to improve their accuracy in line with guidance issued by DEFRA, and that DEFRA considered DCiC's measurements to be fit for purpose.

4.8.81 Several other parties including Caron Fellows [RR-023], Phil Moss [AS-034], Jane Temple [AS-036], R.L. Dodd [AS-037], Diana Bruce [AS-039], Nick Arran [AS-040], Pauline Inwood [AS-042], S.Wheeler [AS-047], Carol Leak [AS-048], Mr B.W. Day [AS-051], Chris Newman [AS-052], Mr & Mrs Day [AS-053] , Christian Murray-Leslie [AS-054], Susan Genda [AS-055], Anne Morgan [AS-058], FoED [REP6-035 REP7-018 REP8-009 REP9-030 REP10-010 REP11-007], FoMP [REP12-015 REP14-039] and Derby Climate Coalition [REP14-035] raised concerns, including in relation to current issues with poor air quality; increases in pollution from traffic, including from diversions during the construction phase; health effects, including to residents, children and vulnerable people; pollution of green space and footpaths; loss of mature trees that mitigate pollution and the difficulty of replacing them; mitigation by reducing traffic, encouraging use of public transport and cycling; and AQD compliance. The Applicant responded [REP1-005 REP7-007 REP8-007 REP10-009 REP11-003 REP12-006] to the matters raised and, as we consider necessary, we address these matters in further detail elsewhere in this section.

4.8.82 Parties, including Joanna Watson [REP9-046] and Derby Climate Coalition [REP14-035] said that Covid-19 increased the reasons for the Proposed Development to be halted and suggested links between dirty air and increased infections from Covid-19. The Applicant [REP10-009 REP14-001] said that initial research indicated that long term exposure to poor air quality, and especially elevated $PM_{2.5}$ concentrations, were associated with

worse health outcomes from Covid-19; that further research was required to investigate a range of risk factors for Covid-19; that, based on available information, it did not consider that the Proposed Development would increase mortality from Covid-19; and that overall the proposals would result in a reduction in human exposure to air pollution in the long term. DCiC [REP14-032] said that research on this was at an early stage; that it was hard to draw any confident conclusions; that it was not aware of any requirement within the relevant planning policy to model or mitigate against the potential risk; and that consideration could be included within the detailed design phase and CEMP as further evidence became available.

Conclusions on construction dust and emissions and vehicle emissions during the operational phase

4.8.83 The Applicant has compared the construction scenarios not considered in detail in the assessment with those that have been. We are satisfied that the comparison has demonstrated that the construction scenarios considered in detail cover the worst-cases of key factors such as construction traffic volumes, re-routing and proximity to receptors. On that basis we are content that the construction scenarios chosen for the detailed assessment were appropriate for the consideration of reasonable worst-case impacts in relation to air quality during the construction phase.

4.8.84 The advice provided in IAQM guidance and the provisions within the OEMP [REP14-008 PW-AIR1 and MW-AIR1] regarding no idling vehicles and types of fuel lead us to conclude it unlikely that emissions from construction machinery would lead to a significant effect on air quality and, on that basis, we are satisfied with the assessment in that respect.

4.8.85 We welcome the addition of OEMP [REP14-008 MW-AIR5] provisions for communication and liaison with DCiC during the construction phase and have no reason to disagree with DCiC that they satisfy its earlier concerns in relation to addressing problems and complaints arising. We are happy that DCiC and EBC engagement in the development of the CEMP and TMP are secured appropriately in Requirements 3 and 11 of the rDCO (Appendix D) and in the OEMP [REP14-008 PW-G1 and MW-G5-7].

4.8.86 DCiC's ability to control the traffic management measures in Stafford Street would appear not be affected by the Proposed Development and it said that it was content with the OEMP provisions. On that basis we consider that suitable controls are in place if DCiC monitoring suggests that construction methods could be putting compliance with the AQD at risk. We therefore agree with the Applicant that there is no need for additional powers in this respect.

4.8.87 Dust mitigation and monitoring provisions have been included in the OEMP [REP14-008 PW-AIR1, MW-AIR1, MW-AIR2 and MW-AIR3]. Both DCiC and EBC were content with them and we agree. In our view the Applicant has provided considered and reasonable responses to our questions about dust impacts and mitigation. We agree with DCiC that some construction dust impacts would be inevitable, that there is a degree of uncertainty, but that the Applicant has adopted an appropriate approach for dealing with any significant effects.

4.8.88 The Applicant presented robust evidence of decreases in vehicle emissions in future years by reference to IAN 185/15 and we are therefore content with the assessment in that respect. It also demonstrated to our satisfaction that appropriate consideration had been given to the mitigation measures suggested in paragraph 5.15 of the NPSNN. Noting that both DCiC and EBC were content and, leaving detailed AQD compliance matters for further consideration below, we are satisfied with the Applicant's overall approach for air quality assessment and mitigation and for NO_2 monitoring during the operational phase.

4.8.89 We have seen good evidence of close working between DCiC and the Applicant and appropriate provisions are secured to require that collaborative working continues during the detailed design phase. DCiC did not advised to the contrary and so we are satisfied that the matters raised by Public Heath England have been addressed appropriately.

4.8.90 The Applicant has made several references to the consideration of vulnerable and high-risk receptors and has provided responses to air quality concerns raised in respect of specific locations at the Royal Derby Hospital, RSfD and Cherry Lodge children's residential care home. On balance we accept the Applicant's reasoning for the Proposed Development not leading to significant air quality-related health impacts at those locations.

4.8.91 While there have been suggestions that there may be a link between long term exposure to poor quality air and worse health outcomes from Covid-19, we have not seen the robust evidence necessary for us to conclude that the Proposed Development would be likely to result in increased health impacts in that respect. Noting DCiC's comments that research was at an early stage and that there would be opportunities for Covid-19 to be considered during the detailed design phase as further evidence becomes available, we are content that appropriate provisions have been secured in relation to the potential for adverse air quality effects with respect to Covid-19.

4.8.92 The Applicant responded to other concerns raised by David Clasby and many other parties in some detail. We have reviewed the concerns and responses and, on balance and after careful consideration, are satisfied with the Applicant's position, including with respect to increasing speed limits to 50 mph, future changes in traffic levels, air quality effects in the vicinity of local roads, the use of diffusion tubes for monitoring, mitigation by reducing traffic levels, mitigation by trees, and potential health effects. We address these matters in further detail elsewhere in this section as we consider necessary.

AQD compliance

4.8.93 In its LIR, DCiC [REP1-035] noted that in 2015 Derby was identified by DEFRA, along with five other cities, to take early action to improve roadside NO_2. In 2017 the Government launched a revised Air Quality Plan for roadside NO_2 emissions, requiring LAs to develop measures to achieve compliance in their areas. DCiC's Local Air Quality Plan was submitted to the SoS for approval in early 2019. Following approval of the Local Air Quality Plan, DCiC is implementing a highway scheme to address roadside

NO_2 in response to air quality exceedances identified through the requirements of the AQD. A feasibility study undertaken with Government identified one site of predicted exceedance on the Derby road network in Stafford Street. This highway scheme was designed to achieve compliance with the requirements of the AQD in the shortest possible time and subsequently to maintain compliance.

4.8.94 The Applicant [REP2-020] said that operation of the Proposed Development would reduce annual mean NO_2 concentrations by more than $1ug/m^3$ in Stafford Street and would therefore have a beneficial impact on the only non-compliant road link in Derby.

Discrepancy with DEFRA's methodology

4.8.95 DCiC [REP1-034] raised a discrepancy between the Applicant's methodology for compliance-checking against the AQD for annual average NO_2 with the methodology prescribed by DEFRA. The location of modelled receptors in the DEFRA methodology is 4 metres from the kerb, whereas the Applicant used a point at the façade of the closest receptor to the kerb. DCiC considered that the Applicant's approach would be more conservative in many cases and that this was therefore of little concern. However, it also suggested sense-checking of receptors adjacent to any road links that were predicted to experience a notable increase in traffic volume; that were between 4m and 10m from the kerb; and that already experienced annual average NO_2 concentrations close to, or higher than, $40\mu gm^{-3}$.

4.8.96 The Applicant [REP2-020] noted that DCiC had provided it with modelled NO_2 concentrations in 2016 and 2020 at receptors 4m from roads across the city. It said that this information had been used together with the modelled impacts to assess whether the LV was likely to be exceeded, an approach that it said was in line with IAN 175/13. The Applicant had undertaken additional analysis which indicated that the Proposed Development was not expected to affect compliance in areas that were currently compliant during either the construction or operational phases. The Applicant [REP3-019 REP3-026] then submitted additional air quality information to DCiC, which adjusted modelled concentrations to 4m from the kerb. It said the results of that adjustment showed that "*NO_2 concentrations at the compliance receptors are within the limit value with all construction scenarios and during the Scheme opening year*".

4.8.97 DCiC [REP3-027] said that the Applicant's work "*provides greater clarity and assurance that the A38 Scheme should not create a non-compliance with the EU Limit value for annual average NO_2 either during construction or following completion of the Scheme and the assessment methodology is considered robust.*"

DMRB update and LA105

4.8.98 Responding to our question [PD-010 PD-014] about the new DMRB LA105 guidance, the Applicant [REP3-015 REP3-026] initially said that the "*new DMRB air quality guidance was published in November 2019. Highways England made the point that the A38 scheme was designed and prepared in accordance with the previous guidance. Highways England's position is that it is not appropriate to retrofit the scheme to the new guidance. Highways*

England stated that it would not be undertaking a new assessment of the scheme against the new DMRB guidance." It set out [REP4-024] the changes that the application of LA105 methodology would have made to the assessment and said that it was "*not anticipated to cause any additional significant effects or materially new or materially worse adverse environmental effects or compliance risks in comparison with those reported in the ES*".

4.8.99 DCiC [REP4-029] said that LA105 provided a means of reconciling infrastructure scheme contributions with national compliance modelling and was of the opinion that further assessment of the potential for exceedance of LVs under the updated LA105 guidance would be helpful.

4.8.100 The Applicant [REP6-016] later said that it needed to reconcile its approach with other work being done nationally that had taken a different approach to the application of LA105. As a result, the Applicant provided an Updated Air Quality Compliance Risk Assessment [REP6-020] that it subsequently supplemented [REP7-009] following from comments from DCiC [REP7-010] about construction phase impacts being omitted.

4.8.101 The updated assessment [REP6-020] concluded that the modelled annual mean NO_2 concentrations at qualifying features would be below the annual mean LV near the A38 and across Derby in 2024 (opening year) and were therefore AQD compliant.

4.8.102 The Applicant [REP6-016 REP9-029] said that footpaths adjacent to roads were not considered in the original compliance assessment and the updated assessment gave particular attention to footpaths close to the A38 where concentrations were likely to be highest. The updated assessment [REP6-020 REP7-009] predicted an exceedance of the LV during the construction phase at some footpaths adjacent to the A38 in the vicinity of Markeaton junction. However, the Applicant [REP6-020 REP7-009] considered that as the increase was short term for an eight month construction period and as there would be an exceedance regardless of the Proposed Development, the impacts of the construction activities on ambient air quality would not delay compliance.

4.8.103 The Applicant [REP7-009] said that the footpaths experiencing exceedances would be realigned as the construction phase passed through its various stages. It then said [REP12-007] that if, at the detailed design phase, the works were predicted to make air quality worse at those footpaths, then the existing footpaths would be closed and alternative routes would be implemented as mitigation. It provided [REP14-022] examples of alternative routes, confirming that diversions would be temporary and would make use of existing footpaths. The Applicant suggested an OEMP provision to secure this, which was later updated [REP14-008 MW-AIR4] in response to our suggestion [PD-026] to clarify the trigger level for an alternative route to be identified and the criteria for an alternative route to be considered acceptable.

4.8.104 DCiC [REP9-030] said that it was satisfied with the Applicant's updated assessments and agreed [REP14-032] that moving footpaths away from the A38 carriageway would have the effect of resolving any concerns in relation

to potential exceedances of the LV for NO_2 along the A38 during the construction phase. Noting the need to consider suitable alternatives and active travel choices in detail once more information was available, it welcomed the OEMP [REP14-008 MW-AIR4] provisions for more discussions to be held with it during the detailed design phase.

4.8.105 Both DCiC [REP7-010 REP9-030] and the Applicant [REP14-022] highlighted that determining compliance against the AQD was the sole responsibility of the Secretary of State for Environment, Food and Rural Affairs (SoSEFRA).

Delays in non-compliant areas becoming compliant

4.8.106 The Applicant [REP1-005] considered that the proposals would not affect the ability of any non-compliant areas in the East Midlands zone to achieve compliance. It said that with DCiC's traffic management measures to improve air quality in Stafford Street during the operational phase, there were not expected to be any non-compliant areas in 2021 or later years that could be adversely affected by the Proposed Development. The Applicant further said that, even if Stafford Street remained non-compliant, the changes in air quality at Stafford Street associated with the Proposed Development would either be imperceptible or an improvement and so would not affect compliance. During the consideration of LA105, it stated [REP6-020] that the proposals would not delay compliance.

4.8.107 DCiC [REP1-034] welcomed that the Proposed Development was predicted to have a positive impact on Stafford Street by reducing the volume of traffic and causing a reduction in annual average NO_2 concentrations during the operational phase. It noted that negligible increases in NO_2 were predicted and that the assessed construction traffic management scenarios could be subject to change following appointment of the construction contractor or in response to changing circumstances. It noted that potential impacts on Stafford Street during the construction of the Proposed Development should be controlled by the DCiC traffic management scheme, although it did consider that there was a risk of the Proposed Development proceeding before that was in place. The Applicant [REP2-020] noted that the SoSEFRA had approved the DCiC traffic management measures for Stafford Street and that a ministerial direction had been issued to DCiC for it to comply with the legal LV for NO_2 within the shortest possible time, and by 2020 at the latest.

4.8.108 In its SoCG with the Applicant [REP7-020], DCiC agreed that, subject to consideration of the additional air quality assessments submitted by the Applicant at D6 and 7, the "*Scheme is not predicted to … have the potential to delay a non-compliant zone to achieve compliance*". DCiC [REP4-029 REP7-010 REP9-030] further considered its position while the implications of the new DMRB LA105 guidance were being discussed (see above), before saying that "*the results indicate that the completed scheme is unlikely to affect the ability of the UK to achieve compliance in the shortest possible time*" and it was satisfied that the Applicant's updated assessments applied LA105. The Applicant's updated assessments [REP6-020 REP7-009] said that the Proposed Development was not expected to delay compliance.

4.8.109 EBC [REP1-051] confirmed that there were no LV exceedances in its area.

Compliant areas becoming non-compliant

4.8.110 In its SoCG with the Applicant [REP7-020], DCiC agreed that, subject to consideration of the additional air quality assessments submitted by the Applicant at D6 and D7, the "*Scheme is not predicted to result in a zone compliant with the Air Quality Directive to become non-compliant*". DCiC [REP7-010 REP9-030] said that "*the results of the submitted compliance assessment are indicative of the completed scheme being unlikely to create any new non-compliances against the EU AQ Directive and associated UK Regulations*".

4.8.111 EBC [REP1-051 REP9-031] was "*content that the proposed development would not result in a zone/agglomeration currently compliant becoming non-compliant.*"

Conclusions with respect to the AQD

4.8.112 During the Examination, the Applicant submitted adjustments to the NO_2 concentrations modelled in the assessment to those at 4m from the kerb, in order to identify concentrations at locations consistent with DEFRA's AQD methodology. Noting DCiC's comments, we are content with the methodology used by the Applicant and, subject to the later consideration of DMRB updates below, their conclusions that the concentrations considered by this study would be within LVs at the relevant receptors during both the construction and operational phases.

4.8.113 The DMRB LA015 guidance was published after the application was submitted and therefore it would be unreasonable to expect compliance with this method following submission. However, we note the comments made by both the Applicant and DCiC about the value of it being considered, both to help to relate the Applicant's assessment to national compliance modelling and to reconcile with best practice being employed for other similar projects. The main difference between the new assessment methodology and Application version is the consideration of exposure on footpaths. Using the new methodology, the Applicant identified additional potential exceedances of LVs in some locations during the construction phase. DCiC was content with the updated assessment and we have no reason to disagree with them. Similarly, we are content that appropriate mitigation has been secured [REP14-008 MW-AIR4] to avoid any exceedances of objectives or LVs or significant effects by implementing alternative temporarily routes for the relevant footpaths during the construction phase.

4.8.114 The Applicant, DCiC and EBC agreed that during the operational phase the Proposed Development would be unlikely to cause any delays in non-compliant areas becoming compliant, or to cause any compliant areas to become non-compliant. DCiC welcomed the positive impact of the operational phase of the Proposed Development on the currently non-compliant Stafford Street.

4.8.115 Given the legal requirements for DCiC to implement their traffic management measures in Stafford Street and that these measures have been approved, we find it likely that they would be in place before the Proposed Development would come into operation.

4.8.116 DCiC was, however, less sure about those tests being met during the construction phase. Areas of concern included the potential for changes to the construction proposals; that some, albeit negligible, increases in NO_2 were predicted at Stafford Street; and that there were some subtle differences between the Applicant's assessment methodology and DEFRA's.

4.8.117 Responding to the concerns, the Applicant has:

- provided evidence to demonstrate that its assessment is conservative;
- secured provisions for later assessment and mitigation when more information is available; and
- identified that DCiC is legally required to address the compliance issues in Stafford Street and that DCiC will maintain a high degree of control through its own traffic management measures.

4.8.118 On balance, we are satisfied that, through the combination of the secured mitigation and the other controls available to DCiC, during the construction phase the Proposed Development would be unlikely to cause any delays in non-compliant areas becoming compliant, or to cause any compliant areas to become non-compliant.

4.8.119 Again, we note the comments made by DCiC and the Applicant about the SoSEFRA having the sole responsibility for determining AQD compliance.

Conclusions on air quality policy and factual issues

4.8.120 We have had particular regard to the policies set out in the NPSNN in our consideration of the effects of the Proposed Development in relation to air quality. Consideration has been given to the relevant sections of the AQD, the AQS, the Clean Air Strategy, and to relevant local plans and policies.

4.8.121 Air quality effects in relation to biodiversity and designated sites are covered in Section 4.11. Climate change, CO_2 and other carbon emissions are dealt with in Section 4.15. Nuisance and health are discussed in Section 4.16 and traffic levels in Section 4.7.

4.8.122 We have received no substantive concerns from relevant pollution control authorities about their ability to regulate potential releases and are therefore content that paragraph 4.55 of the NPSNN is satisfied. For the purposes of paragraph 4.56 we have no good reason to believe that any relevant control permits, or licences or other consents would not subsequently be granted.

4.8.123 The Applicant has clearly considered vehicle emissions, how tighter emission standards are expected to reduce PM_{10} and NO_2 emissions, air quality effects over the wider area, relevant statutory air quality thresholds and AQMA as required by paragraphs 2.16, 3.6-8, and 5.10-12 of the NPSNN.

4.8.124 We have seen no substantive evidence that gives us cause to doubt that the consideration of the study area, selection of receptors, baseline conditions, changes to vehicle emission rates, $PM_{2.5}$, factors considered for the

assessment of significant effects, or the overall assessment methodology are appropriate for the purposes of the assessment.

4.8.125 We are satisfied that proper consideration has been given to construction scenarios, emissions from construction machinery and that appropriate measures have been secured in the rDCO (Appendix D) and OEMP [REP14-008] to address uncertainties, unforeseen events, communication and liaison requirements, vehicle emissions and dust mitigation and monitoring during the construction phase.

4.8.126 We are content with the Applicant's overall approach for air quality assessment and mitigation and for NO_2 monitoring during the operational phase.

4.8.127 The Applicant has demonstrated to our satisfaction that appropriate consideration has been given to the mitigation suggested in paragraph 5.15 of the NPSNN and we are satisfied that appropriate measures have been secured in the rDCO (Appendix D) and the OEMP [REP14-008].

4.8.128 We accept the Applicant's reasoning for the Proposed Development not leading to significant air quality-related health impacts with respect to vulnerable and high-risk receptors. We have not seen robust evidence necessary for us to conclude that the Proposed Development would be likely to result in increased health impacts associated with Covid-19 and are content that appropriate provisions have been secured in relation to the potential for adverse air quality effects in that respect. We are satisfied with the Applicant's responses to IPs and other parties.

4.8.129 We have paid particular attention to the AQD and to the relevant provisions in the NPSNN, including paragraphs 5.9 and 5.13. We note that the SoSEFRA has the sole responsibility for determining compliance against the AQD. However, from the evidence presented to us, our view is that the Proposed Development would be unlikely to cause any delays in non-compliant areas becoming compliant, or to cause any compliant areas to become non-compliant.

4.8.130 We are content that appropriate measures have been taken to avoid, mitigate and minimise adverse impacts and, where possible, to contribute to improvements.

4.8.131 We acknowledge the Applicant's overall assessment of a slight improvement in air quality that would not be significant.

4.8.132 Based on the above, we are satisfied that appropriate consideration has been given to relevant policy for the Proposed Development and find that that, subject to the provisions of the rDCO (Appendix D), it would be unlikely to result in any significant effects in respect to air quality. Therefore, our view is that air quality does not weigh significantly for or against the DCO being made.

4.9 NOISE AND VIBRATION

4.9.1 This section addresses the effect of the Proposed Development with respect to noise and vibration.

4.9.2 Human and building receptors are considered here. Noise and vibration effects in relation to biodiversity and designated sites are covered in Section 4.11. The transport assessment and traffic levels are addressed in Section 4.7. Nuisance and health are considered in Section 4.16. Compensation for blight is discussed in Chapter 7.

Policy context

4.9.3 The NPSNN sets out the matters to be considered for decision making.

4.9.4 Paragraph 5.193 states that statutory requirements for noise must be met and that due regard must have been given to the relevant sections of the NPSE, the NPPF and the NPPG on noise.

4.9.5 Paragraph 5.194 requires the optimisation of layout to minimise noise emissions and, where possible, the use of landscaping, bunds or noise barriers to reduce noise transmission. It also refers to consideration of the need to mitigate impacts elsewhere on the road network.

4.9.6 Paragraph 5.195 says that:

"*The Secretary of State should not grant development consent unless satisfied that the proposals will meet, the following aims, within the context of Government policy on sustainable development:*

- *avoid significant adverse impacts on health and quality of life from noise as a result of the new development;*
- *mitigate and minimise other adverse impacts on health and quality of life from noise from the new development; and*
- *contribute to improvements to health and quality of life through the effective management and control of noise, where possible.*"

4.9.7 Paragraph 5.196 refers to the need to "*consider whether requirements are needed which specify that the mitigation measures put forward by the Applicant are put in place to ensure that the noise levels from the project do not exceed those described in the assessment or any other estimates on which the decision was based.*"

4.9.8 Paragraph 5.197 says that consideration should be given to requirements to ensure delivery of all mitigation measures, including any needed for operational or construction noise over and above any included in the application.

4.9.9 Paragraph 5.198 notes that mitigation measures should be proportionate and reasonable and may include containment of noise generated, adequate distance between source and noise-sensitive receptors, specifying acceptable noise limits or times of use, optimisation of layout, or the use of landscaping, bunds or noise barriers to reduce noise transmission.

4.9.10 Paragraph 5.199 refers to noise mitigation through increased dwelling insulation and ventilation measures pursuant to the Noise Insulation Regulations and says that an indication of the likely eligibility for compensation should be included in the assessment. It notes that "*in extreme cases, the Applicant may consider it appropriate to provide noise mitigation through the compulsory acquisition of affected properties in order to gain consent for what might otherwise be unacceptable development.*"

4.9.11 Paragraph 5.200 requires consideration of opportunities to address the noise issues associated with Noise Important Areas.

4.9.12 Paragraph 180 of the NPPF refers to the need to identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.

4.9.13 Relevant local plans and policies are set out in Section 3.8.

The application

4.9.14 The main sections of the application relevant to the noise and vibration matters considered here are:

- Chapter 9 – Noise and Vibration [APP-047];
- Appendix 9.1 – Noise and Vibration Terminology [APP-218];
- Appendix 9.2 – Construction Phase Noise Predictions [APP-219];
- Appendix 9.3 – Noise Modelling Details [APP-220];
- Appendix 9.4 – Noise Monitoring [APP-221];
- Chapter 15 – Assessment of Cumulative Effects [APP-053];
- Chapter 16 – Residual Effects [APP-054]; and
- OEMP [APP-159 updated to REP14-008 during the Examination].

4.9.15 Chapter 9 – Noise and Vibration [APP-047] provides the Applicant's assessment of potential noise and vibration effects during the construction and operational phases.

Baseline and study area

4.9.16 Noise sensitive receptors were identified within a study area extending to 1km from the proposals [APP-128 APP-129] and included residential buildings, educational buildings, medical buildings, community facilities, designated sites, scheduled monuments and public footpaths. The study area included other proposed developments, the majority of which were residential properties. The 17 properties that are proposed to be demolished in Queensway and Ashbourne Road were not included in the assessment. Eight Noise Important Areas were identified in the 1km study area. Existing noise barriers, existing low noise surfacing and other low noise surfacing planned before the opening year were also identified.

4.9.17 The study was informed by meetings with, and visits to, the RSfD to ensure that the noise assessment accurately predicted effects on the school and to assist in achieving appropriate mitigation.

4.9.18 The study area for the detailed quantitative assessment extended to 600m from the Order land, together with affected routes in the 1km study area.

4.9.19 A baseline noise survey was carried out in June 2015. This focussed on receptors closest to the Order land and included Breadsall village. The survey characterised the local noise climate and was used to verify the traffic noise prediction modelling. The Applicant considered that the comparison between observed and modelled levels provided confidence that the noise model was robust.

4.9.20 Environmental baseline conditions were not anticipated to change significantly between 2015 and the 2020 construction year baseline. The assessment of effects during the construction phase used 2015 ambient noise levels to establish Significant Observed Adverse Effect Levels (SOAEL), which the Applicant considered to be a conservative approach. Significant effects were equated to SOAEL. DCiC AQD compliance traffic measures for Stafford Street were assumed to be in place before and during the construction phase, but not during the operational phase. Additional traffic flows from other developments were included in the traffic data for the baseline, or do-minimum assessment, for the construction year (2020), the opening year (2024) and the future assessment year (2039).

Construction phase

4.9.21 Construction activities with the potential to generate significant noise or vibration effects were identified. These included site clearances, earthworks, retaining wall construction, bridge construction, road construction, the use of vibratory rollers and piling. The assessment assumed rotary bored piling rather than impact or driven piling; a 13-tonne roller for certain earthworks; and a 3.5 tonne roller for other earthworks and pavement construction. Construction traffic and re-routing during traffic management phases were also considered.

4.9.22 Construction noise effects were assessed at a selection of the closest sensitive receptors to the construction works, which were considered representative of neighbouring properties in their vicinity. Construction noise levels were assessed in accordance with British Standard (BS) 5228-1, using the ABC method, which sets the threshold for the onset of potential significance depending on the existing ambient noise level. The construction traffic noise assessment was based on traffic predictions for the year 2024. The assessment addressed the three (out of eight) construction scenarios considered to represent the likely worst-case.

4.9.23 Thresholds for construction vibration levels causing annoyance were assessed based on BS 5228-2. BS 7385 was used for the assessment of potential vibration damage to buildings.

4.9.24 Significant effects during the construction phase were identified following consideration of predicted noise or vibration levels exceeding SOAEL, together with professional judgement that included factors such as whether

SOAEL would be exceeded for more than 10 days (or 10 evenings, weekends or nights) in any 15, or more than 40 days (or 40 evenings, weekends or nights) in any six month period.

4.9.25 Mitigation considered during the construction phase included BPM measures, together with restrictions to HGV construction traffic movements, early installation of the noise barrier alongside the RSfD, the use of localised temporary site hoardings or noise barriers, and communication with local residents.

4.9.26 Construction noise levels were predicted to exceed SOAEL at 11 locations during the daytime period for one or more months, at six locations during evenings/weekends and at 15 locations for the night-time period. A conservative approach was adopted such that all identified exceedances were assumed to be at risk of exceeding the duration criteria. On that basis, significant adverse construction noise effects were identified at the closest receptors to the construction works between Kingsway junction and Kedleston Road junction, at the Ford Farm Mobile Home Park, at the northern edge of Breadsall, and at the property adjacent to the works at the floodplain compensation area to the west of the Little Eaton junction.

4.9.27 The potential to reduce the magnitude of construction noise effects would be considered when specific details of the construction works became available, at which time it was said that provisions for noise insulation and temporary re-housing may apply. Relevant measures are set out in the OEMP [REP14-008 PW-NOI1 and MW-NOI4].

4.9.28 Vibrations due to the steady state operation of vibratory plant were estimated to exceed the SOAEL for vibration annoyance from vibrating rollers at approximately 150 residential buildings along the A38 between Kingsway junction and Markeaton junction, at the closest buildings at the RSfD, at the Ford Farm Mobile Home Park, and at the individual property at the southern end of Ford Lane. Significant adverse construction vibration effects were therefore identified at all those locations, once again on the assumption that the duration criteria would be exceeded.

4.9.29 The vibration due to vibratory plant during the construction phase was said to be well below the lowest cosmetic building damage criteria at any receptors, assuming a minimum 50m separation distance for the 13-tonne roller, and 15m for the 3.5 tonne roller.

4.9.30 The assessment of noise from construction traffic was informed by liaison with the RSfD and, as a result, assumed that a 4.0m high noise barrier would be installed along the western boundary of the RSfD as soon as possible once the houses between the school and the A38 were demolished. Without the noise barrier, major increases in traffic noise would be anticipated at the RSfD. Moderate increases in construction traffic noise, which were considered significant, were anticipated at a single residential property on Ashbourne Road, on a small number of roads in the Mackworth and New Zealand residential areas and at the RSfD (residential accommodation and the main reception, rather than classrooms).

4.9.31 Monitoring would be undertaken during the construction phase to ensure that the mitigation measures were being implemented appropriately.

Operational phase

4.9.32 The consideration of operational activities addressed changes in traffic flow, composition, speed, road surface, ground topography, the presence of intervening buildings and structures, and the distance to the road.

4.9.33 Operational traffic noise effects were assessed in accordance with the Calculation of Road Traffic Noise methodology, with night-time levels being calculated using a method developed by the Transport Research Laboratory. Consideration was given to:

- the number of properties where residents may experience changes in traffic noise levels and annoyance;
- impacts on sensitive receptors other than residential properties;
- other sensitive receptors within the 1km study area; and to
- affected routes outside the 1km study area.

4.9.34 The SOAEL for operational traffic noise was set to the daytime trigger level in the Noise Insulation Regulations and, for night-time, to the interim outdoor target level provided in the World Health Organisation Night Noise Guidelines for Europe.

4.9.35 Operational traffic vibration was considered from the engines and exhausts of vehicles and from the interaction of vehicle tyres with the road surface.

4.9.36 Significant noise effects during the operational phase were identified following a consideration of changes in noise level combined with professional judgement. The professional judgement took account of factors such as absolute noise levels, receptor sensitivity, the acoustic character of the area, and the likely perception of a traffic noise change.

4.9.37 The mitigation of adverse effects during the operational phase included route selection, the use of underpasses, use of low noise surfacing, and the installation of permanent noise barriers.

4.9.38 Moderate increases in operational traffic noise, which were considered adverse and significant, were anticipated at the RSfD (residential accommodation and the main reception, rather than classrooms). Moderate reductions in operational traffic noise, which were considered beneficial and significant, were identified at three properties in the vicinity of Raleigh Street, which has an access onto the A38 that would be closed during the operational phase.

4.9.39 The Noise Important Areas [APP-128 APP-129] on the A38 would generally experience a negligible increase in traffic noise during the operational phase due to the slight increase in traffic flows on the A38. The proposed 1.5m high barriers between Kingsway junction and Markeaton junction would result in a slight reduction in traffic noise levels at the facades facing the A38 within Noise Important Area 8005. The residential properties within Noise Important Area 11628 facing onto the A38 would be demolished.

4.9.40 A preliminary consideration of properties which may qualify for noise insulation works under the Noise Insulation Regulations identified 13 residential buildings at Kingsway hospital, new flats at the Kingsway Hospital site, properties on the corner of Lyttelton Street and Kingsway Park Close, the caretakers flat at the Army Reserves Centre on Windmill Hill Lane, properties on the A52 Ashbourne Road adjacent to Markeaton junction, and properties in the south-east corner of Allestree closest to Little Eaton junction. Paragraph 9.3.37 of the assessment [APP-047] commits the Applicant to the completion of a full Noise Insulation Regulations assessment once the detailed design is finalised and in accordance with the timescales set out in the Regulations. Relevant measures are set out in the OEMP [REP14-008 PW-NO13 and MW-NO14].

4.9.41 No significant vibration effects were predicted during the operational phase. No significant noise effects were predicted on affected routes beyond the 1km study area during the operational phase.

Factual issues considered during the Examination

4.9.42 Noise and vibration matters considered during the Examination included:

- baseline conditions and overall assessment methodology;
- construction noise and vibration;
- operational noise and vibration; and
- specific receptors and other matters.

Baseline conditions and overall assessment methodology

Study area, receptors and baseline information

4.9.43 DCiC [REP7-020] and EBC [REP1-008 REP1-051] each confirmed that they were satisfied with the Applicant's consideration of the study area, the receptors selected for the assessment, and the baseline information. They were not aware of any quiet areas, or any areas valued for their tranquillity or acoustic environment in the vicinity of the Proposed Development.

SOAEL

4.9.44 DCiC [REP1-034] raised concerns that the SOAEL levels proposed for operational traffic noise were higher than those normally accepted for applications through the planning system and that they therefore had the potential to cause detriment to local amenity from noise. However, it further noted that that local residents were already accustomed to high levels of noise from the A38 and that significant effects were only likely to occur where the Proposed Development caused a significant increase in noise levels. On that basis, DCiC accepted the approach for determination of noise effects in the ES and the process for mitigation appraisal.

4.9.45 The Applicant [REP3-026] said that the SOAEL were consistent with the latest version of the DMRB issued in November 2019, were the same as those adopted for numerous road schemes in recent years, and were as had been adopted for other major infrastructure schemes such as HS2.

4.9.46 EBC [REP1-051] was content with the SOAEL and with the noise and vibration levels used to identify the magnitudes of impact.

Baseline noise levels

4.9.47 We raised questions [PD-005] about the differences between surveyed and modelled baseline levels of up to 13dB; and about any changes in baseline conditions since the noise surveys were carried out in June 2015.

4.9.48 The Applicant [REP1-005] responded that the correlation between measured and predicted noise levels was generally within 2dB, which it considered a very good match. It addressed locations where there were greater differences, which it considered could be explained by variations in wind direction; by the proximity of fences to a survey location; or by short-term measurements at some locations not being representative. This latter effect was suggested as the explanation for the 13dB discrepancy, an explanation which was supported by long term measurements at other locations nearby. The Applicant considered that the comparisons provided confidence that the noise model was robust.

4.9.49 With respect to any changes in conditions since 2015, the Applicant [REP1-005] said that the model validation compared 2015 measured noise levels with those modelled based on 2015 traffic data and that, therefore, the model validation compared like with like. It referred to the ongoing development of the Kingsway Hospital site since 2015, noting that relevant changes had been included in the 2024 and 2039 traffic noise modelling.

Noise sources with distinctive characteristics

4.9.50 Responding to our question [PD-005], the Applicant [REP1-005] said that the application of BS 5228-1 for the assessment of construction noise levels took account of the frequency spectra of relevant construction plant and activities. It said that construction plant was generally not a source of distinctive tonal, impulsive or low frequency noise and that no impact type piling using a hammer, which could be classed as a source of impulsive noise, was proposed as part of the works. It noted that the OEMP required the use of less intrusive reversing alarms rather than high pitched and potentially tonal reversing alarms. It further stated that traffic noise was not impulsive in nature and was not a particular source of tonal or low frequency noise.

Vertical level differences

4.9.51 In response to our question [PD-005] about the consideration of vertical level differences, the Applicant [REP1-005] explained that the model included 3-dimensional ground height information for existing ground levels and features, receptors, the Proposed Development and noise barriers.

Cumulative impacts with designated fund projects

4.9.52 Replying to our FWQ [PD-005], the Applicant [REP1-005] said that any cumulative effects with two potential designated fund projects at Markeaton junction / Markeaton Park [APP-053 paragraph 15.10.2] would be considered during the planning application process for those projects. It

also stated that the nature of those projects was such that there were not anticipated to be any significant implications with regards to noise and vibration during the construction or operational phases.

Overall assessment methodology

4.9.53 DCiC [REP7-020] and EBC [REP1-051] both said that they were content with the Applicant's noise and vibration assessment methodology.

Conclusions on baseline conditions and overall assessment methodology

4.9.54 We have no reason to doubt that the Applicant's consideration of the study area, receptors, baseline information, noise sources with distinctive characteristics, vertical level distances or cumulative impacts with the two designated fund projects are appropriate for the purposes of the assessment.

4.9.55 Noting DCiC's comments about the relationship between changes in noise level and significant effects, and that it accepted the Applicant's approach for the determination of noise effects, we do not consider that its concerns about the proposed SOAEL levels compared with other types of development are material to the assessment. We accept the Applicant's case that SOAEL levels are consistent with current guidance and with current practice on major infrastructure schemes, and that they are therefore appropriate for the purposes of the assessment.

4.9.56 Our view is that the Applicant has provided a satisfactory explanation of the differences between observed levels of noise and those predicted by the noise model. No other material concerns have been raised by other parties on this matter and so we are content that the noise model has been validated and that it is therefore likely to be robust.

4.9.57 On balance, and with respect to the matters considered above, we agree with DCiC and EBC that the Applicant's noise and vibration assessment methodology is satisfactory but note the further detailed matters in relation to the assessment methodology for the construction and operational phases that are addressed further below.

Construction noise and vibration

Construction scenarios

4.9.58 Responding to our question [PD-005] about the potential for construction noise or vibration to exceed SOAEL for the construction scenarios not considered in detail in the assessment, the Applicant [REP1-005] argued that it had taken a proportionate approach appropriate to the information available at this stage. To demonstrate that it had chosen the scenarios likely to represent the likely worst-case traffic noise effects, the Applicant provided a qualitative assessment of the other scenarios in comparison with the assessed scenarios in terms of factors including volumes of construction traffic on the network, traffic re-routing and the proximity of traffic to receptors.

Cumulative impacts with other developments

4.9.59 The Applicant stated [APP-047 paragraph 97.30] that "*a number of development projects are ongoing, or are planned, that have the potential to change baseline conditions*" but that "*based on consideration of future anticipated developments in the area, these are not expected to affect the construction noise assessment.*"

4.9.60 Responding to our request [PD-005] to clarify its approach, the Applicant [REP1-005] said that the construction traffic generated by other potential developments were unknown and unquantifiable. It stated that the baseline traffic model included traffic movements associated with construction sites ongoing at the time and argued that the general level of construction traffic on the network would not change significantly. It also said that it had carried out "*a high level qualitative appraisal of the potential for construction phase cumulative effects taking into account the scale of the applicable developments*" in the cumulative impact assessment [APP-240].

4.9.61 When asked [PD-005 PD-014] to comment, DCiC [REP4-029] confirmed that it agreed with the noise and vibration assessment, while EBC [REP1-051] said that it was not aware of any other developments that would affect the construction noise assessment.

Assessment methodology for the construction phase

4.9.62 We questioned [PD-005 PD-010 PD-014 EV-014] the Applicant's approach that effects would only be significant if SOAEL was exceeded for more than 10 days in 15 or 40 days in six consecutive months, noting that BS 5228 is not explicit about this for the 'ABC' method adopted by the Applicant.

4.9.63 The Applicant [REP1-005 REP3-026 REP4-024 EV-019 REP6-018] said that this duration aspect was not applied in the ES to give a worst-case approach, but that it would be considered during the detailed design phase when more information would be available. It said that the 'ABC' method referred to the need to consider factors such as duration when determining if there is a significant effect, but the method did not provide further guidance on suitable durations. The Applicant explained that it adopted the durations provided in BS 5228-1 in relation to the determination of eligibility for noise insulation. It argued that:

- it was necessary to look outside the 'ABC' method for guidance on duration and that the most appropriate place was elsewhere in BS 5228;
- the durations in relation to consideration of eligibility for noise insulation were relevant as they related to construction phase impacts and to the onset of when an impact requires mitigation, which is an indication of a significant effect;
- adopting the durations for noise insulation was more conservative than any other option in BS 5228; and that
- the 10 days in 15 or 40 days in six consecutive months approach was consistently applied by the Applicant on road schemes and now included in the DMRB.

4.9.64 DCiC [REP4-029] accepted the durations of exceedance of SOAEL as a tool for the consideration of potential impacts. EBC [REP1-051] initially thought

that any exceedances of SOAEL should be considered significant but, following further explanations from the Applicant, later [REP4-036] came to the view that the "*short duration events indicated by the Applicant would not be significant events*".

4.9.65 Noting that the duration limits had not been considered in the assessment but that they would be considered during the detailed design phase, we queried [PD-010 PD-014 EV-014] how a different assessment approach could be justified at a later stage; whether such an approach could lead to materially new or materially worse effects than those considered in the assessment; what was the likelihood of other receptors in addition to those identified in the ES experiencing noise levels above SOAEL; and what was the likelihood of the durations of exceedances identified in the ES being exceeded.

4.9.66 The Applicant [REP3-015 REP3-026 REP4-024 EV-019 REP6-018] confirmed that the duration of impact would be considered when the contractor was on board and when more detail on construction activities was available following the detailed design phase and programming. It said that:

- it had taken a worst-case approach for the ES by not applying duration and had it been applied fewer significant effects would have been identified;
- whilst the exact details may be subject to change, it provided evidence that a robust approach had been taken in the ES;
- its robust approach meant that the overall picture of exceedances of the SOAEL, including the durations of any exceedances, were unlikely to be materially worse than identified in the assessment; and that
- it was reasonable to assume that additional exceedances of the SOAEL beyond those identified in the ES were unlikely.

4.9.67 The OEMP [REP14-008 MW-NOI8] includes a requirement to amend the traffic management proposals or propose additional mitigation should the traffic management proposals developed during the detailed design phase lead to materially new or materially worse environmental effects.

4.9.68 DCiC [REP3-027] said that it agreed with the approach outlined in the OEMP and that it still agreed with the methodology and conclusions of the ES. It also stated that "*This should not, however, be taken to mean that the ES provides a guarantee of any sort that significant effects during construction in particular, won't occur. To the contrary, some degree of noise effect is inevitable and exceedance of SOAELs is very possible at times throughout the period of construction.*"

4.9.69 EBC [REP4-036] was of the view that, based on current information, the later inclusion of the duration criteria would not create any further significant effects.

The use of professional judgement

4.9.70 We asked [PD-005] the LAs whether they had any comments on the professional judgements made for the assessment of construction and traffic noise effects above SOAEL.

4.9.71 DCiC [REP1-034] said that:

- the subjective nature of noise and nuisance made it hard to state that it fully agreed but considered that an acceptable approach had been taken;
- that the judgements appeared to be reasonable; and that
- based on the available information, best estimates had been made of where the most significant effects might occur.

4.9.72 EBC [REP1-051] had no comments to make.

BPM

4.9.73 The Applicant does not propose to secure noise and vibration limits in the OEMP [REP14-008], preferring other mitigation such as the application of BPM. We invited [PD-005] comments on how the application of limits and BPM compare with respect to preventing limits being exceeded, limiting impacts to those identified in the ES, and encouraging the contractor to minimise noise and vibration.

4.9.74 The Applicant [REP1-005] considered that setting limits could unintentionally become a license to generate noise and vibration up to the limit, and that it could reduce the contractor's flexibility to adopt methods such as concentrating works into a shorter period with higher noise levels, which could be perceived by the public as a better outcome. It considered that the setting of limits would not necessarily be effective in limiting impacts to those identified in the ES as they would not encourage the contractor to control activities that were not generating the highest noise and vibration. It also stated that it was not aware of any precedent of noise and vibration limits being imposed through a highways DCO.

4.9.75 With respect to limiting impacts to those identified in the ES, the Applicant [REP1-005] referred to several relevant provisions in the OEMP:

- PW-NOI1 and MW-NOI1 require the use of BPM to reduce noise and vibration; to control noise and vibration at source through measures such as the use of enclosures, screening and less intrusive alarms; and to offer noise insulation or temporary housing if relevant BS 5228 trigger levels would be exceeded;
- PW-NOI4 and MW-NOI5 provide for the control of vibration with respect to the protection of building occupants from disturbance and the protection of buildings from damage; and
- PW-G4 and MW-G12 set out restrictions with respect to core working hours and works outside core hours.

4.9.76 DCiC [REP1-034] considered that the main issue with setting noise and vibration limits was that they failed to take account of all of the other variables which contribute to perceived annoyance/nuisance. It added that

noise levels were useful as an initial guide, but that it would prefer to avoid outright limits to allow greater flexibility to deal with issues as and when they arise. DCiC believed that a CEMP was an appropriate method of securing suitable noise control for the proposed construction works, provided that the CEMP was agreed with it. The Applicant [REP2-020] replied that DCiC would be consulted during the preparation of the CEMP.

4.9.77 EBC [REP1-051] considered "*the effectiveness of the specific measures to be acceptable for preventing limits being exceeded, limiting impacts, and encouraging the contractor to minimise noise and vibration*".

Piling and drum rollers

4.9.78 The assessment makes assumptions about the types of piling and vibration rollers that would be used and states that construction methods and the detail of mitigation methods were yet to be finalised. We queried [PD-005 PD-010] whether the construction methods and mitigation measures assumed in the assessment should be secured in the DCO or OEMP.

4.9.79 The Applicant [REP3-026] said that it was not possible to define the exact types of plant that would be required during the construction phase given that the construction contractor was yet to be appointed. It [REP1-005 REP3-015] added a provision to the OEMP [REP14-008 MW-G9] that the "*contractors will not use impact or vibratory piling. If piling methods other than rotary bored piling are proposed, before adopting such an approach Highways England must demonstrate that such methods complies with the requirement to adopt Best Practicable Means (BPM) to minimise noise and vibration effects*". The Applicant [REP1-005 REP3-026] considered that it had made robust assumptions regarding the likely size of rollers, but felt that some flexibility should be allowed to the contractor, and referred to the BPM provisions to minimise vibration.

4.9.80 The Applicant [REP4-024] said that no benefit from site hoardings had been included in the assessment. Provisions were added to the OEMP [REP14-008 PW-NO13 and MW-NO13] for the need to consider actual plant requirements, and for the details and locations of acoustic screening to be established in conjunction with DCiC and EBC.

Night-time and weekend working

4.9.81 We questioned [PD-005 PD-010 PD-014 EV-014] the need for work to be carried out outside core hours and whether this should always require prior agreement with DCiC or EBC rather than prior agreement only being required for those works not listed in the application version of the OEMP [APP-249]. DCiC [REP1-034 REP3-027] and EBC [REP1-051 AS-028] said that work outside core hours should require their prior agreement. DCiC [REP3-027] did not see a need for approval to s61 of the COPA, whereas EBC [AS-028] asked for this to be included.

4.9.82 DCiC [EV-019] later clarified that communication of specific times and mitigation to residents was a key aspect of mitigation.

4.9.83 Further to our request [EV-019] to the Applicant, DCiC and EBC to reach an agreed position, the Applicant [REP6-018 REP7-007] reported that DCiC and

EBC expressed a view that works outside core hours should at least be notified and that approval of emergency works in advance would be too onerous but that they would like to be informed as soon as reasonable practicable. EBC [REP6-043] also confirmed this position with respect to the emergency works.

4.9.84 The OEMP [PW-G4 and MW-G12] was updated during the Examination to include a list of activities that would be undertaken outside core hours. Requirement 3 of the dDCO and the OEMP were updated to require written notification to be provided to relevant LAs in advance of those works, except for any emergency works which would be notified as soon as practicable. Other work outside core hours would require prior written approval from the LAs.

4.9.85 With respect to s61 of the COPA, the OEMP [REP14-008 PW-NOI2 and MW-NOI2] requires prior consent from EBC for any works other than emergency works undertaken outside core working hours and which comprise noise generating activities.

Community liaison

4.9.86 We asked [PD-005] whether DCiC and EBC were content with the provisions for communications with communities, liaison, measures to inform of potentially disruptive construction activities, and proposals for dealing with any complaints. We also queried whether the related measures identified in the ES [APP-047 paragraph 9.9.5] should be added in the OEMP.

4.9.87 DCiC [REP1-034] considered that it would be extremely helpful to have robust communications and flexibility in place, but considered that these elements should be agreed under the CEMP at a later date. EBC [REP1-051] were content with the communication proposals, but considered that the ES provisions should be added to the OEMP.

4.9.88 The Applicant [REP1-005 REP2-020] added further provisions to the OEMP [REP14-008 G29] to reflect the measures identified in ES paragraph 9.9.5 and highlighted its commitment to provide a CSM.

Noise and vibration surveys and monitoring during the construction phase

4.9.89 Responding to our questions [PD-005 PD-010], both DCiC [REP1-034 REP3-027] and EBC [AS-028] confirmed that they were content with OEMP provisions for noise and vibration surveys and monitoring during the construction phase.

4.9.90 EBC [REP1-051 AS-028] asked for monitoring to be a requirement at locations of potential significant effect, where noise and vibration limits might be exceeded. The Applicant [REP1-005 REP3-026] considered that it was not appropriate to finalise the noise monitoring locations before the working methods, construction plant and site hoarding were finalised. It added a requirement to consult with EBC and DCiC on monitoring locations to the OEMP [REP14-008 PW-NOI5 and MW-NOI6].

Re-housing

4.9.91 The Applicant [REP1-005] said that any exceedances of BS 5228-1 trigger levels for noise insulation and temporary re-housing would be confirmed once the detailed design phase had been completed and details of the proposed construction working methods, plant and so on were finalised. It was unable to confirm the number of properties qualifying for re-housing at this stage but, based on the ES, considered this likely to be limited to a small number of properties in very close proximity to the works.

4.9.92 The OEMP [REP14-008 PW-NOI1 and MW-NOI4] includes provisions in respect of re-housing should BS 5228-1 trigger levels be exceeded.

Other matters

4.9.93 With reference to paragraphs 5.194 and 5.198 of the NPSNN and responding to our question [PD-005], the Applicant [REP1-005] clarified the consideration given to the containment of noise generated; ensuring an adequate distance between source and noise-sensitive receptors; specifying acceptable noise limits or times of use; optimisation of layout to minimise noise emissions; and the use of landscaping, bunds or noise barriers to reduce noise transmission. We note the relevant provisions included in the OEMP [REP14-008] for BPM (PW-NOI1 and MW-NOI1), core working hours (PW-G4 and MW-G12), installation of noise barriers (MW-NOI7), and site hoardings and bunds (PW-NOI1, PW-NOI3, MW-G25 and MW-NOI1).

4.9.94 When invited [PD-005] to comment on the proposed mitigation measures DCiC [REP1-031 REP1-034] and EBC [REP1-051] did not raise any further concerns. DCiC [REP1-034] said that the "*evidence produced in the ES to demonstrate the appropriateness of the proposed mitigation measures is not questioned by DCiC*" while EBC [REP1-051] considered that "*the proposed mitigation measures secured through the dDCO and OEMP should ensure noise and vibration levels do not exceed those in the assessment*".

4.9.95 Referring to paragraphs 5.193 and 5.195 of the NPSNN, we asked [PD-005] the LAs whether they had any more comments regarding local plans and policies; statutory requirements for noise; compliance with the NPSE, the NPPF, and Government guidance on noise; impact on health; and general statutory compliance. DCiC [REP1-034] said that they had no issues subject to the process of CEMP agreement and implementation. EBC [REP1-051] had no further comments.

4.9.96 We asked [PD-005] the LAs whether they had any more comments regarding likely effects on receptors, secured mitigation measures, or significant effects. DCiC [REP1-034] said that its comments had already been covered and referred to its SoCG with the Applicant [REP7-020]. EBC [REP1-051] said that it had no further comments.

Conclusions on construction noise and vibration

4.9.97 We are satisfied that the Applicant's comparison of the construction scenarios demonstrated that the scenarios considered in detail covered the worst-cases of key factors such as construction traffic volumes, re-routing and proximity to receptors. On that basis we are content that the scenarios chosen for the detailed assessment are appropriate for the consideration of

reasonable worst-case impacts from noise and vibration during the construction phase.

4.9.98 The Applicant has not specifically modelled the construction traffic generated from other developments for the construction phase assessment. Noting that no unusually high levels construction traffic from other developments have been identified and that both DCiC and EBC are content, we are satisfied with the Applicant's approach of including a general level of underlying construction traffic movements in its model.

4.9.99 Durations of 10 days in 15 or 40 days in six consecutive months for exceedances above SOAEL used in the assessment are not specified by BS 5228-1 for the 'ABC' method adopted by the Applicant. However, no other method is specified either, although those durations are used in BS 5228-1 in relation to noise insulation, which we accept has some relevance to the assessment of significant effects during the construction phase. We consider the use of these durations on other infrastructure projects and their adoption in DMRB as strong evidence of this approach being consistent with best practice for highway projects of this type. We note that BS 5228-1 does say that duration can be a consideration for the assessment of significant effects. We have not been presented with a more compelling method than that adopted by the Applicant and note that both DCiC and EBC appeared to accept the Applicant's approach for the purposes of the assessment. Based on the above we are content with the Applicant's use of 10 days in 15 or 40 days in six consecutive months durations in its assessment.

4.9.100 The Applicant did not use the duration criteria in the assessment but said that it would do so during the later detailed design phase when more information was available. It is clear to us that the assessment approach of considering all exceedances of SOAEL to be significant is robust as including the duration criteria would only serve to reduce the number of significant effects.

4.9.101 Although the later use of the duration criteria during the detailed design phase would be consistent with the methodology, it would lead to the potential for higher levels of sound and vibration to not being considered significant than had been the case in the assessment. The Applicant provided evidence that the assessment was robust and considered that any additional exceedances of SOAEL beyond those identified in the assessment were unlikely. This was not disputed by DCiC or EBC. We also note the OEMP [REP14-008] provision with respect to further mitigation if any materially new or materially different effects are identified during the detailed design phase. Our view is that the later use of the duration criteria does not undermine the assessment representing a reasonable worst-case and that it does not undermine the mitigation. Furthermore, there is no reason for us to conclude that more significant effects would be identified at a later stage due to the use of the duration criteria. We therefore accept that the Applicant's use the duration criteria would be acceptable as part of the more detailed assessments that would be carried out later, when more information became available.

4.9.102 We have seen no substantive evidence that gives us cause to doubt the Applicant's application of professional judgement for the assessment and agree with DCiC's view that the judgements appeared to be reasonable.

4.9.103 The use of BPM is supported by DCiC and EBC, in part because of the flexibility that it provides to deal with matters that would be difficult to fully anticipate. We have no reason to doubt that, alongside other measures secured in the OEMP [REP14-008], the use of BPM would be a practical and effective part of the overall measures to mitigate the impacts of noise and vibration during the construction phase. Although the specification of noise and vibration limits, for example at SOAEL, would on balance appear to be more likely to result in noise and vibration levels being kept below those levels, we note that the significant effect considerations also include other factors such as duration. On balance, we do not find any conclusive evidence of the specification of limits being necessary, or indeed helpful, for the avoidance of significant adverse impacts. We are therefore content that the use of BPM is appropriate and that the specification of noise and vibration limits is not required.

4.9.104 We welcome the addition of measures in the OEMP [REP14-008] to avoid the use of impact or vibratory piling and for provisions for acoustic screening to be established in conjunction with DCiC and EBC. We are satisfied that those mitigation measures are likely to be enough for ensuring that the assessment is robust in those respects. Regarding the size of rollers, we note the OEMP [REP14-008] provisions to minimise vibration and on balance we consider that they would be likely to result in adverse impacts not being materially worse than those identified in the assessment.

4.9.105 The DCiC and EBC concerns that identified night-time works should be notified in advance to assist with mitigation through communication with residents is reasonable and now reflected in the OEMP [REP14-008]. The Applicant has provided a compelling argument that it is not practical for emergency works to be notified in advance and that to delay them may result in more adverse impacts, and so we are content that emergency works should be notified as soon as practicable. The evidence is that the s61 night-time working provisions secured in the OEMP [REP14-008] are as requested by the LAs and we have no reason to dispute that they are appropriate.

4.9.106 We welcome the additions to the OEMP [REP14-008] of the community liaison measures assumed in the assessment and find that they are appropriate for ensuring that the assessment is robust in those respects. Noting the comments from DCiC and EBC and the matters relating to the CSM that were addressed in Section 4.7, we are satisfied that appropriate community liaison measures have been secured.

4.9.107 We have no reason to disagree with DCiC and EBC that appropriate provisions for noise and vibration surveys and monitoring have been provided in the OEMP [REP14-008].

4.9.108 No evidence has been provided of the potential for re-housing to be greater than a small number of properties in close proximity to the works and no parties have disagreed with the Applicant's approach for those to be

identified during the detailed design phase when more information becomes available. Recognising that there is no requirement for firm numbers to be provided at this stage and accepting that detailed and accurate information is required for re-housing to be assessed, we are therefore satisfied with the Applicant's approach.

4.9.109 Both DCiC and EBC were satisfied with the secured mitigation measures and consideration of policy with reference to paragraphs 5.193-5 and 5.198 of the NPSNN and we find no substantive reasons to disagree with them.

Operational noise and vibration

Road surfacing

4.9.110 We asked [PD-005] about the likelihood of assumptions in the assessment for low noise surfacing of retained sections of A38 being completed by 2024 and for the resurfacing of other roads that the Applicant are responsible for by 2039. The Applicant [REP1-005] said that the A38 low noise surfacing works had either been completed or, as advised and re-confirmed by its East Midlands Asset Delivery Team, were planned to be completed by 2021. It had a very high confidence that works would proceed as assumed in the assessment.

4.9.111 Responding to our questions [PD-005 PD-010] about the consideration given to very low noise surfacing, the Applicant [REP1-005] explained that very low noise surfacing was more costly than low noise surfacing and had only be used for specific sections of a small number of schemes. It had been considered in the vicinity of the RSfD but was not adopted as the traffic speeds were too low for the benefits to be realised. The Applicant [REP3-026] said that the use of very low noise surfacing at Little Eaton would reduce traffic noise levels at source by the region of 1.75 dB, but argued that a smaller benefit was likely to be achieved due to the contributions from other roads and that it was not justified as no significant noise effects were predicted in the vicinity of the Little Eaton junction during the operational phase.

Noise barriers

4.9.112 We queried [PD-005 PD-010] the differences between reflective and absorptive barriers and why different barriers were used in different locations. The Applicant [REP1-005] explained that an absorptive barrier minimised the reflection of traffic noise off the barrier towards the opposite side of the road and explained that they would be used when there were sensitive receptors on both sides of the road, but that their benefits were relatively small and so had not been considered in the assessment. It said [REP3-026] that an absorptive barrier would not be justified alongside the RSfD as the noise levels on the opposite side of the road in Markeaton Park would be lower with the Proposed Development.

Noise Important Areas

4.9.113 Responding to our question [PD-005], the Applicant [REP1-005] said that the Noise Important Areas predicted to experience an increase in traffic noise would be receiving a negligible increase that would not be perceptible.

4.9.114 DCiC [REP1-034] did not believe that the Proposed Development would have any material impact on its Noise Important Areas and did not perceive any conflict with its developing Local Noise Action Plan.

Other operational noise and vibration matters

4.9.115 With reference to paragraphs 5.194 and 5.198 of the NPSNN and responding to our question [PD-005], the Applicant [REP1-005] clarified the consideration given to the containment of noise generated; ensuring an adequate distance between source and noise-sensitive receptors; specifying acceptable noise limits or times of use; the optimisation of layout to minimise noise emissions; and the use of landscaping, bunds or noise barriers to reduce noise transmission. In doing so it referred to the mitigation embedded in the design, including the use of underpasses, the choice of alignment with respect to receptors, the limited potential to increase distances between sources and receptors and the use of noise barriers.

4.9.116 DCiC [REP1-035] said that the operational mitigation, primarily in the form of noise barriers, was agreed in principle and that [REP1-034] the "*evidence produced in the ES to demonstrate the appropriateness of the proposed mitigation measures is not questioned by DCiC*". EBC [REP1-051] considered that the proposed mitigation measures "*should reduce impacts for receptors in Erewash*" and "*ensure noise and vibration levels do not exceed those in the assessment*".

4.9.117 Referring to paragraphs 5.193 and 5.195 of the NPSNN, we asked [PD-005] the LAs whether they had any more comments regarding local plans and policies; statutory requirements for noise; compliance with the NPSE, NPPF, and Government guidance on noise; impact on health; and general statutory compliance. DCiC [REP1-034] said that they had no issues while EBC [REP1-051] had no further comments.

4.9.118 We asked [PD-005] the LAs whether they had any more comments about likely effects on receptors, secured mitigation measures, or significant effects. DCiC [REP1-034] said that this had all been agreed and referred to its SoCG with the Applicant [REP7-020]. EBC [REP1-051] said that it had no further comments regarding operational noise and were content with the mitigation described in the assessment.

Conclusions on operational noise and vibration

4.9.119 Noting the Applicant's very high level of confidence that resurfacing works would be carried out as assumed in the assessment, their references to some firm plans being in place and that there is no evidence to the contrary, we are content that the assumptions in the assessment for works to be carried out by 2024 are reasonable.

4.9.120 We have no reason to doubt the Applicant's explanation that very low noise surfacing would bring relatively small benefits over the proposed low noise surfacing. The Applicant considered the use of very low noise surfacing in the vicinity of the receptor (RSfD) predicted to experience significant effects from noise during the operational phase but found that the traffic speeds were too low for significant noise reduction benefits to be realised.

Separately to that, we have not received a compelling justification for the additional costs and maintenance liabilities of very low noise surfacing at locations where no significant effects are anticipated. Following from the above we are content that a case has not been made for very low noise surfacing and consider that the Applicant's proposal for low noise surfacing represents proportionate mitigation.

4.9.121 The Applicant explained their rationale for the selection of reflective or absorptive noise barriers, which was not questioned by DCiC or EBC. The additional use of absorptive noise barriers would potentially result in a small decrease in noise levels in some areas, but they have not been shown to provide a benefit where significant effects are predicted. On that basis, and noting the additional costs of absorptive noise barriers, we are content that the Applicant's proposals for absorptive noise barriers are proportionate.

4.9.122 We have seen consideration of potential impacts on Noise Important Areas and attention has been paid to DCiC's developing Local Noise Action Plan. No more than negligible increases in noise levels have been predicted in Noise Important Areas and DCiC did not believe that there would be any material impact on its Noise Important Areas. The evidence provided to us leads us to conclude that appropriate consideration has been given to Noise Important Areas.

4.9.123 Both DCiC and EBC were satisfied with the secured mitigation measures and consideration of policy with reference to paragraphs 5.193-5 and 5.198 of the NPSNN and we find no substantive reasons to disagree with them.

Specific receptors and other noise and vibration matters

RSfD

4.9.124 Responding to our question [PD-005], the Applicant [REP1-005] said that it had been in discussion with the RSfD to identify the uses and sensitivities of different building on the site. It had taken account of those along with the sensitivities of hearing-impaired people in its assessment and identification of a significant adverse effect during both the construction and operational phases. No equipment sensitive to vibration was identified during their discussions.

4.9.125 Permanent 4m high noise barriers are proposed between the RSfD and Queensway, which is alongside the A38. The RSfD [RR-019 AS-022] felt that the permanent noise barrier should be constructed before the demolition of the houses on Queensway as it thought it important that there should be as little noise disruption as possible. Noting the potential for increased road and demolition noise, DCiC [REP1-034 REP3-027] supported the principle of constructing the noise barrier before the demolition of the houses if it was practical and feasible.

4.9.126 We asked a series of questions [PD-005 PD-010 PD-014 EV-014 EV-019] of the Applicant to explore options for temporary and permanent noise barriers alongside the RSfD and how the mitigation could be secured. The Applicant [REP8-003] discussed the noise barriers directly with the school during the Examination and referred [REP3-015 REP6-018] to uncertainties in the timing of CA of the Queensway houses, access issues and site conditions

had to be accounted for. It also explained [REP6-018] that the permanent barrier would reduce demolition noise at the school by around 10dB.

4.9.127 The Applicant's [REP6-042] final position was to include a provision in the OEMP [REP14-008 MW-NOI7] for the early installation of noise barriers alongside the RSfD. If the permanent barriers could not be constructed before the demolition of the Queensway buildings then alternative mitigation would be provided, such as temporary noise barriers capable of providing comparable noise mitigation to the permanent noise barrier, potentially in sections and in combination with sections of the permanent noise barrier. The provision also includes for discussions with the school to investigate whether the demolition could be carried out at times that would be less sensitive for the school.

Cherry Lodge children's residential care home

4.9.128 Concerns were expressed by the operators of Cherry Lodge [RR-015] about the sensitivity of children with emotional and behavioural difficulties to changes in their local environment and the potential for a significant risk of an adverse impact on their wellbeing that could make their care more challenging.

4.9.129 Responding to those concerns and to our questions [PD-005], the Applicant [REP1-005] said that Cherry Lodge had been identified as a specific receptor in the noise and vibration assessment and that the sensitivity of people with special needs to increases in noise had been included as a factor in the identification of significant effects. In terms of mitigation during the construction phase, it said that site hoarding would be employed to reduce the magnitude of the impact and indicated that Cherry Lodge may qualify for noise insulation and temporary re-housing. Mitigation during the operational phase was incorporated in the design with the A38 immediately to the west being in a deep cutting 8m below ground level. Permanent noise barriers were not proposed as the worst affected façade was anticipated to experience a minor increase in noise in the opening year of the operational phase.

4.9.130 The potential for blight at Cherry Lodge is considered in Chapter 7.

Other Interested Party issues and concerns

4.9.131 Several parties, including Alan Bradwell [RR-021], Caron Fellows [RR-023], Robert Frank Hancox [RR-024], Mark Silo [RR-031], Dr John Spincer [AS-044], Diana Bruce [AS-039], Nick Arran [AS-040], Chris Newman [AS-052], FoMP [REP9-042] and FoED [REP10-010 REP11-008] raised concerns, including in relation to traffic noise; the removal of trees providing screening against noise; the provision of mitigation in the form of barriers, road surfacing and speed limits; increases in heavy freight; and disproportionate impacts on those who generate less noise. The Applicant responded [REP1-005 REP7-007 REP8-007 REP10-009 REP11-003 REP12-006] to the matters raised and, as we consider necessary, we address these matters in further detail elsewhere in this section.

Conclusions on specific receptors and other noise and vibration matters

4.9.132 Responding to concerns raised by the relevant IPs, the Applicant clarified that account has been taken in the assessment of the particular sensitivities of people at the RSfD and at Cherry Lodge children's residential care home. The indications are that the conclusions of significance in that respect were based on professional judgement. We note that no alternative methods have been presented to the Examination, that no doubts have been expressed about this specific application of professional judgement and that both DCiC and EBC have been content with the Applicant's overall use of professional judgement for the assessment. We therefore accept that the Applicant's approach is acceptable.

4.9.133 Significant adverse noise effects are predicted at the RSfD during both the construction and operational phases. A 4m high noise barrier is proposed as a primary mitigation measure during both phases. The Applicant's need for some flexibility appear reasonable and we welcome the clarification of commitments in the OEMP [REP14-008] to providing equivalent mitigation to the 4m high barrier during the demolition of the Queensway buildings. The RSfD have not commented on those proposals, but DCiC supported the principles and said that it was content with the overall mitigation measures. Based on the above we are satisfied that a reasonable balance has been found between the need for flexibility and certainty, accept that the proposed mitigation is appropriate, and that it is likely that the effects would be as identified in the assessment.

4.9.134 We are mindful of the other noise and vibration matters raised by other parties and, having carefully reviewed those and the Applicant's responses, are satisfied that they have been addressed appropriately.

4.9.135 The comments by DCiC and EBC referred to earlier in this section about them being happy with the noise and vibration assessment and related mitigation measures were for the Proposed Development as a whole and we therefore consider that they apply to the specific cases of the RSfD and Cherry Lodge and to matters raised by other parties. Based on the above and noting the comments made by all parties, we are satisfied that the OEMP [REP14-008] and the rDCO (Appendix D) provide appropriate mitigation.

Conclusions on noise and vibration policy and factual issues

4.9.136 We have had particular regard to the policies set out in the NPSNN in our consideration of the impacts of the Proposed Development in relation to noise and vibration. Consideration has also been given to statutory requirements for noise and the relevant sections of the NPSE, the NPPF, the PPG on noise and the local plans, as set out in the ES [APP-047], in Section 3.8 of this report and as is required by paragraph 5.193 of the NPSNN.

4.9.137 Noise and vibration effects in relation to biodiversity and designated sites are covered in Section 4.11. The transport assessment and traffic levels are addressed in Section 4.7 and health in Section 4.16. Compensation for blight is discussed in Chapter 7.

4.9.138 In the ES [APP-047] and during the Examination we have seen clear evidence that the minimisation of noise and vibration effects was an important factor in the selection of design options and are therefore

satisfied that the layout optimisation stipulations in paragraph 5.194 of the NSPNN have been met.

4.9.139 We find no evidence of any material conflict between the Proposed Development and local plan policies on noise and vibration. Nor do we have reason to doubt that the consideration of baseline conditions, study area, identification of Noise Important Areas, baseline surveys, noise models, identification of receptors or assessment methodology is appropriate for the purposes of the assessment.

4.9.140 We are satisfied that due consideration has been given to construction scenarios and cumulative impacts during the construction phase with other developments. Reasonable assumptions have been made in the assessment about the use of construction plant and appropriate measures have been secured to restrict those where it has been necessary to protect the integrity of the assessment.

4.9.141 We explored, in some depth, the Applicant's handling of duration, the case for noise and vibration limits and the appropriateness of BPM and other mitigation measures during the construction phase.

4.9.142 We have concluded that consideration of duration in the assessment is consistent with relevant codes of practice and relevant guidance and we are comfortable that the likely reasonable worst-case noise and vibration effects during the construction phase have been identified.

4.9.143 Noting the comments received from DCiC and EBC, we are satisfied that it is not appropriate to secure noise and vibration limits; that the level of uncertainty in the assessment is appropriate; and that the secured measures, including BPM, provide appropriate flexibility to respond to uncertainties, while not bringing into doubt the robustness of the assessment.

4.9.144 We are content with the agreements reached between the Applicant and the relevant LAs to mitigate night-time works, including the measures secured for notification and, where necessary, prior approval and (for EBC) the need for section 61 approvals.

4.9.145 For the operational phase, we are happy that road surfacing and noise barriers options have been considered appropriately and that the Applicant's resulting proposals for mitigation measures are proportionate.

4.9.146 There is good evidence of consultation with the RSfD and we are satisfied that impacts and mitigation options have been considered in the depth appropriate for the significant adverse impacts that are predicted and we are satisfied that the secured mitigation measures are proportionate and reasonable.

4.9.147 In our view, and as noted above, appropriate mitigation has been secured in the rDCO (Appendix D) and the OEMP [REP14-008] to ensure delivery of the mitigation measures, as required by paragraphs 5.196-7 of the NPSNN. Noting comments made during the Examination, we are satisfied that the appropriate options for mitigation have been considered and that the

secured mitigation measures are proportionate and reasonable, consistent with paragraph 5.198 of the NPSNN.

4.9.148 An initial assessment has been provided of any requirements for noise insulation or temporary rehousing and we find that appropriate measures have been secured for those to be considered further when more information is available during the detailed design phase. CA and blight are considered in Chapter 7. We are therefore of the view that the requirements of paragraph 5.199 of the NPSNN have been satisfied.

4.9.149 Noise issues in Noise Important Areas have been considered with the LAs and no material effects on them have been found. No tranquil areas have been identified. In those respects, we are content that the requirements of paragraph 5.200 of the NPSNN and paragraph 180 of the NPPF have been met.

4.9.150 Significant adverse effects from noise and vibration have been identified, which, subject to the context of Government policy on sustainable development, NSPNN paragraph 5.195 notes as grounds for development consent not to be granted. Those effects are taken forward into our consideration of the case for making the DCO in Chapter 6. Otherwise we are content that appropriate measures have been taken to avoid, mitigate and minimise adverse impacts and, where possible, to contribute to improvements.

4.9.151 Based on the above, we are satisfied that appropriate consideration has been given to relevant policy for the Proposed Development and that, subject to the provisions of the rDCO (Appendix D), the likely significant effects have been identified in respect to noise and vibration.

4.9.152 We find that moderate beneficial reductions in operational traffic noise at three properties in the vicinity of Raleigh Street weigh significantly in favour of the DCO being made.

4.9.153 Our view is that the following weigh significantly against the DCO being made:

- construction noise above SOAEL at the closest receptors to the construction works between Kingsway junction and Kedleston Road junction, at the Ford Farm Mobile Home Park, the northern edge of Breadsall, and at the property adjacent to the works at the floodplain compensation area to the west of Little Eaton junction;
- moderate adverse construction traffic noise at a single residential property on Ashbourne Road, on a small number of roads in the Mackworth and New Zealand residential areas and at the closest receptors at the RSfD;
- construction vibration above SOAEL at approximately 150 residential buildings along the A38 between Kingsway junction and Markeaton junction, the closest buildings at the RSfD, the Ford Farm Mobile Home Park, and the individual property at the southern end of Ford Lane; and
- moderate adverse operational traffic noise at two buildings at the RSfD.

4.10 THE WATER ENVIRONMENT

Introduction

4.10.1 This section considers the effects of the Proposed Development on the water environment including drainage, water quality and pollution, flood risk, and the WFD. The effect of the proposal on water-based biodiversity and nature conservation interests is covered in Section 4.11. We have already concluded in paragraph 3.3.12 that the Proposed Development would not materially affect the coastal or marine environments.

4.10.2 The EA expressed concerns regarding the Applicant's Quantitative Risk Assessment for discharges into controlled waters [RR-005 REP1-020]. EBC also expressed concern regarding the remediation of land at Little Eaton which is proposed to be used as a construction compound [REP1-050]. These matters are dealt with under the heading of land instability and contaminated land in Section 4.16.

Policy context

4.10.3 The NPSNN recognises that the planning and pollution control systems are separate but complementary (paragraph 4.49) and the decisions taken under the PA2008 should not duplicate those made under the pollution control regime. The ExA and SoST should work on the assumption that the relevant pollution control regime will be properly applied and enforced (paragraph 4.50). A similar approach should be taken in respect of land drainage and flood defence controls (paragraph 4.51).

Water quality policy

4.10.4 Paragraph 5.222 of the NPSNN advises that, where feasible, projects such as road widening should take opportunities to improve the quality of existing discharges where these are identified and shown to contribute towards WFD commitments.

4.10.5 Paragraph 5.223 sets out the requirements for ESs in relation to water quality. These include describing the existing quality of waters affected and the impacts of the proposal on water resources. Any impacts on water bodies or protected areas under the WFD and source protection zones (SPZs) around potable groundwater abstractions and any cumulative effects should also be described. Regard should also be had to River Basin Management Plans (paragraph 5.226).

4.10.6 The ExA and the SoST should consider proposals to mitigate adverse effects on the water environment and whether appropriate requirements should be attached to any development consent and/or planning obligations (paragraph 5.227). The Proposed Development should also *"adhere to any National Standards for sustainable drainage systems (SuDs). The National SuDs Standards will introduce a hierarchical approach to drainage design that promotes the most sustainable approach but recognises feasibility, and use of conventional drainage systems as part of a sustainable solution for any given site given its constraints"* (paragraph 5.230).

Flood risk policy

4.10.7 Paragraph 5.91 of the NPSNN advises that the NPPF *"makes clear that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. But where development is necessary, it should be made safe without increasing flood risk elsewhere."* It goes on to note that the supporting guidance explains that *"essential transport infrastructure (including mass evacuation routes), which has to cross the area at risk, is permissible in areas of high flood risk, subject to the requirements of the Exception Test."*

4.10.8 Paragraph 5.92 of the NPSNN requires Flood Risk Assessments (FRA) to be submitted with applications in Flood Zones (FZs) 2 and 3 as well as in FZ1 in certain circumstances, including projects of one hectare or more.

4.10.9 FRAs should identify and assess the risks of all forms of flooding to and from the project and demonstrate how these flood risks will be managed, taking climate change into account (paragraph 5.93). Where flood risk is a factor, the SoST should be satisfied that the application is supported by an appropriate FRA and that the Sequential Test and, if required, the Exception Test have been applied. Paragraphs 5.105 to 5.109 explain the operation of the Sequential and Exception tests. The application of the tests is set out in greater detail in the NPPG.

4.10.10 Paragraph 5.100 of the NPSNN advises that, for construction work which has drainage implications, approval for the project's drainage system will form part of any development consent issued. The SoST will need to be satisfied that the proposal complies with any National Standards published by Ministers under Paragraph 5(1) of Schedule 3 to the Flood and Water Management Act 2010. Furthermore, the DCO will need to make provision for the adoption and maintenance of any SuDs by the most appropriate body.

4.10.11 Paragraph 5.102 of the NPSNN states that reasonable steps should be taken to avoid, limit and reduce the risk of flooding to the proposed infrastructure and others. However, the nature of linear infrastructure means that there will be cases where upgrades are made to existing infrastructure in an area at risk of flooding. Paragraph 5.104 goes on to advise that reasonable mitigation measures should be made to ensure that the infrastructure remains functional in the event of predicted flooding.

4.10.12 The management of flood risk may include the use of SuDs but could also include vegetation to help to slow runoff, hold back peak flows and make landscapes more able to absorb the impact of severe weather events (paragraph 5.110). SuDs can cover a range of techniques and features (paragraph 5.111).

4.10.13 Paragraph 5.113 of the NPSNN advises that the proposed surface water drainage arrangements should ensure that the volumes and peak flow rates of surface water leaving the site are no greater than the rates prior to the proposed project, unless specific off-site arrangements are made and result in the same net effect.

4.10.14 Paragraph 165 of the NPPF states that *"Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate."*

The application

4.10.15 The parts of the application most relevant to the consideration of the water environment are:

- Drainage Outfall Drawings [APP-015];
- Chapter 13: Road Drainage and the Water Environment [APP-051];
- Figure 3.2: Flood Storage and Compensation Areas - Alternatives Investigated [APP-070];
- Figures 13.1 to 13.3: Surface Water Features for the three junctions [APP-150 [APP-151 [APP-152];
- Appendix 13.1: Assessment of Routine Road Runoff and Accidental Spillage Risk [APP-228]
- Appendices 13.2 A to C: Flood Risk Assessments for the three junctions [REP9-017 REP9-018 APP-231];
- Appendices 13.3 A and B: Kingsway and Little Eaton Junction Water Framework Directive Compliance Assessments [APP-232 APP-233];
- Appendix 13.4: Road Drainage Strategy [APP-234]; and
- Floodplain Compensation Area – Contours Before and After Excavation Works [REP4-020].

Drainage strategy

4.10.16 The application includes a preliminary drainage design and states that the main source of guidance used to prepare the road drainage strategy and water environment assessment was DMRB, Volume 11, Section 3, Part 10, HD45/09 Road Drainage and the Water Environment. Reflecting the nature of the proposal, distinct drainage solutions are set out for each of the three junctions including the use of sustainable drainage features and mechanical solutions to treat and attenuate the highway runoff prior to discharge. The application states that attenuation has been designed to ensure no flooding from the site in a 1 in 100 year plus 40% climate change rainfall event.

Kingsway junction

4.10.17 The main watercourse in this area is Bramble Brook which runs through the junction and is culverted under the A38 in several locations. The Brook would be diverted within the junction and existing culverted sections would be replaced with a new culverted section linking the new Bramble Brook alignment with the existing incoming 900mm diameter culvert to the west of the junction. Proposed earthwork drainage would be located at the top of cuttings or at the toe of embankments to capture surface flows from natural catchments and would then outfall into carrier pipes.

4.10.18 The drainage design here has been split into Catchments 1 to 5 (see Drainage Strategy Figure 2.2 [APP-234]). Runoff from the carriageway would be collected via a combination of road edge channels, gullies and combined kerb drainage units. Carrier pipes would be used to ensure that spillages would be contained within the drainage system. Sub-surface

drainage would be provided via narrow filter drains where necessary. Catchment 1 would be treated and discharged via an attenuation pond. The other catchments would not use vegetative highway runoff treatment, although petrol interceptors would be used at Catchments 2 and 5.

Markeaton junction

4.10.19 Surface watercourses in this area include the Markeaton Brook system and associated lakes. The existing culverts beneath the A38 connecting Markeaton Lake with Mill Pond and Markeaton Lake with Middle Brook would remain unaltered. The existing outfall for highway drainage and the Severn Trent Water surface water sewer is into the Markeaton Lake culvert.

4.10.20 The preliminary drainage design for this junction is based on six catchments (6 to 11) (see Drainage Strategy Figure 2.3 [APP-234]). At the Markeaton junction, runoff from the carriageway would be collected using a combination of road edge channels, gullies and combined kerb drainage units. Catchment 10 would use a combination of engineered and vegetated attenuation features. Catchment 7 would discharge via a petrol interceptor.

4.10.21 The junction proposal involves the creation of an underpass and the area has a high groundwater level. Therefore, a secant form of pile construction is proposed, combined with a water-excluding reinforced concrete base slab to ensure groundwater exclusion from the underpass. The arrangement would also resist uplift pressures. Pumping of groundwater would be required during the construction and operational phases as the underpass would be below the level of nearby watercourses. The pumping station would be required to convey surface water runoff from the majority of the new A38 mainline to the surface. It would be located beside the junction's southbound diverge slip road with access from that road.

Little Eaton junction

4.10.22 Dam Brook is located to the east of the junction. The River Derwent is situated to the west of the Proposed Development. Two existing culverts pass under the A38 at the junction and deliver runoff into Dam Brook. This brook would be realigned. Earthwork drainage would be located at the top of cuttings or at the toe of embankments to capture surface flows from natural catchments. These would outfall into the proposed carrier pipe system.

4.10.23 The drainage design for this junction incorporates catchments 12 to 16 (see Drainage Strategy Figure 2.4 [APP-234]) and the means of collection of runoff from the carriageway would be similar to the other junctions. The runoff from catchments 12 and 13 would outfall into the realigned Dam Brook. Attenuation storage would be provided by lined attenuation ponds and oversized pipes. Catchments 14 and 15 would discharge via petrol interceptors.

Assessment of road drainage and water quality

4.10.24 The Applicant's assessment of water quality risk used the Highways Agency Water Risk Assessment Tool Methods A and D. Method A assessed the impact of routine road runoff on receiving waterbodies by considering the

copper and zinc content of the runoff (as a proxy for a range of metals typically found in highway runoff), together with the potential for chronic sediment impact on the receiving watercourse. Method D was used to indicate where an accidental spillage would result in a serious pollution incident on a receiving water body and guides the need for spillage containment measures.

4.10.25 A study area of 1km around the application site boundary was adopted. The importance of the water environment attributes within that area was identified. The following receptors were found to have high sensitivity/importance:

- Kingsway junction – Bramble Brook - flood risk;
- Markeaton junction – Markeaton Brook and tributaries, Markeaton Lake and Mill Pond - surface water. Markeaton Brook floodplain – flood risk; and
- Little Eaton junction – River Derwent, Dam Brook and tributaries, surface water abstractions (the area is designated as an SPZ – surface water. River Derwent floodplain – flood risk.

4.10.26 The assessment goes on to identify potential impacts during the construction and operational phases. Design features to avoid impacts have been embedded into the Proposed Development including:

- Markeaton junction - not extending the culverts from Markeaton Lake to Mill Pond and to Middle Brook; and
- Little Eaton junction - not altering the River Derwent bridge.

4.10.27 The assessment of LSEs also considered a range of embedded mitigation measures during the construction and operational phases.

Impacts on water quality

4.10.28 The Applicant's assessment of the impacts of the Proposed Development on the water environment, taking into account design and mitigation measures, is summarised as follows:

- Construction phase: The impact on surface water quality at Bramble Brook, Dam Brook and Markeaton Brook and their tributaries, Markeaton Lake, Mill Pond, River Derwent and surface water abstractions at Little Eaton junction would be slight adverse. The impact on groundwater flows in bedrock and superficial aquifers would also be slight adverse. Such effects were not considered significant. Impacts on surface water flows and groundwater quality during the construction phase would be negligible.
- Operational phase: Negligible impacts on surface water quality and groundwater flows and quality. As such, the Applicant found that there would be no significant effects associated with road drainage and water quality during the operational phase of the Proposed Development.

Flood Risk Assessment

4.10.29 FRAs were submitted for each of the junctions with the application [APP-229 APP-230 APP-231]. The FRAs for Kingsway and Markeaton junctions were revised during the of the Examination [REP9-017 REP9-018]. The study areas for the FRAs comprised FZs along the watercourses that it was considered may be affected by the proposal.

4.10.30 The FRAs were based on the methods set out in DRMB HD45/09 and were intended to accord with the NPPF. The EA's designation of FZ was adopted. This is consistent with the NPPF and defines FZ1 as very low risk, FZ2 as low risk and FZ3 as medium risk based on the annual probability that a flood event would occur. For Kingsway junction, hydraulic modelling was undertaken using DCiC's Derby Integrated Catchment Model (DCIM) which the Applicant updated to include local data. The Little Eaton junction hydraulic modelling was undertaken using the EA's Milford to Allestree and Lower Derwent models. No hydraulic modelling was considered to be required for Markeaton junction. DCiC was content with this approach [REP7-020]. Data published by the EA, DCiC's Level 1 Strategic Flood Risk Assessment Review April 2013 (SFRA) and DCiC's DCIM were used to identify existing flood risks at each of the junctions.

4.10.31 At Kingsway junction, EA mapping indicates that the junction is within FZ1. However, Bramble Brook is an ordinary watercourse and DCiC, as the Lead Local Flood Authority (LLFA), has responsibility for managing the flood risk from the brook. DCiC's local knowledge and modelling indicated flood risk and storage issues at Kingsway junction. The DCiC SFRA identified that Bramble Brook through Kingsway junction falls within FZ3 and, as such, the risk of fluvial flooding from Bramble Brook is considered high.

4.10.32 EA flood risk maps also suggested a high risk of surface water flooding in places adjacent to the junction. Consequently, three flood storage areas would be provided, adjacent to Bramble Brook, within the Kingsway hospital site and within the proposed junction.

4.10.33 At Markeaton junction, EA mapping indicates that Markeaton junction roundabout would be located within FZ1. The roundabout would be at low risk of surface water flooding. However, to the north of the Markeaton footbridge, most of the Order land would be within FZs 2 or 3. Areas in FZ3 are mainly in the vicinity of Markeaton Lake, Mill Pond and an area of land at Derby University, between Markeaton Brook and Mill Pond.

4.10.34 The low point of the proposed new carriageway would be lower than the existing drainage outfall level and the Markeaton Lake level. Therefore, the Proposed Development would include a pumping station adjacent to the southbound diverge slip road which would pump highway runoff from the mainline of the Proposed Development where it would be in cutting. The pumping station would be designed to deal with a 1 in 100-year storm event with allowances made for climate change.

4.10.35 Little Eaton junction would be located within FZs 2 and 3. Land to the west of the junction is shown on EA flood risk mapping to be at high risk of river flooding, while land to the east is at low risk. Land to the south of the

junction is generally mapped as being at high risk of flooding from surface water, while land to the east is at low to high risk.

4.10.36 The Proposed Development would result in permanent loss of floodplain associated with the River Derwent. As such, a floodplain compensation area would be provided to the south of the A38 and west of the River Derwent. It would provide 'like-for-like' compensation for the floodplain loss. To mitigate surface water flood risks associated with an unnamed stream emanating from Breadsall Manor near to the Little Eaton junction, a multi-stage flood alleviation channel would be created which would connect the stream with the realigned Dam Brook. A new 600mm diameter culvert from the watercourse under the new A38 embankment would also be provided to connect into an existing culvert in order to take flows from the flood alleviation channel should it exceed its storage potential.

Sequential and Exception Tests

4.10.37 At all three junctions, at least part of the Order land would fall within FZ3. The NPSNN and the NPPG, therefore require the Sequential and Exception Tests to be applied. The Applicant's FRAs for each of the junctions finds that the Proposed Development amounts to 'Essential Infrastructure' for the purposes of NPPG Table 2: Flood risk vulnerability classification. Table 3 allows for Essential Infrastructure to be located within FZ3 if it passes the Exception Test.

4.10.38 The aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. In this case, the Proposed Development comprises the upgrading of existing linear infrastructure. The FRAs for Kingsway and Markeaton find that those elements of the Proposed Development could not be re-located to another area with a lower flood risk classification. The same principle applies to the Little Eaton junction. In addition, however, the works at this junction would include a flood compensation storage area which would be located within the River Derwent floodplain. The Applicant evaluated and undertook hydraulic modelling for 13 potential locations for this facility and consulted with the EA [APP-041 APP-070 REP1-005]. The outcome was that the proposed location would be the only suitable position for the floodplain storage. The EA has confirmed that it was content with the selected location [REP1-022].

4.10.39 The Exception Test requires it to be demonstrated that the proposal provides wider sustainability benefits to the community that outweigh flood risk. An FRA must also demonstrate that the proposal would be safe for its lifetime, without increasing flood risk elsewhere and, where possible, would reduce flood risk overall. The Applicant contends that, since the Proposed Development is an NSIP, and having regard to the benefits of the proposal set out in the Planning Statement, it passes the first part of the Exception Test [REP9-017 REP9-018 APP-252].

Impacts due to Flood Risk

4.10.40 The Applicant's assessment finds the construction phase impacts on flood storage would be due to construction works within the floodplain and other areas at risk of flooding. During the operational phase, the impacts would arise from increased flows due to increased runoff from the road as a result

of a larger impermeable area and the loss of flood storage as a result of increased land take.

4.10.41 However, with the mitigation measures which would be incorporated into the Proposed Development, the impacts during both the construction and operational phase were assessed to be negligible at all three junctions [APP-051].

The WFD

4.10.42 The Order land would be located within the Derwent Derbyshire Management Catchment of the Humber River Basin District. The Humber River Basin Management Plan (HRBMP) is, therefore, relevant to the consideration of the application. WFD compliance assessments were submitted for the Kingsway [APP-232] and Little Eaton junctions [APP-233]. The assessments considered potential risks to waterbodies at Bramble Brook, the River Derwent and Dam Brook and identified water environment mitigation measures. WFD assessment was screened out for Markeaton junction as the Proposed Development would not require any physical changes to watercourses or waterbodies which would pose a risk to WFD objectives.

4.10.43 Of the three affected waterbodies at the Kingsway and Little Eaton junctions, only the River Derwent through Derby has specific WFD monitoring and status classifications within the HRBMP [APP-051]. In the vicinity of Little Eaton junction, the River Derwent is classified as heavily modified, with good chemical and moderate ecological potential in 2016. The WFD objectives for this waterbody are for no change to its condition.

4.10.44 Bramble Brook and Dam Brook are not independent WFD waterbodies, but the WFD applies to all inland waters, so local effects on these WFD tributaries were also assessed. The section of Markeaton Brook that passes beneath the A38 just north of the A38/Kedleston Road junction is identified within the HRBMP and classified as having moderate ecological and good chemical status in 2016, with an objective of achieving good overall and ecological potential status by 2027.

Conclusions on the WFD

4.10.45 The Applicant's Kingsway junction WFD compliance assessment recognises that the Proposed Development would require the realignment and culverting of Bramble Brook through the junction. Without mitigation this would cause local deterioration to WFD quality elements. Mitigation measures are proposed which would enhance the riparian zone of Bramble Brook through the provision of formal flood storage areas. They would remain wet and provide wetland habitat.

4.10.46 The Bramble Brook channel within the junction would also be enhanced through the creation of alternate inset berms which would provide improved flow variation, reduce fine sediment deposition and provide habitat for bankside and emergent vegetation. The assessment found that, with the implementation of the mitigation measures, the Proposed Development would not have an adverse effect on the WFD status of the Markeaton Brook waterbody (which includes Bramble Brook).

4.10.47 The Little Eaton assessment focussed on establishing whether the Proposed Development would result in any deterioration from the existing 'moderate' ecological conditions of the River Derwent, prevent or compromise the waterbody from meeting its WFD objectives of 'good' potential by 2027, or prevent connecting waterbodies from meeting their objectives. It found that the Proposed Development would have a negligible impact upon the current ecological status or future objectives of the River Derwent waterbody. The proposed realignment of Dam Brook would provide an opportunity to enhance the local water environment and contribute to WFD improvement objectives.

Issues considered during the Examination

4.10.48 The water environment issues considered during the Examination included:

- baseline information;
- flood risk and the Sequential and Exception Tests;
- use of SuDs;
- effects on water quality;
- realignment of Dam Brook; and
- maintenance arrangements.

Baseline Information

4.10.49 We [PD-005] and DCiC [RR-003, REP3-027] raised concerns regarding the preliminary nature of the drainage design and the discharge rates used in the drainage calculations. The Applicant responded [REP1-005] that the preliminary design was adequate to inform the drainage strategy and to ensure a suitable land take for drainage features for the purposes of the DCO. Little information was available on existing drainage and the 'modified rational method' for assessment discharge rates was therefore adopted. The Applicant further advised that a drainage survey would be undertaken during the detailed design phase and there would be on-going discussion with DCiC.

4.10.50 DCiC confirmed in its SoCG [REP7-020] that it was content with this approach. The Applicant has indicated that reasonable steps would be taken to ensure that the total discharge rate from the proposed surface water drainage system does not exceed the existing discharge rate. It would also endeavour to achieve 30% betterment where it is practicable to do so. These measures are secured in rDCO (Appendix D) Requirement 13 and the OEMP [REP14-008 D-RD1]. On a related point, Requirement 14 of the dDCO was amended in response to our [PD-005] and DCiC's [REP1-034] queries. It now reflects the different climate change allowances for flood compensation areas and flood storage areas.

Flood Risk

4.10.51 Queries were raised by ourselves [PD-005] and DCiC [RR-003] regarding the use of DCiC's DCIM in the Kingsway FRA and whether it took into account the EA's up to date climate change projections. FoED was also

concerned on this point and that the modelling did not take into account recent experience of flooding in the Markeaton area as well as other locations around Derby [REP6-35, REP7-018 REP9-038]. It also questioned whether the Proposed Development met the Exception Test with regard to flood risk [REP11-008]. FoMP made a similar comment regarding flooding within the Markeaton Park Walled Garden [REP9-042 [AS-045]. Both parties also queried the effect of tree removal at Markeaton Park on flood risk. At ISH4 [EV-019] and in our request for further information [PD-018] we also sought clarification of the potential for flood water to overtop the proposed carriageway at Markeaton and lead to the risk of surface water flooding the areas adjoining the road.

4.10.52 In its responses to FoED, the Applicant said that single rainfall events cannot be readily used as evidence of under-accounting of climate change impacts [REP8-007]. The Applicant stated that the climate change allowances used in the FRA were based on the most appropriate guidance and reflected the expected average impacts on rainfall intensity having regard to EA advice on the matter [REP8-007, REP10-009]. It said that advice also acknowledged that the climate change allowances used at each of the junctions appropriately varied between 40% and 50% to reflect the differing considerations applicable to each location. The SoCGs with the EA [REP5-008] and DCiC [REP7-020] confirm that those authorities consider that the FRAs use the appropriate climate change allowances.

4.10.53 With regard to flood risk associated with the Markeaton junction, the Applicant advised that the modelling determining the extent of surface water flooding in the Markeaton FRA was produced by the EA and represents existing conditions. It said that the modelling accounted for the flood risk both to and from areas adjoining the A38, as well as risk to and from the road itself. It said that the model outputs formed the basis of the FRA and the associated surface water flood risk map showed overtopping of the existing road during the 0.1% Annual Exceedance Probability (AEP) event (but not in the 1% AEP event). This overtopping would be outside of the boundary of the proposed changes to the road and therefore not associated with the Proposed Development. For the avoidance of doubt, the Applicant also confirmed at ISH4 [REP6-018] that the present day 0.1% AEP event had reasonable equivalence to a 1% AEP event plus 40% climate change allowance and, therefore, made appropriate allowance for climate change.

4.10.54 The areas adjoining the A38 within the surface water flood extent (that is, Markeaton Park, Markeaton Brook, Markeaton Lake) would not be amended as part of the proposal, nor are there proposals to amend the watercourses and associated structures. Therefore, the Applicant considered that the Proposed Development would not have any impacts on these flood extents and would not alter surface water flooding risks in the areas adjoining the road [REP9-029].

4.10.55 The Applicant acknowledged that trees can help to alleviate the risk of groundwater flooding. However, it considered that the proposed removal of trees at Markeaton Park would not have a significant effect on groundwater levels, the movement of groundwater or lead to ground destabilisation. In the OEMP [REP14-008 DL-5] it is proposed to plant a greater number of

trees than those removed, albeit that it would take time for the replacement trees to mature to the point where they would alleviate groundwater flood risk. Nevertheless, it would be reasonable to expect the replacement trees to provide some alleviation before they fully mature.

4.10.56 FoMP [REP042] echoed earlier DCiC [RR-003] concern that the use of secant piling in the Markeaton junction underpass could affect groundwater flows. The Applicant responded that the underpass would be aligned in the same direction as the groundwater flows and, therefore, would not be a barrier to those flows. As such, it considered that the secant piling would not increase the risk of ground water flooding [REP10-009].

4.10.57 The SoCG with DCiC [REP7-020] confirms that DCiC was content with the findings of the Markeaton FRA. As the LLFA for the area, DCiC would be consulted on drainage matters during the detailed design phase in accordance with the OEMP [REP14-008 D-RD8].

Use of Sustainable Urban Drainage

4.10.58 Early in the Examination DCiC [RR-003, REP3-027] and DCC [RR-004, REP1-030] expressed the view that the Proposed Development did not make sufficient use of SuDs and/or Natural Flood Management in the proposals for the storage and attenuation of surface water at each of the junctions. The use of SuDs is supported by both the NPSNN and the NPPF. We also raised this matter in our FWQ [PD-005] and it was a topic of discussion at ISHs 2 [EV-011 EV-012 EV-013] and 4 [EV-019].

4.10.59 The Applicant's response [REP3-026 REP4-025] was that the proposals took a considered and reasonable approach to opportunities to use open space for multiple purposes as well as incorporating SuDs into the design. However, in some locations, constraints such as the land available, the need to retain areas of open space (including replacement open space at Markeaton junction) and public safety had necessitated other solutions such as buried attenuation storage tanks. Nevertheless, the Applicant also accepted that the proposals could be refined during the detailed phase with a view to reconsidering the opportunities for SuDs, provided that such solutions could be accommodated within the Order land and would not compromise the provision of replacement open space at Markeaton junction.

4.10.60 With this assurance in place, both Councils considered that the proposals were satisfactory at this stage [REP6-27, REP6-010]. The OEMP [REP14-008 D-RD1] makes provision for the use of SuDs to be reviewed and for the Councils to be consulted on the detailed design of highway drainage.

Water quality

4.10.61 Concerns raised by DCiC regarding water quality were largely focussed on the discharges at the Markeaton junction [RR-003]. It referred to silt loading at Markeaton Brook as a long-standing issue and to the susceptibility of Mill Pond and Markeaton Lake to the quality of water discharges. DCiC, therefore, considered that all surface water discharges should be treated using SuDs or petrol interceptors. It also advised that the discharge rate into Mill Pond should be carefully considered as the

associated dam was predicted to overtop in a 1 in 30 year event [RR-003 REP1-034 REP3-027].

4.10.62 These matters were discussed at ISHs 2 [EV-011 EV-012 EV-013] and 4 [EV-019] where the need for treatment of surface water before discharge in the existing system was also raised by FoED. In its responses [REP3-026 REP6-18], the Applicant advised that Markeaton Lake is upstream of the Order land and would not receive any pollutants or sediments from the Proposed Development. The Applicant considered that the proposal incorporates measures to attenuate flows and reduce pollutants before the highway drainage is discharged into Mill Pond. As such, attenuation features that assist in the removal of silt had been incorporated into the highway surface water drainage design at Markeaton junction where feasible and practicable to do so. The Applicant further contended that the provision of attenuation should result in a betterment over the existing situation where silt laden drainage currently enters watercourses unattenuated.

4.10.63 The Applicant [REP3-026 REP6-18] was of the view that petrol interceptors would be necessary where the probability of spillage resulting in environmental impact would be 1%, which means that it would be greater than a 1 in 100-year event. The drainage design includes a petrol interceptor upstream of Markeaton Lake culvert. The Applicant considered that this would reduce the amount of hydrocarbons entering Mill Pond via the culvert and was expected to result in a betterment over the existing situation. Therefore, the Applicant considered that the proposals provide adequate measures to prevent siltation and other pollutants at Markeaton Lake and Mill Pond.

4.10.64 The Applicant [REP3-026 REP6-18] was of the view that the integrity of the Mill Pond dam wall would not be affected by the proposals. It said that the highway drainage system design allowed for the attenuation of flows so that there would be no flooding from a 1 in 100-year event with a 40% allowance for climate change. It stated that the proposed outfall rates were, therefore, less than the existing flow rates into the Mill Pond

4.10.65 At ISH4 [EV-019], DCiC recognised that there was no specific requirement for mechanical drainage to be used if sustainable drainage was not possible and that it should be taken into account that the proposal comprises an alteration to existing infrastructure. It was satisfied with a commitment from the Applicant that the use of SuDs would be agreed during the detailed design phase [REP6-018 REP7-020]. Requirement 13 of the rDCO (Appendix D) and the OEMP [REP14-008 D-RD1] secure this commitment.

Realignment of Dam Brook

4.10.66 The proposals at Little Eaton include the realignment of Dam Brook, which runs to the east of the junction. As the LLFA for the area, DCC sought assurance that these works would not lead to flooding issues upstream in Breadsall village, where there had been previous instances of flooding [REP1-030 REP3-031].

4.10.67 The Applicant responded by producing a Hydraulic Modelling Technical Note for the works [Appendix to REP2-020]. The Note provided further details of

the modelling undertaken for the Dam Brook works and concluded that they would not result in an increased flood risk to properties in Breadsall.

4.10.68 Whilst DCC was generally satisfied with this additional information, it remained concerned that the study area for the modelling exercise did not extend far enough east (where both Dam Brook and Boosemoor Brook are culverted) to be certain that there would not be an increased risk of flooding [REP4-030]. The Applicant considered that, as the modelling did not show an increased risk of flooding close to the culverts the proposed diversion would be below the level of the culverts and the flow of water should not be impeded. As such, it considered that the modelling was sufficiently extensive. Nevertheless, it agreed to review the matter during the detailed design phase [REP6-018]. In its SoCG, DCC agreed with this approach [REP6-010]. Consultation with DCC, details of the alignment of the brook and the creation of an associated multi-stage flood alleviation channel are secured through OEMP [REP14-008 D-RD6 and D-RD7].

Maintenance arrangements for the drainage features

4.10.69 The LLFAs [REP4-029 REP4-030] and the Applicant recognised that the body responsible for maintenance of the drainage features on completion would vary according to the function of the feature and the area it served. The LLFAs sought further clarity over the demarcation of responsibilities for maintenance. Whilst acknowledging that the finer details could only be confirmed following completion of the detailed design of the drainage system, the following principles were proposed by the Applicant [REP4-024]:

- Kingsway. The proposed drainage attenuation pond and flood storage area located between the A38 mainline and the northbound diverge slip road would be owned and maintained by the Applicant. The highway drainage attenuation storage tank located within Mackworth Park would be maintained by the Applicant. The permanent rights to do so were being sought within the DCO. DCiC would remain responsible for maintaining the parkland on and around the storage tank. The flood storage feature proposed on land owned by Kier Homes would remain in their ownership. Through the DCO, permanent rights were being sought for the Applicant to access the land to maintain the flood control features, such as weirs, headwalls and flap valves.
- Markeaton. The proposed highway drainage attenuation consisting of two buried attenuation tanks and a forebay pond would be managed by the Applicant. There would be no flood storage features at this junction.
- Little Eaton. Separate proposed ponds to collect water from the areas of highway would be managed by the local and strategic highway authorities. The roundabout and the A61 would be DCC's responsibility and water from these areas would be managed in the southernmost pond. The northern pond would be managed by the Applicant as it would collect water from the A38. On completion, the floodplain compensation area sited to the west of the River Derwent would be returned to its owner and no future maintenance responsibilities were anticipated.

4.10.70 The Applicant also submitted a Maintenance and Repair Strategy Statement [REP6-025], which it intended to be a live document that would be updated as the Proposed Development progressed. The Statement provides a strategy and guidance for the post implementation maintenance and repair of the Proposed Development as a whole.

4.10.71 Requirement 13 of the rDCO (Appendix D) includes a clause which requires the surface water drainage system to be constructed in accordance with the approved details and subsequently maintained. The LLFAs have indicated that they agree with the proposed approach to the division of maintenance responsibilities (DCiC [REP14-032] and DCC REP14-033]).

Conclusions on the water environment

4.10.72 We have examined the proposal against the policies set out in the NPSNN in our consideration of the impacts of the Proposed Development on the water environment.

4.10.73 At the start of the Examination a fairly wide range of concerns were expressed by the LLFAs and others. However, there was a constructive dialogue between the Applicant and the LLFAs during the Examination and many of the issues were agreed to their satisfaction.

4.10.74 We find that the content of the final versions of the FRAs [REP9-017 REP9-018 APP-231] for each of the junctions meet the requirements of paragraphs 5.92 and 5.93 of the NPSNN. In each case they make appropriate allowance for climate change based on the considerations applicable at the three locations. This is reflected in the SoCGs with DCC [REP6-010], DCiC [REP7-020] and the EA [REP5-008]. Parts of the Proposed Development would be in areas with a medium or high risk of flooding. However, we are satisfied that the risks posed to and by the Proposed Development have been properly assessed and an appropriate package of mitigation measures has been proposed. These are secured through Requirements 13 and 14 of the rDCO (Appendix D) and the OEMP [REP14-008 MW-WAT10 and MW-WAT11].

4.10.75 We recognise that other parties to the Examination (especially FoED and FoMP) remain concerned about the impact of the Proposed Development on flood risk and point to recent incidents of flooding. Nevertheless, we have not been presented with substantive evidence to demonstrate that the Proposed Development would directly affect, or be affected by, these or similar incidents. Nor did the LLFAs express concerns in this regard. Consequently, with the proposed mitigation measures in place we are content that the Proposed Development would be likely to lead to a negligible increased risk of flooding. As such, the Proposed Development would accord with paragraphs 5.102 and 5.104 of the NPSNN.

4.10.76 The Applicant has sought to address the Sequential and Exception Tests in its FRAs. Whilst the information submitted by the Applicant was relatively brief, neither the LLFAs nor the EA questioned its findings and we are satisfied that, overall, enough information has been provided to make the necessary assessment.

4.10.77 We agree that the Proposed Development amounts to Essential Infrastructure which the NPPG advises can be in FZ3. We also recognise the nature of the proposals as alterations to existing linear infrastructure at three locations. We are satisfied that, at none of the junctions, could the Proposed Development be re-located to an area of lower flood risk. Therefore, we find that the Proposed Development meets the Sequential Test.

4.10.78 We have already found in Section 4.5 that there is a well-established need for the development and that it would bring benefits to the wider community. Given the low level of flood risk posed by the Proposed Development, we are satisfied that those benefits outweigh that risk and that the Proposed Development would be safe for its lifetime, without increasing flood risk elsewhere. As such, we find that the proposal meets the Exception Test and that it would, therefore, comply with paragraphs 5.105 to 5.109 of the NPSNN.

4.10.79 The proposal as submitted made use of SuDs in several locations. We accept that land ownership constraints, the need to retain or replace public open space and to ensure public safety, limit the extent to which further SuDs solutions are achievable. Nevertheless, we welcome the Applicant's commitment to review the opportunities to increase the use of SuDs during the detailed design phase. With this undertaking secured in the OEMP [REP14-008], we consider that the Proposed Development meets the preference for the use of SuDs set out in paragraphs 5.110, 5.111 and 5.230 of the NPSNN and paragraph 165 of the NPPF. We are content that there is nothing to suggest that the design of the SuDs features would not comply with the relevant National Standards as required by paragraph 5.100 of the NPSNN.

4.10.80 Further, we find that the proposal would provide adequate surface water storage and attenuation capacity to ensure that the peak rate and total volume discharged from the site would not exceed the existing rates and volumes. Indeed, the OEMP [REP14-008 D-RD1] seeks to achieve a betterment in these values. As such, we find that the Proposed Development would meet the aims of paragraph 5.113 of the NPSNN.

4.10.81 The Applicant submitted additional information to the Examination to address the effect of the proposal on water quality at the Markeaton junction. It also undertook to review the need for further treatment of highway discharges during the detailed design phase. By the close of the Examination the LLFAs and the EA were satisfied that this matter had been satisfactorily addressed as shown in the SoCGs [REP6-010 REP7-020 REP5-008]. We see no reason to disagree.

4.10.82 Similarly, the question mark over the effect of the proposed realignment of Dam Brook was largely resolved by further submissions and dialogue during the Examination. Although DCC remained concerned regarding the extent of the study area used in the submitted modelling, we are content that the submissions to date adequately demonstrate that the proposed realignment of the Brook would be unlikely to lead to a material increased risk of flooding further upstream.

4.10.83 The findings of the WFD compliance assessments were not disputed during the Examination. Having considered the evidence on water quality, we find that the conclusions of the assessments are reasonable. Therefore, we are satisfied that the Proposed Development would be unlikely to hinder the aims of the HRBMP for the waterbodies affected by the Proposed Development. Indeed, we agree with the Applicant's assessment that the proposals offer opportunities for slight benefits at Bramble Brook and Dam Brook.

4.10.84 We see no reason to disagree with the Applicant's finding that, during the construction phase, the proposals would be likely to result in a slight adverse impact on groundwater flows in bedrock and superficial aquifers. On the other hand, as well as the benefits to Bramble Brook and Dam Brook, we are satisfied that the proposals should result in some betterment of the water quality of discharges at some locations compared with the existing situation. These improvements are secured through the rDCO (Appendix D) and the OEMP [REP14-008]. Overall, therefore, we consider that the Proposed Development would not have a harmful effect on water quality. As such, we consider that the proposal meets the requirements of paragraphs 5.222, 5.223, 5.226 and 5.227 of the NPSNN.

4.10.85 We accept that, in some instances, the precise demarcation of responsibilities for maintenance of drainage features would depend on the outcome of the detailed design. However, the principles for allocating responsibilities have been clearly set out and agreed by the relevant parties. Provisions in the Maintenance and Repair Strategy Statement, the OEMP [REP14-008] and the rDCO (Appendix D) would ensure that outstanding responsibilities are properly allocated. These provisions also ensure that the responsibilities would be imposed on the appropriate bodies. As such, we find that the maintenance arrangements for the drainage system comply with the requirements of paragraph 5.100 of the NPSNN.

4.10.86 Whilst we find that the proposal would result in slight adverse impact on groundwater flows in bedrock and aquifers in the construction phase, these would be offset by betterment in water quality at Bramble Brook and Dam Brook. We are satisfied that the necessary measures to secure this betterment, the protection of water quality, the provision and maintenance of the surface water drainage system and to mitigate flood risk are set out in the rDCO (Appendix D) and the OEMP [REP14-008]. With those measures in place we are satisfied that the Proposed Development would be unlikely to result in any significant effects on the water environment. As such, we conclude that the effect of the Proposed Development on the water environment does not weigh significantly for or against the DCO being made.

4.11 BIODIVERSITY AND ECOLOGICAL CONSERVATION

Introduction

4.11.1 This section considers the effect of the Proposed Development on biodiversity and nature conservation interests. It includes air quality and water borne impacts on biodiversity. Issues relating to the HRA are

addressed separately in Chapter 5. However, it is relevant to note here that Chapter 5 finds that the Proposed Development would not have a significant effect on the objectives of any European sites, or on any site to which the same protection is applied as a matter of policy.

4.11.2 This section considers the effect of the Proposed Development on veteran tree T358 at the Markeaton junction. The tree is not within an ancient woodland and, as the NPSNN advises, veteran trees found outside ancient woodland are particularly valuable for biodiversity. However, the effect of the proposed removal of other trees and replacement planting proposals at the Markeaton junction is considered in Section 4.12.

Policy context

National policies

4.11.3 Paragraph 5.22 of the NPSNN advises that, where the project is subject to EIA, the ES should set out *"any likely significant effects on internationally, nationally and locally designated sites of ecological or geological conservation importance) on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity".* The ES should consider *"the full range of potential impacts on ecosystems."*

4.11.4 The project should also take opportunities to conserve and enhance biodiversity conservation interests (paragraph 5.23). The NPSNN goes on to state that "*As a general principle, and subject to the specific policies below, development should avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives."*

4.11.5 Paragraph 5.26 advises that the SoS should attach appropriate weight to *"designated sites of international, national and local importance, protected species, habitats and other species of principal importance for the conservation of biodiversity, and to biodiversity and geological interests within the wider environment."* Paragraph 5.29 of the NPSNN presumes against development which is likely to have an adverse effect on SSSIs either individually or in combination with other developments.

4.11.6 Paragraph 5.31 recognises that sites of regional and local biodiversity interest, including LWSs, have a fundamental role to play in meeting overall national biodiversity targets and in contributing to the quality of life and the wellbeing of the community. Nevertheless, whilst due consideration should be attached to such designations, given the need for new infrastructure, these designations should not be used in themselves to refuse development consent.

4.11.7 Paragraph 5.32 is clear that the SoS should not grant development consent for development that *"would result in the loss or deterioration of irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the national need for and benefits of the development, in that location, clearly outweigh the loss. Aged or veteran trees found outside ancient woodland are also particularly valuable for biodiversity and their loss should be avoided. Where such trees*

would be affected by development proposals, the Applicant should set out proposals for their conservation or, where their loss is unavoidable, the reasons for this."

4.11.8 Paragraph 5.33 says that proposals may provide opportunities for building in beneficial biodiversity features as part of good design and the SoS should consider whether the Applicant has maximized such opportunities. Requirements or planning obligations can be used to deliver such beneficial features.

4.11.9 Many wildlife species receive statutory protection under a range of legislative provisions, whilst other species and habitats have been identified as being of principal importance for the conservation of biodiversity. Proposals should take measures to protect these species and habitats from any adverse effects. Where appropriate, requirements or planning obligations may be used in order to deliver this protection. Consent should be refused where there would be harm to these habitats or species and their habitats, unless the benefits of the development (including need) clearly outweigh that harm (paragraphs 5.33 and 5.34).

4.11.10 Paragraph 5.36 of the NPSNN states that appropriate mitigation measures should be an integral part of the proposals, and that applicants should identify where and how these will be secured. It goes on to say *"the applicant should demonstrate that:*

- *during construction, they will seek to ensure that activities will be confined to the minimum areas required for the works;*
- *during construction and operation, best practice will be followed to ensure that risk of disturbance or damage to species or habitats is minimised (including as a consequence of transport access arrangements);*
- *habitats will, where practicable, be restored after construction works have finished;*
- *developments will be designed and landscaped to provide green corridors and minimise habitat fragmentation where reasonable;*
- *opportunities will be taken to enhance existing habitats and, where practicable, to create new habitats of value within the site landscaping proposals, for example through techniques such as the 'greening' of existing network crossing points, the use of green bridges and the habitat improvement of the network verge."*

4.11.11 Paragraph 5.38 advises that the SoS will need to take account of what mitigation measures may have been agreed between the applicant and NE and whether NE has granted or refused, or intends to grant or refuse, any relevant licenses, including protected species mitigation licenses.

4.11.12 NE should be consulted regarding the assessment of noise on designated nature conservation sites, protected landscapes, protected species or other wildlife (paragraph 5.192).

4.11.13 Paragraphs 170 to 177 of the NPPF set out the national planning policies for conserving and enhancing the natural environment. Amongst other things the policies seek to minimize impacts on and provide net gains for biodiversity. Where significant harm to biodiversity cannot be avoided, mitigated, or as a last resort compensated for, permission should be refused.

Development plan policies

4.11.14 DCCS Policy CP16 aims to maintain, enhance and manage Derby's green infrastructure. Policy CP19 deals with biodiversity and states that assets will be protected, enhanced, managed, restored, strengthened and created in a manner appropriate to their significance. EBCS Policy 16 seeks new or enhanced green infrastructure corridors which are inclusive and multi-functional, with biodiversity provision and opportunities. Policy 17 requires proposals to protect, restore, expand and enhance biodiversity.

The application

4.11.15 The most relevant elements of the application with regard to biodiversity and nature conservation are:

- Chapter 8: Biodiversity [REP9-009];
- Figures 2.12A-H: Environmental Masterplans [APP-068];
- Figure 8.3: Statutory Designated Sites within 2km of the Scheme [APP-097];
- Figure 8.4: Non-Statutory Sites within 2km of the Scheme at Kingsway and Markeaton Junctions [APP-098];
- Figure 8.5: Non-Statutory Sites within 2km of the Scheme at Little Eaton Junction [APP-099];
- Appendix 8.1: Summary of ecological surveys and studies to date [APP-178];
- Appendix 8.12(a): White-clawed Crayfish Survey in 2018 [APP-207];
- Appendix 8.17: Details of statutory, non-statutory and non-designated sites located within 2km of the Scheme [APP-214];
- Appendix 8.20(a): Summary of Biodiversity Effects [REP9-015]; and
- OEMP [REP14-008].

Ecological assessment

Introduction

4.11.16 The Applicant said that its assessment methodology was based on guidance in DMRB Volume 11 Sections 2 (EIA assessment) and 3 (Ecology Nature Conservation), together with the Guidelines of Ecological Impact Assessment in the UK and Ireland (CIEEM Third Edition, 2018) (CIEEM guidelines). The methodology assigns ecological importance, based on a geographical approach, to ecological features present within the applicable

study area. It goes on to characterise the ecological impacts on specific features and determine the significance of effects by consideration of the importance of the ecological feature. It then characterises the ecological impact on each specific feature.

4.11.17 The assessment seeks to consider CIEEM and DMRB guidance, as well as the EIA Regulations, in its definition of the significance of a biodiversity effect. As such, effects at international, European, UK or national level (CIEEM categories) are equated with 'very large' effect (DMRB category). Similarly, 'regional' level is equated with 'large' effect, 'county or unitary authority' level with 'moderate' effect, 'local' level with 'slight' effect and 'site' level with 'neutral' effect. For the purposes of the assessment, significant effects are taken to be moderate or greater. Slight and neutral effects are considered not significant. The Applicant took the view that significant adverse effects trigger the need for mitigation. This matter features in the issues considered during the Examination below.

4.11.18 In response to concerns expressed by EBC and its advisors, Derbyshire Wildlife Trust (DWT), the Applicant produced a Technical Note on the Biodiversity Metric Assessment (BMA) for the Alfreton Road Rough Grassland LWS. Whilst not formally part of the ES, the BMA was submitted to the Examination by EBC [REP12-010].

Nature conservation designations

4.11.19 There are no European designated sites within 2km of the Order land. There are six such sites within 30km, although no impact pathways to them have been identified (see HRA NSER [APP-247] and Chapter 5).

4.11.20 There are no national or local statutory designated sites within or directly adjacent to the Order land. One national statutory designated site (Kedleston Park SSSI) and two local statutory designated sites (Mickleover Meadows Local Nature Reserve (LNR), Darley and Nutwood LNR) are within 2km of the Kingsway and Markeaton junctions. A further two national statutory designated sites (Breadsall Railway Cutting SSSI and Morley Brick Pits SSSI) and four local statutory designated sites (Allestree Park LNR, Darley and Nutwood LNR, Breadsall Railway Cutting LNR and Chaddesden Woods and Lime Lane Wood LNR) lie within 2km of Little Eaton junction.

4.11.21 Five non-statutory designated sites (A38 Roundabout LWS, Bramble Brook and Margins LWS, Markeaton Park LWS, Markeaton Brook System LWS and Mickleover Railway Cutting LWS) are located within or directly adjacent to the Order land at Kingsway and Markeaton junctions. At Little Eaton junction two LWSs (Alfreton Road Rough Grassland LWS and River Derwent LWS) are located within or directly adjacent to the Order land.

4.11.22 There is one non-designated site (Broadway Stream DE056/3) adjacent to the Order land at Markeaton junction and a further six such sites within or directly adjacent to the Order land at Little Eaton junction ((A38 Scrub, Ford Lane Field, Des Lane Brook Course, Boosemoor Brook, Plantation and Old Derby Canal).

Habitats

4.11.23 Habitats within or up to 2km from the Order land which are notable due to their inclusion in a Biodiversity Action Plan[5] include:

- semi-natural broad-leaved woodland;
- broad-leaved plantation woodland;
- coniferous plantation woodland;
- mixed plantation woodland;
- scattered broad-leaved trees including veteran trees;
- semi-improved neutral grassland, including three areas of species-rich grassland;
- poor semi-improved grassland;
- marshy grassland;
- tall ruderal planting, including invasive non-native plant species;
- standing water and associated inundation vegetation and qualifying ponds; and
- running water.

4.11.24 There are no ancient woodlands within the Order land, although five are located within 2km. There are seven veteran trees within the Order land and five more nearby.

4.11.25 Invasive plant species recorded within or adjacent to the Order land include Japanese knotweed, giant knotweed, Himalayan balsam, variegated yellow archangel, New Zealand pigmy weed and cherry laurel.

Statutory protected and other notable fauna species

4.11.26 The following statutorily protected and other notable fauna species were scoped-in to the assessment having regard to the findings of the Applicant's Scoping Report and the PINs Scoping Opinion [APP-166]:

- toads;
- breeding birds;
- wintering birds;
- bats (roosting and foraging);
- badgers;
- hedgehogs;
- otters;
- terrestrial invertebrates; and

[5] Highways Agency Biodiversity Action Plan (2002) (HABAP) Lowland Derbyshire Biodiversity Action Plan 2011 - 2020. These Biodiversity Action Plans list specific habitats and species of conservation concern.

- aquatic micro-invertebrates.

4.11.27 Surveys were also carried out for other species, although the need for further assessment was scoped out. These included great crested newts, reptiles (although pre-construction surveys would be undertaken), water vole and white clawed crayfish.

Potential impacts

4.11.28 Without mitigation, construction phase impacts on biodiversity and nature conservation were identified as:

- habitat loss as a result of land use changes and vegetation clearance;
- fragmentation of populations or habitats due to breaking up of a habitat, ecosystem, or land-use type into smaller parcels, or the creation of partial or complete barriers to the movement of species;
- disturbance to species resulting from a change in normal conditions (such as light or noise) that would result in the important biodiversity feature changing its typical behaviour;
- degradation of habitats resulting in the reduction in the suitability of the habitat for the identified important feature; and
- species mortality due to construction activities.

4.11.29 Operational phase impacts were assessed to be less extensive but could include species mortality and disturbance and degradation of habitats.

Design of the proposals, mitigation measures and residual effects

4.11.30 The application proposals include a range of measures intended to avoid or mitigate the likely adverse effects of the Proposed Development on biodiversity and nature conservation interests.

Design measures

4.11.31 The Applicant stated that measures incorporated into the design of the Proposed Development to minimise direct habitat losses included:

- arranging the proposals to avoid any habitat loss associated with the Mickleover Railway Cutting LWS;
- minimising land take at Markeaton Park LWS to minimise tree loss and avoid loss of veteran trees;
- not altering the existing Markeaton Lake culvert beneath the A38 in order to avoid direct impacts on Markeaton Brook System LWS. The proposals would also avoid impacts on the existing culvert from Markeaton Lake to Middle Brook which forms part of the Markeaton Brook LWS. Retention of the existing culverts would also ensure that habitat connectivity would be maintained for amphibians during both the construction and operational phases;
- laying out the proposals to avoid the loss of ponds;

- minimising the extent of permanent habitat loss at Alfreton Road Rough Grassland LWS by avoiding the habitat associated with the inundation and drawdown zone which is of most value botanically and for birds using the field. Reinstating and creating grassland habitat at the LWS;
- minimising the removal of habitat at the A38 Scrub DE05.03 Site of Interest;
- reinstating of habitat loss resulting from the construction phase access to the floodplain compensation area at Little Eaton; and
- laying out the construction compound to the north of Little Eaton junction to minimise the loss of species-rich grassland.

Mitigation measures and residual effects

4.11.32 The measures to mitigate adverse effects on biodiversity during the construction and operational phases are largely contained within the OEMP [REP14-008] and the Environmental Masterplans [APP-068]. Implementation of the Proposed Development in accordance with these documents is secured by rDCO (Appendix D) Requirements 3, 5 and 6. In addition, Requirement 10 would secure the preparation of a written scheme for the protection and mitigation measures for any protected species that were not previously identified in the ES or nesting birds found when undertaking the Proposed Development.

4.11.33 The Applicant's assessment of the effects of the Proposed Development on biodiversity and nature conservation after mitigation is summarised below.

Statutory designated sites

4.11.34 Chapter 5 deals with European sites. The Applicant considered that the Proposed Development would not have a significant effect on any other statutory designated sites during the construction or operational phases. For the most part, this is due to their distance from the Order land and the absence of hydrological or habitat links. In the case of the Darley and Nutwood LNR, the assessment identified the need for pollution prevention control measures and standard best practice measures to control construction dust. These are secured in the OEMP [REP14-008].

Non-statutory designated sites

4.11.35 The Applicant's assessment found that the A38 Roundabout LWS would be subject to habitat loss during the construction phase. This would be mitigated by the translocation or appropriate planting of species-rich grassland in Markeaton Park. Nevertheless, the assessment considered that the LWS would experience a moderate significant adverse residual effect. No further significant effects during the operational phase were identified.

4.11.36 Following mitigation, no significant effects during the construction or operational phases were identified at other non-statutory designated sites.

Non-designated sites of interest

4.11.37 The Applicant's assessment found that there would be no significant effects on non-designated sites of interest during the construction or operational phases of the Proposed Development.

Other habitats

4.11.38 Regarding veteran trees, the assessment found that the Proposed Development would have a slight adverse (non-significant) effect during the construction phase due to the loss of one veteran tree near to the proposed replacement Markeaton footbridge. This matter was raised during the Examination and is reported below.

4.11.39 The Proposed Development would result in the loss of some 11.38ha of semi-natural broadleaved woodland, mixed plantation woodland and broadleaved and coniferous plantations during the construction phase. Mitigation would comprise native broadleaved woodland planting with a suitable flora understory. Felled trees would be retained as features which would contribute to biodiversity. Notwithstanding, the assessment found that there would be a moderate significant adverse effect on woodland and plantation in the short to medium term, although no significant effects in the long term.

4.11.40 In terms of standing water, there is one pond within the Order land at Little Eaton junction. Whilst there would be works in this area, the pond would be retained. The assessment found that there would be no significant construction phase effects on the pond. The proposed highway drainage system includes an attenuation pond at Kingsway junction, a wet sedimentation pond at Markeaton junction, plus two highway runoff attenuation ponds at Little Eaton junction. Two new ecology ponds at Little Eaton junction are proposed as part of the realignment of Dam Brook. The assessment found that the resulting habitat gains would have a slight beneficial non-significant effect on standing water.

4.11.41 In terms of running water, the assessment reported that Dam Brook (Little Eaton) would be realigned within a new channel with a net gain of open channel of almost 200m. Backwaters and attenuation ponds would also be provided which would improve the riparian zone of the channel. The assessment, therefore, identified a slight adverse non-significant construction phase effect on running water in the short-term and a moderate significant beneficial effect in the medium to long term.

4.11.42 At Bramble Brook (Kingsway) around 131m of open channel would be lost as a result of culvert construction. The channel would also be realigned against the proposed north bound slip road. With the mitigation measure reported at paragraph 4.10.46 (WFD assessment) the effects on Bramble Brook were assessed to be slight adverse non-significant in the short-term and not significant in the medium to long term.

4.11.43 The assessment found that there would be no significant construction phase effects on species rich semi improved grassland, poor semi-improved grassland, marshy grassland, arable field margins, hedgerows, amenity grassland, improved grassland, scattered and dense scrub, scattered trees or tall ruderal hard standing.

4.11.44 No significant operational phase effects on other habitats were identified in the Applicant's assessment.

Species

4.11.45 The Applicant's assessment found that, following mitigation, the Proposed Development would have no significant adverse construction phase effects on:

- toads;
- birds (including barn owl, notable farmland birds on the pastoral and arable land at Little Eaton, nesting lapwing south-west of Little Eaton junction, Schedule 1 little ringed plover and oystercatcher south-west of Little Eaton junction, common nesting bird species, wintering birds including lapwing, teal, and black-headed gull in the flooded field southwest of Little Eaton junction);
- roosting bats (including noctule bat maternity roost at tree M2, common pipistrelle maternity roost at the River Derwent bridge, the network of transient tree and structure roosts of common species, two confirmed roosts within the Order land and one small occasional day roost of whiskered bats);
- badgers (although this matter was raised in the Examination and is reported further below);
- hedgehogs;
- aquatic macroinvertebrates at Bramble Brook; and
- fish.

4.11.46 In respect of foraging bats, the assessment found that the Proposed Development would not have a significant construction phase effect in the short to medium term. It said that there would be a slight beneficial effect in the long-term through the creation and enhancement of habitats of value to foraging and commuting bats.

4.11.47 Similarly, regarding otters, the construction phase of the proposal was not found to have significant short to medium term effects. A moderate significant beneficial long-term effect was considered to result from the habitat enhancement works at Dam Brook and Bramble Brook.

4.11.48 The Applicant considered that terrestrial invertebrates would experience a non-significant construction phase effect in the short to medium term and a slight non-significant beneficial long-term effect. It said that this would be as a result of planting proposals and the retention of felled trees, as well as the mitigation proposed for species-rich grassland.

4.11.49 Construction phase effects on aquatic macroinvertebrates at Dam Brook were considered to not be significant in the short to medium term. The assessment concluded that there would be a moderate significant beneficial long-term effect due to the proposed realignment and restoration of Dam Brook and the provision of additional habitat.

4.11.50 The Applicant's assessment found that there would be no significant operational phase effects on species, apart from badgers. Here it was considered that there would be a slight beneficial effect as a result of the installation of badger fencing which would minimise the risk of badgers colliding with vehicles. This matter is considered further below.

Applicant's conclusions

4.11.51 Overall, the Applicant found that the only significant effects on biodiversity during the construction phase in the long-term would be on the A38 Kingsway Roundabout LWS. This would be a moderate adverse significant effect due to the complete permanent loss of the LWS. There would also be a moderate adverse effect of semi-natural broadleaf woodland in the short to medium term. However, the effect would be neutral in the long term. Moreover, with the implementation of mitigation measures, the Applicant considered that there would be potential for up to a moderate beneficial significant effect on biodiversity in the medium to long term.

4.11.52 The Applicant considered that benefits would arise in respect of standing water (ponds), running water, foraging and commuting bats, otter, terrestrial invertebrates, aquatic invertebrates and fish. It said that potential biodiversity gains would also be delivered using Markeaton Park for the translocation of species-rich grassland, Mackworth Park for the incorporation of bat and bird box mitigation, the new Dam Brook alignment and associated wildlife ponds. As such, the Proposed Development was considered to have the potential to achieve no net loss, and potentially net gain, in biodiversity.

Issues considered during the Examination

4.11.53 The biodiversity and nature conservation issues considered during the Examination included:

- the assessment methodology;
- A38 Kingsway Roundabout LWS;
- Alfreton Road Rough Grassland LWS;
- veteran tree T358;
- white clawed crayfish in the Markeaton area;
- air quality and noise impacts on biodiversity;
- other biodiversity effects; and
- opportunities for enhancement.

Assessment methodology

4.11.54 In our FWQ [PD-005] we sought clarification of the Applicant's definition of 'significant' in the assessment. In particular, how its use of geographical categories (National, County and so on) takes into account the varying potential characterisations of ecological impacts which may occur at each level of significance/importance. In its responses, DCiC [REP1-034] and

EBC [REP1-051] were also concerned that the definition did not adequately distinguish between impacts on 'priority' and 'non-priority' habitats.

4.11.55 The Applicant's response [REP2-020] referred to the CIEEM guidelines which acknowledge that *"the scale of significance of an effect may not be the same as the geographic context in which the feature is considered important"*. Reference was also made to the application of professional judgement and the use of the word 'generally' in the table used to describe the significance of ecological effects (ES Chapter 8 Table 8.4 [REP9-009]). Examples of the practical application of this approach were given. The Applicant considered that the assessment methodology was transparent in quantifying both the importance of biodiversity features, including their geographical context, and the scale of the effect of the proposal (ES Chapter 8, Section 8.3 [REP9-009]).

4.11.56 With regard to the Council's concerns, the Applicant's response [REP2-020], accepted that 'priority' and 'non-priority' habitats contributed to biodiversity value and contended that this was considered in the assessment's evaluation of the importance of ecological features. It went on to confirm that effects were assessed in detail only for those features that are of at least local importance or are subject to some form of legal protection. In its SoCG [REP7-020], DCiC confirmed that it considered that the assessment appropriately addressed the effects of the Proposed Development on ecological receptors, including designated and non-designated sites, and that it appropriately identified impacts and effects on biodiversity. The SoCG with EBC [REP1-008] was completed prior to the D2 submissions. However, its subsequent submissions do not dispute the Applicant's responses on this matter.

A38 Kingsway Roundabout LWS

4.11.57 The proposal would result in the complete loss of this site which sits within the Kingsway junction. It is identified as a habitat of principal importance (species-rich semi-improved natural grassland (HABAP)). Mitigation would primarily take the form of the translocation of species-rich grassland habitats from the site. Top soil would be collected from within the LWS and used to create a new species-rich grassland area within Markeaton Park as shown in Environmental Masterplan ES Figure 2.12D [APP-068].

4.11.58 The assessment reported that an outline agreement for such works had been obtained from DCiC. However, the final layout of the new species-rich grassland area would be subject to receptor site soil testing to ensure the presence of suitable soil mycorrhiza. The final layout would also be subject to consultation with DCiC in order to avoid locations within Markeaton Park which it may select for the storage of silt following any potential de-silting of Markeaton Lake. These matters are secured by the OEMP [REP14-008 PW-BIO2] which also ensures that any alternative location would not give rise to any materially new or materially worse environmental effects in comparison with those reported in the ES.

4.11.59 FoED expressed concern over the loss of the LWS [REP8-009] and FoMP raised detailed questions regarding the translocation exercise [REP14-039, AS-062]. The Applicant's responses are set out in [REP15-007]. Regarding

the depth of soil, subject to detailed testing, it said that topsoils are typically approximately 30cm deep. In terms of the movement of soils, approximately 840m^3 of soils would be translocated requiring some 84 haulage trips completed in less than two weeks. Regarding the profiling of the affected area, the Applicant advised that an equivalent volume of topsoil would be removed from the Markeaton Park receptor site prior to the translocation works, thereby allowing the site profile to be similar to existing levels.

4.11.60 The Applicant said that there was no intention to place wet soils adjacent to Markeaton Lake nor alter the lake banks. In terms of the replanting proposals, it said that the topsoil to be translocated would contain a seed bank creating a new species rich grassland. The receptor area would also receive a combination of plug planting and seeding with an appropriate native species rich grassland seed mix. The Applicant also confirmed that the translocation would not involve the material from above a capped landfill site [AS-061] as FoMP appear to suggest [REP15-011].

Alfreton Road Rough Grassland LWS

4.11.61 The Alfreton Road Rough Grassland LWS is a non-statutory designated site of County level importance designated for its floodplain semi-improved grassland habitat. In turn, this habitat supports waders and waterfowl, including lapwings, little ringed plovers and oystercatchers. The habitat of greatest interest was said to be towards the south of the designated area.

4.11.62 The Applicant's initial assessment (ES Chapter 8 [APP-046]) found that the Proposed Development would not have a significant effect on this LWS after mitigation. Following our SWQ [PD-014], discussions took place between the Applicant, EBC and DWT in an attempt to satisfy the Council's concern that the loss of around 30% of the site would result in a significant effect.

4.11.63 The Applicant subsequently submitted an updated assessment for the LWS [REP4-023]. It found that the proposal would result in the permanent loss of some 16% (0.64ha) of the LWS and a temporary, construction phase, impact on 21% (0.87ha) of the site. That area would be reinstated with habitat of higher biodiversity value than is currently present. In comparison, the initial assessment had reported a 30% permanent loss and a 20% temporary loss. The Applicant concluded that the Proposed Development would have a non-significant (neutral) effect on the LWS and that the functional integrity of the site would not be affected. In response EBC still considered the loss to be unacceptable [REP9-031].

4.11.64 At the request of EBC and DWT, the Applicant then prepared a BMA for the site [REP12-010]. The BMA used a modified DEFRA v1.0 Biodiversity Metric calculator tool to assign 'biodiversity units' to the habitats within the LWS based on their area, distinctiveness and condition. Its outputs were not, therefore, directly comparable with the earlier assessments. The BMA found that the baseline value of the site was 17.10 biodiversity units, the Proposed Development would result in the site's biodiversity value falling to 11.06 units, but habitats with value of 3.20 units would be created. Overall, therefore, it was considered that the Proposed Development would lead to the loss of 2.84 units or 17% of its baseline value.

4.11.65 The BMA [REP12-010] concluded that the proposal would have a non-significant (neutral) effect on the LWS. It would not undermine the conservation objectives of the LWS or negatively affect the conservation status of habitats or species for which the site is designated, that is the floodplain grassland and its interest in wetland birds. Moreover, the BMA methodology did not allow consideration of the conservation objectives of specific habitats or species. In the case of the Alfreton Road Rough Grassland LWS, these considerations included the retention of the area of core biodiversity value to the LWS, the creation of woodland habitat which would provide screening for birds using the site and the control of non-native invasive species currently present on the site. The BMA said that the application of professional judgement to those considerations resulted in a reduction to the assessed overall impact of the Proposed Development.

4.11.66 In its response to our Further Written Questions [REP12-009], EBC accepted that the habitat which gave rise to the designation of the LWS, that is the open water and the majority of the seasonally flooded neutral grassland, would not be harmed by the Proposed Development. However, it referred to the destruction of 37% of the LWS due to construction works before mitigation. It went on to note that, after mitigation, the site would experience a loss of 17% of its biodiversity value due to the lower biodiversity value of the replacement habitats. Further, EBC considered that the impact on the designated interest of the LWS would be even higher, as the proposed replacement habitats (amenity grassland and broadleaf woodland) do not form part of that designated interest. The core area of habitats (open water and semi-improved neutral grassland) would be reduced in extent by 28% (based on area, rather than biodiversity units). Therefore, EBC concluded that a net loss to the core area of this scale would cause a significant impact on the LWS.

4.11.67 The matter was discussed at ISH7 [EV-25] where EBC and DWT confirmed that they did not dispute the methodology used in the BMA, but considered that its scope was limited since it only included effects on species and not habitats. This was acknowledged by the Applicant who went on to point out that the BMA was not submitted as part of the ES and should not be considered in isolation.

4.11.68 The essence of the dispute between the parties was that EBC defined the loss of core area by reference to the designated area of the LWS, whereas the Applicant defined it by reference to the loss of the actual areas of habitat which its surveys found contributed to the designated interest of the LWS, that is, the floodplain semi-improved grassland. The amount of open water on the site and the population of birds it supports vary over time.

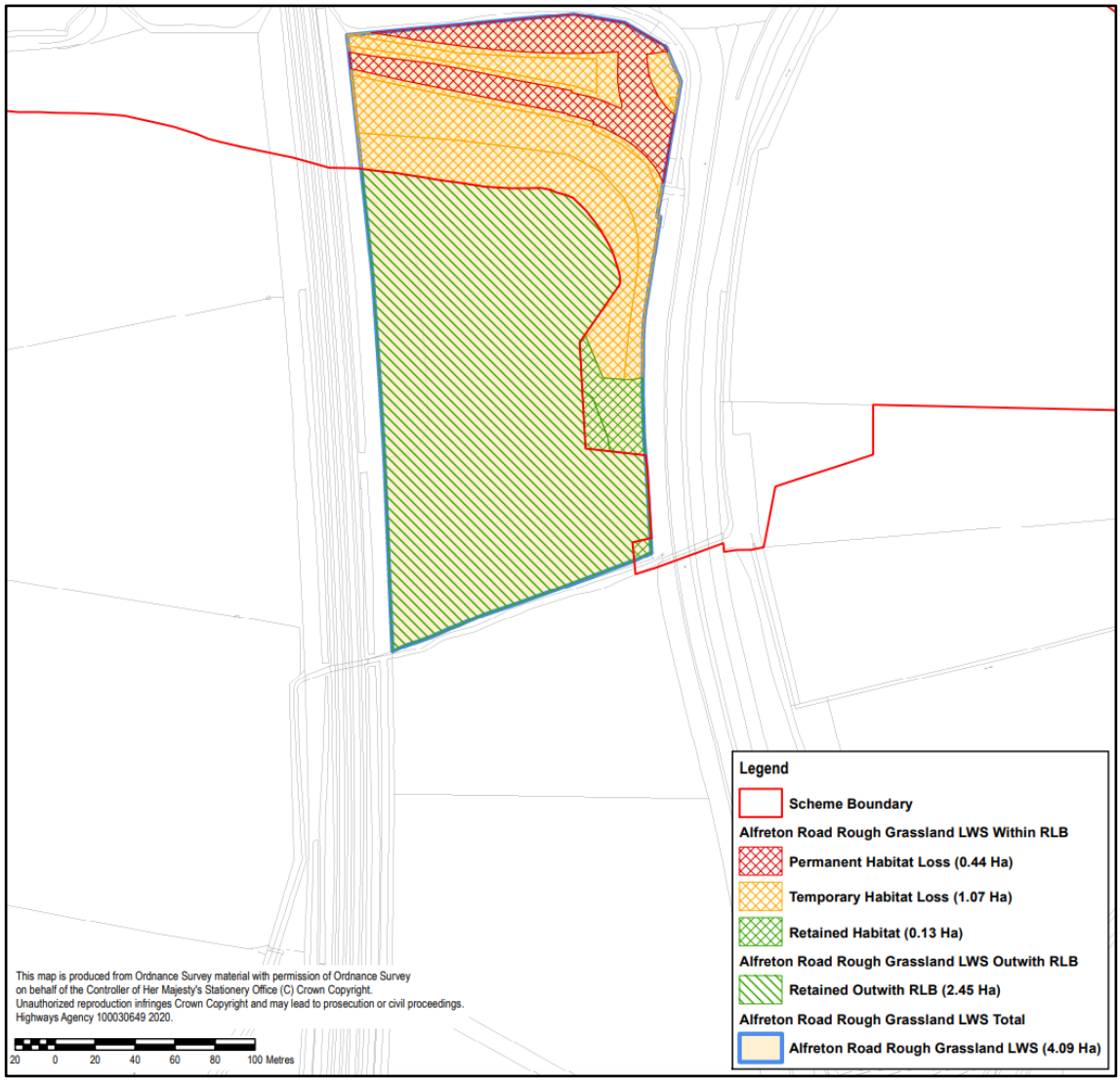

Figure 4.11.1: Habitat loss and retention [extract from REP12-010 Figure 1]

4.11.69 At ISH7 [EV-25] DWT accepted that the loss would be 17% as measured using the BMA, but did not accept the Applicant's contention that, in reality, the loss would be smaller due to the retention of the core habitat, and the proposed woodland screening and removal of invasive species. EBC and DWT also questioned the biodiversity value of the proposed replacement semi-neutral and amenity grassland. The use of species-rich grassland or lowland meadow was suggested. The Applicant [EV-25 REP14-021] resisted that suggestion on the basis that biodiversity off-setting should be on a like-for-like basis. It maintained its position that, as defined by the ES, the effect of the Proposed Development on the LWS was not significant.

4.11.70 The use of Designated Funds to compensate for the loss of biodiversity at the LWS was also discussed at ISH7. However, that process falls outside of the scope of the DCO and so is not considered in this report.

Veteran Tree T358

4.11.71 This common oak tree is located on the east side of the A38 carriageway, close to the existing Markeaton footbridge. The spiral ramp of the existing footbridge is within the root protection area (RPA) of the tree. The

proposed replacement of this footbridge would have a larger diameter spiral ramp which would impinge further into the RPA and would also encroach into the tree canopy area. Proposed utility diversion and drainage routes would also run through the RPA and canopy and the RPA would be affected by carriageway construction works. The Applicant's assessment anticipated the loss of the tree as a result of the combined effect of these works [APP-046].

4.11.72 Concern over the loss of the veteran tree was initially raised by DCiC [REP4-029] and the Woodland Trust [AS-049] and the matter was discussed at ISH4 [EV-019]. FoMP also objected to the loss of the tree [REP12-015]. The Applicant prepared a Technical Note [REP7-008] which considered the opportunities to alter the proposals in order to reduce their effect on the tree. However, it found that such opportunities were constrained by the LoD under the DCO and the fact that moving the carriageway west to avoid the tree would require more land to be taken from Markeaton Park. Therefore, the Applicant considered that although it may be possible to retain the tree, even with adjustments to the proposals, the effects would be significant, and the most likely outcome would be the loss of the tree.

4.11.73 In response to our request for further information [PD-018], DCiC sought a further assessment of the options for the alignment of the carriageway and raised the possibility of the tree being retained in a reduced form [REP9-030]. The Applicant responded [REP12-007] that options to move the carriageway within the LoD, reposition the replacement footbridge and the proposed utilities diversions, as well as the use of construction plant access restrictions, would be investigated during the detailed design phase. If, as a result of these adjustments, it appeared possible to retain the tree albeit with impacts on the RPA, options to reduce the tree's canopy would be investigated. These measures are secured in the OEMP [REP14-008 PW-LAN4].

4.11.74 The matter was discussed at ISH7 [EV-25] when DCiC indicated that it was more reassured regarding the veteran tree. The changes to the OEMP indicate the Applicant's willingness to try to retain the tree in a viable state. DCiC retained the view that the focus on attempting to retain the tree was preferable to seeking to realign the A38 carriageway thereby further impacting on Markeaton Park and its associated tree and habitat loss [REP14-032].

4.11.75 FoMP [REP14-039] and Derby Climate Coalition [AS-059] questioned whether more could be done to move the proposed works away from the tree. At ISH7 [EV-25] we also asked whether the bridge could be moved further north within the LoD to reduce the impact on the tree. The Applicant's response explained that the footbridge needed to be replaced in order to accommodate the widening of the carriageway. It also referred to a 2015 consultation exercise on the relocation of the footbridge which resulted in a preference for it to be replaced in its current position. The Applicant also referred to the Technical Note [REP7-008] and the commitment to review the position during the detailed design phase. Moving the footbridge further north would be included in that process, but any movement would be likely to be constrained by the proximity of Mill

Pond. For the purposes of the assessment, it was still assumed that the tree would be lost.

White clawed crayfish in the Markeaton area

4.11.76 Anne Morgan (on behalf of FoMP) raised an issue regarding non-native signal crayfish in Markeaton Lake. She said that this species carries a disease which is lethal to native white clawed crayfish. Anne Morgan was concerned that noise and vibration from the proposed construction work could cause the signal crayfish to migrate upstream of the Lake towards the population of white clawed crayfish at Kedleston Hall [AS-058 REP9-042]. She also sought clarification regarding the effect of the proposed TP of land around Markeaton Lake on the work of a Partnership (University of Derby and others) which is trying to eliminate the signal crayfish from Markeaton Lake. She also requested funding assistance from the Applicant regarding that activity [REP13-007].

4.11.77 With regard to the migration of the signal crayfish, the Applicant responded that, whilst construction activities at Markeaton junction would generate noise and vibration, the application of BPM, including the use of rotary bored piling, would aim to minimise any disturbance, (secured through OEMP [REP14-008 MW-G9]). Moreover, it said that sound and vibration propagate very poorly from land to water, especially where the ground is loose or gravelly, as at Markeaton Lake. The Applicant also advised that signal crayfish rarely choose to leave their waterbody and cross land, rather they seek refuge within the waterbody. It also said that there were significant barriers to the upstream movement of signal crayfish beyond Markeaton Lake [REP9-028].

4.11.78 In terms of the TP of the land around the Lake, the Applicant confirmed that the land would be required to undertake biodiversity mitigation works, but said that those works would not restrict access to the Lake for any planned activity relating to the control of signal crayfish. The Applicant [REP14-029] considered that the funding of the Partnership's activity was not within the scope of the DCO.

Air quality and noise

4.11.79 Our FWQ [PD-005] sought the views of NE, DCC, DCiC, and EBC on the air quality effects of the Proposed Development on international or nationally designated sites. None of the authorities had reason to disagree with the Applicant's assessment that no such sites would be affected [REP1-009 REP1-033 REP1-034 REP1-051]. The Applicant's ES assessment also considered the air quality effects of the Proposed Development on other nature conservation sites (County or locally designated). It said that there were several such sites within 200m of the Proposed Development which, potentially, could be affected by dust deposition, NO_X concentrations or nitrogen deposition rates. However, it said that with the dust suppression measures contained within the OEMP [REP14-008 MW-AIR1, MW-AIR2 and MW-AIR3], the changes to NO_X concentrations and nitrogen deposition rates were found to be not significant [REP1-005].

4.11.80 The completed SoCGs with NE, DCC, DCiC, and EBC all showed that those bodies were content that the Applicant's assessment took into account the

air quality and noise effects of the Proposed Development on biodiversity [REP1-009 REP6-010 REP7-020 REP1-008].

Other biodiversity effects

4.11.81 DCC was concerned about the effect of the Little Eaton proposals on badgers [REP1-030]. The Applicant's response set out its badger territory analysis and details of the proposed badger fencing and crossings [REP2–020]. Based on that evidence, DCC was content that existing badger commuting routes would be likely to be retained and not severed by the proposal. As such, it considered that the issue had been satisfactorily addressed [REP4-030].

4.11.82 Derby Climate Coalition expressed concerns regarding the effect of the Proposed Development on otters, great crested newts, bats and white clawed crayfish at Little Eaton as well as referring to the general loss of biodiversity in the UK and globally [REP9-039 REP10-020]. Others, including Christian Murray-Leslie [AS-054] also made general points regarding the loss of biodiversity. Anne Morgan [AS-045] suggested that the proposed mitigation would not be of equal environmental value. FoED considered the impacts on biodiversity at Markeaton and Little Eaton to be "*staggering*" [REP8-009].

4.11.83 The Applicant's responses [REP7-007 REP9-028 REP10-009] referred to the use of up to date surveys and the assessments carried out for the species in question. It also made the point that generalised concerns regarding biodiversity loss were beyond the scope of the DCO. The SoCGs with the statutory bodies responsible for biodiversity matters (NE, DCC, DCiC and EBC) found the Applicant's assessment of biodiversity matters, including impacts on species, to be broadly acceptable [REP1-009 REP6-010 REP7-020 REP1-008].

Opportunities for enhancement

4.11.84 Consideration of the opportunities for enhancement also took in the Applicant's approach to no net loss of biodiversity, the use of BMA and the weight to be attached to NPPF policies on biodiversity enhancement.

4.11.85 Our FWQ [PD-005] sought clarification of the Applicant's approach to achieving NNL, as well as the views of NE, DCiC, DCC and EBC on this matter. In its response, the Applicant [REP1-005] advised that the ES assessment considered delivery of NNL in terms of the significance of residual effects, rather than using BMA. This allowed it to consider important ecological features (not just habitats) including designated sites, protected and notable species. It also allowed comprehensive biodiversity mitigation and enhancement measures to be considered. The ES assessment found that there is potential to achieve NNL and potential net gain having regard to all the mitigation hierarchy measures applied during the life cycle of the Proposed Development.

4.11.86 We did not receive a direct response on this topic from NE. However, its SoCG [REP1-009] indicates general agreement with the scope, methodology and findings of the ES on biodiversity and nature conservation matters and with the proposed mitigation measures. The response of DCC also indicated

agreement with the Applicant's approach to biodiversity matters [REP1-033] and its SoCG [REP5-007] shows agreement on the proposed mitigation measures.

4.11.87 In their responses, DCiC [REP1-034] and EBC [REP1-051], considered that NNL should be demonstrated through the use of BMA. DCiC also advised that the NPPF aspires to a net gain for biodiversity rather than simply no net loss. Derby Climate Coalition also considered that BMA should be used [REP9-039]. Subsequently, EBC agreed to the Applicant's approach to biodiversity enhancement and that there was no requirement to use BMA for NSIPs [REP4-031]. The Applicant's approach to biodiversity enhancement, the use of BMA and the weight to be attached to NPPF policies was discussed at ISHs 2 [EV-011 EV-012 EV-013] and 4 [EV-019].

4.11.88 The Applicant [REP3-026] considered that there was no policy requirement to use BMA for NSIPs and that the process had not previously been requested by any party. It also set out the proposed opportunities for biodiversity enhancement. These included:

- the management of invasive plant species;
- the replacement of species-poor semi-improved grassland with species rich grassland;
- the retention of felled trees to enrich woodland habitat;
- maximising ecological opportunities in the realignment of Bramble Brook and Dam Brook;
- the creation of new water features and biodiversity enhancement in the drainage design; and
- habitat creation for a range of terrestrial and aquatic species.

4.11.89 The Applicant also subsequently undertook to produce a BMA during the detailed design phase [REP7-007]. This is secured through the OEMP [REP14-008 D-B31].

4.11.90 In its ISH4 submissions [REP6-027], DCiC maintained the view that BMA would allow a more transparent measurement of biodiversity gains and losses and noted it's understanding that BMA would be used for the application. Nevertheless, it took comfort from the Applicant's commitment to produce a BMA during the detailed design phase. Nor did DCiC express concern regarding the survey methods that had been used to assess individual habitats or question the extent or quality of the habitats as presented in the ES. It noted the proposed net gain in the number of trees to be planted and that the proposals sought to achieve net gains for some habitats (for example grasslands). However, the Applicant and DCiC were unable to agree on the weight to be attached to NPPF policies which seek biodiversity enhancement, rather than NNL [REP6-027]. Those positions were maintained in the SoCG with DCiC [REP7-020].

Conclusions on biodiversity and ecological conservation

4.11.91 Our consideration of this topic has had careful regard to the policies of the NPSNN on biodiversity and ecological conservation. We have also

considered the NPPF and development plan policies insofar as they are applicable to an NSIP.

4.11.92 The Applicant's overall approach to this topic, including the scope and content of baseline surveys, was generally agreed by the most relevant authorities. Nor, for the most part did those authorities raise substantive concerns regarding the Applicant's findings. This is shown in the SoCGs with NE, DCC, EBC and DCiC referred to above. Rather, the matters raised during the Examination focussed on specific issues and concerns. Having reviewed the Applicant's submissions on this topic, we are of the same view. Therefore, we find that the application accords with paragraph 5.22 of the NPSNN in its consideration of the full range of sites, habitats species and potential impacts and paragraph 5.26 in attaching appropriate weight to the range of sites, habitats and species. As required by paragraph 5.38 of the NPSNN, the Applicant [APP-216] provided letters from NE stating that, based on the information and proposals provided, it saw no impediment to issuing bat or badger mitigation licences, should the DCO be granted.

4.11.93 The assessment methodology used in ES Chapter 8 conflates two sources of guidance and we found the resulting definition of 'significant' awkward. Nevertheless, we consider that the assessment methodology is sufficiently comprehensive and transparent, and we were not left in doubt as to how the effects of the proposal had been quantified.

4.11.94 The Proposed Development would result in the loss of the A38 Kingsway Roundabout LWS. The ES finds that, after mitigation, the LWS would experience a moderate adverse residual effect that was considered significant. We consider that there is a degree of doubt over whether the mitigation proposed in the ES would be achievable due to the need for soil testing and DCiC's potential need to use the selected translocation site for silt deposition. Nevertheless, even if those doubts materialise, an alternative location is secured through the OEMP [REP14-008]. The Applicant's responses to the detailed questions raised by FoMP are clear. As such, we are satisfied that the likely effect on the LWS would be no greater than moderate significant adverse, as assessed. We have taken this impact into account in the overall balance below.

4.11.95 The Alfreton Road Rough Grassland LWS is a site of County level/moderate significance as defined by the ES. An effect on one or more of its features would, therefore, lead to a significant impact (ES Table 8.4). However, there was a measure of agreement between the parties that the Proposed Development would not adversely affect the part of the LWS which contributes most to its biodiversity importance. Furthermore, there is no substantive evidence to demonstrate that either the permanent or temporary loss of the other parts of the designated area would affect the integrity of the site as a whole or adversely affect the bird population supported by the site.

4.11.96 The mitigation measures for the LWS would include partial replacement of the lost semi-improved grassland. There would also be biodiversity benefits in the proposed woodland screening and removal of invasive species. As such, whether it is measured using the BMA or the ES methodology, we

consider that the overall impact of the Proposed Development on the LWS would not be significant.

4.11.97 The potential loss of the veteran tree at the Markeaton junction was the subject of considerable debate during the Examination. The reasons why it was threatened by the Proposed Development and the options for reducing that threat were explored as required by paragraph 5.32 of the NPSNN. We welcome the Applicant's commitment to investigate whether more can be done to retain the tree, even with a reduced canopy. However, we consider that the most likely outcome remains the loss of the tree. The NPSNN requires such a loss to be balanced against the national need and benefits of the proposal. We do this in the overall planning balance in Chapter 6.

4.11.98 We find the Applicant's evidence on the effect of construction activity on the signal crayfish at Markeaton Lake more compelling than that provided by FoMP. Therefore, we find that the Proposed Development would not pose a threat to the white clawed crayfish at Kedleston Hall. Nor do we consider that enough evidence has been provided for us to believe that the proposed TP of the land around Markeaton Lake would inhibit the work of the Partnership seeking to eliminate the signal crayfish from the Lake.

4.11.99 The Applicant's assessment takes into account the possible air quality and noise effects of the proposal on biodiversity during the construction and operational phases. We find that there is no substantive evidence to indicate that those effects would be significant. We note that neither NE, DCC, DCiC or EBC have expressed concerns in these regards. We are therefore satisfied that the Proposed Development would accord with paragraph 5.192 of the NPSNN.

4.11.100 Several objections were raised regarding the effect of the Proposed Development on specific species. However, there was little solid evidence to support those concerns. On the other hand, we have already found that the Applicant's baseline information and assessments of the effect of the Proposed Development on those and other species are sound. As such, we find that the objections raised do not call into question the relevant ES findings.

4.11.101 In terms of the more generalised objections raised on biodiversity matters, whilst we acknowledge that there are widely held concerns regarding the effect of development on biodiversity at national and international levels, our task in this report is to consider the effects of the Proposed Development. That does include any cumulative biodiversity effects with other developments. However, we have not been presented with substantive evidence to show that there would be any such effects on biodiversity or nature conservation in this case.

4.11.102 The question of whether the proposal takes the opportunities available for biodiversity enhancement broadened out during the Examination to consider the use of BMA, the weight to be attached to NPPF policies on biodiversity net gain and the Applicant's approach to NNL.

4.11.103 We recognise that BMA is becoming more widely used and that, corporately, HE has made a commitment to using it in similar projects[6]. However, we have not been made aware of any policy provision applicable to the Proposed Development which specifically requires its use. Furthermore, as the consideration of the Alfreton Road Rough Grassland LWS (paragraphs 4.11.61 to 4.11.70 above) shows, the process would not necessarily take into account all biodiversity gains and losses. Consequently, we find that the fact that it has not been used at this stage of the project does not weigh against the proposal. Nevertheless, we welcome the Applicant's commitment to using BMA during the detailed design phase where it has the potential to assist in refining the mitigation proposals.

4.11.104 The NPSNN is the primary source of policy guidance for the Proposed Development. We consider that the NPPF is also an important and relevant consideration, but only to the extent relevant to a project and it is not intended to contain specific policies for NSIPs where particular considerations can apply. In this case the NPSNN provides clear guidance on the approach to biodiversity enhancement. Paragraph 5.23 requires the Applicant to show how the proposal takes advantage of opportunities to enhance, as well as conserve, biodiversity interests. Paragraph 5.33 requires the SoS to consider whether the Applicant has maximised opportunities to build in beneficial biodiversity features in and around developments. As such, whilst acknowledging the aims of paragraphs 170(d) and 175(d) of the NPPF to achieve a net gain in biodiversity, we consider that they do not outweigh paragraphs 5.23 and 5.33 of the NPSNN in this case.

4.11.105 Given these findings, we conclude that the Applicant's approach to assessing NNL is satisfactory. It enables the full range of biodiversity gains and losses to be taken into consideration and we have already found that the scope, methodology and assessment findings of the ES are generally sound. As set out above, where specific matters have been disputed, we have not found reason to disagree with the Applicant's position.

4.11.106 The impact on the A38 Kingsway Rough Grassland LWS weighs against the proposal. However, while the SoS should give due consideration to such regional and local designations, paragraph 5.31 of the NPSNN advises that LWS designations should not be used, in themselves, to refuse consent.

4.11.107 We have found that the Proposed Development has the potential to achieve enhancements in biodiversity. The mitigation measures necessary to achieve those enhancements are clearly set out in the OEMP [REP14-008] and there is no convincing evidence to demonstrate that they would not be deliverable. Therefore, we find that the Proposed Development would result in a modest general enhancement of biodiversity that would not be significant. Moreover, we find that moderate beneficial operational effects on Dam Brook, protected/notable fish in Dam Brook, otters and aquatic macro-invertebrates weigh significantly in favour of the DCO being made.

4.11.108 To that extent, the Proposed Development would comply with paragraphs 5.23, 5.26, 5.29, 5.31, 5.33 and 5.34 of the NPSNN on conserving and

[6] Highways England Biodiversity Report 2018-19

enhancing biodiversity conservation interests and paragraphs 5.36 and 5.38 regarding the mitigation measures.

4.11.109 We consider that the moderate adverse construction effects on the A38 Kingsway Rough Grassland LWS and the short to medium term moderate adverse effect on semi-natural broadleaved woodland weigh significantly against the DCO being made.

4.11.110 We also consider that the likely loss of veteran tree T358 weighs against the DCO being made. Paragraph 5.32 of the NPSNN requires the national need for, and benefits of, the Proposed Development to clearly outweigh the loss if consent is to be granted. We undertake that exercise in Chapter 6.

4.11.111 Based on the above, we are satisfied that appropriate consideration has been given to relevant policy for the Proposed Development and that, subject to the provisions of the rDCO (Appendix D), the likely reasonable worst-case effects have been identified in respect to biodiversity and ecological conservation.

4.12 LANDSCAPE AND VISUAL

Introduction

4.12.1 This section considers the landscape and visual effects of the Proposed Development. Since the proposals encompass suburban as well as semi-rural settings, it also considers the townscape and effects on the outlook of nearby residential occupiers. The Little Eaton junction falls within the GB. This section therefore deals with the effect of that element of the Proposed Development on the openness of the GB. The effect of the Little Eaton junction on the setting of the DVMWHS is considered in Section 4.14.

4.12.2 The effects of the proposed removal and replacement of trees on air quality and carbon capture are considered in Sections 4.8 and 4.15 respectively. FoMP requested that the purported beneficiary of the 'Mundy Covenant', which affects Markeaton Park, should be consulted regarding proposals at Markeaton Park, including the removal of trees [REP14-039]. The position of the purported beneficiary of the covenant is considered in Chapter 7.

Policy context

National policies

4.12.3 Paragraphs 5.144 to 5.146 of the NPSNN deal with the content of the Applicant's assessment. Amongst other things, they advise on the use of landscape assessment guidelines and local character studies and require relevant development plan policies to be considered. Landscape and visual effects should be considered at the construction and operational phases and the assessment should include any light pollution and local amenity effects.

4.12.4 Paragraph 5.149 advises that both the nature of the existing landscape likely to be affected, and the nature of the effect likely to occur, need to be considered in judging the landscape impact. It goes on to state that *"Having regard to siting, operational and other relevant constraints, the aim*

should be to avoid or minimise harm to the landscape, providing reasonable mitigation where possible and appropriate."

4.12.5 Paragraph 5.156 advises that landscapes may be highly valued locally and protected by local designations. Local landscape designations, based on landscape character assessment, should be given particular consideration, but should not be used in themselves as reasons to refuse consent.

4.12.6 The SoS should consider whether "*the project has been designed carefully, taking account of environmental effects on the landscape and siting, operational and other relevant constraints, to avoid adverse effects on the landscape or to minimise harm to the landscape, including by reasonable mitigation*" (paragraph 5.157).

4.12.7 The SoS will also need to consider "*whether the visual effects on sensitive receptors, such as local residents and other receptors, outweigh the benefits of the development*" (paragraph 5.158).

4.12.8 With regard to mitigation, paragraph 5.159 of the NPSNN advises that changing the operation, or reducing the scale, of a proposal can help to avoid or mitigate visual and landscape effects, but that such changes may result in a significant operational constraint and reduction in function. However, there may be exceptional circumstances where significant benefits from mitigation warrant a small reduction in scale or function.

4.12.9 Paragraph 5.160 recognises tha*t* adverse landscape and visual effects can be minimised through the careful consideration of the siting, design, choice of materials and landscaping scheme for the proposal. Off-site landscaping such as filling in gaps in existing tree and hedge lines to mitigate impacts on more distant vistas may be appropriate.

4.12.10 Paragraphs 5.170, 5.171 and 5.178 of the NPSNN deal with proposals in the GB. We have already concluded that, in principle, the Proposed Development would not be inappropriate development in the GB, subject to its effect on openness (see paragraph 4.5.38 above). Paragraph 133 of the NPPF is clear that openness is one of the essential characteristics of GBs.

Development plan policies

4.12.11 DCCS Policy CP4 Character and Context requires new development to make a positive contribution to the character, distinctiveness and identity of neighbourhoods. Amongst other things, Policy CP16 identifies Green Wedges as areas of land that define the City's neighbourhoods. Kingsway junction is within a Green Wedge and Markeaton Park adjoining Markeaton junction is also a Green Wedge. Policy AC7 aims to protect and enhance the landscape character of the River Derwent corridor.

4.12.12 EBCS Policy 10 requires development to make a positive contribution to the public realm and sense of place, have regard to the local context and reinforce valued local characteristics.

The application

4.12.13 The parts of the application most relevant to the consideration of landscape and visual effects are:

- Chapter 7: Landscape and Visual Impact [REP2-008];
- General Arrangement Figures: 2.5 Kingsway [APP-061], 2.6 Markeaton [APP-062], 2.7 Little Eaton [APP-063];
- Figures 2.12A-H: Environmental Masterplans [APP-068];
- ZTV Figures 7.1A Kingsway and Markeaton Junctions [REP2-010], 7.1B Little Eaton [APP-086];
- Figure 7.3A-B: Landscape Designation Areas [APP-089];
- Figure 7.4: Local Character Areas [APP-090];
- Figure 7.5(a): Representative Viewpoints 1–24 [REP9-013];
- Figure 7.8A-C: Landscape Design [APP-094];
- Appendix 7.1: Visual Effects Schedule [APP-176];
- OEMP [REP14-008]; and
- Additional Photomontages [REP2-021].

Landscape and visual assessment

Introduction

4.12.14 The Applicant advised that its assessment was based primarily on the guidance in IAN 135/10 Landscape and Visual Effects Assessment and the Guidelines for Landscape and Visual Impact Assessment (Third Edition). The landscape and visual assessments used field surveys and published mapping and national and local landscape character area studies. ZTVs were established. Using this information, together with consultation with relevant bodies, the assessment identified ten new Landscape Character Areas (LCAs) [APP-090] which were used as the basis of the landscape assessment. These comprised:

- LCA1 Mickleover Residential;
- LCA2 Mackworth Public Open Space;
- LCA3 Derby Fringes Mixed Development;
- LCA4 Mackworth and Derby Fringes Residential Areas;
- LCA5 Markeaton Park and Surrounds;
- LCA6 Darley Residential Surrounds;
- LCA7 Allestree Residential Areas;
- LCA8 Darley Abbey and Derwent Valley Flood Plain;
- LCA9 Allestree Park and Allestree Hill Open Space; and

- LCA10 Little Eaton and Breadsall Green Belt.

4.12.15 Twenty four representative viewpoints [REP9-013] were identified based on desk-top studies, consultation with the LPAs and feedback from statutory consultation. The viewpoints are listed at paragraph 7.7.70 of the ES [REP2-008] and were updated during the Examination. They were used as the basis of the visual assessment.

4.12.16 The significance of impacts was determined by reference to the sensitivity of the landscape and visual receptors and the magnitude of the impacts (ES Chapter 7 Table 7.5 REP2-008]), although professional judgement was also applied. Moderate, large or very large effects were considered significant for the purposes of the assessment. The effects were assessed at the construction, year 1 (in winter to represent the changes that would be apparent on a winter's day in the year that the Proposed Development would open) and year 15 (in summer to represent the changes that would be apparent after 15 years when the landscape planting should have reached a level of maturity and would be fulfilling its intended screening and integration functions) stages.

Potential impacts

4.12.17 Prior to mitigation, construction phase impacts on landscape character and visual receptors were anticipated to include the introduction of construction plant, compounds and the like; construction activity and the removal of landscape features. Further impacts on landscape character were considered to include earthworks and excavations. Impacts on visual receptors would include the removal of buildings such as the 15 houses at Queensway.

4.12.18 Before mitigation operational phase impacts on landscape character were anticipated to fall within LCAs 2, 3, 4, 5, 6, 7, 8 and 10 and comprise the introduction of permanent new road features and associated earthworks and structures, the loss of existing landscape features and land use change. Pre-mitigation operational phase impacts on visual receptors were anticipated to include the removal of character-forming features, the introduction of new road infrastructure and modifications to existing roads at each of the junctions, ecological mitigation works and the loss and replacement of open space.

4.12.19 Potential impacts are described in full at paragraphs 7.8.2 to 7.8.5 of the ES [REP2-008].

Design of the proposals and mitigation measures

4.12.20 The OEMP [REP14-008] includes a range of good practice measures to minimise the landscape and visual effects of the construction works. These would include ensuring that working areas would be well managed, compounds and the like would be appropriately sited and designed, the protection of trees to be retained and minimising the luminosity and duration of lighting (subject to safety requirements).

4.12.21 The Applicant has sought to incorporate measures into the design to avoid or reduce the impact of the proposals. These include:

- positioning the mainline carriageways at the Kingsway and Markeaton junctions within cuttings below the level of the existing junctions in order to visually contain much of the new carriageway and associated infrastructure and to screen traffic movements from existing views available from nearby residential properties, footpaths and cycleways;
- arranging the new Little Eaton junction so that it would pass the new roundabout on two bridges on embankments. The new carriageway would be approximately 11m above existing ground level at the highest point on the north side of the junction, before quickly dropping down to around 3m above existing ground levels. Screening barriers would be used to reduce visual effects for nearby receptors, including the Ford Farm Mobile Home Park;
- confining the lighting of the new and improved sections of road to locations where road safety is a priority and using directional and narrow beam LEDs to minimise the potential for light spill in night-time views across the landscape and residential areas. The A38 mainline at Little Eaton junction would not have overhead lighting in order to minimise visual intrusion. However, 12m high LED luminaires would still be provided at the new at-grade Little Eaton roundabout and the approaching slip-roads for safety reasons;
- designing signage to minimise visual clutter, taking into account safety design standards. Due to the limited verge widths and the requirement for large retaining walls, along with complex merge and lane drop arrangements, in some instances the most appropriate signing arrangement would be to provide gantry mounted direction signs. As such, up to seven gantries are proposed along the mainline between Kingsway junction and Kedleston Road junction and approaches. If such gantries were not used, signage requirements would need further land take and signage to be placed significantly closer to nearby sensitive receptors;
- retaining existing vegetation and trees wherever possible;
- considering the design of the floodplain compensation area at Little Eaton junction. The landform design was developed with input from landscape, ecological and cultural heritage specialists with the aim of creating a naturalistic profile that would blend in with the surrounding valley profile, as well as enabling the land to be returned to agricultural use;
- integrating the proposals fully with the existing A38. Some redundant highway sections would be released for landscape planting, including the parts of the existing access from Brackensdale Avenue onto the A38; sections of existing carriageway at the existing northbound A38 from Markeaton junction; the existing access from Ford Lane onto the A38 and a section of the existing A38 mainline carriageway located to the north of Little Eaton junction. Planting proposals in these areas aim to integrate the landscape design with existing Green Wedges and areas of public open space; and
- appropriately landscaping the replacement public open space at Queensway and providing facilities for pedestrians and cyclists

connecting the A52 Ashbourne Road with the proposed new Markeaton footbridge.

4.12.22 The Proposed Development's planting strategy seeks to:

- filter, screen and contain more the prominent components of the proposals in views from visual receptors;
- provide compensatory planting for trees, hedgerows, shrubs, woodland and grassland lost as a result of permanent land take, and reinstate planting removed because of site clearance activities. Semi-mature trees would be planted in selected prominent locations;
- reinforce the existing vegetation pattern by planting species found locally;
- help to integrate drainage features and watercourse channel realignment works into the surrounding landscape framework and pattern; and
- provide visual interest to people travelling on the new and modified sections of road, as well as pedestrians and cyclists.

Summary of significant effects

4.12.23 The Applicant's assessment found that the Proposed Development would have the following significant effects during the construction phase:

Landscape:

- LCA2 Mackworth Public Open Space - moderate adverse;
- LCA4 Mackworth and Derby Fringes Residential Areas - moderate adverse;
- LCA5 Markeaton Park and Surrounds – large adverse;
- LCA6 Darley Residential Surrounds – large adverse;
- LCA8 Darley Abbey and Derwent Valley Flood Plain – large adverse; and
- LCA10 Little Eaton & Breadsall Green Belt – large adverse.

4.12.24 Visual (numbers refer to representative viewpoints [REP9-013]):

- 1 Mackworth Park – large adverse;
- 2 Public open space at Greenwich Drive South (looking north-east) - moderate adverse;
- 4 Footpath adjacent to the A5111 Kingsway - moderate adverse;
- 5 Public open space at Greenwich Drive South (looking south-east) – moderate adverse;
- 7 Greenwich Drive North looking east – large adverse;
- 10 Markeaton Park entrance - moderate adverse;
- 12 Markeaton Park fringes adjacent to the A38 - moderate adverse;

- 14 Bonnie Prince Charlie Walk, Markeaton footbridge (looking south) - moderate adverse;
- 16 Derwent Valley Heritage Way (south) – large adverse;
- 17 Derwent Valley Heritage Way (north) – large adverse;
- 23 Breadsall FP3 – moderate adverse; and
- 24 Breadsall FP2 – moderate adverse.

4.12.25 Significant effects during the operational phase were assessed as follows:

Landscape:

- LCA5 Markeaton Park Surrounds – moderate adverse in year 1, slight adverse in year 15;
- LCA6 Darley Residential Surrounds - moderate adverse in year 1, neutral in year 15;
- LCA8 Darley Abbey and Derwent Valley Flood Plain -moderate adverse in year 1, slight adverse in year 15; and
- LCA10 Little Eaton and Breadsall Green Belt - moderate adverse in year 1, slight adverse in year 15.

Visual:

- 2 Public open space at Greenwich Drive South (looking north-east) - moderate adverse in year 1, slight adverse in year 15;
- 7 Greenwich Drive North looking east - moderate adverse in year 1, slight adverse in year 15;
- 10 Markeaton Park entrance - moderate adverse in year 1, neutral in year 15;
- 16 Derwent Valley Heritage Way (south) - moderate adverse in year 1, slight adverse in year 15; and
- 17 Derwent Valley Heritage Way (north) - moderate adverse in year 1, slight adverse in year 15.

4.12.26 Overall, therefore, the assessment found that, by year 15, there would be slight adverse effects on three LCAs and five representative viewpoints and neutral effects on seven LCAs and nineteen representative viewpoints. As the landscape proposals mature, the landscape and visual effects would reduce, such that by year 15, the Applicant considered that there would be no significant effects.

Issues considered during the Examination

4.12.27 The landscape and visual effects issues considered during the Examination included:

- assessment methodology;
- the effect on landscape character at Little Eaton junction;

- GB openness;
- proposals for the removal and replacement of trees at Markeaton Park; and
- the effect of the works to create the northern dumbbell at Kingsway junction.

Assessment methodology

4.12.28 In its WRs [REP1-030] and LIR [REP1-031] DCC disagreed with some of the findings in the Applicant's assessment. It considered that the landscape character and sensitivity of the landscape surrounding the Little Eaton junction had not been fully reflected in the assessment and, as a result, the overall effects on the landscape and visual receptors had been under assessed. DCC also sought further visualisations to enable a proper understanding of the visual effects of the planting proposals at the Little Eaton junction.

4.12.29 Our FWQ [PD-005] also sought clarification of several matters in the assessment methodology, including the extent of the study area compared to the ZTVs, apparent inconsistencies in the terms used to describe the magnitude of landscape impacts and distortions in some of the representative viewpoint photographs. We also requested additional viewpoints and further details of the relationship between the proposed northern dumbbell at the Kingsway junction and the adjoining open space.

4.12.30 The Applicant's response [REP2-020] to DCC's concerns accepted that the sensitivity of some of the LCAs had been under-assessed and produced a revised version of ES Chapter 7 [REP2-008]. The broader concerns of DCC are dealt with below under the headings of Little Eaton junction and GB openness.

4.12.31 The Applicant's response to our FWQ [REP1-005] explained that the parts of the ZTVs which extended beyond the study area would only form a small additional visual element within the view and would be barely perceivable, if at all, by eye. The headings of ES Tables 7.20-7.29 and 7.31-7.40 were incorrect which made it difficult to follow how the magnitude of landscape impacts had been derived. However, the content of the tables was correct and there was no need to change the findings of the assessment in this regard. The table headings were corrected in the revised version of ES Chapter 7 [REP2-008]. The additional representative viewpoints [REP2-021], corrections to some of the originally submitted viewpoint photographs [REP2-011] and a cross-section through the Kingsway junction northern dumbbell were provided [REP2-022].

Little Eaton junction

4.12.32 DCC [REP1-030 REP1-031 REP1-033] initially found it difficult to accept that the proposed embankment crossing the floodplain at Little Eaton, compounded by proposed planting, would be likely to have only a 'slight adverse' effect. The embankment and associated planting were considered to be incongruous features and would block off the natural connections and functionality of the linear landscape. It considered that carrying the new

carriageway on a viaduct over the roundabout would provide a more elegant solution.

4.12.33 The concerns of DCC were discussed in meetings with the Applicant, and its officers made further site visits. These matters were also discussed at ISH2 [EV-011 EV-012 EV-013] along with the character and sensitivity of the landscape at Little Eaton. The Applicant subsequently produced additional photomontages of the Little Eaton junction proposals, including the proposed flood compensation storage area, in response to DCC's concerns, although most were not available at ISH2 [REP3-018].

Figure 4.12.1: Viewpoint 17 without the scheme [extract from REP3-018]

Figure 4.12.2: Viewpoint 17 with the scheme (year 15) [extract from REP3-018]

4.12.34 In its post-ISH2 submissions DCC [REP3-029] reported that many of its concerns with regard to the assessment of the landscape and visual effects of the Little Eaton proposals had been allayed in the light of its meeting with the Applicant and, most significantly, its consideration of the additional photomontages. DCC still believed there was some merit in exploring the use of a free-standing viaduct that would allow the landscape to flow through the junction. However, it was satisfied that the visualisations demonstrated that many of the adverse effects associated with the A38 crossing the floodplain already exist with the presence of sizeable embankments to facilitate the existing crossings of the River Derwent and the Midland Mainline railway. In particular, it accepted that the photomontages demonstrated that the proposed new embankments would not be significantly higher than the existing embankments and that the views from the selected locations would not be noticeably different from the current views once the proposed planting had become established.

4.12.35 Therefore, DCC [REP3-029] agreed with the Applicant's assessment, that during the construction phase, landscape and visual effects would be significant but would become moderate adverse on completion of the works and slight adverse in year 15. It noted that the overall success of the proposals would depend on the detailing and welcomed the opportunity to be consulted, particularly in relation to the proposed planting and flood compensation area.

4.12.36 BPC's WRs sought a review of the process leading to the selection of the submitted layout of the Little Eaton junction [REP1-027]. We have already concluded in Section 4.5 that the process of considering alternatives to the selected route at Little Eaton was satisfactory. However, the landscape and

visual implications of the submitted proposal were also considered at ISHs 2 [EV-011 EV-012 EV-013] and 4 [EV-019] and in our SWQ [PD-014].

4.12.37 BPC's written submissions [REP1-027] also stressed the importance of the woodland/tree belt on the eastern side of the A38 and the slip road in providing visual screening from the Breadsall direction. It considered that the section of planting alongside the ponds at the southern end of the southbound slip road and the adjoining section of the A61 would be too narrow to provide screening from overhead lighting and traffic negotiating the roundabout. It also considered that the woodland should principally comprise robust evergreen species to ensure reliable year-round screening. BPC also stressed the importance of long-term maintenance of the woodland planting.

4.12.38 The Applicant responded by referring to its ES assessment of the effect of the proposal on the landscape at Breadsall and the associated mitigation measures [REP2-020 REP4-025 REP6-018]. BPC essentially maintained its initial position over its concerns during the Examination [REP3-028 REP4-28]. However, the Applicant did amend the OEMP [D-L3] to require the proportion of evergreen trees and the width of the woodland belt on the east side of the Little Eaton junction to be reviewed during the detailed design phase.

Green Belt openness

4.12.39 In Section 4.5 we concluded that, in principle, the Proposed Development would not be inappropriate development in the GB, subject to it preserving openness. We raised this matter in our FWQ [PD-005] and it was discussed at ISHs 2 and 4. At ISH4 [EV-019] we also sought the views of the relevant parties on a Supreme Court judgement[7] issued during the Examination which dealt with the approach to the visual elements of GB openness. The Applicant submitted a Technical Note on the Supreme Court judgement [REP6-022]. That Note also summarised the positions of the Applicant, DCC and EBC on the effect of the proposal on GB openness.

4.12.40 In its SoCG EBC [REP1-008] confirmed that it considered the Proposed Development would not conflict with GB policies as set out within the NPSNN, NPPF and the EBCS. Its subsequent submissions do not resile from that position. DCC's submissions refer to its updated position on the landscape and visual effects of the proposal (see paragraph 4.12.34 above). On that basis it concluded that *"the proposed scheme would have no materially greater impact on the openness of the Green Belt than the existing junction scheme and that the openness of the Green Belt would be preserved."* [REP3-029]. Nor did it consider that the Supreme Court judgement affected that position [REP6-029].

4.12.41 The Applicant accepted [REP1-005] that the Proposed Development would have an effect on the openness of the GB, but that it would not result in material harm to openness. It said that the existing A38 corridor travels through the GB designation severing it in a north south direction and includes junctions, signage and large planted embankments in its current

7 R (Samuel Smith Old Brewery(Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant) [2020] UKSC 3 e

form. The Applicant considered that in this location, on the southern edge of the GB designation, there is less openness due to the proximity of further built form. The spatial context of this part of the GB is, therefore, different from the more open and rural parts of the designated area to the north-east in terms of the extent of existing built form.

4.12.42 The Applicant's submission [REP1-005] went on to note that, although the Proposed Development would be more elevated than the existing junction, it would have the same characteristics and would not significantly increase the extent of the A38 into the surrounding area. It said that measures to protect against intrusion into the openness of the GB would include woodland and tree planting on the A38 mainline embankment and associated slip roads, amenity grassland planting on closed sections of the A38 and planting associated with the 2.5m high noise and screening barriers.

4.12.43 The Applicant, therefore, found that the Proposed Development would not give rise to significant visual effects on the GB and that no demonstrable and unacceptable harm would be caused to the openness of the GB. As such, it considered that there would be no material conflict with the GB policy objectives of the NPSNN or NPPF [REP1-005]. The Technical Note [REP6-022] concluded that there were no specific implications for the consideration of the Proposed Development arising from the Supreme Court judgment.

Removal and replacement of trees at Markeaton junction

4.12.44 The Proposed Development would result in the loss of trees at Markeaton Park. In its response to our SWQ [PD-014], DCiC [REP4-029] commented on the public amenity value of numerous trees proposed to be removed. It also pointed out that not all of the trees with amenity value are the subject of Tree Preservation Orders, noted inaccuracies in the submitted Arboricultural Impact Assessment Report (AIA) Appendix F TPOs Affected by the Scheme [APP-177] and commented on the requirements for the protection of retained trees.

4.12.45 The effect of the Proposed Development on trees at Markeaton Park was also discussed at ISH4 [EV-019]. Whilst the location of the losses is shown on ES Figure 7.6A Retention of Existing Vegetation and Trees [APP-092] and in the Tree Retention Plans appended to the AIA, in many cases the trees are shown in groups and the actual number of trees to be removed is not clear. DCiC sought a net gain in the number of trees to be provided [REP6-027]. FoED referred to the value of Markeaton Park for people living in wards in the city which lack public open space [REP6-035] as well as for young people at the RSfD and Derby University [REP7-018]. Phil Moss [AS-034], Stephanie Dobson [AS-035], Jane Temple [AS-036], Pauline Inwood [AS-042] and Chris Newman [AS-052] each expressed concern over the loss of trees at Markeaton Park.

4.12.46 In its response to our request for further information [PD-018] FoMP also stressed the value of Markeaton Park to Derby's residents and noted the effect of the trees in screening park visitors from the A38. It also expressed concern that the replacement trees would not survive due to the

excavation and maintenance of the proposed utilities corridor and the effects of flooding [REP9-042 REP12-015 REP13-007 AS-058]. The latter point was also made by FoED [REP8-009 REP10-010].

4.12.47 The Applicant submitted a revised version of the AIA which included clarifications to Appendix F [REP9-014]. It is also relevant to note here that Schedule 8 of the dDCO was amended during the of the Examination to correct references to TPOs.

4.12.48 The Applicant's responses to the concerns regarding the removal and replacement of trees at Markeaton Park [REP6-018 REP8-007 REP9-028 REP10-009 REP11-003 REP14-029] contended that it had sought to minimise tree loss throughout the proposals. However, it considered that some tree loss would be unavoidable. At the Markeaton junction, it said that the proposals would result in the loss of approximately 50 individual trees adjoining the south bound carriageway and approximately 50 individual trees adjoining the north bound carriageway. These figures did not include groups of trees which would be considered during the detailed design phase. Near the Markeaton footbridge it said that there are several trees that are diseased and in need of removal or maintenance attention. There is no ancient woodland, one veteran tree (this tree is considered in Section 4.11 above) and a low proportion of the highest value Category A trees in this area.

4.12.49 In response to our question at ISH4 [EV-019], the Applicant confirmed that there were currently no figures for the number of trees to be planted at Markeaton Junction. However, that information would be provided in the retention and hedgerow plans during the detailed design phase. Moreover, the Applicant said that it intended to plant more trees than would be taken down within Markeaton Park and would plant semi mature trees to replace trees lost along the boundary. The detailed landscape proposals would be the subject of consultation with DCiC. These provisions are secured in the OEMP [REP14-008 PW-LAN1, D-L3 and D-L5].

4.12.50 Requirement 5 of the rDCO (Appendix D) secures the implementation of the approved landscaping scheme and Requirement 6 provides for the replacement, if necessary, of any tree or shrub planted as part of the Proposed Development for a period of five years. The OEMP [REP14-008 PW-LAN2] provides for the protection of retained trees during the construction phase and this would be further detailed in the Arboricultural Mitigation Strategy secured through the OEMP [REP14-008 MW-LAN2]. The Arboricultural Mitigation Strategy would also ensure that newly planted trees would be successfully established. The OEMP [REP14-008 MW-LAN3] provides for the maintenance and management of proposed planting.

4.12.51 We have concluded in Section 4.10 that the proposal would not give rise to ground water flooding at the Markeaton junction and the Applicant pointed out that the FRA for that junction [REP9-018] found that groundwater was typically at depths of around 2.5m to 3.5m, whilst to the north-east of the junction in the area of Markeaton Lake, groundwater depths of 1.0m to 3.0m were encountered. This indicates that there would be sufficient depth of soil above the prevailing groundwater to sustain the newly planted trees [REP11-003].

Kingsway junction northern dumbbell

4.12.52 The RR of Chris O'Donnell [RR-027] expressed concern that the proposed footpath realignment included in the alterations to create the northern dumbbell at Kingsway junction would adversely affect living conditions in terms of loss of privacy. Our FWQ also sought further information on the effect of the works on the adjoining open space, existing and proposed planting and the houses on Greenwich Drive South [PD-005].

4.12.53 In response, the Applicant submitted a cross-section drawing showing the relationship of the northern dumbbell works to Greenwich Drive South, the adjoining open space and footpaths [REP2-022]. It also referred to landscape design drawing ES Figure 7.8A [APP-094]. These drawings showed that the roundabout embankment adjacent to the dumbbell would be planted with shrubs and intermittent trees over the area of lost public open space. The realigned footpath/cycleway would pass through woodland edge planting at the base of the embankment. Beyond the woodland edge planting, existing vegetation comprising open grassland and a belt of trees crossing Greenwich Drive South would be retained and would have a screening effect. The Applicant also undertook to consider the exact alignment of the footpath/cycleway during the detailed design phase [REP1-003].

Conclusions on landscape and visual

4.12.54 The SoCGs with DCiC [REP7-020], DCC [REP6-010] and EBC [REP1-008] indicated that those authorities were generally satisfied that the landscape and visual effects were properly assessed, that the mitigation measures were appropriate and that they would deliver the residual effects as reported in the ES. The authorities were also broadly content with the landscape planting proposals in the Applicant's submissions, subject to consultation during the detailed design phase.

4.12.55 Whilst we and others had some initial concerns regarding the Applicant's assessment methodology for landscape and visual effects, we consider that these matters were addressed by the Applicant's clarifications. We are satisfied that the methodology is robust and allows the effects of the Proposed Development to be properly considered in accordance with paragraphs 5.144 to 5.146 of the NPSNN.

4.12.56 The effect of the Proposed Development on the landscape at Little Eaton was the subject of considerable debate during the Examination. The proposed junction would create an elevated section of carriageway over a re-configured roundabout with associated slip roads and embankments. As such, the configuration of the junction would alter markedly and there would be considerable additional land take. Moreover, this would take place in a semi-rural setting.

4.12.57 However, the existing junction is a prominent feature in the landscape and much of the additional land take would be used to create planted embankments. Whilst the carriageway would be raised above the existing junction level, we are satisfied that the photomontages submitted by the Applicant demonstrate that the extent of the increase in height would be assimilated fairly comfortably into the landscape as a whole. The planted

embankments would, in time, be effective in screening the new junction from most medium- and long-distance viewpoints. Moreover, due to their use in the existing junction, embankments are an established element of the landscape character of the area. We therefore conclude that the Proposed Development would not undermine the existing linear character of the local landscape.

4.12.58 The use of a viaduct rather than embankments to carry the elevated carriageway, as suggested by DCC, was not part of the application proposals. Having reached the conclusion that the proposed embankments would be an acceptable solution, we consider that there is no need to consider the viaduct further.

4.12.59 The depth of planting on the south east side of the Little Eaton junction adjoining Breadsall village would be narrower than at other locations. This may limit the effectiveness of the screening to a degree and increase the perception of vehicle movements and lighting from public viewpoints on the edge of the village. However, such perception exists at present and we find that the change would not be unacceptable in terms of either visual impact or impact on the outlook of residential properties in that area. Nevertheless, we welcome the Applicant's commitment to review the depth of the planting and the mix of tree species at this location during the detailed design phase.

4.12.60 The rDCO (Appendix D) and the OEMP [REP14-008] include clear provisions to ensure the implementation and long-term maintenance of the planting at the Little Eaton junction. Overall, therefore, we agree with the Applicant's assessment that the effect of the Proposed Development on the Little Eaton landscape, although large adverse during the construction phase, would reduce to slight adverse when the proposed planting matures in year 15 and beyond. Similarly, we agree that the visual effects would diminish to slight adverse over the same period.

4.12.61 The proposals would limit the use of overhead lighting to the lower part of the Little Eaton junction and use LED fittings to restrict light spillage. Requirement 16 of the rDCO (Appendix D) and OEMP [REP14-008 D-CH5] would control the details of the lighting proposals. As such, we are content that the proposals would be likely to reduce light spillage compared with the existing arrangements, as contended by the Applicant.

4.12.62 There was consensus among the relevant LPAs and the Applicant that the Samuel Smith Old Brewery Supreme Court judgement did not have a material bearing on the consideration of the effects of the Proposed Development on the GB. We see no reason to disagree.

4.12.63 We have already found that the existing junction is a prominent feature in the landscape and, as such, it affects the openness of the GB. Nevertheless, in form and function it is separated and readily distinguishable from nearby built development including Breadsall village and the group of properties to the north of the Little Eaton junction. The same would be true of the proposed junction arrangement. Consequently, we find that the Proposed Development would not lead to urban sprawl.

4.12.64 The additional height of the proposal at the Little Eaton junction, whilst noticeable, would not significantly change the essentially linear character of the existing junction and, as we have already found, it would be assimilated into the overall landscape. The additional land take would be largely used for planted embankments rather than adding significantly to the extent of built development. The woodland planting on these embankments would further help to absorb the proposal into the landscape and would provide effective visual screening when established.

4.12.65 Consequently, we find that, in both its spatial and visual effects, the proposal would preserve the openness of the GB. As such, the Proposed Development would fall within the exception set out in paragraph 146(c) of the NPPF and, therefore, would not be inappropriate development in the GB. As such, we find that the proposals would accord with paragraphs 5.170, 5.171 and 5.178 of the NPSNN and paragraph 133 of the NPPF.

4.12.66 Considerable concern emerged during the Examination regarding the effect of the proposals on the trees at Markeaton junction, particularly along the edge of Markeaton Park. We agree that these trees make a very significant contribution to the landscape character of the area and provide valuable visual screening between Markeaton Park and the A38. As such, we recognise that they are valued by local residents, irrespective of whether they have statutory protection. Moreover, we consider that the Applicant's submitted proposals lacked clarity over the number of trees which would be lost and replaced.

4.12.67 However, during the Examination, the proposals for tree loss and replacement became clearer. The Applicant's undertaking to plant more trees than would be removed and to plant semi-mature trees at the boundary of Markeaton Park are important considerations that are secured through the rDCO (Appendix D) and the OEMP [REP14-008]. Furthermore, no substantive evidence was presented to demonstrate that the proposals would involve the removal of more than the unavoidable minimum number of trees necessary to implement the proposed works to the junction and carriageways.

4.12.68 We find that rDCO (Appendix D) Requirements 5 and 6 and the OEMP [REP14-008 PW-LAN3, MW-LAN3 and MW-LAN4] contain adequate controls to ensure that the proposed landscaping scheme would be carried out in accordance with the approved details at the preliminary works and main works stages and would be maintained. This would include the elements of the planting adjoining the proposed utility corridor. Taking into account also our findings in Section 4.10 on groundwater levels and the risk of flooding in the area, we consider that those matters would not pose an undue risk to the survival of the proposed planting.

4.12.69 The removal of trees on the scale proposed at the Markeaton junction would inevitably have an adverse short-term effect and this is acknowledged in the Applicant's summary of significant landscape and visual effects. Notwithstanding the use of some semi-mature planting, it would take time for the replacement planting to ameliorate those effects. However, we find that the planting proposals are well considered and would plug the gaps left by the lost trees. Once mature, they would largely restore the landscape

character of the edge of Markeaton Park and would provide effective visual screening from the A38. As such, we are satisfied that the landscape and visual effects of the Proposed Development on the Markeaton junction would be no worse than slight adverse in the long term. We conclude that the Proposed Development would not, therefore, conflict with paragraph 5.149 of the NPSNN with respect to landscape impact or DCCS Policy CP16 with respect to its effect on the Markeaton Green Wedge.

4.12.70 The works to form the northern dumbbell of the Kingsway junction would impinge on the adjoining public open space (replacement open space is considered in Section 4.13 below) and bring the embankment somewhat closer to the properties on Greenwich Drive South. However, a considerable gap would be retained, and woodland planting would be provided on, and at the base of, the embankment. This planting would also help to screen the realigned footpath/cycleway from the nearby residential properties. As such, we accept the Applicant's assessment that the proposal would not have significant landscape or visual effects on the Greenwich South Drive area in the long term. Consequently, we are satisfied that the Proposed Development would not conflict with DCCS Policy CP16 with respect to its effect on the Green Wedge at Kingsway.

4.12.71 Given its position and alignment, we are satisfied that the alterations to the footpath/cycleway at the Kingsway junction would not materially reduce the privacy of nearby residential occupiers. It is relevant to note here that the Proposed Development attracted limited objections regarding impacts on the privacy or outlook of nearby residential occupiers. We have already considered the visual effects of the proposal on residential properties at Breadsall. For the most part, the proposals would not otherwise bring the road significantly closer to retained dwellings.

4.12.72 An exception to this would be the Ford Farm Mobile Home Park at Little Eaton. However, these properties are not generally oriented towards the proposed road and noise barriers and existing and proposed planting would provide visual screening. Therefore, we find that the Proposed Development would not have a harmful effect on the living conditions of nearby residential occupiers by reason of loss of outlook or privacy.

4.12.73 Overall, therefore, we agree with the Applicant's assessment of the landscape and visual effects of the Proposed Development. During the construction phase the significant effects would be:

- temporary large adverse effects on four LCAs and four representative viewpoints; and
- temporary moderate adverse effects on a further two LCAs and eight representative viewpoints.

4.12.74 During the operational phase the Proposed Development would have moderate adverse effects on four LCAs and five representative viewpoints in year 1 that would be significant. By year 15 the effects would be no more than slight adverse. As such, we agree with the Applicant's conclusion that the long-term landscape and visual effects of the Proposed Development would not be significant.

4.12.75 The Proposed Development would, therefore, comply with paragraphs 5.156 to 5.160 of the NPSNN. It would also accord with DCCS Policy CP4 and EBCS Policy 10 insofar as they seek to protect local character and with DCCS Policy AC7 regarding the protection of the landscape character of the River Derwent corridor.

4.12.76 Based on the above, we are satisfied that appropriate consideration has been given to relevant policy for the Proposed Development and that, subject to the provisions of the rDCO (Appendix D), the likely reasonable worst-case impacts have been identified in respect landscape and visual considerations.

4.12.77 We find that the following weigh significantly against the DCO being made:

- temporary large adverse effects during the construction phase on four LCAs and four representative viewpoints;
- temporary moderate adverse effects during the construction phase on two LCAs and eight representative viewpoints; and
- moderate adverse effects in Year 1 of the operational phase, reducing to slight adverse or neutral by Year 15, on four LCAs and five representative viewpoints.

4.13 LAND USE, SOCIAL AND ECONOMIC

Introduction

4.13.1 This section deals with the land use, social and economic effects of the Proposed Development. It, therefore, takes in the loss and replacement of public open space, effects on public rights of way, severance, pedestrians, equestrians and cyclists (often referred to as non-motorised users (NMUs), effects on human health, direct and indirect effects on businesses in the area and effects on agricultural land and holdings. The consideration of effects on human health should be read in conjunction with Section 4.8 on air quality and Section 4.9 on noise and vibration.

4.13.2 The relationship of the proposal to GB policies and openness has been considered in Sections 4.5 and 4.12 above. The need for the development and its economic benefits are dealt with in Section 4.5. Section 4.7 deals with driver stress. We deal with material assets (including mineral resources) geology, waste and landfill in Section 4.16.

National policy context

<u>Open space and green infrastructure</u>

4.13.3 Paragraph 5.162 of the NPSNN advises that access to high quality open spaces and the countryside can be a means of providing necessary mitigation and that green infrastructure can enable developments to provide positive environmental and economic benefits.

4.13.4 Paragraph 5.165 requires the Applicant to "*identify existing and proposed land uses near the project, any effects of replacing an existing development*

or use of the site with the proposed project or preventing a development or use on a neighbouring site from continuing."

4.13.5 At paragraph 5.166 the NPSNN states that "*Existing open space, sports and recreational buildings and land should not be developed unless the land is surplus to requirements or the loss would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location. Applicants considering proposals which would involve developing such land should have regard to any local authority's assessment of need for such types of land and buildings.*"

4.13.6 Paragraph 5.174 advises that the SoS "*should not grant consent for development on existing open space, sports and recreational buildings and land, including playing fields, unless an assessment has been undertaken either by the local authority or independently, which has shown the open space or the buildings and land to be surplus to requirements, or the Secretary of State determines that the benefits of the project (including need) outweigh the potential loss of such facilities, taking into account any positive proposals made by the Applicant to provide new, improved or compensatory land or facilities.*"

4.13.7 At paragraph 5.175 the NPSNN goes on to state that green infrastructure identified in development plans should normally be protected from development, and, where possible, strengthened by, or integrated within it. The value of linear infrastructure in supporting biodiversity should also be taken into account when assessing the impact on green infrastructure.

4.13.8 Paragraph 5.181 advises that, where s131 and s132 of the PA2008 apply (in relation to the loss of open space), "*any replacement land provided under those sections will need to conform to the requirements of those sections.*"

Public access and NMUs

4.13.9 Paragraph 3.16 of the NPSNN advises that the Government is committed to sustainable travel and is investing in developing a high-quality cycling and walking environment to bring about a step change in cycling and walking. The national road network has a direct role in helping pedestrians and cyclists and "*the Government expects Applicants to use reasonable endeavours to address the needs of cyclists and pedestrians in the design of new schemes.*"

4.13.10 Applicants should also "*identify opportunities to invest in infrastructure in locations where the national road network severs communities and acts as a barrier to cycling and walking, by correcting historic problems, retrofitting the latest solutions and ensuring that it is easy and safe for cyclists to use junctions*" (paragraph 3.17).

4.13.11 Furthermore, all reasonable opportunities to deliver improvements in accessibility on, and to, the existing national road network should be taken wherever appropriate (paragraph 3.20). Paragraph 3.21 reminds applicants of their duty to promote equality and to consider the needs of disabled people as part of their normal practice.

4.13.12 With regard to public rights of way, National Trails, and other rights of access to land, paragraph 5.184 recognises their importance as recreational facilities for walkers, cyclists and equestrians. Applicants are expected to take appropriate mitigation measures to address adverse effects on these facilities and, where appropriate, to consider what opportunities there may be to improve access. It goes on to advise that revisions to an existing right of way need to consider the use, character, attractiveness and convenience of the right of way. The SoS should consider whether the mitigation measures put forward by the applicant are acceptable and whether they should be secured by requirements attached to any grant of development consent.

4.13.13 The NPSNN confirms at paragraph 5.185 that public rights of way can be extinguished under s136 of the PA2008 if the SoS is satisfied that an alternative has been or will be provided or is not required.

4.13.14 Paragraph 5.205 requires applicants to consider reasonable opportunities to support other transport modes in developing infrastructure. They should use reasonable endeavours to address any existing severance issues that act as a barrier to NMUs. In doing so, applicants should seek to improve access, wherever possible, on and around the national networks and take account of the accessibility requirements of all those who use, or are affected by, national networks infrastructure, including disabled users (paragraph 3.20).

Human health

4.13.15 Paragraph 4.79 of the NPSNN advises that national road networks have the potential to affect the health, wellbeing and quality of life of the population. Direct impacts on health can arise because of traffic, noise, vibration, air quality and emissions, light pollution, community severance, dust, odour, polluting water, hazardous waste and pests.

4.13.16 New or enhanced national network infrastructure may also have indirect health impacts. This could be due to access to key public services, local transport, opportunities for cycling and walking or the use of open space for recreation and physical activity (para 4.80).

4.13.17 Where the proposal would have likely significant environmental impacts affecting human beings, the ES should identify and set out the assessment of any likely significant adverse health impacts (paragraph 4.81). Measures to avoid, reduce or compensate for adverse health impacts, including cumulative impacts, should also be identified (paragraph 4.82).

Socio-economics

4.13.18 Paragraph 2.13 of the NPSNN states that the SRN provides critical links between cities, joins up communities and connects other transport infrastructure. It provides a vital role in people's journeys, and drives prosperity by supporting new and existing development, encouraging trade and attracting investment. A well-functioning SRN is critical for safe and reliable journeys and the movement of goods in support of the national and regional economies.

4.13.19 Paragraph 2.16 advises that traffic congestion constrains the economy and impacts negatively on quality of life. It constrains existing economic activity, as well as economic growth, by increasing costs to businesses and damaging their competitiveness. Congestion can also lead to a marked deterioration in the experience of road users.

4.13.20 Nevertheless, the Government recognises that for development of the national road network to be sustainable it should be designed to minimise social, as well as environmental, impacts and improve quality of life (paragraph 3.2). Applicants are expected to avoid and mitigate social impacts in line with the principles set out in the NPPF. They should also provide evidence that they have considered reasonable opportunities to deliver social benefits as part of schemes (paragraph 3.3).

Agricultural land and holdings

4.13.21 Paragraph 5.168 of the NPSNN states that applicants should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, Applicants should seek to use areas of poorer quality land in preference to that of a higher quality.

Development plan policies

4.13.22 DCCS Policy CP16 Green Infrastructure seeks to maintain and enhance the City's green infrastructure to ensure that everyone has access to high quality natural and semi-natural habitats, green space and sport and recreation facilities. Among other things it states that, where new development has an adverse impact on a recognised important element of green infrastructure, that impact should be understood, minimised and residual adverse impacts mitigated. Policy CP17 similarly seeks to ensure access to public green spaces and that any loss would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location.

4.13.23 Policy AC1 City Centre Strategy aims to reinforce the central economic, cultural and social role of the city centre. Policy AC4 City Centre Transport and Accessibility seeks to maximise the efficiency of the transport network and promotes the use of cycling, walking and public transport.

4.13.24 EBCS Policy 15 Transport Infrastructure Priorities requires new development to include a sufficient package of measures to ensure that journeys by non-private car modes are encouraged. Policy 16 Green Infrastructure, Parks and Open Space aims to protect and enhance existing and potential green infrastructure corridors and assets.

The application

4.13.25 The elements of the application most relevant to the consideration of land use, social and economic matters are:

- Chapter 10 - Geology and Soils [APP-048];
- Chapter 12 - People and Communities [REP9-011];

- Figure 2.8: Kingsway Junction - Public Open Space Losses [APP-064];
- Figure 2.9: Markeaton Junction - Public Open Space Losses and Replacement [APP-065];
- Figures: 12.3A Kingsway junction [APP-147], 12.3B Markeaton junction [APP-148] and 12C Little Eaton junction [APP-149] – Facilities for Pedestrians and Cyclists Included in Scheme;
- Appendix 12.1: Walking, Cycling and Horse Riding Assessment [APP-226];
- Appendix 12.2: Human Health [APP-227];
- Planning Statement and National Policy Statement Accordance Table [APP-252];
- OEMP [REP14-008]; and
- TMP [REP14-011].

The Applicant's people and communities assessment

Introduction

4.13.26 The methodology used by the Applicant in its assessment of the effects of the Proposed Development on people and communities (ES Chapter 12) was said to be primarily derived from DMRB Volume 11, Section 3, Part 6: Land Use Part 8: Pedestrians, Cyclists, Equestrians and Community Effects and Part 9: Vehicle Travellers. However, it also acknowledged that there was no specific guidance for some elements of the assessment and professional judgement had been used. This applied to the criteria used to determine the sensitivity of, and magnitude and significance of effects on, NMUs and community and private assets (dwellings, community buildings and public spaces). The Applicant said that the DRMB did not provide specific guidance for the assessment of effects on human health.

4.13.27 Human health effects were characterised as positive, negative, neutral or uncertain. The assessment of community severance considered both new severance caused by increases in traffic levels and relief due to reductions in traffic levels.

4.13.28 Notable findings from the Applicant's review of baseline conditions included:

- four 12-hour surveys of NMUs on footpaths, cycleways, bridleways and national trails that cross the three A38 junctions or facilitate movement between them. The surveys were carried out on a bank holiday, weekends and weekdays in 2014 and 2018. Breadsall FPs 1, 2, 3 and 4 were found to have low levels of usage and, therefore, assessed as low sensitivity. Routes at other locations were found to be of medium, high, or very high sensitivity;
- there were several formal and informal open spaces around the Kingsway and Markeaton junctions. Other land uses were mainly urban. At Kingsway, these included a former hospital site which was undergoing redevelopment and the Royal Derby Hospital some 600m away in Uttoxeter Road. At Markeaton nearby uses included the Esso PFS and

McDonald's Restaurant, the RSfD and the Army Reserve Centre. At Little Eaton nearby urban uses included a garden centre, Starbucks restaurant and Ford Farm Mobile Home Park; and

- human health key indicators were identified by Public Health England at ward level. In six of the seven of the wards identified, the proportion of the population with general health classified as bad or very bad was lower than the national average. The only exception to this was Abbey ward. Five of the seven wards had a higher proportion of residents with a limiting long-term illness or disability than the national average.

Potential impacts

4.13.29 Prior to mitigation, potential construction phase impacts were anticipated to include:

- NMUs: temporary closure or diversion of footpaths and cycleways, potential strengthening works to the Ford Lane bridge and the severance of access to community facilities;
- private assets: loss of land from the industrial units at Kingsway Park Close, the Army Reserve Centre and four residential properties on Sutton Close and Ashbourne Road, alterations to the accesses to the McDonald's Restaurant and the Esso PFS at Markeaton, the demolition of properties on Queensway and Ashbourne Road, temporary use of land at Little Eaton junction for a construction compound and utilities diversion works;
- open space, community assets and severance: temporary use of land in Mackworth Park for drainage works, utilities diversion and access, use of land at Mill Pond for construction access, permanent loss of existing and proposed public open space, temporary use of land to carry out ecological mitigation works, temporary and permanent use of land within the RSfD site, temporary and permanent use of areas of informal open space and the permanent closure of the existing access into Markeaton Park from Markeaton junction and the reconfiguration of the existing park exit onto Ashbourne Road; and
- human health: reduction in access to services, social infrastructure and open space, temporary effects on physical and mental health as a result of changes in air quality, noise, neighbourhood amenity and accessibility and temporary changes to the length of some journeys to work.

4.13.30 Potential operational phase impacts prior to mitigation were anticipated to include:

- NMUs: permanent changes in journey length and amenity for pedestrians and cyclists, permanent changes to severance; permanent change in amenity for pedestrians and cyclists due to noise, air quality and visual effects associated with the operation of the road;
- private assets: no further impacts;
- open space, community assets and severance: no other direct impacts; and

- human health: changes to access to key services, social infrastructure and open space, permanent changes to physical and mental health as a result of changes in air quality, noise, neighbourhood amenity and accessibility, permanent changes to some motorised user, pedestrian and cycle journeys, changes in traffic flows which could impact on social cohesion and potential impacts on health resulting from climate change.

Design and mitigation measures

4.13.31 The Applicant said that it sought to design the Proposed Development to minimise the loss of public open space. Specifically, the proposal includes a link road from Kingsway junction to Kingsway Park Close rather than the original proposal of a link road from the junction onto Greenwich Drive South. The Applicant said that this option was selected as it would reduce long-term impacts on the area of public open space adjacent to Greenwich Drive South, as well as reduce traffic severance issues.

4.13.32 The OEMP [REP14-008] includes a range of measures to reduce impacts on human health and community assets during the construction phase. The TMP [REP14-011] includes measures to reduce the effects of construction activities on NMUs and the living conditions of nearby occupiers. These include:

- limiting construction working hours and vehicle movements and routes;
- minimising the need to close and divert footpaths and cycleway facilities and minimising closure and diversion durations. Where the closure of public footpaths and cycle routes would be required, safe and appropriate alternative means of access would be provided to ensure access would always be maintained in order to minimise temporary severance. The construction contractor would agree temporary diversion routes in advance with DCiC, EBC and DCC as applicable. Appropriate signage and notification all closures and diversions of footpaths and cycleways would be used to inform pedestrians and cyclists;
- having regard to bus routes when planning temporary diversions and traffic management measures;
- ensuring appropriate communications with local residents by means such as internet sites, newsletters, newspapers and radio announcements. A Community Relations Manager would be appointed who would be responsible for leading engagement with affected communities. The Applicant envisaged that a dedicated webpage would provide updates regarding construction progress, details of areas affected by construction, and the mitigation in place to reduce adverse effects. In addition, the HE Customer Contact Centre would be available to deal with queries. A complaint management system would be in place, in line with systems used by HE on other major infrastructure projects; and
- liaising with the RSfD during the construction phase regarding school access arrangements and the replacement of the sensory garden.

4.13.33 The need for communication and consultation with a wide range of potentially affected people and businesses during the construction phase was debated during the Examination and we return to this matter below.

4.13.34 The proposal would include the following measures intended to avoid or minimise effects during the operational phase of the Proposed Development:

NMUs

- Kingsway junction. National Cycle Route NR54/NR68/RR66 would be subject to a minor diversion due to the need to acquire a small section of public open space for the proposed Kingsway junction western roundabout embankment. Controlled crossings would be provided at Brackensdale Avenue at the widened A38 underbridge and at Kingsway Park Close. The uncontrolled pedestrian crossing of the A38 from Greenwich Drive North to Thurcroft Close would be closed permanently, with alternative routes being available either via Brackensdale Avenue or Markeaton junction. Uncontrolled crossings of side roads would be provided at Raleigh Street and Thurcroft Close on the eastern side of the A38. All other existing footpath and cycleway routes would be retained. A new shared footpath and cycleway would be provided across Kingsway junction from Mackworth Park, linking Mackworth to the A5111 Kingsway;
- Markeaton junction. Closure and realignment of the existing footpath and cycleway (Route of RR66) from Raleigh Street to the A52 and realignment of the route from the A52 to Kedleston Road. The combined footway and cycleways would be widened to 3m with clear signage. Controlled crossings would be provided on all arms of Markeaton junction. Controlled crossings would be provided on the A52 west of the Esso PFS to provide access into Markeaton Park from the west. Replacement of the existing Markeaton footbridge. All other existing footpath and cycleway routes would be retained; and
- Little Eaton junction. The existing left in, left out access onto the A38 from Ford Lane would be closed to vehicle access, landscaped and provided with facilities to enable continued access to adjacent pedestrian and cyclist routes. Controlled crossings for pedestrians and cyclists would be installed on the new A38 southern slip roads. A 3m wide dual footway and cycleway would be constructed between these crossings to allow NR54 to pass beneath the main carriageway of the A38. An uncontrolled crossing would be provided from the section of the NR54 that runs along the B6179 to provide access across the road. Breadsall FP3 would be subject to a minor diversion outside the new fence line and join Breadsall FP1. All other existing footpath and cycleway routes would be retained.

Open space, community assets and severance, and private assets

- replacement public open space would be provided using the area vacated by the buildings to be demolished on Queensway, areas of the existing A38 at Markeaton junction that would be removed and landscaped, plus the area occupied by the removal of the redundant Brackensdale Avenue access. The total area of 7,832m^2 of replacement public open space would be approximately 44m^2 larger than the public open space proposed to be removed. The replacement public open

space would be landscaped and provided with pedestrian and cycleway access as appropriate;

- access to the Esso PFS and McDonald's Restaurant would be via a revised and signalised access junction off the A52 together with an exit onto the new A38 diverge slip road;
- areas of informal open space used temporarily during the construction phase between Kingsway junction and Markeaton junction would be appropriately landscaped;
- the existing access from Markeaton Park onto the A52 would be reconfigured to create a new signalised access with pedestrians and cyclist facilities; and
- sites used temporarily during the construction phase would be restored and returned to the applicable landowner. The Army Reserves Centre and the owners of the Little Eaton construction compound have been consulted in order to confirm the use of these sites. Similarly land at the RSfD used temporarily during the construction phase would be appropriately restored and landscaped.

Development land

- the only development site considered to be potentially directly affected by the proposal would be the Kingsway hospital site to the south-east of Kingsway junction. The Applicant said that discussions took place with the owners and developers regarding the use of part of the site adjacent to Bramble Brook for the creation of flood storage areas with associated footpath, seating and ecological mitigation planting. These works would be integrated with the development proposal for that site.

4.13.35 The Applicant considered that the footpath and cycleway proposals would provide at least the level of provision that exists at present with enhanced provision where deemed appropriate and reasonable. In undertaking the design of the proposed footpath and cycleway facilities, the Applicant said that the requirements of the Equality Act 2010 were considered in order to take appropriate account of the needs of disabled users.

Summary of likely effects

4.13.36 The Applicant identified the following likely effects:

NMUs – construction phase:

- Effects on pedestrians and cyclists generally would be temporary minor adverse, which would not be significant. Three significant effects were identified. First, disruption to the well-used footway and cycleway at Kingsway junction would result in a temporary moderate adverse effect on pedestrians and cyclists. Second, the absence of the Markeaton footbridge for around 18 months would result in a temporary moderate adverse effect on users of the footbridge and the Bonnie Prince Charlie Walk national trail. Third, potential closure of the Ford Lane bridge to the west of the Little Eaton junction. If strengthening works are

required there would be a temporary moderate adverse effect on pedestrians and cyclists.

NMU's – operational phase:

- Kingsway junction. The new pedestrian and cyclist route across the A38 at Kingsway would improve connectivity between Mackworth and the A5111 Kingsway as well as connecting the new residential development at the Kingsway hospital site with Mackworth Park resulting in a permanent moderate beneficial effect on pedestrians and cyclists, which was considered significant;
- Markeaton junction. The realignment of the existing footway and cycleway (RR66) to the east of the A38 between Raleigh Street and Kedleston Road would improve amenity for pedestrians and the replacement of an existing zebra crossing at Ashbourne Road with two signalised crossings would increase the perception of safety. These changes were considered to result in moderate beneficial effects, which would be significant; and
- Little Eaton junction. No significant effects.

Public transport: no significant effects during the construction or operational phases.

Private assets, construction phase:

- The demolition of 15 residential properties on Queensway and two properties on Ashbourne Road was considered to result in a locally large adverse (significant) effect on directly affected parties, albeit that they would be eligible for financial compensation. However, given the relatively small number of dwellings affected compared with the Mackworth ward as a whole, and their relative isolation, the loss was considered a permanent slight adverse effect at the neighbourhood scale, which would not be significant.

Private assets, operational phase:

- No significant effects.

Development land

- No significant effects during the construction or operational phases.

Community facilities – construction phase:

- The Applicant had regard to the relatively small areas of public open space proposed to be taken up by the Proposed Development at Kingsway and Markeaton junctions compared with the total amount of open space available at these locations and the proposed provision of replacement open space. It, therefore, found that there would be a temporary slight adverse effect which would not be significant;
- the temporary use of open space for ecological mitigation would not have a significant effect;

- the effects of the Proposed Development on the RSfD were also assessed as not significant; and
- there would be no loss of open space or other effects on community facilities at Little Eaton.

Community facilities, operational phase:

- No significant effects.

Community severance, construction phase:

- At Kingsway and Markeaton junctions the Applicant found that the reduction in congestion on the A38 would reduce severance. It had regard to the availability of alternative routes when assessing the effects of changes to the routes people in those areas would need to make during the construction phase. It found that the effects of the changes would not be significant;
- the Applicant had regard to the sensitivity of users when assessing the potential disruption to journeys to the RSfD. It, nevertheless, found that the effects would not be significant;
- the changes to the length and reliability of public transport journeys was found to be not significant at any of the three junctions; and
- having regard to the low level of usage and the availability of alternative routes, the closure of the Ford Lane junction with the A38 to motor vehicles was assessed to be not significant.

Community severance, operational phase:

- At Kingsway and Markeaton, the increased capacity junctions would draw traffic away from nearby local routes, leading to a reduction in severance. No significant adverse effects were identified at these junctions or at the Little Eaton junction.

Human health, construction phase:

- Access to open space and nature – neutral effect;
- air quality, noise and neighbourhood amenity – negative effect for the closest receptors (between Kingsway junction and Kedleston Road junction and at the Ford Farm Mobile Home Site);
- accessibility and active travel – neutral;
- access to work and training – positive; and
- social cohesion – neutral.

Human health – operational phase:

- Access to healthcare services and other social infrastructure – positive;
- access to open space and nature – positive;

- air quality, noise and neighbourhood amenity. There would be a slight improvement in overall air quality at properties in the study area. Whilst part of the RSfD would experience a moderate increase in traffic noise, overall, there would be a slight reduction in noise levels for properties in the study area. The assessment found that, taken as a whole, the effects on air quality, noise and neighbourhood amenity as a determinant of human health would be positive;
- accessibility and active travel. The Applicant had regard to the predicted reductions in conflicts between motorised users and NMUs, the reduction in personal injury accidents and the improved connectivity for NMUs at each of the junctions. It found that the effect of the Proposed Development on accessibility and active travel as a determinant of health would be positive for residents in the study area;
- access to work and training – positive; and
- social cohesion - positive.

4.13.37 ES Chapter 12 [REP9-011] does not reach an overall conclusion on whether or not the effect of all of the people and communities matters it considers would be significant. That does not seem unreasonable given the diverse range of matters covered in the chapter.

The Applicant's agricultural land and holdings assessment

4.13.38 The Applicant considered the effect of the Proposed Development on agricultural land and holdings in ES Chapter 10 [APP-048]. It said that there were no affected agricultural land or holdings at Kingsway or Markeaton junctions. At Little Eaton junction agricultural soils would be affected and that Agricultural Land Classification (ALC) quality investigations were undertaken in 2015 and 2018. The latter survey included the site of the proposed floodplain compensation area. These investigations indicated that agricultural soils within the application boundary were predominantly of ALC subgrades 3a and 3b. We note that best and most versatile agricultural land is defined as land in ALC grades 1, 2 and 3a.

4.13.39 Farm assessment interviews with landowners were carried out in 2015 and 2017. These sought to establish baseline conditions and the agricultural circumstances of the land potentially affected and to identify the main impacts of the proposal and the potential means of mitigating any impacts. Seven farm holdings were identified, three of which were used for grazing, one for dairy, beef, arable and grazing, one for grazing and woodland (although the area affected by the proposal is mainly woodland) and one for turf production. The turf production holding was assessed to be of high sensitivity to change. The dairy, beef, arable and grazing holding was found to be of medium sensitivity. The grazing holdings were assessed to have low sensitivity.

4.13.40 Potential construction phase impacts were identified as the loss of agricultural soils (following the restoration of land required temporarily), severance, and the loss of, or disruption to, land, property, buildings, operational infrastructure and access. Other potential construction phase effects identified included the deposition of dust on sensitive crops, land uses or buildings; disruption to drainage, irrigation and water supply

systems; unintentional pollution of soil and water courses; spread of injurious weeds and construction noise.

4.13.41 Potential operational phase effects were identified as a reduction in the net area of agricultural land; permanent severance; the permanent loss of, or effect on, farm property, buildings and structures, and the consequential effects on the land use and farm enterprise.

4.13.42 Proposed mitigation where agricultural land would be required for temporary works would involve the protection and replacement of soil resources following the construction phase to reinstate pre-existing agricultural capability. A Soil Management Plan would be prepared and implemented by the contractor, taking into account the guidance provided in the relevant DEFRA Code of Practice. This mitigation is secured in the OEMP [REP14-008 PW-GEO6 and PW-GEO8].

4.13.43 The OEMP [REP14-008 PW-COM3, MW-BIO 8, MW-COM2, MW-COM3 and MW-COM4] also includes the following measures to avoid or reduce the effects on agricultural holdings:

- arrangements for the maintenance of farm and field accesses affected by construction;
- protection and maintenance of livestock water supply systems, where reasonably practicable;
- protection of agricultural land adjacent to the construction site, including the provision and maintenance of stock-proof fencing;
- adoption of measures to control the deposition of dust on adjacent agricultural crops;
- control of invasive and non-native species and the prevention of the spread of weeds generally from the construction site to adjacent agricultural land;
- adoption of measures to prevent, insofar as reasonably practicable, the spread of soil-borne, tree, crop and animal diseases from the construction area; and
- liaison and advisory arrangements with affected landowners, occupiers and agents, as appropriate.

Summary of effects

4.13.44 The Applicant's assessment found that the Proposed Development would not lead to significant effects on agricultural land or holdings. During the construction phase, less than 20ha of Grade 3a agricultural land would be lost, resulting in a minor effect. The loss of topsoil and subsoil were also considered a minor effect. During the operational phase, the potential gradual degradation of agricultural soils in the floodplain compensation area was found to be a negligible effect.

Issues considered during the Examination

4.13.45 The land use, social and economic matters considered during the Examination included:

- provision for NMUs during the construction and operational phases;
- the safety and convenience of the proposed footpath diversion at the Little Eaton junction;
- the adequacy of the proposed replacement public open space;
- the effects on visits to and events at Markeaton Park;
- the effects on city centre businesses, particularly during the construction phase;
- the Esso PFS and McDonald's Restaurant operations at Markeaton junction; and
- the effects on the RSfD.

Provision for NMUs

4.13.46 DCG [REP1-036 REP1-037] said that it was a member-based organisation representing 400 people in the Derby area and sought to promote cycling as an everyday means of transport. Whilst recognising the potential of the Proposed Development to create new and improved active travel routes and infrastructure, it had significant concerns that such potential would not be realised. It was also concerned regarding congestion and pedestrian and cyclist safety during the construction phase and that specific elements of the proposal did not make adequate provision for NMUs.

4.13.47 A SoCG was agreed between the Applicant, DCG and Sustrans [REP10-007]. It records that agreement had been reached on a number of those groups' specific concerns. Where agreement was not reached the position of DCG and Sustrans, with the Applicant's response, was recorded as:

- objection to the 2-lane exits from the new roundabouts onto the A38 slip road westbound and Kingsway Park Close. Applicant's response: two-lane exits to slip roads from roundabouts were proposed where traffic flows dictate. Providing only one lane in these locations could result in congestion. Nevertheless, the matter would be revisited during the detailed design phase;
- need to upgrade paths between Kedleston Road and the Proposed Development. Applicant's response: the paths are outside the Order land so are not within the scope of the Proposed Development. Any changes would be for DCiC to consider; and
- all crossings should have user operated lights to control traffic. There should be walking and cycling segregation. All active travel routes should meet the minimum accepted best practice design standard for shared use paths. Applicant's response: most of the proposed crossings would be signal controlled. Uncontrolled crossings would be used only where traffic flow was low. Shared pedestrian/cycleway facilities would be generally provided with a minimum width of 3m wherever possible.

4.13.48 Provision for NMUs was also discussed at ISH2 [EV-011 EV-012 EV-013]. DCG set out its position under the broad headings of the design of the facilities, the continuity of NMU routes during the construction phase, the mitigation of congestion during the construction phase (to encourage the growth of NMU journeys) and the safety of NMUs from construction traffic. It [REP3-033] also expressed concern that the TMP did not provide sufficient detail or give sufficient consideration to NMUs.

4.13.49 At ISH2, DCC considered that the proposal "*tried to maximise opportunities to encourage non-car travel, particularly seeking to ensure that the existing footpath and cycle network to and around the junction improvements is maintained or appropriately permanently or temporarily rerouted around the scheme*" [REP3-029]. DCiC acknowledged that the TMP makes provision for NMUs through the works and recognised that the A38 Behaviour Change Working Group (BCWG) would provide an opportunity for the Applicant to engage and use the group to refine the TMP [REP3-027].

4.13.50 In response to DCG, the Applicant acknowledged that the routing of NMUs would be an important part of the planning process to ensure that safe and segregated movements would be maintained, but was reluctant to include greater detail in the TMP pending the appointment of a contractor for the project [REP3-026]. Nevertheless a revised version of the TMP [REP14-011] was submitted which partially addressed DCG's concerns [REP9-041]. The outstanding matters can be summarised as:

- the TMP was still a motor-traffic management document. NMUs were not considered in the same level of detail;
- managing non-motorised traffic effectively would be essential if the current level of NMU traffic was to be maintained during the construction phase;
- insufficient detail had been provided on how NMU route diversions would be designed, managed, consulted on and implemented;
- there was no statement about maximising the growth of active travel during the construction phase;
- TMP Tables 2 and 3.1 should have companion tables to document the corresponding NMU restrictions and customer service requirements; and
- as well as the commitment to provide *"cycle ways (through the scheme) where they are currently located"*, cycleways should be provided everywhere a cycleway would be included in the final proposals, even if there was no such provision at present.

4.13.51 These concerns were also raised in our FWQ [PD-025]. In response, the Applicant [REP9-029 REP10-009] committed to operating the Fleet Operator Recognition Scheme to a minimum of silver standard with limited exceptions. The Applicant also committed to use reasonable endeavours to address DCG's outstanding concerns as set out above. The latest version of the TMP [REP14-011] includes broad provisions in line with DCG's concerns (see for example paragraph 5.2.3, 5.2.4 and 5.2.7). Specific matters are left for subsequent, more detailed, iterations of the TMP although there is a commitment to work with the BCWG to address DCG's concerns.

4.13.52 FoED [REP10-010 REP11-008] contended that the proposal would result in longer journeys for people from deprived wards walking across the Kingsway and Markeaton junctions into the city centre, to Royal Derby Hospital, to Markeaton Park and to the Aldi Supermarket. It also considered that the proposed changes to the Markeaton Park entrance would encourage car use. The Applicant [REP11-003 REP12-006] responded that the Proposed Development would not curtail public access to Markeaton Park. It said that its assessment in ES Chapter 12 [REP9-011] also showed that, during the operational phase of the proposal, there would be benefits for users of public transport due to reduced congestion on the A38. It considered that the proposal would provide a range of facilities for pedestrians and cyclists which would provide safer access options into Markeaton Park, whilst some routes would experience improvement in amenity and an increased perception of safety.

Conclusions on provision for NMUs

4.13.53 The Applicant has identified a significant adverse effect on NMUs during the construction phase due to the disruption of a Kingsway junction cycle and footpath. However, completion of the proposed works would result in an improvement of the cycle and foot path route across this junction. The existing route across the junction is difficult to navigate and the new route would strengthen the connection between the residential areas of Mackworth to the west of the junction and the retail and other facilities to the east. Although the crossings of the slip roads at Kingsway junction would be uncontrolled, we accept the Applicant's evidence that the level of vehicle movements on the slip roads would not justify the use of signal controls.

4.13.54 Concerns have been expressed regarding poor air quality affecting the health of people crossing the junctions on foot or by cycle. However, we have found no substantive evidence to show that the effects would be materially worse than the existing position, even having regard to the consequences of COVID19. Overall, we agree with the Applicant that, during the operational phase, the proposal would be likely to result in a significant beneficial effect for NMUs crossing Kingsway junction.

4.13.55 The absence of the Markeaton footbridge for around 18 months was also identified as a significant temporary adverse effect. The results of a public consultation on the replacement of the footbridge showed a preference to re-built it in the current position (see discussion in relation to the veteran tree in Section 4.12 above). That being the case, it is inevitable that there would be a period when the bridge would be unavailable. The Applicant has indicated that it would seek to minimise the rebuilding period and there is nothing to indicate that the period envisaged would be any longer than would be reasonably necessary to complete the works. Alternative routes to cross the A38 in the vicinity would be available, albeit that they would be less convenient. Consequently, we accept that the temporary absence of the footbridge would be unavoidable. The replacement bridge would result in a long-term improvement insofar as it would meet current standards for disabled access. Nevertheless, there would be a significant temporary adverse impact on NMUs.

4.13.56 The potential closure of the Ford Lane bridge for strengthening works was the subject of considerable discussion during the Examination (see Section 4.7). It appears that it may not be necessary to undertake the strengthening works, but if it is, there would be a significant temporary adverse effect on NMUs.

4.13.57 The concerns regarding provision for NMUs broadly fall into three categories: the adequacy of the measures set out in the TMP, the extent to which the Proposed Development promotes active travel and the effects of the proposal on residents without access to a private car and who are, therefore, more reliant on walking, cycling or public transport.

4.13.58 The submitted TMP [APP-254] was an outline document which did lack detail. However, it evolved during the of the Examination. The latest version [REP14-011] includes substantive commitments to ensure that the needs of NMUs are properly catered for during the construction phase. Further detail is still required, although we recognise that this does depend to an extent on the involvement of the contractor for the project. OEMP [REP14-008 MW-TRA2] and rDCO (Appendix D) Requirement 11 would secure the submission and approval of a detailed TMP and there are provisions to ensure that appropriate consultations take place. We note that the LHAs were satisfied with the TMP [REP14-011] by the close of the Examination. We are also encouraged by the engagement of the relevant parties with the BCWG and have confidence that this would help to shape future iterations of the TMP so as to ensure that the needs of NMUs would be likely to be addressed appropriately.

4.13.59 Notwithstanding the temporary adverse effects identified above, overall, we find that the Proposed Development addresses the needs of NMUs during the construction and operational phases. Moreover, it takes reasonable opportunities to support non-car transport modes.

Breadsall footpath diversion

4.13.60 The proposal includes the closure of Breadsall FP3 which runs from Rectory Lane on the western edge of the village to the existing Little Eaton junction. The definitive route of FP3 then runs south along the east side of the junction. However, it is also possible to cross the A38 and B6179 using informal routes. This allows access to the facilities on the north side of the junction (including Starbucks and a garden centre) as well as the eastern end of Allestree and riverside footpaths.

4.13.61 BPC [REP1-028] objected to the proposed diversion of FP3 which, it argued, would add some 650m to the existing route. Users of the new route would need to walk to the south of the proposed junction, cross the A61 via a new pedestrian crossing near the old Croft Lane and then northward again on the western side of the A61. BPC said that the diverted route would be almost a mile long which would be unacceptable and effectively stop pedestrians using the footpath. Crossing the A61 to the south of the new junction was considered by BPC to be unsafe. BPC also said that the footpath had the appearance of having already been diverted on the ground. It said that the original route has been allowed to become very overgrown in an apparent attempt to deter use of the existing route. We

note that the Applicant's proposed diversion route is actually to the north of Croft Lane, where the existing FP1 crosses the A61.

4.13.62 BPC requested the retention of the existing route of FP3 and a new pedestrian route to the B6179 across the two slip roads and beneath the A38 main carriageway that it said would be safer than the existing route.

4.13.63 The matter was discussed at ISH2 [EV-011 EV-012 EV-013] when the Applicant submitted a Little Eaton Junction Existing and Proposed Rights Of Way Plan [REP3-016]. The Applicant [REP3-026] also referred to the fact that FP3 does not cross the existing junction and that the existing informal crossing does not meet its design standards. Further, that its surveys showed that usage of FP3 was very low and that safe alternative routes from Breadsall to Little Eaton village and the facilities on the north side of the junction would be available on completion of the proposal.

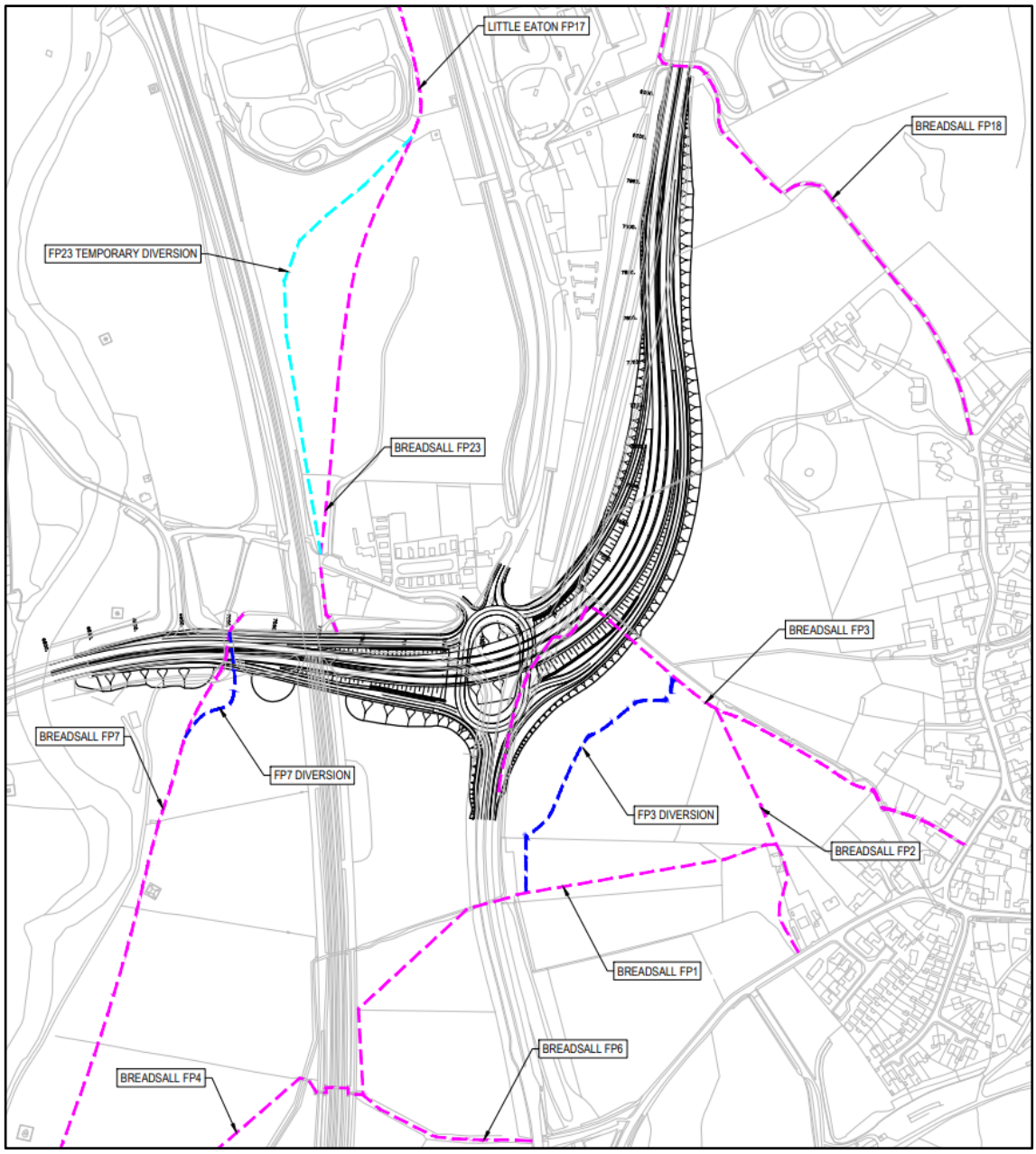

Figure 4.13.1: Little Eaton junction rights of way [extract from REP3-016]

4.13.64 The question of the proposed location of the A61 crossing was also discussed at ISH2. There is a separate proposal to provide a toucan crossing of this road at the end of Croft Lane. However, DCC advised that the proposal is subject to further survey and consultation. Nevertheless it also confirmed that it did not object to the Applicant's proposed diversion of FP3 [REP3-029].

4.13.65 In response to our SWQ [PD-014] , BPC maintained its objection to the diversion based on the length of the diverted route and the unsafe crossing of the A61. It also questioned whether the low usage of the existing route is due to lack of maintenance and the danger posed by the existing crossing points [REP4-028].

4.13.66 At ISH4 [EV-019], the parties essentially maintained their positions regarding the diversion of FP3. DCC also re-iterated that work on the provision of the toucan crossing of the A61 was still under way. There were also on-going discussions between the Applicant and DCC [REP6-029] regarding surfacing the part of the diverted route from the point where FP1 crosses the A61 to the site of the proposed toucan crossing. However, we consider that both matters fall outside the scope of our Examination.

Conclusions on Breadsall footpath diversion

4.13.67 The diversion of FP3 at Breadsall would result in a longer journey for people wishing to walk from the village to the facilities on the north side of Little Eaton junction, the riverside walks and the eastern end of Allestree. However, the existing route advocated by BPC would involve sections which are not public footpaths and crossing the existing junction at points which are unmarked and unsafe.

4.13.68 The Applicant's diverted route would involve crossing the A61. It is unfortunate that the decision on whether to provide a toucan crossing at that point had not been made by the time the Examination closed. Nevertheless, there appears to be a willingness on the part of the Applicant and DCC to provide the toucan crossing. However, even if it is not provided, the crossing point on the A61 would be formally recognised and marked. It would also be on a straight section of the road some distance from the new junction where drivers are less likely to be distracted by other vehicle movements than would be the case at the crossing points on BPC's proposed route.

4.13.69 Whilst the proposed route would be considerably longer than that suggested by BPC, the Applicant's survey evidence indicates that the existing route is lightly used and, therefore, we consider that it is unlikely to be regarded as an essential facility by a significant number of people. Indeed, BPC tacitly accepted that safety concerns regarding the existing route probably contribute to its low usage. It is also relevant to note that FP18 would continue to provide a fairly direct route between Breadsall and the central part of Little Eaton village. On balance therefore, we find that the safety benefits of the proposed diversion of FP3 would outweigh the reduction in convenience and attractiveness that it would cause. The OEMP [REP14-008 MW-COM5] and Requirement 3 of the rDCO (Appendix D) secure the stopping up of the existing route and the provision of the diverted route.

Replacement public open space

4.13.70 Details of the proposed loss of open space and its replacement are set out in detail in the Applicant's Planning Statement [APP-252] and summarised in Section 2.2 above. All of the land in question falls within the administrative area of DCiC. In quantitative terms, the Proposed Development would result in a small addition of 44m^2 of public open space. Whilst there was no substantive dispute over the quantum of replacement open space during the Examination, its suitability was discussed. Our FWQ [PD-005] referred to the test under s131(12) of the PA2008, which requires replacement open space to be 'no less advantageous'. We sought a comparative assessment of the existing and proposed replacement areas. The Applicant's response [REP1-005] can be summarised as:

- Kingsway open space proposed to be removed. The land within Greenwich Drive South would mostly consist of a landscape buffer to the edge of the A38. The land adjacent to Mackworth Park would comprise in part a planted wooded area outside the formal public open space designation for Mackworth Park (although it was proposed as a formal designated open space within DCiC's emerging local plan). It would support accessibility to the formal public open space at either side, but as such was not considered to be a destination of itself. The land would have good accessibility from various points along Greenwich Drive South and would be convenient and highly accessible to the residential population to the west of the Kingsway Junction.
- Kingsway junction proposed replacement open space. On completion of the proposal the land at Brackensdale Avenue would lie adjacent to an existing area of informal open space. This combined open space land would be more open with greater flexibility for different types of recreational use. It would support the proposed formal designation of land as public open space since it would be a larger area of land, that would not be impacted by passing traffic along Brackensdale Avenue.
- Markeaton junction open space proposed to be removed. This land would comprise various linear strips on the edge of Markeaton Park. Its proximity to the A38 and A52 roads would limit its function as actively useable public open space. The land had the appearance of highway verge and offered a degree of separation between the main open areas of Markeaton Park and the surrounding highway infrastructure. As such, it functioned as a means to access Markeaton Park, rather than as a destination for recreational purposes. Although Markeaton Park was a high value recreational space, the areas proposed to be lost performed more poorly in their functionality and their loss was considered unlikely to erode the functional value and quality of Markeaton Park.
- Markeaton junction proposed replacement open space. The land at Queensway would lie adjacent to an existing area of public open space to the northeast. Its overall linear nature would reflect the characteristics of the land it was proposed to replace in that it would form direct links with adjoining public open space. The replacement land would be a larger, more consolidated open space and would be appropriately landscaped. Consequently, the replacement land was considered to represent a destination in its own right, rather than simply

an area to pass through. Markeaton Park draws local and regional visitors. Whilst the replacement land would lie on the other side of the A38, it would be highly accessible and convenient for users via the replacement Markeaton footbridge and through existing and proposed public footpaths. It was considered to complement and enhance both Markeaton Park and the existing adjacent public open space land.

4.13.71 In its response to our FWQ [PD-005] DCiC was broadly content with the replacement open space at Kingsway junction, but questioned the relatively narrow replacement open space at Queensway and considered that the attenuation tanks proposed to be located within the space would compromise its functionality. It also sought greater use of SuDs in the area [REP1-034]. However, in subsequent submissions, DCiC accepted that the Queensway land would be suitable and this was confirmed in its SoCG [REP7-020]. The OEMP [REP14-008 D-RD1] includes a provision to review the further use of SuDS in the Queensway replacement open space.

4.13.72 FoMP objected to the acquisition of land at Markeaton junction for use as replacement open space and questioned whether the land under the replacement Markeaton footbridge would function as replacement open space [REP9-042 REP12-015]. FoED drew attention to paragraph 5.174 of the NPSNN which advises that the SoS should not grant consent for development on existing open space unless there is surplus or excess land, or the benefits of the project outweigh the loss of those facilities. It also suggested the Proposed Development would harm the poorest sectors of society by taking away land and giving it to the more affluent [REP10-010]. Nick Arran [AS-040] and Pauline Inwood [AS-042] were also concerned regarding the loss of green space at Markeaton Park.

4.13.73 In response to these lines of objection the Applicant [REP12-006 REP13-006] argued that powers of CA would only be granted if they are in the public interest and that compensation would be provided to those who experience loss from the use of CA. It considered that the replacement land would be of equal standing in qualitative terms to the land proposed to be lost and would ensure no net reduction in the amount of public open space. The Applicant also referred to DCiC's agreement to the replacement open space proposals and considered that they comply with the NPSNN.

Conclusions on replacement public open space

4.13.74 The proposal would result in the loss of areas of public open space, including part of the edge of Markeaton Park adjoining the A38. Markeaton Park is highly valued locally, and rightly so. However, the recreational value of the area proposed to be taken is compromised by its proximity to the A38 and we have already found in Section 4.12 that the landscape and visual impact of the proposal on this area could be adequately mitigated in time.

4.13.75 The proposed replacement open space would be on the opposite side of the A38 at Queensway. It would not, therefore, be contiguous with Markeaton Park and would perform a different function. However, the replacement land would link with an existing area of open space to the northeast at Mill Pond. The small part of the open space which would be below the

replacement footbridge would be open and accessible. Whilst its functionality would be compromised to a degree, we consider that it would nevertheless be part of, and contribute to, the overall provision. The replacement open space would be landscaped and provided with pedestrian and cycle routes appropriate to its linear shape.

4.13.76 No evidence emerged during the Examination to question the size or value of the replacement open space at Kingsway and we see no reason to disagree with the Applicant's justification of this element of the proposal. Overall, the proposal would result in a small additional area of public open space and we find that the replacement land would be no less advantageous than the area to be lost. The replacement land would be publicly accessible and, therefore, we do not consider that the proposal would harm the poorest sectors of society by taking away land. The replacement open space is secured under Article 38 of the rDCO (Appendix D) and laid out and landscaped in accordance with Requirements 5 and 12.

Markeaton Park visitors and events

4.13.77 During ISH4 [EV-019] DCiC expressed concern regarding the effects of construction access and potential severance on the commercial operation of Markeaton Park. It said that more than 100 events were held in Markeaton Park annually, overall visitor numbers exceeded 1.6 million per year and that car parking also generated substantial revenue for the Council. DCiC was of the view that careful construction plans would be needed to ensure little or no disturbance of these activities in order to maintain the popularity and patronage of Markeaton Park [REP6-027].

4.13.78 As set out above in relation to the replacement open space and provision for NMUs, FoMP [REP9-042 REP12-015] and FoED [REP10-010] also expressed concerns regarding the effects of the proposal on access to, and usage of, Markeaton Park.

4.13.79 The Applicant [REP7-007] recognised that careful traffic management would be needed during the construction phase. The TMP [REP14-011] and the OEMP [REP14-008 MW-TRA2] seek to minimise the effects of construction activity on access to Markeaton Park for routine visits and events. These provisions also refer to the need for the Applicant's CSM to regularly liaise with DCiC regarding routine park access and arrangements for access to Markeaton Park during organised events [REP7-007].

Conclusions on Markeaton Park visitors and events

4.13.80 The Applicant has acknowledged the need to liaise with DCiC during the construction phase in order to minimise disruption to events and routine visits to Markeaton Park. This requirement is formalised in the OEMP [REP14-008]. The BCWG and the appointment of a CSM by the Applicant would provide further opportunities to ensure good co-ordination.

4.13.81 During the operational phase, the proposal provides for signal-controlled crossing on all arms of the Markeaton junction roundabout, as well as on Ashbourne Road a short distance to the west of the revised access to Markeaton Park. There are no existing signal-controlled crossings of Ashbourne Road close to the main park entrance. The proposal would,

therefore, improve access to Markeaton Park for pedestrians coming from the south side of Ashbourne Road, including the Esso PFS and McDonald's Restaurant facilities. Therefore, we find that, overall, the Proposed Development would not have an adverse effect on Markeaton Park visitor convenience and events during the construction phase but would have a slightly beneficial effect in the long term, that would not be significant.

City centre businesses

4.13.82 Intu Derby [REP1-044 REP3-037 REP11-010] owns and operates a large shopping centre in the city centre. Whilst welcoming the Proposed Development in principle, it was concerned that the disruption during the construction phase would cause delays and inconvenience for visitors to the city centre and, therefore, potentially reduce trade in city centre shops including those in its centre.

4.13.83 Intu Derby [REP1-044 REP3-037 REP11-010] sought assurance that the proposed works would be co-ordinated with other highways schemes in the region in order to avoid cumulative impacts. Specifically, it pointed to the need to ensure that the measures identified in the TMP would be properly resourced and flexible, that they identified and addressed particular congestion issues, sought to minimise disruption during peak shopping times of the day and times of year (such as Christmas) and included good road signage and media messaging. It also sought funding for mitigation measures and effective communications and stakeholder engagement during the construction phase.

4.13.84 The effect of the proposal on local businesses was also discussed at ISH2 [EV-011 EV-012 EV-013]. We asked for more evidence of the potential effects of the Proposed Development on city centre businesses. DCiC advised that its retail study does not address that matter [REP3-027]. Intu Derby pointed to its experience elsewhere including a harmful effect from the A1 Western Bypass scheme on its Metrocentre.

4.13.85 Amongst other things, the Applicant [REP12-006] said that it would liaise with the promoters of other road schemes in the area and identify the works that would run in parallel as part of the preparation for the proposal. These matters are addressed in Section 5.7 of the TMP [REP14-011]. The Applicant advised that it had no direct funding available to support the mitigation measures sought by Intu Derby. However, it said that other sources of funding may be available, and this would be pursued by its Travel Demand Management Manager. The Applicant also said that its programme for the construction phase allowed, to a degree, for unplanned events being experienced and therefore that there is contingency built into its programme.

4.13.86 Many of the other concerns of Intu Derby relate to the TMP. This document evolved significantly during the of the Examination. We have considered it in Section 4.7 and found that, whilst there would inevitably be delays and congestion during the construction phase, the TMP has been supported by an appropriate level of assessment. Further, that provisions in the TMP [REP14-011] and OEMP [REP14-008] secure further detailed assessment,

on-going development of the traffic management proposals and engagement with relevant parties in order to deal with unforeseen issues.

4.13.87 It is also relevant to note that, during the of the Examination, the work of the BCWG gained momentum. This group includes the Applicant, DCiC, DCG as well as Intu Derby and others. It provides a forum for a wide range of stakeholders to engage with the project on matters including potential disruption during the construction phase. Although the formation of the Group fell outside the DCO process, we note that it is referred to in the TMP [REP14-011] and that relevant parties to the Examination appear to wish to constructively engage with the initiative.

Conclusions on city centre businesses

4.13.88 We recognise that, during the construction phase, the proposal would have the potential to disrupt visits to the city centre due to delays and inconvenience. We also accept that such disruption, and even the perception that it would occur, could be harmful to city centre businesses, although the evidence of harm was only anecdotal.

4.13.89 However, the TMP [REP14-011] and the OEMP [REP14-008] contain measures to minimise congestion and to provide for on-going consultation and public communication. Again, the BCWG would help to achieve these aims. The Applicant also said that it was committed to co-ordinating the works with other highways schemes in the region. With these measures in place, we consider it likely that the risk of disruption would be reduced to an acceptable level. Further, as Intu Derby acknowledged, in the longer term, the Proposed Development should reduce congestion and delays around the city centre and so benefit businesses there.

Esso PFS and McDonald's Restaurant

4.13.90 The operators of these businesses (Euro Garages and McDonald's Restaurants) had a number of mutual concerns [REP1-040 REP1-045 REP3-035 REP3-036 REP3-040 REP6-038 REP6-039 REP6-040 REP6-041] regarding the effects of the proposal on their ability to continue to run viable businesses at their adjoining sites. The sites currently share access and egress points on the northbound carriageway of the A38 and on Ashbourne Road immediately to the west of the Markeaton junction.

4.13.91 The initial concerns of both operators related to the proposed loss of direct access from the A38, the restriction of the proposed slip road access to egress only, the capacity and safety of the proposed signalised access from the A52, the effect of the proposal on the access rights that each company had over the other's land and the absence of advanced signage of the facilities. In addition, McDonald's had concerns regarding the need to change the movement of heavy vehicles through its site which it said could result in the need to strengthen part of its car park. McDonald's considered that the changes to HGV movements resulting from the proposal could also have implications for refuse collection and neighbour relations. FoMP expressed concern regarding the safety of the proposed access to the Esso PFS and McDonald's Restaurant facility [REP12-015].

4.13.92 These matters were the subject of on-going dialogue and the exchange of additional information between the operators and the Applicant throughout much of the Examination. They were also discussed in ISHs 2 [EV-011 EV-012 EV-013], 4 [EV-019] and 6 [EV-024]. As a result of this dialogue considerable progress was made towards bridging the gap between the parties. We summarise below the position regarding each concern at the close of the Examination.

4.13.93 Refuse collection and neighbour relations. This matter was resolved on the basis that the refuse collection vehicle would enter the site via the A52, rather than via Enfield Road (a largely residential road) [REP10-012].

4.13.94 McDonald's Restaurant car park strengthening. McDonald's supplied the Applicant with survey information on the existing car park. McDonald's continued to believe that part of its car park would need to be strengthened and discussions were ongoing at the close of the Examination. However, if further works were required they would be achieved through financial compensation [REP15-012]. As such, this matter need not affect our recommendation on the DCO.

4.13.95 A38 Ingress. The operators were concerned that the loss of direct access into their facilities from the A38 would reduce their 'presence' on the main road. They said that it would also be less convenient for visitors to their facilities and would increase the number of vehicle movements passing through the proposed Markeaton junction and the revised access into their sites from the A52.

4.13.96 The Applicant submitted a Technical Note [REP4-021] on the provision of access to the sites from the A38. It advised that up to date HE guidance in CD112 stated that *"Direct accesses and priority junctions shall not be provided on connector roads".* The proposed slip road would be a connector road for the purposes of the guidance. The Technical Note also set out options for the provision of access from the slip road and reported discussions held with the HE's Safety, Engineering and Standards team. That team did not support the operator's preferred ingress/egress option on safety grounds but was open to the possibility of an egress only option. The operators accepted that consideration of safety matters was the correct approach, albeit that they questioned whether the Applicant was taking the same approach to the consideration of the A52 access [REP6-039 REP6-41]. The Applicant subsequently confirmed that the provision of egress only was acceptable to the HE's Safety, Engineering and Standards team.

4.13.97 A52 Access. The operators and the Applicant exchanged traffic modelling information during the Examination and agreed that the A52 access would have adequate capacity to serve the facilities [REP15-009 REP15-012]. However, the operators remained concerned that the proposed access would be potentially unsafe. Swept path analyses and a Road Safety Audit were produced by the operators to support their position [REP6-040]. The concern was largely due to the constricted design of the access which would leave drivers with little time and space to make complex manoeuvres. The turning radii for large vehicles was also considered to be tight.

4.13.98 The Applicant [REP7-007 REP10-009] considered that the proposed access would be no worse than the existing arrangement. The operators said that the signalisation of the junction, and the need to increase its capacity as a result of the closure of the entry to the sites via the A38, meant that the existing and proposed situations were not comparable. They also questioned whether any necessary adjustments to the proposed access could be achieved within existing land ownerships [REP15-009 REP15-012]. DCiC, as the LHA, considered that the proposed access would be acceptable in principle, subject to changes to improve its safety and operation, which could be achieved during the detailed design phase [REP14-032].

4.13.99 Access rights. The operators accepted that the way in which their sites would operate following implementation of the Proposed Development would not generally affect their existing rights. However, they remained concerned regarding the implications of the loss of the access via the A38 [REP15-009 REP15-012]. Again, the matter was the subject of on-going dialogue at the close of the Examination, but we consider that this is a compensation issue rather than one requiring material adjustments to the Proposed Development.

4.13.100 Advance signage. The Applicant was sympathetic to the operators' request to provide advance Trunk Road Service Area signage for the operators' facilities [REP7-007]. However, it said that the level of provision at the facilities did not meet the requirements for such signage (mainly the lack of HGV parking) as set out in HE's Circular 2/2013. Euro Garages supplied information showing that facilities elsewhere which it considered lacked similar provision had, nevertheless, been provided with advance signage [REP15-010]. At the close of the Examination the Applicant had been unable to secure a relaxation of the Circular 2/2013 requirements from the relevant department within HE. However, discussions were on-going and the Applicant considered that the matter could be resolved outside of the DCO process [AS-061].

Conclusions on Esso PFS and McDonald's Restaurant

4.13.101 The Proposed Development would have direct effects on the operation of the Esso PFS and McDonald's Restaurant facilities at the Markeaton junction. The reduction in the 'presence' of the facilities on the main A38 carriageway would be an inevitable consequence of the configuration of the junction layout. After considerable investigation, it became apparent that the option of entry into the facilities from the slip road would not meet current safety standards. The provision of advance signage of the facilities would go some way to mitigating the loss of direct access to the A38.

4.13.102 Whilst that provision had not been secured at the close of the Examination, we consider that the extent of any commercial harm suffered by the businesses would be a matter for financial compensation rather than something which weighs against making the DCO. Any adjustment necessary to the access rights enjoyed by Euro Garages and McDonald's and any strengthening needed to the McDonald's Restaurant car park would also fall into this category.

4.13.103 As proposed, the access to the facilities from the A52 would be tightly configured. We recognise there is limited scope to refine it during the detailed design phase due to land ownership constraints. However, both the Applicant and DCiC as the LHA considered that the proposal was acceptable in principle and that some improvement to it would be possible within the land ownership constraints. We consider that the operators have not provided sufficient evidence for us to disagree with the Applicant and DCiC on this point.

4.13.104 The operators questioned the Applicant's contention that the proposed access would be no worse than the existing situation. However, we consider that the signalisation of the access should allow for more control of vehicle movements and speeds and, as the Applicant noted [REP10-009], there would be scope to adjust the signals in response to experience of the actual operation of the junction. Whilst the closure of the A38 would result in more movements through the proposed access than the existing access, this change is accounted for in the capacity modelling which was agreed by the operators. Overall, therefore, we consider that the proposed access from the A52 would be capable of operating safely and would be unlikely to lead to undue congestion.

RSfD

4.13.105 In its RRs the RSfD sought the early provision of an aesthetically pleasing noise barrier to mitigate the effect of traffic noise and assurances regarding the air quality impacts of the Proposed Development [RR-019 AS-22].

4.13.106 In terms of noise mitigation, the Applicant responded [REP1-003] that a 4m high reflective noise barrier would be installed on the western boundary of the school, as illustrated on Environmental Masterplan ES Figure 2.12C [APP-068]. With the proposed noise barrier in place, the Applicant considered that potentially significant increases in road traffic noise would be limited to several facades at Lydia House and the Karten building. Lydia House is used as residential accommodation by pupils. The affected sections of the Karten building are offices and meeting rooms and were therefore considered less sensitive. At all other school buildings, the change in traffic noise levels was predicted by the Applicant to be not significant. The Applicant also considered that, with the Proposed Development in place, traffic noise levels at the worst affected school buildings would be similar to current traffic noise levels at other parts of the school.

4.13.107 We note that the RSfD would be consulted on the details of the noise barrier and the Applicant undertook to provide the barrier early in the construction phase, prior to the demolition of the adjoining houses on Queensway. These matters are secured in OEMP [REP14-008 MW-NO17 and D-N4].

4.13.108 With regard to air quality, the Applicant advised that air pollutant concentrations at the school were achieving the national and European air quality criteria set to protect human health and would continue to do so during both the construction and operational phases [REP1-003]. It said that the air quality criteria had been set to protect the most vulnerable members of society which included children. The Applicant considered that

specific additional air quality mitigation measures were, therefore, not necessary although the OEMP [REP14-008 MW-AIR1 and MW-AIR2] does include a range of general measures to mitigate air quality impacts.

4.13.109 Other concerns expressed by the RSfD were addressed and agreed as set out in the SoCG [REP8-003].

Conclusions on RSfD

4.13.110 The Applicant engaged constructively with the RSfD in order to meet its concerns. Whilst the RSfD would be one of the receptors experiencing more direct air quality and noise impacts, no evidence was presented during the Examination to show that the effects would be greater than those assessed by the Applicant. Those effects are considered in Sections 4.8 and 4.9.

Overall Conclusions on land use, social and economic

4.13.111 Inevitably with a proposal such as A38 Derby Junctions, which seeks to upgrade existing infrastructure in three locations, two of which are largely urban, there would be numerous points of interaction with existing pedestrian, cycle and public transport routes. Moreover, it would be possible to identify numerous opportunities to make improvements to existing facilities close to the proposal.

4.13.112 We agree with the Applicant that the Proposed Development would be likely to result in significant adverse effects on NMUs during the construction phase due to the disruption to a cycle and footpath at Kingsway junction, the removal of the Markeaton footbridge and potential works to the River Derwent bridge on Ford Lane. Subject to the greater detail that would be provided in subsequent versions of the TMP under the OEMP [REP14-008 MW-TRA2], we find that the proposal would otherwise make adequate provisions for NMUs during the construction phase. We also consider that, on completion, the Proposed Development would make the necessary linkages with existing routes and, in some cases, would improve accessibility across the A38. Some existing routes would be altered or extended, but this has been justified on safety grounds. We consider that the alternative routes proposed in these cases would not be excessively long or inconvenient for users.

4.13.113 Whilst interested parties suggested further opportunities to improve facilities for NMUs in the vicinity of the proposal, we recognise that the project is defined in scope and budget. Nevertheless, we welcome the Applicant's willingness to investigate the use of other funding to support such opportunities.

4.13.114 We find no substantive evidence to suggest that the proposal would have a significant detrimental effect on public transport services during the construction or operational phases. Indeed, during the operational phase, the easing of congestion should improve the reliability of bus journeys passing through the junctions.

4.13.115 This benefit can be considered along with the permanent moderate beneficial effects for walkers and cyclists at the Kingsway junction and users of the Regional Cycle Route (RR) 66 between Brackensdale Avenue

and Kedleston Road. On the other hand, there would be temporary adverse effects from absence of the Markeaton footbridge, the possible disruption to the Ford Lane footbridge and disruption and diversions for pedestrians and cyclists using the shared footway and cycleway east of Kingsway junction. On this basis, we are satisfied that appropriate consideration has been given to NMUs and, as such, we find that the Proposed Development would comply with paragraphs 3.16, 3.17, 3.20, 3.21 and 5.205 of the NPSNN as well as EBC Policy 15.

4.13.116 Having found that the Proposed Development would make adequate provision for the needs of NMUs, we are not persuaded that it would have a particularly harmful effect on residents who are more reliant on walking, cycling or public transport. The related concerns expressed by parties regarding air quality impacts are dealt with in more detail in Section 4.8. The Applicant considered the needs of disabled users in the design of the footpath and cycleway facilities and nothing emerged during the Examination for us to call into question that aspect of the proposal. As such, we consider that the Proposed Development would be accessible to the community as a whole and, therefore, comply with paragraph 3.21 of the NPSNN.

4.13.117 Notwithstanding the concerns of BPC, we have found that the proposed diversion of the public footpath FP3 at Breadsall would be more satisfactory than the retention of the existing route. As such, the proposal would accord with paragraph 5.185 of the NPSNN.

4.13.118 We found that the Proposed Development would make adequate provision for the loss of public open space in both quantitative and qualitive terms. The replacement open space would be reasonably well related to existing green spaces and there is nothing to suggest that the proposal would inhibit access to existing green infrastructure. Consequently, we find that the Proposed Development would accord with paragraphs 5.162, 5.166, 5.174, 5.175 and 5.181 of the NPSNN. It would also be consistent with DCCS Policies CP16 and CP17 and EBCS Policy 16.

4.13.119 Where human health matters were raised during the Examination, they were largely in the context of air quality effects or accessibility to facilities. Air quality is considered in detail in Section 4.8 and we have considered access to facilities in this section. In both cases, we find that there would be unlikely to be any significant effects. In reaching that conclusion we note that the Applicant's findings on human health matters were not disputed by Public Health England or the Environmental Health departments of the relevant LAs.

4.13.120 The Applicant set out a fairly comprehensive assessment of human health effects, albeit that it did not conclude in terms of significance of effects.

4.13.121 It found that the proposal would not have adverse effects on access to community facilities or severance during the construction and operational phases. There would be modest reductions in severance at the Kingsway and Markeaton junctions as a result of the reduction in congestion on the A38 and the transfer of motorised trips from nearby local routes. We have considered above the concerns related to changes to NMU routes during the

construction and operational phases raised during the Examination. No other substantive evidence emerged during the Examination to cause us to disagree with the Applicant's assessment. As such, we find that the Proposed Development would address existing severance issues in accordance with NPSNN paragraphs 3.17 and 5.205.

4.13.122 Accordingly, we accept the Applicant's assessment that the effect of the proposal on human health and social cohesion would be largely positive and we therefore consider it unlikely that there would be any significant human health effects overall. The Proposed Development would therefore comply with paragraphs 4.79 to 4.81 of the NPSNN.

4.13.123 The proposal would result in the loss of 15 dwellings at Queensway and another two at Ashbourne Road. These losses would have a large adverse effect that would be substantial at a very local level. However, the properties in question are located between the A38 and institutional uses (the RSfD and the Army Reserves Centre) and are, therefore, somewhat peripheral to the general residential communities in the area. As such, there are few people in the immediate vicinity who would be directly affected by the loss of the properties. We, therefore, consider it more appropriate to consider the effect at a broader, neighbourhood level. The number of properties affected would be relatively small at this level and there is no firm evidence to demonstrate that the scale of the loss of residential accommodation would be significant at the neighbourhood level. The need for CA of the properties is considered in Chapter 7 and any direct loss experienced by individual owners or occupiers would be a matter for financial compensation.

4.13.124 We have also found that the effects of the Proposed Development on city centre businesses and the Esso PFS and McDonald's Restaurant facilities at Markeaton are capable of being satisfactorily mitigated. Such measures are secured in the rDCO (Appendix D), TMP [REP14-011] and OEMP [REP14-008] or, in the case of some of the effects on the Esso PFS and McDonald's Restaurant facilities, through financial compensation.

4.13.125 Indeed, insofar as the proposal would reduce delays on the road network around the city centre and improve links between the city centre and the residential areas to the west, we consider that it would be likely to lead to a slight improvement in social and economic conditions. We have already found in Section 4.5 that the proposal would help to release constraints on planned housing and employment development growth to the west of the city.

4.13.126 The Applicant's assessment found that there would be no significant effects on agricultural land or holdings. This matter was not raised in the Examination and we see no reason to disagree with the Applicant's assessment. As such, we find that the proposal would accord with paragraph 5.168 of the NPSNN.

4.13.127 Overall, therefore, we consider that the Proposed Development would comply with paragraphs 2.13, 2.6, 3.2 and 3.3 of the NPSNN. It would also support the aims of DCCS Policies AC1 and AC4.

4.13.128 Based on the above, we are satisfied that appropriate consideration has been given to relevant policies for the Proposed Development and that, subject to the provisions of the rDCO (Appendix D), the likely reasonable worst-case impacts have been identified in respect to land use, social and economic considerations.

4.13.129 We find that permanent moderate beneficial effects for walkers and cyclists at the Kingsway junction and users of the Regional Cycle Route (RR) 66 between Brackensdale Avenue and Kedleston Road weigh significantly in favour of the DCO being made.

4.13.130 We conclude that the moderate adverse effects during the construction phase on pedestrians and cyclists using the shared footway and cycleway east of the Kingsway junction, the Markeaton footbridge and the River Derwent bridge on Ford Lane weigh significantly against the DCO being made.

4.14 THE HISTORIC ENVIRONMENT

Introduction

4.14.1 This section considers the effects of the Proposed Development on the historic environment. There are no listed buildings or scheduled monuments in the Order land and nor does the Proposed Development fall within any Conservation Area. However, parts of the Little Eaton junction proposal fall within the boundary of the DVMWHS. Consideration also needs to be given to the effect of the proposal on the settings of designated heritage assets as well as on non-designated heritage assets.

Policy context

National policies

4.14.2 Paragraph 5.122 of the NPSNN advises that heritage assets may be buildings, monuments, sites, places, areas or landscapes. The sum of the heritage interests held by a heritage asset is referred to as its significance. Significance derives not only from a heritage asset's physical presence, but also from its setting. The footnote to this paragraph explains that the setting of a heritage asset is *"the surroundings in which it is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral."*

4.14.3 Paragraph 5.128 requires the SoS to identify and assess the particular significance of any heritage asset or its setting affected by the Proposed Development, taking account of the available evidence and any necessary expertise. Paragraph 5.129 goes on to advise that the SoS should take into account the particular nature of the significance of the heritage asset and the value that it holds. This understanding should be used to avoid or minimise conflict between the conservation of the asset and any aspect of the proposal.

4.14.4 The SoS should take into account the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets, including the contribution of their settings (paragraph 5.130). When considering the impact of a development on significance, great weight should be given to the conservation of the asset. The more important the asset, the greater the weight should be. Significance can be harmed or lost through development within the setting of an asset. Substantial harm to or loss of designated assets of the highest significance, including WHSs, should be wholly exceptional (paragraph 5.131).

4.14.5 Paragraph 5.132 of the NPSNN states that any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of the development, recognising that the greater the harm to the significance of the heritage asset, the greater the justification that will be needed for any loss. Paragraph 5.134 explains that, where development would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

4.14.6 Paragraph 5.135 states that "*Not all elements of a World Heritage Site or Conservation Area will necessarily contribute to its significance."* The SoS should treat the loss of an element that makes a positive contribution to the site's significance either as substantial harm or less than substantial harm *"taking into account the relative significance of the elements affected and their contribution to the significance of the Conservation Area or World Heritage Site as a whole."*

4.14.7 Applicants should look for opportunities for new development within Conservation Areas and WHSs, and within their settings, to enhance or better reveal their significance (paragraph 5.137).

4.14.8 The NPPF sets out broadly similar policies for the conservation and enhancement of the historic environment. Paragraph 184 identifies WHSs being of the highest significance. Paragraph 193 confirms that great weight should be given to any harm to a designated heritage asset, irrespective of whether it amounts to substantial or less than substantial harm. Any harm to the significance of a designated heritage asset or its setting requires clear and convincing justification (paragraph 194) and less than substantial harm should be weighed against the public benefits of the proposal (paragraph 196).

4.14.9 The effect of a proposal on the significance of a non-designated heritage asset should be taken into account and a balanced judgement will be required having regard to the scale of any harm (paragraph 197).

Local policies

4.14.10 Policy CP20 Historic Environment of the DCCS seeks to preserve, enhance, restore and repair heritage assets and identifies the importance of the DVMWHS. Amongst other things, it requires proposals that have the potential to impact upon the significance of heritage assets (including development affecting their settings) to be of the highest design quality.

4.14.11 Policy AC9 deals with the DVMWHS and states that the Council will only approve proposals outside of the WHS, including sites within the buffer zone, if they do not have an adverse effect on the OUV or its setting, including specific monitored views into and out of the site. Policy AC10 recognises that the Darley Abbey Mills Complex is a key part of the DVMWHS. It promotes the sensitive transformation of the Complex.

4.14.12 EBCS Policy 11 The Historic Environment supports proposals that would sustain or enhance the significance of heritage assets and their settings. We have already found that the weight to be accorded to the saved policies of the Erewash Borough Council Local Plan is limited since they pre-date the NPPF and NPSNN. However, it is relevant to note that Policy EV19 presumes against development within the DVMWHS buffer zone that would have an adverse effect on the WHS or its setting.

4.14.13 The DVMWHS Management Plan 2014 sets out a framework for the management of the WHS. Aim 1 of the Plan is to protect, conserve and enhance the OUV of the DVMWHS. Aims 2 and 3 relate to the promotion of public awareness and the development of sustainable tourism.

The application

4.14.14 The most relevant elements of the application to the consideration of the historic environment are:

- Chapter 6: Cultural Heritage [APP-044];
- Figures 6.1 Kingsway [APP-076], 6.2 Markeaton [APP-077], 6.5 [APP-080] and 6.6 [APP-081] Little Eaton - Location of Designated and Non-designated Heritage Assets;
- Appendix 6.1 Heritage Impact Assessment for the Derwent Valley Mills World Heritage Site [APP-173]; and
- WHS Photomontages [REP3-018].

Applicant's assessment

4.14.15 The Applicant's assessment of the historic environment is found primarily in ES Chapter 6 [APP-044]. A separate Heritage Impact Assessment (HIA) focuses on the impacts of the proposal on the OUV of the DVMWHS.

Historic environment assessment

Introduction and baseline

4.14.16 The Applicant said that the methodology used in ES Chapter 6 [APP-044] was largely taken from DMRB Volume 11, Section 3, Part 2 (HA 208/07). However, it said that the consideration of the setting of heritage assets adopted the guidance in Historic England's (Hist E's) Good Practice Advice Guide GPA3: The Setting of Heritage Assets.

4.14.17 The baseline for the assessment was informed by a range of published national and local information sources, a programme of non-intrusive and

intrusive archaeological field investigations and a historic map regression exercise.

4.14.18 The methodology categorised heritage assets as archaeological remains, historic buildings or historic landscapes. The significance of an effect was derived by combining the value of the asset with the magnitude of any impact. Whereas the NPSNN refers to the 'significance' of a heritage asset the Applicant's assessment used the term 'value'. The DVMWHS was ascribed a 'very high value'. Grade I and II* listed buildings and Conservation Areas containing very important buildings were considered 'high value' and Grade II listed buildings and other Conservation Areas 'medium value'.

4.14.19 The study area was defined as 1km from the Order land for designated heritage assets and 500m for non-designated assets. As a result of the baseline investigation, the assessment considered the following heritage assets within the study area:

- Kingsway and Markeaton junctions: 24 Grade II or II* listed buildings, 24 locally listed buildings (by DCiC) together with Friars Gate, Leylands Estate, Markeaton, Allestree and Darley Abbey Conservation Areas; and
- Little Eaton junction: nine Grade I, II or II* listed buildings, three locally listed buildings (by EBC) and Breadsall and Little Eaton Conservation Areas.

4.14.20 A further three Grade I listed buildings, 15 Grade II* listed buildings, Darley Abbey Old Abbey Building (remains of) scheduled monument, Kedleston Hall, Kedleston Registered Park and Garden, Breadsall Priory and Allestree Park, all of which are located beyond the study area, were also considered. The assessment reviewed the historical development of the study area, described each of the identified heritage assets and characterised the historic landscape at each junction. The DVMWHS was considered part of the historic landscape but was described separately.

Potential impacts

4.14.21 Prior to mitigation, the identified potential impacts during the construction phase included the removal of archaeological remains, compaction of potential archaeological deposits, physical impacts on historic landscapes and buildings, intrusion into the settings of buildings and temporary impacts from construction activities.

4.14.22 Before mitigation, the identified potential impacts during the operational phase included changes to the settings of historic building and landscapes from lighting and increases in noise levels and changes to the setting of the DVMWHS.

Design, mitigation and enhancement measures

4.14.23 The assessment considered that proportionate measures to avoid or minimise direct impacts on heritage assets were embedded within the design of the Proposed Development. The assessment listed the embedded

measures intended to minimise physical impacts and conserve or enhance the setting of heritage assets:

- minimising permanent land-take from Mackworth Park;
- minimising permanent land-take from Markeaton Park and creating a new park entrance and exit that would be sympathetic to the significance of Markeaton Park;
- removing sections of the current A38 adjacent to Markeaton Park and using them as appropriately landscaped public open space;
- using the creation of species rich grassland within Markeaton Park to enhance the environment within this public open space;
- removing the closed toilet facilities block at Markeaton Park which currently has an adverse impact on the setting of the entrance;
- carefully dismantling and rebuilding a section of the Markeaton Park boundary wall on a new alignment so that it would be sympathetic to the significance of Markeaton Park;
- minimising land-take within the DVMWHS such that the River Derwent Bridge would be unaffected;
- appropriately landscaping the area left by the closure of the left in/left out access onto the A38 from Ford Lane. This area is located within the DVMWHS and it was considered that the works would have a beneficial impact on the setting of the DVMWHS;
- designing the new highway sections within, and on the approach to the DVMWHS, to reduce visual intrusion. Minimising lighting impacts at Little Eaton junction by using solar powered studs integrated within the road pavement on the A38 mainline carriageway. 12m high LED luminaires would be provided at the new at-grade roundabout and the approaching slip-roads, with the lights angled down at 5° to reduce impacts on the surrounding landscape;
- installing timber noise and visual screening barriers along the northbound mainline A38 in the vicinity of Ford Farm Mobile Home Park, and along the southbound mainline A38 and associated diverge slip-road in the vicinity of Breadsall Conservation Area in order to reduce visual intrusion and noise impacts;
- giving very careful consideration to the creation of a naturalistic landform for the floodplain compensation area at Little Eaton junction, which is located within the DVMWHS; and
- integrating the proposed landscape planting into the surrounding landscape taking into account heritage assets, including Markeaton Park, the DVMWHS and Breadsall Conservation Area.

4.14.24 Measures to avoid or minimise potential physical impacts arising from construction activities were identified as:

- including within the OEMP and CEMP measures that aim to minimise the visual intrusion of the works;

- providing protective fencing to ensure that the gates and pillars and retained boundary wall at Markeaton Park would not be damaged during construction activities including those for the creation of the utilities diversion corridor;
- locating construction compounds outside of culturally sensitive areas including avoiding designated and non-designated assets and the DVMWHS;
- laying out construction compounds to reduce temporary impacts on the settings of heritage assets; and
- avoiding direct effects on the former Derby Canal (Little Eaton branch) by the installation of a temporary bridge to cross the canal. The bridge would not disturb the canal or require any earthworks and would be removed and the area appropriately restored on completion.

4.14.25 A staged programme of archaeological mitigation would be implemented during the preliminary works. The programme would comprise measures to protect archaeological remains in-situ and/or to record archaeological remains through investigation, prior to the construction phase. A Heritage Management Plan would be produced, based on the Archaeological Mitigation Strategy to indicate how the historic environment would be protected.

4.14.26 The Archaeological Mitigation Strategy and an accompanying Overarching Written Scheme of Investigation would set out the scope, guiding principles and methods for the archaeological mitigation. For each site or area of archaeological interest, a Site-Specific Written Scheme(s) of Investigation would be prepared outlining specific measures applying to that area. These documents would be prepared in consultation with the DCC archaeologist and the DVMWHS Partnership (the Partnership) as applicable.

Summary of historic environment assessment

4.14.27 The key findings of the Applicant's assessment can be summarised as:

- the effect of the Proposed Development on the overall OUV of the DVMWHS was found to be slight adverse, that was no more than a negligible impact on an asset of very high value. The proposal would affect a small section of the overall DVMWHS and took into account the embedded mitigation measures;
- there would be neutral or slight adverse effects on fifteen non-designated archaeology assets;
- there would be neutral or slight adverse effects on six historic building assets, including four that are designated: Breadsall Manor, Breadsall Conservation Area, Church of All Saints and Allestree Hall; and
- there would be neutral or slight adverse effects on nine historic non-designated landscape character types and a beneficial effect on one non-designated landscape character type.

4.14.28 Overall, the assessment found that the Proposed Development would not have any significant (for the purposes of EIA) effects on the historic environment.

Heritage Impact Assessment for the DVMWHS

4.14.29 The HIA deals with the effects of the Little Eaton junction proposal, part of which falls within the DVMWHS core area. It took into consideration current legislative and planning context in relation to the DVMWHS, including international (especially, ICOMOS guidance), national and local policies. In particular, it had regard to the existing DVMWHS Management Plan. This Plan sets out the attributes of the DVMWHS which contribute to its OUV.

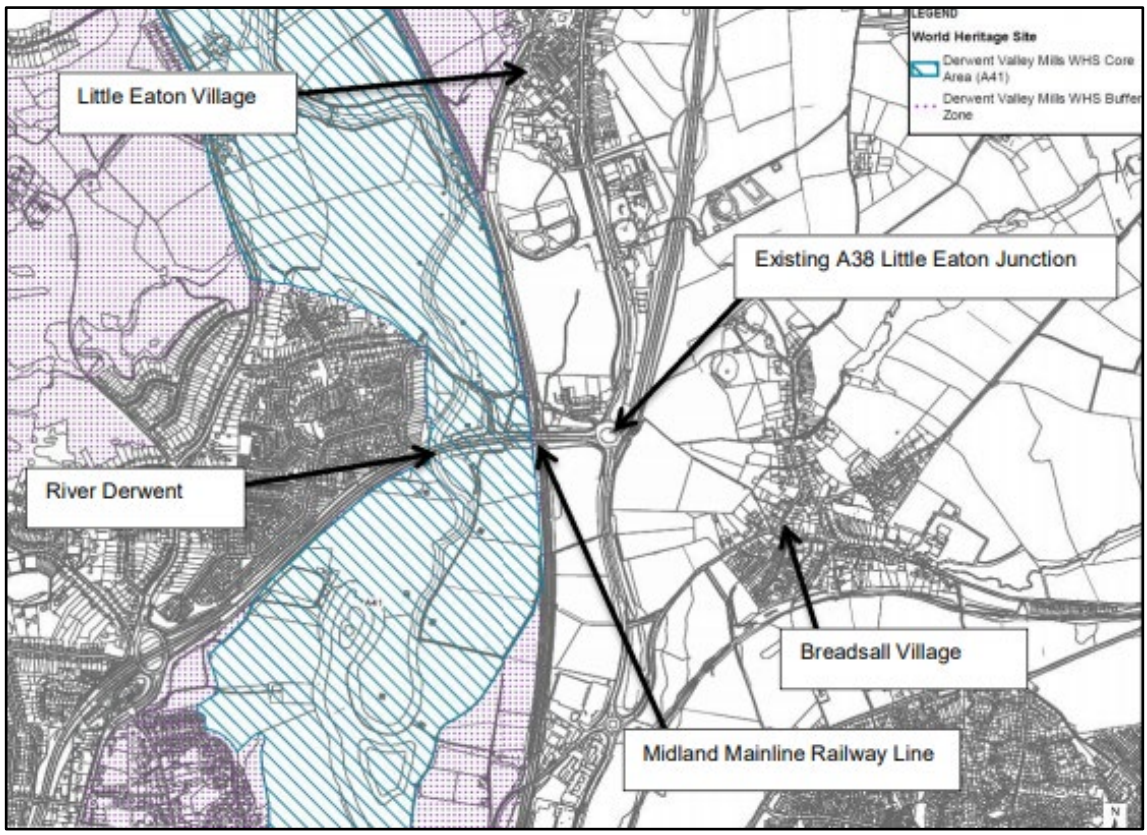

Figure 4.14.1: Little Eaton junction in relation to DVMWHS [APP-173 page 47]

4.14.30 The assessment said that the DVMWHS was designated due to its role in the development of the Industrial Revolution, that it consisted of a 24km length of the lower Derwent Valley stretching from Matlock Bath in the north to Derby city centre in the south, and that a number of elements from this period survive, including standing buildings and historic landscape features. The Management Plan sets out the values and key attributes which contribute to the OUV. The values are identified as:

- Value 1. The successful harnessing of natural energy to deliver the power to drive newly devised machines housed in mills to produce goods of superior quality at an unprecedented rate.
- Value 2. The creation of a new way of life resulting from the need for people to congregate together (in factories) producing goods of superior quality at an unprecedented rate, sometimes in formerly rural (non-

urban) locations, with attendant intensification of agriculture for provisioning. In the early 19th century the new way of life was further developed with the adoption of new modes of transportation.

- Value 3. The dissemination of the new technology and new mode of mass production, from the Derwent Valley to other parts of the UK, Europe and North America, prior to the introduction of steam power and the transference of mill development to the coalfields of Lancashire.
- Value 4. The further development of industry including the introduction of new modes of transportation and utilities.

4.14.31 The attributes identified as being relevant to the Proposed Development were:

- "*The relationship of the industrial installations and their dependent housing settlements to the river and its tributaries and to the topography of the surrounding rural landscape has been preserved, especially in the upper reaches of the valley, virtually intact.*" and,
- "*A 'relic' industrial landscape, where late 18th and early 19th century industrial development may still be seen in an 18th/19th century agricultural landscape*".

4.14.32 The Little Eaton element of the Proposed Development does not contain any of the Key Properties of the DVMWHS. The eastern boundary of the core area of the DVMWHS is formed by the Midland mainline railway line and elements of the proposal fall within it. These include:

- the raising and widening of the mainline carriageway and the creation of new slip roads and associated embankments and retaining walls;
- extensions to the railway bridge and the flood arch over the River Derwent;
- the closure to vehicles of the Ford Lane/A38 junction; and
- the floodplain compensation area to the west of the River Derwent.

4.14.33 The assessment found that the proposed Little Eaton junction falls within the settings of the DVMWHS and the Darley Abbey Conservation Area, and that associated listed buildings, and Allestree Hall and Registered Park and Garden are located nearby.

4.14.34 The Proposed Development was considered to have the potential to cause physical impacts on the DVMWHS through alterations to the historic landscape and impacts on the settings of associated heritage assets. The HIA considered that these had been minimised as much as possible through the design process (see paragraphs 4.14.23 and 4.14.24 above).

4.14.35 The effect of the Proposed Development on the overall OUV of the DVMWHS, considering the embedded mitigation measures, and that the proposal is concerned with a small section of the overall DVMWHS, was assessed as slight adverse. This was based on the proposal having no more than a negligible impact upon an asset of Very High value. The Proposed Development was, therefore, considered to align with the aims and policies

outlined in the DVMWHS Management Plan. It was also considered to align with national planning policies set out in the NPSNN and the NPPF.

Issues considered during the Examination

4.14.36 The historic environment issues considered during the Examination included:

- the effect of the proposed Little Eaton junction and floodplain compensation area on the DVMWHS;
- the re-building of the Markeaton Park gates; and
- the re-building of the RSfD gates and wall.

DVMWHS

4.14.37 Our FWQ [PD-005] sought views on whether the HIA provided a robust assessment of the effect of the embankment on the character of the 'relic landscape' which contributes to the OUV and of the effect of the Proposed Development from relevant viewpoints.

4.14.38 In its response to our FWQ [REP1-033] and in its WRs [REP1-030] and LIR [REP1-031], DCC was concerned about the effect of the proposed Little Eaton junction on the historic landscape. Regarding the DVMWHS specifically, it considered that the HIA omitted discussion of the importance of the Derwent floodplain as an attribute of the DVMWHS. It said that, in this location, the floodplain boundary was the DVMWHS boundary. It considered that the proposed embankment would be an intrusive engineered landform that would detract from the authenticity of the Derwent floodplain landscape in this location. Therefore, DCC considered that the HIA understated the impacts on the DVMWHS. It took the view that the proposal would result in a minor adverse impact on an asset of very high value, thus producing a moderate adverse effect which would be viewed as significant for the purposes of EIA. It also advocated consultation with the DVMWHS Partnership.

4.14.39 DCiC [AS-017]expressed concern regarding the effect of the floodplain compensation area on the Darley Abbey part of the DVMWHS. It considered that the earthworks would have a severe negative impact on the OUV of the DVMWHS in this area, contrary to the Management Plan and DCCS Policies CP20 and AC9. In response to our FWQ [PD-005], DCiC [REP1-034] referred to the need for consistency in relation to a public inquiry where two appeals for residential development at North Avenue, Darley Abbey were dismissed in part due to their effect on the historic landscape of the DVMWHS[8]. It suggested that the viewpoints used in that inquiry should be reviewed.

4.14.40 In response to DCC, the Applicant [REP2-020] advised that no response was received from the Partnership to its initial consultation invitation. However, it said that subsequently the Partnership had expressed the view that the proposal would cause less than substantial harm to the OUV of the DVMWHS and potential impact on the River Derwent floodplain. The

[8] Appeal refs: APP/C1055/W/15/3137935 and APP/C1055/W/15/3141117

Applicant went on to record that the Partnership stated that the floodplain was identified as an attribute of the WHS and that *"the proposed embankments may be seen as harmful to this attribute because they will detract from the legibility and intact-ness of the Derwent flood plain landscape in this location"*.

4.14.41 The Applicant's response [REP1-003 REP2-020] to DCiC referred to its use of ICOMOS guidance in the preparation of the HIA, which it considered was consistent with the North Avenue inquiry. It said that the views used in that inquiry had been examined and new viewpoints of the proposal were being prepared. The Applicant also stated that the North Avenue inquiry related to a new permanent housing development which it did not consider comparable to temporary works for the floodplain compensation area that, it said, would leave no discernible trace.

4.14.42 The effect of the proposal, including the floodplain compensation area, was also discussed at ISH2 [EV-011, EV-012 EV-013]. The Applicant advised that the character of the historic landscape at Little Eaton junction and how it contributed to the OUV of the DVMWHS was set out in the HIA. It discussed the individual attributes of the OUV, as well as their contribution to authenticity and integrity as set out in the Statement of Outstanding Universal Value. The Applicant said that the area formed part of the River Derwent floodplain, an open area of semi-rural landscape which reflected the harnessing of the waterways and formed a backdrop to the development of the mills and factories. As such, the area contributed to Values 1,2 and 3 as set out in the Statement of Outstanding Universal Value and the Management Plan. In particular, the area contributed to the understanding of the relic industrial landscape as conveyed in Value 3. The Applicant considered that the existing A38 embankment formed part of this landscape. Although it did not contribute to the OUV of the DVMWHS, nor did it remove the ability to understand the OUV. It said that the existing A38 embankment was present at the time of the WHS inscription.

4.14.43 The Applicant [REP3-026] said that the main works at Little Eaton junction (east of the railway) would be located outside the DVMWHS boundary and buffer zone. The HIA acknowledged that there would be changes to the existing road network, including the construction of the Little Eaton junction. It said that there would be a temporary impact as a result of the construction of the floodplain compensation area to the west of the River Derwent, but that this would be reinstated to an agricultural landscape which would blend into the existing natural landscape. The Applicant's view was that the proposal would, therefore, lead to little discernible change to the landscape and the way the area would be experienced or understood. It considered that, in accordance with the inscribed integrity of the DVMWHS, the proposal would maintain the interdependence between the built elements and the natural landscape. Regarding authenticity, the Applicant's position was that the Proposed Development would allow the landscape to continue to reflect the attributes of the DVMWHS and the rural landscape.

4.14.44 The Applicant [REP3-026] went on to state that the landform design of the floodplain compensation area was developed with input from landscape, ecological and cultural heritage specialists with the aim of creating a

naturalistic profile that would blend in with the surrounding valley profile, as well as enabling the land to be returned to agricultural use.

4.14.45 The Applicant [REP3-026] also considered that the Proposed Development would not damage the OUV of the DVMWHS. Based on ICOMOS guidance, it was assessed to have a slight adverse effect on the OUV of the DVMWHS as a whole, that is, a negligible impact on an asset of very high value. As such, the Applicant concluded that the Proposed Development would cause less than substantial harm to the significance of the DVMWHS.

4.14.46 The Applicant [REP3-026] considered that no further mitigation measures were necessary, but advised that it would consult with the Partnership, DCC and DCiC regarding the detailed design of the floodplain compensation area layout, the junction lighting proposals, and the junction landscape planting during the detailed design phase.

4.14.47 The Applicant reported that it had further discussion with DCC and the Partnership. It submitted additional photomontages showing the proposed Little Eaton junction [REP3-018] and illustrating the floodplain compensation area contours before and after the excavation works [REP4-020]. As a result of the further discussions, DCC [REP3-029] revised its position regarding the effect of the Proposed Development on the Little Eaton landscape and the DVMWHS. We have already considered this in relation to landscape and visual effects in Section 4.12 above. However, DCC's response covered both landscape and visual and historic environment considerations.

4.14.48 With regard to the historic environment specifically, DCC's SoCG confirmed that it was content with the Applicant's assessment of the effect of the Proposed Development on the DVMWHS [REP6-010]. It also expressed a wish to be involved in the detailed design of the floodplain compensation area to ensure that this would be delivered as sensitively and naturalistically as possible so that it would not impact on the qualities that help define the OUV of the DVMWHS. Further, DCC said that a key aspiration of the Management Plan was to promote a general reduction in street lighting (and light pollution) throughout the designation. Therefore, DCC also wished to be consulted on the lighting strategy for the Little Eaton junction to help ensure that it would accord, as far as possible, with the Management Plan objectives. DCC concluded that the DVMWHS was an important heritage asset, but that the effect of the Proposed Development would amount to less than substantial harm. It was of the view that the significant public benefits of the proposal, as identified in its LIR and WRs, would be likely to outweigh that harm [REP3-029].

4.14.49 The OEMP [REP14-008 D-CH4 and D-CH5] require the Applicant to consult with the EA, DCiC, DCC and the Partnership on the design of the floodplain compensation area and to consult with DCiC, DCC and the Partnership on the street lighting design.

4.14.50 Except to submit the North Avenue appeal decisions, DCiC did not make further submissions on the DVMWHS [REP3-027]. No further concerns were raised during the Examination by DCiC or others regarding the effect of the Proposed Development on the part of the DVMWHS that falls within DCiC's

administrative area. That area includes the Darley Abbey Mills Complex. DCiC's SoCG confirmed its agreement to the Applicant's assessment of the effect of the Proposed Development on the DVMWHS [REP7-020].

4.14.51 Hist E [AS-027] considered the effect of the Little Eaton junction proposals, including the flood compensation works, on the OUV of the DVMWHS. It was content that the ICOMOS guidelines had been followed in the HIA and that the assessment had appropriately identified baseline heritage assets and historic landscape character. Further, it considered that the ES assessment assumptions and limitations were acceptable and did not alter the assessment findings. Hist E was, therefore, content with the assessment of the effects of the Proposed Development which indicated that it would not be damaging to the OUV of the DVMWHS. As such its "*advice to the Department for Digital Culture Media and Sport is that significant impact upon OUV is unlikely*." and that "*the A38 Junctions scheme did not in our view require notification to the World Heritage Centre (Paris) in accordance with paragraph 172 of the Operational Guidelines for the Implementation of the World Heritage Convention"*.

Markeaton Park wall and gates

4.14.52 DCiC [AS-017] advised that Markeaton Park is a heritage asset and its stone boundary walls were an important part of the enclosure of Markeaton Park. The revised entrance to Markeaton Park would affect this feature. DCiC suggested that as much as possible of the wall should be retained in its original location and that where the wall would be affected by the proposal the existing material should be reused at a location to be agreed. DCiC went on to advise that the Heritage Lottery Fund gave a grant for work to Markeaton Park, including the relocation of the original park gates and railings to a low wall adjacent to Ashbourne Road. It considered those features should be kept in that location.

4.14.53 The Applicant responded [REP2-020] that the section of the Markeaton Park boundary wall which would be affected by the proposal would be carefully dismantled and rebuilt on a new alignment sympathetic to the significance of Markeaton Park. This is secured in the OEMP [REP14-008 MW-CH1]. A Method Statement for the works would be prepared as part of the CEMP and discussed and agreed with the DCiC conservation officer. The renovated park gates and pillars would not be directly affected by the construction works, although the works would take place in close proximity. Protective fencing would be erected to ensure that the gates and pillars would not be damaged during construction activities. Again, this is secured through the OEMP [REP14-008 MW-CH3]. These matters were agreed in the SoCG with DCiC [REP7-020].

RSfD gates and wall

4.14.54 The RSfD expressed concerns regarding the effect of the proposal on the Mundy wall, which runs along its boundary with Ashbourne Road, and the Victorian gates located adjacent to 18 Queensway [RR-019 AS-022]. The Applicant [REP1-003] responded that the proposed alteration to the school's access from Ashbourne Road would require the removal of the Mundy wall to create space for the visibility splays required for the access. The

intention would be to take the wall down and reuse all salvageable stone to rebuild the wall in a new position outside of the visibility splay. The OEMP [REP14-008 MW-CH6 and MW-CH7] secures the re-building of the wall and retention of the gates. These matters were agreed in the SoCG with RSfD [REP8-003].

Conclusions on the historic environment

4.14.55 We are satisfied that the Applicant's historic environment assessment has identified the significance of the heritage assets and their settings which would be potentially affected by the Proposed Development. The assessment also includes sufficient information to allow the nature and value of the significance of the assets to be understood. As such, we find that the assessment accords with paragraphs 5.128 and 5.129 of the NPSNN.

4.14.56 The initial concerns of DCC and DCiC regarding the effect of the Proposed Development on the DVMWHS ensured that the matter was roundly debated. However, before the close of the Examination, both authorities agreed with the Applicant's assessment. Importantly, Hist E also concurred with it.

4.14.57 We agree that the assessment appropriately identifies and evaluates the significance (value) of the DVMWHS and the contribution which the Little Eaton landscape makes to the understanding of its OUV. We consider that the assessment rightly recognises that this contribution takes into account the existing Little Eaton junction. The Proposed Development would raise the height of the junction and extend the spread of built development to a degree. The largest part of this development would be located outside of the core area of the DVMWHS and its buffer zone. Nevertheless, there would also be an effect on the setting of the DVMWHS. However, the nature and form of the proposed junction would be similar to the existing junction and its additional scale and height would be relatively modest in relation to its landscape setting. The closure to vehicles of the Ford Lane junction with the A38 would allow an area of former carriageway to be landscaped. This would result in a small benefit to the DVMWHS. To that extent, the Proposed Development would accord with paragraph 5.137 of the NPSNN.

4.14.58 For the most part, the necessary mitigation measures have been embedded into the design of the proposal. Where further mitigation is necessary, such as the detailed landscape and lighting designs, the rDCO (Appendix D) and OEMP [REP14-008] contain provisions to ensure that appropriate consultation would take place prior to approval.

4.14.59 The floodplain compensation area would fall within the core area of the DVMWHS. However, as illustrated in the additional photomontages, it would be capable of being assimilated into the contours of the surrounding landscape. On completion the land would be returned to its agricultural use and the lasting effect on the landscape would be negligible.

4.14.60 Therefore, we find that the Proposed Development would have a limited impact on the relationship between the 'relic' landscape and the industrial heritage of that part of the Derwent Valley. As such, we agree with the

Applicant that, overall, the Proposed Development would have a slight adverse effect on the OUV of the DVMWHS. This would not place it in conflict with the aims of paragraph 5.130 of the NPSNN or the Management Plan. Nevertheless, paragraph 5.131 of the NPSNN is clear that great weight should be given to the conservation of any heritage assets and that the more important the asset the greater the weight should be. In this case, the WHS carries very high significance.

4.14.61 The Applicant's assessment found that the Proposed Development would have slight adverse effects on four other designated heritage assets (Church of All Saints Grade I listed building, Allestree Hall and Breadsall Manor Grade II listed buildings and Breadsall Conservation Area). In each case, the designated asset is located a considerable distance from the Proposed Development and the effect would be on a relatively small part of its setting.

4.14.62 Hist E and the relevant LPAs were content that impacts on designated heritage assets had been identified and assessed appropriately (see SoCGs [REP1-008 REP1-012 REP6-010 REP7-020]). Apart from the DVMWHS, no substantive concerns were raised about the effects of the proposal on other designated heritage assets. On this basis, we see no reason to disagree with the Applicant's assessment of the effect of the Proposed Development on designated heritage assets. We are satisfied that it would, therefore, accord with paragraph 5.130 of the NPSNN. The Proposed Development would also broadly align with the aims of DCCS Policies CP20, AC9 and AC10 and EBCS Policy 11.

4.14.63 Considered collectively, we consider that the slight adverse effects that have been identified would amount to less than substantial harm to the designated heritage assets for the purposes of paragraphs 5.134 and 5.135 of the NPSNN. In reaching this view we have had regard to the very high significance of the WHS as required by paragraph 5.131 of the NPSNN. This harm should be balanced against the public benefits of the proposal (paragraphs 5.132 and 5.134). We do this in Chapter 6.

4.14.64 The Applicant's assessment found that the Proposed Development would not affect any designated archaeological assets and that there would be neutral or slight adverse effects on 15 non-designated archaeological assets. Of these, one was found to be of medium value and the others low or negligible value. The relevant LPAs were satisfied that archaeological matters had been properly considered in the Applicant's assessment [REP1-008 REP6-010 REP7-020] and the matter was not raised during the Examination. The rDCO (Appendix D) and the OEMP [REP14-008] secure a thorough programme of archaeological investigation and evaluation. Therefore, we agree with the Applicant's assessment that the effect of the Proposed Development on the archaeological resource would be slight adverse and not significant.

4.14.65 Markeaton Park was identified by the Applicant as a non-designated heritage asset. The proposal would involve the re-building of part of the Markeaton Park wall. However, the OEMP [REP14-008] secures the re-use of existing material as far as possible and a Method Statement would be agreed to ensure that the works would be undertaken sympathetically. The

existing gates would be protected during the construction phase. DCiC was satisfied with these precautions. We also note that the proposal would include the removal of the existing modern disused toilet block close to the entrance to Markeaton Park. We consider that this building is unsightly, and that its removal would result in visual benefit. Therefore, we find that the effect of the Proposed Development on the Markeaton Park non-designated heritage asset would be slight adverse at worst and not significant.

4.14.66 The Applicant found that the Proposed Development would have slight adverse effects that were not significant on eight other non-designated landscape character types and two non-designated historic buildings. Based on the evidence presented in the Examination, we see no reason to disagree with that assessment.

4.14.67 Neither the Victorian gates nor the Mundy wall at the RSfD site were identified as non-designated heritage assets. Nevertheless, we consider that they contribute to the character of the area. Measures in the OEMP [REP14-008] to secure the re-use of the existing materials when re-building the wall on a new realignment would help to minimise the effect of that work. The gates would also be retained. As such, we are satisfied that these works would not have a harmful effect on the character of the area.

4.14.68 Overall, therefore, we find that the Proposed Development would lead to slight adverse effects on a relatively limited number of non-designated heritage assets. Whilst these effects are not significant for the purposes of the ES, as required by paragraph 197 of the NPPF, we consider them in the planning balance exercise in Chapter 6.

4.14.69 As a result of these considerations, we conclude that the following weigh against the DCO being made:

- less than substantial harm to the OUV of the DVMWHS, noting that the DVMWHS carries very high significance;
- less than substantial harm to the settings of three listed buildings and one Conservation Area; and
- slight adverse effects on several non-designated heritage assets.

4.15 CLIMATE CHANGE

4.15.1 This section considers the effect of the Proposed Development in relation to climate change.

4.15.2 The following related topics are covered elsewhere:

- air quality in Section 4.8 and health in Section 4.13;
- flood risk in Section 4.10;
- biodiversity in Section 4.11;
- traffic in Section 4.7 and NMUs in Section 4.13;
- social and economic matters in Section 4.13; and

- the case for making a DCO in Chapter 6.

Policy and legal context

4.15.3 Carbon emissions are addressed in paragraphs 5.16 to 5.19 of the NPSNN.

4.15.4 Paragraph 5.16 refers to a system of five year carbon budgets that set a trajectory to a cut in greenhouse gas (GHG) emissions by at least 80% by 2050 and says that "*carbon budgets and plans will include policies to reduce transport emissions, taking into account the impact of the Government's overall programme of new infrastructure as part of that*." Paragraphs 5.16-17 state that "*the impact of road development on aggregate levels of emissions is likely to be very small*" and that it is "*very unlikely that the impact of a road project will, in isolation, affect the ability of Government to meet its carbon reduction plan targets.*"

4.15.5 Paragraph 5.17 requires Applicants for road projects to "*provide evidence of the carbon impact of the project and an assessment against the Government's carbon budgets*".

4.15.6 Paragraph 5.19 requires evidence to be provided of mitigation measures "*incorporating engineering plans on configuration and layout, and use of materials"*. It requires the SoS to *"consider the effectiveness of such mitigation measures in order to ensure that, in relation to design and construction, the carbon footprint is not unnecessarily high."* and states that *"the adequacy of the mitigation measures relating to design and construction will be a material factor in the decision making process.*"

4.15.7 Paragraph 5.18 sets out that the Government's national carbon reduction strategy is likely to ensure that any carbon increases from road development do not compromise its overall carbon reduction commitments. It considers that "*any increase in carbon emissions is not a reason to refuse development consent, unless the increase in carbon emissions resulting from the proposed scheme are so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets.*"

4.15.8 Climate change adaptation is addressed in paragraphs 4.36 to 4.47 of the NPSNN. These identify that applicants must consider the impacts of climate change when planning location, design, build and operation and set out how developments would respond to and accommodate the potential effects of climate change using the latest UK climate projections.

4.15.9 Paragraph 4.43 requires applicants to "*demonstrate that there are no critical features of the design of new national networks infrastructure which may be seriously affected by more radical changes to the climate beyond that projected in the latest set of UK climate projections*."

4.15.10 Paragraph 4.44 sets out that "*any adaptation measures must themselves also be assessed as part of any environmental impact assessment and included in the environment statement, which should set out how and where such measures are proposed to be secured.*"

4.15.11 The Climate Change Act 2008 was amended on 26 June 2019, after the application was submitted. The Climate Change Act 2008 (2050 Target

Amendment) Order 2019 amends s1 of the Climate Change Act 2008 from "*it is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 80% lower than the 1990 baseline*" to "*it is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline.*"

4.15.12 Section 104 of the PA2008 states that the SoS must decide an application for a national networks NSIP in accordance with the NPSNN unless it is satisfied that to do so would, amongst other things, lead to the UK being in breach of its international obligations.

4.15.13 As referred to in Section 3.3, the Paris Agreement 2015 provides a framework for keeping global warming well below 2°C and was ratified by the UK Government in November 2016, after the NPSNN was designated in December 2014.

4.15.14 Relevant local plans and policies are set out in Section 3.8.

The application

4.15.15 The main sections of the application relevant to the climate change matters considered here are:

- Chapter 14 – Climate [APP-052];
- Appendix 14.1 – Climate Resilience Baseline [APP-235];
- Appendix 14.2 – Climate Impact and Effects [APP-236];
- Chapter 5 – Air Quality [APP-043];
- Chapter 15 – Assessment of Cumulative Effects [APP-053];
- Chapter 16 – Residual Effects [APP-054]; and
- OEMP [APP-159].

4.15.16 Chapter 14 – Climate [APP-052] provides the Applicant's assessment of GHG impacts, climate change resilience and in-combination effects of a changing climate and the Proposed Development on the surrounding environment.

4.15.17 No potential in-combination effects were considered significant. In-combination effects are addressed as necessary in the other relevant sections of this report.

GHG impact assessment

4.15.18 The GHG study area covered all direct emissions arising from construction activities within the Order land, indirect emissions embedded within construction materials, emissions arising from the construction traffic and operational traffic emissions for the whole traffic model study area.

4.15.19 End of life assessment of demolition and decommissioning was scoped out of the assessment as it was considered very unlikely that the Proposed Development would be demolished.

4.15.20 GHG emissions during the construction phase considered activity data specific to the Proposed Development and were calculated in line with the advice in IAN 114/08, supplemented by HE's Carbon Reporting Tool. GHG emissions during the construction and operational phases considered the seven Kyoto Protocol gases and were reported as tonnes of carbon dioxide equivalent (tCO_{2e}). Road user emissions were calculated using the guidance provided in DMRB Volume 11, Section 3, Part 1, HA 207/07. Changes in CO_2 vehicle emissions are identified in paragraphs 5.10.61 to 5.10.65 of Chapter 5 – Air Quality [APP-043]. Calculations performed using the HE Carbon Reporting Tool accounted for the six Kyoto Protocol GHGs defined prior to the addition of nitrogen trifluoride in 2018.

4.15.21 The Applicant considered that there was no specific guidance regarding significance levels for GHG emission impacts. However, it said that that there was guidance indicating consideration of the UK National inventory. Recognising that the UK has legally binding GHG reduction targets, the calculated emissions were assessed against the UK's carbon budgets. Consideration was given to the level of certainty of emissions and the extent to which they would be additional to the existing inventory.

4.15.22 GHG emissions during the construction phase were directly compared with relevant UK carbon budgets. The assessment of GHG emissions during the operational phase considered the differences between the emissions predicted with and without the Proposed Development in the opening year (2024) and future design year (2039) – which would relate to the Sixth Carbon Budget and beyond as published by the Committee on Climate Change. The Sixth Carbon Budget update is due to be published in December 2020.

4.15.23 The GHG and climate change resilience assessments used professional judgement when design information was not available. The lifespan was taken as 60 years.

4.15.24 Key mitigation measures during the construction phase included:

- the development and implementation of a plan to reduce energy consumption and associated carbon emissions, including the consideration of renewable and/or low or zero carbon energy sources;
- the recording and reporting of energy consumption and materials use on an ongoing basis during the construction phase using the HE Carbon Reporting Tool;
- where practicable, the use of materials with lower embedded greenhouse gas emissions and water consumption, sustainably sourced materials and recycled or secondary materials; and
- the planting of trees, shrubs and hedgerows as part of the landscape design to offset some of the carbon emissions associated with land use change and subsequent loss of carbon sink.

4.15.25 The key mitigation measure during the operational phase was identified as a reduction in operational energy use through the replacement of 56 lighting columns at the Little Eaton junction with solar powered studs integrated within the road pavement. It was not considered practical to

monitor GHG emissions from road users during the operational phase as the Applicant argued that it would not have direct control over road user emissions.

4.15.26 A breakdown was provided of GHG emissions by construction activity and it was identified that "*the embodied carbon associated with the use of materials is the biggest contributor to the carbon footprint of the Scheme*" at 118,713 tCO_{2e}, being over 90% of the emissions during the construction phase.

Reporting category	Emissions (tCO_2e) (approximate)	% construction emissions
Land clearance (loss of carbon sink)	4,027	3.08%
Embodied carbon in raw materials and transportation of materials to site[2]	118,713	90.72%
Fuel used on site	4,749	3.63%
Worker travel	3,199	2.44%
Disposal of construction waste	168	0.13%
Total	**130,858**	**100%**

Figure 4.15.1: GHG emissions breakdown by construction activity [APP-052 page 24]

4.15.27 Additional road user emissions due to the Proposed Development were assessed as 856 tCO_{2e} in the opening year (2024) and 2,723 tCO_{2e} in the future design year (2039).

Reporting category	Year of Scheme opening (2024) (tCO_2e)	Design year (2039) (tCO_2e)
Do-minimum	7,933,641	8,879,454
Do-something	7,934,497	8,882,177
Variation	**856**	**2,723**

Figure 4.15.2: Comparison of road user emissions [APP-052 page 24]

4.15.28 The Applicant said that the reported operational GHG emissions represented a worst-case scenario as full allowances had not been made for the uptake of low emission vehicles or future grid decarbonisation.

4.15.29 The emissions were compared with the relevant UK carbon budgets and it was stated that "*emissions arising as a result of the Scheme represent less than 0.01% of total emissions in any five-year carbon budget during which they arise.*" It was concluded that "*the GHG impact of the Scheme would not have a material impact on carbon reduction targets as set by the UK government*" and that "*these emissions are not deemed to be significant in the context of the relevant carbon budgets*."

Climate change resilience impact assessment

4.15.30 The climate change resilience study area covers all assets and infrastructure constituting the Proposed Development. Receptors vulnerable to climate

change impacts were identified for the construction phase (including workforce, plant and machinery); Proposed Development assets (including road pavements, structures, earthworks, drainage and technology); and end-users (including members of the public and commercial operators).

4.15.31 The assessment considered the overarching aims of relevant government planning strategies and policies to minimise the adverse impacts of climate change by requiring new developments to consider climate change within their designs. The Applicant considered that there was no prescribed format for such an assessment and so it adopted new and emerging guidelines and what it considered to be good practice from similar infrastructure developments.

4.15.32 The assessment identified potential climate change impacts arising from both gradual climate change and increased frequency of severe weather effects and considered their potential consequences and the likelihood of occurrence. Account was taken of the mitigation measures integrated into the design. Significance was derived by multiplying the outcomes from the likelihood and consequence assessments.

4.15.33 The Applicant considered climate and extreme weather data from sources including the Local Climate Impacts Profile for Derby (DCiC, 2011) and Met Office data for the East Midlands region. Forecast climate change data was based on UKCP18 projections obtained from the UK Met Office.

4.15.34 Key mitigation measures during the construction phase included, where practicable, the use of construction materials with superior properties and the incorporation of current road design standards and future climate change allowances.

4.15.35 Key mitigation measures during the operational phase included:

- a drainage strategy that accounted for climate change;
- maintenance plans for drainage systems to allow them to operate effectively;
- implementation of the Highways England Severe Weather Plan for the East Midlands to further increase the resilience to extreme weather conditions;
- flood alleviation measures, including the use of flood storage areas and a floodplain compensation area; and
- drainage to the low point at Markeaton junction designed to accommodate a 1 in 100-year storm event, with climate change allowances, without flooding the carriageway.

4.15.36 The potential climate resilience impacts on the Proposed Development during the construction phase were not assessed to be significant due to the duration and nature of the construction activities. None of the potential impacts assessed during the operational phase were considered significant.

Factual issues considered during the Examination

4.15.37 Climate change matters addressed during the Examination included:

- policy considerations;
- study area and assessment methodology;
- GHG emissions;
- embodied carbon; and
- climate change adaptation.

Policy considerations

International obligations

4.15.38 FoED [REP6-036 REP7-018 REP9-038 REP11-007] made a number of representations with respect to the Paris Agreement 2015 and the Heathrow judgement[9]. It was of the view that full account had not been taken of the Paris Agreement 2015 and that this was "*a serious omission, as evidenced by the recent Heathrow Court of Appeal decision.*" It suggested that the Paris Agreement 2015 was now national policy and that it called for "*a right[s]-based approach, not the usual Highways England cost-benefit approach, which is fundamentally different.*" FoED questioned whether the Applicant had taken enough account of human rights matters in accordance with the Paris Agreement 2015, including the right to health, the rights of those most at risk from the effects of climate change, and the rights of people in vulnerable situations. It said that the Applicant "*does not appear to agree that the poorest and most deprived sectors of non-car driving society … require assistance*". It also questioned whether the Applicant's assessments not being based on net zero carbon were a breach of the Paris Agreement 2015.

4.15.39 Further to FoED's submission, we note that on 27 February 2020 the Heathrow judgement found that that the Paris Agreement 2015 was clearly part of "*Government policy*" at the time of the designation of the Airports National Policy Statement (ANPS) in December 2014; that it ought to have been taken into account in the preparation of the ANPS, but had not; and that failure was "*legally fatal*" to the ANPS. The judgement clarified that it had not found that the ANPS was necessarily incompatible with the UK's commitment to reducing carbon emissions and mitigating climate change under the Paris Agreement 2015.

4.15.40 Derby Climate Coalition [REP14-036] considered that the Proposed Development failed to take account of the Paris Agreement 2015. With reference to the Heathrow judgement Derby Climate Coalition said that "*in setting planning policy of national significance the impacts of the proposed development on the Paris Agreement 2015 were so obviously material that they had to be taken into account by the government*". Derby Climate

[9] R (on the application of Plan B Earth) v Secretary of State for Transport and Heathrow Airport Ltd and Arora Holdings Ltd [2020] EWCA Civ 214

Coalition considered that the government had not taken the impacts of the Proposed Development on the Paris Agreement 2015 into account.

4.15.41 Carole Leak [AS-048] wondered if the Proposed Development may be unlawful following the Heathrow judgement. Mair Bain [REP9-043] said that "*Plans for a third runway at Heathrow airport have been ruled illegal by the court of appeal because ministers did not adequately take into account the government's commitments to tackle the climate crisis. This has set a precedent and the whole road investment strategy and A38 junction scheme urgently needs reviewing.*"

4.15.42 The Applicant [REP8-007 REP10-009 REP12-006 REP15-007] responded to the submissions, stating that:

- "*the Scheme has to be determined in accordance with Government policy, which is set out in the NPS NN. This approach is prescribed in s.104 of the Planning Act 2008. S104 requires that the SoS in deciding the application has regard to the NPS NN and that his decision must be in accordance with any relevant NPS unless to do so would be unlawful or would breach any of the UK's international obligations (ss (4) to (8)). In addition to this, the SoS must have regard to any other matters which the Secretary of State thinks are both important and relevant to his decision (ss(2)(d))*";
- with respect to the Heathrow judgement the "*only legal obligation, in the court's view, was to take the Paris Agreement 2015 into account when arriving at the decision on whether to designate the ANPS; the weight to be afforded to the agreement being a matter for the Secretary of State to determine*";
- "*[the Applicant] has provided a significant amount of detail to the Examination in respect of climate change and has confirmed that the Department for Transport's RIS1 schemes have been included in the UK's current carbon budgets*" and that, as such, it "*does not consider that the Scheme will render the UK in breach of its international obligations (including under the Paris Agreement 2015) and therefore the requirement in section 104(4) of the Planning Act 2008 to determine the application in accordance with the NPSNN applies*"; and that
- the assessment of human rights was detailed in the Statement of Reasons (SoR) [REP9-005] and in the submission titled Human Rights and the Acquisition and Possession of Land for the Scheme [REP6-024].

4.15.43 We note that the SoR and D6 submission referred to by the Applicant consider the rights of those whose interests in the land may be affected by the exercise of powers of CA or TP and make no mention of climate change or the Paris Agreement 2015.

4.15.44 The Applicant [REP12-007] said that RIS2, published in March 2020, complied with the Paris Agreement 2015 obligations. Responding to our request [PD-026] to provide evidence of that, the Applicant [REP14-025] provided a link to Hansard[10] where the Parliamentary Under-Secretary of

[10] https://hansard.parliament.uk/Commons/2020-03-12/debates/6995523A-F812-4EA1-B642-C25C15DB8831/AirportExpansionParisClimateChan

State for Transport replied "*yes*" to a question about whether "*the roads programme has been subject to rigorous environment impact assessments and complies with our Paris agreement obligations*".

Net zero carbon by 2050

4.15.45 We questioned [PD-005 EV-014 PD-018 PD-025 PD-026] whether the Applicant's approach to carbon emissions adequately considered the Government's updated target for net zero carbon by 2050 and what account had been taken of the fact that the associated carbon budgets (for 2033 and beyond) had not yet been published.

4.15.46 The Applicant [REP1-005 REP6-016 REP9-029 REP12-007 REP14-022 REP14-025] replied that:

- the assessment "*was written prior to the publication of the new Government carbon reduction targets set within the Climate Change Act 2008 (2050 Target Amendment) Order 2019 (i.e. the net zero target). As such, Chapter 14: Climate [APP-052] does not take the revised carbon reduction target into account*";
- the revised set of carbon budgets had not yet been published and the assessment "*was therefore undertaken using the set of carbon budgets available at the time of the assessment, which were calculated to meet the previous carbon reduction target i.e. an 80% reduction, based on 1990 levels by 2050*";
- "*programmes which are being assessed and managed across the strategic road transport network and estate will substantially decrease operational emissions beyond those stated in the assessment*";
- "*the assessment as set out in Chapter 14: Climate of the ES [APP-052] demonstrates that the Scheme's greenhouse gas (GHG) impact as a proportion of total UK carbon emissions is negligible such that it can be considered to be immaterial*";
- "*even if carbon budgets become more stringent with net zero, this would not change the magnitude of impact or result in any risk of the Scheme having a material impact on the ability of the Government to meet its carbon reduction targets*"; and that
- therefore the "*conclusion of the assessment does not change in the context of the revised targets*".

4.15.47 Responding to our request [PD-026] for evidence of impact assessments of RIS2, the Applicant [REP14-022 REP14-025] said that it considered that the confirmation in Hansard from the Under-Secretary of State for Transport was sufficient; that it did not have the detailed internal assessments undertaken by the DfT available to it as it is a separate body to the DfT; but that they are within the SoST's Department and so would be available to the SoST when considering our recommendation.

4.15.48 Derby Climate Coalition [REP6-030 REP9-040 REP14-036 AS-060] were of the view that:

- a bias towards time savings and underestimation of carbon costs meant that road project investments were being approved while disregarding the updated target for zero carbon by 2050;
- the NPSNN, the Climate Change Act and the 2050 net zero target were all out of date with the scientific consensus that radical change was now necessary;
- the Proposed Development would bring an increase in carbon emissions in a time of climate emergency and that it was therefore essential for an options development process to be undertaken to find more suitable solutions;
- there had been no Strategic Environmental Assessment of the RIS2 programme and therefore no cumulative impact assessment of the RIS2 schemes;
- the estimated emissions for the RIS2 programme would be 17 million tCO_{2e}, which it considered "*extremely significant*" as it would double a policy gap identified by the Committee on Climate Change in 2018 with respect to the fifth carbon budget;
- the penetration of electric cars over the next 10 years and their impact on carbon emissions would be minimal;
- "*the transport sector, as a whole, is failing to meet pre-net zero carbon budgets and the existing policy gap will become even wider when those budgets are tightened in line with net zero*"; and that
- the Proposed Development was the last thing that we need at this time of multiple crises and should be "*scrapped immediately*".

4.15.49 Mair Bain [REP9-043] said that the assessments were carried out in a pre-climate crisis era; did not take the UK's commitment to net zero emissions into account; and that climate scientists were warning that the carbon targets are too lax and that we need to reach net zero emissions much sooner. She asked if the Applicant and DfT fully grasped the severity of the climate emergency and the urgent need to cut greenhouse gas emissions and if they knew what life would look like in 2050 if "*out of date*" projects like the Proposed Development continued without considering the latest climate science and policy.

4.15.50 FoED [REP6-035 REP7-018 REP8-009] considered that the Proposed Development dated back to the 1980s, took no account of the climate emergency and that the UK would not meet its carbon targets with such schemes in place. It questioned whether the Applicant believed that there was a climate emergency. FoMP [REP15-011] thought that there was no evidence that the Applicant had tried to reach the earlier 80% target for carbon reduction and said that it could not meet the (updated) targets that it had not yet seen.

4.15.51 Phil Moss [AS-034], Mary Smail [REP3-039], Nick Arran [AS-040], Pauline Inwood [AS-042], Sarah Fowler [AS-046] and Christian Murray-Leslie [AS-054] all made written submissions, which included that a climate emergency had been declared by national and local governments; the Proposed Development had been planned before that; increased carbon

emissions from the Proposed Development would transgress carbon budget commitments; and that the planning process was unlawful because it did not take into account the net zero by 2050 commitment.

4.15.52 DCC [REP14-033] said that "*it had raised no fundamental issues or concerns with regard to the likely impacts of the scheme on CO_2 emissions and climate change based on its review of the Applicant's evidence in the EA and OEMP*". We note that Derby City Council declared a 'climate emergency' on 22 May 2019.

4.15.53 In addition to the matters noted above in its responses to our questions, the Applicant [REP7-007 REP9-029 REP10-009 REP12-007 AS-061] further stated that:

- in respect of the declaration of a climate emergency, the application was to be determined by the SoST in accordance with s104 of the PA2008 and with the NPSNN;
- the NPSNN requires the Proposed Development to be in line with the Climate Change Act 2008;
- the analysis to determine the schemes to be included in the RIS was undertaken by DfT following HM Treasury guidance;
- at the M4 Junction 3-12 smart motorway inquiry, DfT confirmed that the programme of schemes described in RIS1, in which the Proposed Development is included, had been cumulatively assessed and included in the current UK carbon budgets;
- it would continue to review the mitigation measures during the detailed design phase and seek further opportunities to minimise carbon emissions as required by the DMRB and in line with the net zero target;
- a wide range of alternative solutions had been considered over the last four decades, but there was very little evidence that they would have the desired effect;
- the Proposed Development is a cost-effective solution; and that 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*"; and that
- "*it will be for the Secretary of State for Transport to determine if this Scheme will have a material impact on the UK meeting its carbon reduction commitments*".

Local policy

4.15.54 DCiC [REP1-035] said that its LTP identified the significant economic price associated with climate change and the role that domestic road transport plays in contributing to CO_2 emissions. It further stated [REP12-019] that it was working on a draft interim Climate Change Action Plan to identify local emissions and an associated carbon budget for Derby and that the city would aim to become zero carbon in advance of 2050.

4.15.55 DCC [REP12-008 REP14-033] said that it had been working closely with its LA partners (eight district and borough councils) to address the impacts of climate change and to reduce greenhouse gas emissions consistent with the allocated carbon budgets for Derbyshire and to reduce carbon emissions to net zero by 2050.

4.15.56 EBC [REP1-050] considered that the Proposed Development did not comply with its climate change policies and stated that all development proposals would be expected to mitigate and adapt to climate change, and to comply with national targets on reducing carbon emissions and energy use.

4.15.57 Alyson Lee [REP3-031] said that the local policies and the EU Directives referenced by them preceded the declaration of a climate and ecological emergency made by Parliament and DCiC and that, considering the existential threat, all major projects that were still in the planning stage should be postponed until new policies had been developed that took account of the catastrophic situation.

4.15.58 Derby Climate Coalition [REP14-036 AS-060] noted that the Applicant's assessment did not take account of the local carbon budgets that were developed later. It suggested that the Tyndall carbon budgets should not be ignored by the Applicant as they were "*clearly seen by government as an integral part of the national effort to meet climate targets*".

4.15.59 The Applicant [REP4-024 REP7-007 REP10-009 REP12-007 REP13-006 REP15-007] repeated some of the responses recorded above and additionally said that:

- there was no requirement to consider the Proposed Development against locally allocated carbon budgets, the purpose of which was to advise LAs when considering how the carbon budgets could be aggregated for their jurisdiction, and there was no legal requirement for them to be adhered to;
- the impact of GHG emissions in the context of DCC's carbon budget had not been considered in the assessment;
- the Proposed Development had been identified as a priority at both the national and the local level in the support given to it through current adopted national and local policy;
- planning policies did not reflect the declaration of a climate emergency;
- the climate assessment was undertaken before the declaration of a climate emergency by the UK Government and DCiC;
- no further policy or guidance had been produced by the UK Government or DCiC regarding how the climate emergency would be met;
- the Tyndall Centre published its carbon budgets after the submission of the application, and they did not align with current UK carbon budgets; and that
- as the Proposed Development was part of the national highways network, with GHG impacts considered across the wider affected road

network, it was considered more appropriate to put the impacts into a national context.

Study area and assessment methodology

4.15.60 We raised several questions [PD-010 PD-018 PD-025] about the methodology and definition of significant effects in relation to GHG emissions, including why a magnitude of increase was considered when the exceedance of LVs was considered for other emissions; whether the emissions should be assessed against a relevant proportion of the UK carbon budget; and the consideration given to cumulative emissions.

4.15.61 Derby Climate Coalition [REP6-030] referred to the statement in the assessment and in paragraph 5.17 of the NPSNN that it is "*very unlikely that the impact of a road project will, in isolation, affect the ability of Government to meet its carbon reduction plan targets*", stating that they are not isolated cases and asking "*should we really be judging these schemes in isolation?*" It also suggested that, together with the other 100 or more similar road schemes that will be affecting other LAs, the cumulative effect would be so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets. FoED [REP8-009 REP10-010 REP11-007] suggested that the Applicant had not considered the cumulative effects of carbon emissions from the planned 100 road schemes across the UK.

4.15.62 DCC [REP9-047] was satisfied with the Applicant's cumulative impact assessment methodology.

4.15.63 The Applicant [REP3-026] replied that exceedance of LVs was relevant for local emissions but was not an appropriate way to consider CO_2 emissions as their impact was on a global level rather than a local level. It said that it was appropriate to consider the wider global context using UK carbon budgets and that this methodology was consistent with accepted industry practice.

4.15.64 The Applicant [REP3-026] did not consider it practical or possible to calculate cumulative impacts with other highways schemes in any meaningful way "*due to constraints on data availability and scale of emissions that would need to be calculated*". It was of the view that the consideration of cumulative emissions with other road schemes and proposed developments was "*a national policy issue, rather than a Scheme-specific issue*". The Applicant reiterated [REP7-007] that the GHG emissions from the Proposed Development as a proportion of total UK emissions was negligible and immaterial. It said [REP12-007] that the "*comparison of GHG emissions against the UK carbon budgets provides an inherently cumulative assessment as it considers allowable emissions from all sources within the UK.*"

4.15.65 The Applicant [REP9-028 REP11-003 REP12-006] later clarified that it had assessed emissions on the affected road network rather than the Proposed Development in isolation and that "*DfT has confirmed that the programme of schemes described in the Roads Investment Strategy (RIS) 1 have been assessed and included in the UK Government's carbon budgets*". It considered [REP11-003] that the question of emissions from the planned

100 road schemes across the UK was beyond the scope of the assessment and was a question for the SoST.

4.15.66 Responding to our question [PD-018] about whether any updates were required to the assessment, the Applicant [REP9-029] said that it had used the latest set of climate projection data available, in accordance with paragraph 4.42 of the NSPNN.

4.15.67 We asked [REP9-005] for clarification of the consideration given to nitrogen trifluoride. The Applicant [REP1-005] replied that it was commonly released from the manufacturing of electronics and microelectronics and was not considered to have a material impact on the overall footprint given the material requirements of the Proposed Development.

4.15.68 FoED [REP7-018 REP9-038] suggested that NO_2 and ozone should have been taken into account. The Applicant [REP8-007 REP10-009] stated that NO_2 was not a GHG and although N_2O was, the main source of that was agriculture and the Proposed Development would not result in N_2O emissions. The Applicant also said that ozone was not a GHG as it had a very short lifespan at ground level due to its high reactivity.

GHG emissions

4.15.69 DCiC [REP1-035] said that it was "*difficult to provide comment on the GHG impacts of the A38(T) Derby Junctions because the current standard appraisal methodology does not take account of the future uptake of lower carbon fuels.*" It later [REP11-006] stated that the Applicant's climate assessment was "*very detailed in trying to quantify the schemes impacts. It concludes that the impact across all three climate aspects is largely acceptable for the 'do-something' scenario*."

4.15.70 EBC [REP9-031] said that "*the development would be contrary to Erewash Core Strategy Policy 1 (Climate Change) in relation to the mitigation of climate changes*". DCC [REP14-033] considered that the "*Little Eaton Junction scheme was relatively limited in extent falling within Erewash Borough and it was considered that the scheme would have relatively limited impact on CO_2 emissions and the carbon budgets that had been set for Erewash Borough and the County as a whole.*"

4.15.71 Derby Climate Coalition [REP6-030 REP14-036 AS-060] suggested that the Proposed Development would use 6% of Derby's total transport emissions budget to 2100, which it considered significant.

4.15.72 FoED [REP6-035 REP7-018 REP8-009] asked for details of the emissions from an extra 15,000 vehicles daily, from the cement and steel used in the Proposed Development and from uncapping the landfill at the A38 Kingsway Island. It said [REP9-038 REP10-010] that emissions from the Kingsway Island could not be identified until an investigation had taken place.

4.15.73 David Clasby [REP3-032] said that a BEIS-funded study by the Tyndall Centre forecast that "*at 2017 CO_2 emission levels, Derby would use this entire budget within 7 years from 2020.*"

4.15.74 The Applicant [REP7-007 REP9-028 REP10-009 REP11-003 REP12-006 REP13-006] repeated that the GHG emissions from the Proposed Development as a proportion of total UK emissions would be negligible and immaterial and further said that:

- the Proposed Development was considered not to have a material impact in the context of DCC's carbon budget as it was estimated to equate to a worst-case scenario of approximately 0.2% of the Derbyshire carbon budget for 2018 to 2022 and 0.6% for the period 2023 to 2027; and that
- the former landfill at the Kingsway was not capped and was passively ventilated, so no additional CO_2 emissions would arise, and this conclusion was not expected to change as a result of the ground investigation.

GHG mitigation – vehicles, traffic and other transport modes

4.15.75 Several submissions were made about the potential for mitigation from increased uses of low emissions vehicles, reducing traffic and increasing the use of other transport modes.

4.15.76 Alyson Lee [REP3-031] and Derby Climate Coalition [REP6-030] suggested that to meet carbon budgets it was necessary to reduce the need to travel by car through measures including improvements to public transport, better cycle infrastructure, incentives for home working and car sharing. Derby Climate Coalition [REP14-037] said that it did not believe that traffic levels on local roads would reduce to make space for cycling due to the effects of induced traffic and thought that DCiC's priorities were economic development and associated greater use of cars rather than active travel. It [AS-060] considered that a "*greener, cleaner future requires investment in integrated public transport systems and housing developments that are centred around active travel, NOT BIGGER ROADS.*"

4.15.77 Mair Bain [REP9-043] was of the view that car mileage would need to reduce by 60% for emissions to stay on track and that, therefore, a rapid transformation of the transport system was required to reduce car use and that more support should be given to sustainable travel options.

4.15.78 Mary Smail [REP3-039] said that the climate emergency meant that it is necessary to put less CO_2 into the atmosphere. Sarah Ollier [AS-030], Stephanie Dobson [AS-035], Jane Temple [AS-036], Diana Bruce [AS-039], Graham McCulloch [AS-041], Dr John Spincer [AS-044], S. Wheeler [AS-047], Mr & Mrs Day [AS-053] and FoMP [REP12-015 REP13-007] made a series of points about reducing carbon emissions by removing traffic from the roads and focusing on public transport, walking and cycling. Hannah Dobson [AS-050] felt that other solutions to address traffic congestion should be sought that gave equal weight to climate, wildlife and sustainability.

4.15.79 DCC [REP9-047] said that "*appropriate consideration has been given to other transport modes and behavioural change, particularly to accommodate the needs of public transport and linkages to the surrounding cycleway / public rights of way network.*" It further considered [REP12-

008] that the Proposed Development "*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.*"

4.15.80 DCiC [REP11-006] said that making better provision for cycling and cycle routes were part of mitigating GHG, along with behavioural changes and cleaner vehicle developments. It suggested [REP12-019] that the Proposed Development "*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.*" It also said [REP14-032] that "*cycling and walking would still take place with this scheme in place. It is a strategic national road solution offering a direct route for through traffic to avoid congestion in Derby. DCiC welcomes this. Active travel is a local initiative that is being pursued by DCiC at a local level within the City.*"

4.15.81 The Applicant [REP7-007] said that the GHG assessment did not take account of government policy on the uptake of electric, hybrid or other low carbon vehicles.

4.15.82 The Applicant [REP9-029 REP13-006] clarified that it was the strategic highway authority and that other transport modes, including local public transport options, were the responsibility of DfT and LHAs, who were responsible "*for promoting transport interventions that promote behavioural changes and the use of noncarbon-emitting transport modes.*" It said [REP7-007 REP12-007 REP14-029] that severance and potential barriers to NMUs had been a focus for the design; that grade separating the junctions would reduce journey times for walking and cycling; gave examples of new provision of footpaths/cycleways that would be delivered as part of the Proposed Development; and gave examples of where it had contributed to local groups that were formulating decarbonisation policies.

4.15.83 The Applicant [AS-061] said the NSPNN "*identifies that relying on alternative transport is not a viable way of managing need. In respect of 'modal shift' (public transport, walking and cycling), it is not realistic to rely on these for all journeys*". It agreed that "*it is necessary to "build a better country with greener travel habits"*, but considered that "*until appropriate options have been developed and this is reflected in policy, it is important to note that there is an urgent need to solve the existing problems on the A38 through Derby which will only worsen with time if the Scheme does not go ahead.*" It also said that "*on the subject of economic growth driving traffic increase, whilst it is agreed that traffic growth is partially driven by economic activity, traffic growth is also a response to increasing population and the provision of development to accommodate the predicted increase in the population.*"

GHG mitigation - trees

4.15.84 Mair Perkins [REP3-038] expressed concern about the removal of mature trees in Markeaton Park which, with the declaration of a climate emergency, she considered should be protected for their carbon capture. Similar or

related comments that more trees should be planted were made by Sarah Ollier [AS-030], Phil Moss [AS-034], Stephanie Dobson [AS-035], Jane Temple [AS-036], Nick Arran [AS-040] and S. Wheeler [AS-047]. Mair Perkins [REP9-043] questioned whether the Applicant had calculated the carbon capture benefits of mature trees versus the planting of saplings.

4.15.85 FoMP [REP12-015 REP13-007 REP14-039] suggested that a large number of trees would be removed, questioned how many would be replaced, and said that the "*zero carbon target can't be met if all the plants that reduce the Carbon load are removed*." It also said [REP14-039] that the Applicant couldn't answer the questions about tree mitigation for climate change as it would not publish the full loss of vegetation until the detailed design phase was completed and withheld the numbers for mitigation until then.

4.15.86 Referring to an Office for National Statistics source, FoED [REP10-010 REP11-008] disagreed with the Applicant's view that pollution removal by trees was small, suggesting that they brought massive beneficial effects. FoMP [REP14-039] provided further evidence of the carbon sequestration value of trees, suggesting that a "*30 year old oak tree stores approximately 1.25 kg per annum, of course varying according to the weather and ground conditions*".

4.15.87 DCiC [REP12-019] said that it was "*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.*"

4.15.88 DCC [REP9-047] considered that "*the Applicant has given sufficient consideration to the need to retain and protect existing trees during the construction phase of the development and to maximise the extent of planting of new trees wherever appropriate. DCC is content that it will be consulted at the detailed design stage of the scheme on the scheme's proposed landscaping proposals and mitigation strategy*."

4.15.89 The Applicant [REP4-024] REP5-010 REP7-007 REP9-028 REP9-029 REP11-003 REP12-006 REP12-007 REP13-006 REP14-029 REP15-007] said that:

- some mature trees would be removed, and it had aimed to minimise the loss;
- mitigation planting was proposed where such losses were unavoidable, as indicated in the Environmental Masterplans [APP-068];
- it was secured [REP14-008 D-L5] that there would be a net increase in trees in Markeaton Park and that planting along the boundary of Markeaton Park would include semi-mature trees;
- trees were important in removing air pollutants at a national level across the UK but at a local level the removal of pollution by deposition and subsequent decrease in concentrations were small;
- newly planted trees would take time before they were able to take up as much carbon dioxide as mature trees and this had been considered by the carbon impact assessment which took the sequestration value of the planted trees as saplings;

- the planting of new trees would not fully compensate for the loss of mature trees in terms of loss of carbon sequestration;
- loss of carbon sequestration from existing carbon stock due to land use change accounted for 3.1% of the total construction carbon footprint and had been taken account of in the assessment; and that
- it would aim to deliver a landscape design that resulted in a net gain in trees.

GHG mitigation – energy use and sources

4.15.90 DCiC [REP11-006] suggested that "*opportunities for decentralised, renewable energy could also be investigated within the vicinity of the scheme in the form of large scale wind, hydro and solar.*"

4.15.91 The Applicant [REP4-024] referred to measures secured in the OEMP [REP14-008 MW-CC1] to monitor energy use and to develop and implement an Energy and Carbon Plan to reduce energy consumption and associated carbon emissions and potentially consider renewable and/or low or zero carbon energy sources. It said [REP10-009] that it was committed to reducing operational emissions on a national scale and was "*investing in renewable energy technology and feasibility studies across the network to reduce carbon emissions, including renewable energy solar farms to support the energy requirements of road tunnels, and photovoltaic noise barriers to power signage, cameras and roadside detectors*" and was "*also reducing the emissions of assets and buildings and rolling out improvements to depot efficiencies as part of the depot greening programme, including fitting solar panels and using LED task lighting*."

4.15.92 Responding to our question [PD-025], the Applicant [REP12-007] said that photovoltaic noise barriers were not proposed as they were still subject to further feasibility investigation; that solar power studs would be used at the Little Eaton junction; and that further opportunities for using renewable energy technologies would be considered during the detailed design phase.

Embodied carbon

4.15.93 Noting that the embodied carbon associated with the use of materials would be the biggest contributor to the carbon footprint, we questioned [PD-005 PD-010 PD-014 EV-014 PD-025 PD-026] the mitigation measures for embodied carbon; how it could be demonstrated that the requirement of paragraph 5.19 of the NPSNN "*to ensure that, in relation to design and construction, the carbon footprint is not unnecessarily high*" was satisfied; and whether to do that would require benchmarking of the Proposed Development against other similar projects and/or the setting of carbon footprint targets.

4.15.94 The Applicant [REP1-005 REP3-026] referred to measures in the OEMP [REP14-008 MW-CC1] to monitor the use of materials using its Carbon Reporting Tool and to develop and implement an Energy and Carbon Plan to reduce emissions, including through materials specification and where practicable to use materials with lower embedded GHG emissions. It clarified [REP4-024] that "*it is not always possible to determine the*

specification and supply of construction materials and products until the Scheme detailed design has been finalised". It said that there would be commercial implications for the construction contractor if its carbon emissions performance were poor and that they must demonstrate an annual reduction in tCO_{2e} emissions [REP6-042].

4.15.95 The Applicant [REP4-024 REP6-042] said that construction phase emissions from the Proposed Development had been benchmarked against other proposed highway schemes. The carbon intensity of the other schemes ranged from 19,054 tCO_{2e}/km to 35,915 tCO_{2e}/km. The Proposed Development was at 23,793 tCO_{2e}/km, which led the Applicant to conclude that it did not have unnecessarily high carbon emissions.

4.15.96 The Applicant [REP12-007 REP13-006 REP14-022] did not consider it necessary or practical for carbon footprint targets to be secured in the OEMP, stating that there was no approved method of doing so for SRN schemes and that "*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. This would need to be set at a network wide level, not agreed arbitrarily for an individual scheme.*" It considered that it had adhered to the obligations in DMRB guidance and that the OEMP already included suitable measures for the appropriate control of GHG emissions. Towards the end of the Examination the Applicant [REP14-025] added a provision to the OEMP [REP14-008 MW-CC1] for the contractor to "*reduce their construction phase GHG emissions to be below the levels as reported in ES Chapter 14.*"

4.15.97 DCiC [REP1-034 REP12-019] initially said that "*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*". It [REP14-032] later concluded that "*after further consideration DCiC has come to the conclusion that it would not be a reasonable approach to set specific Carbon targets*" and stated that "*this topic is an emerging field where there might not be established principles in such schemes.*" It considered that the Applicant's commitment [REP14-008 MW-CC1] for GHG emissions to be lower than detailed in the ES "*to be an appropriate way forward that will ensure that the Scheme's GHG footprint is appropriately managed and is not unnecessarily high as required by the NPSNN.*"

4.15.98 DCC [REP9-047 REP12-008] considered that the Applicant's proposed climate change measures appeared to be appropriate, comprehensive and based on best practice to ensure that the carbon footprint of the Proposed Development would not be unnecessarily high. It considered that the setting of carbon footprint targets in the OEMP would be laudable but said that it could be argued that they would only have a very limited impact on carbon emissions.

4.15.99 EBC [REP1-051 REP9-031] had no comments to make regarding the carbon footprint, the setting of targets or the measures in the OEMP [REP14-008 MW-CC1].

4.15.100 The EA [REP1-022 REP3-034] did not make any comment on whether the carbon footprint of the Proposed Development would be unnecessarily high, but encouraged any opportunities for carbon reduction or lower carbon impact materials to be used.

Climate change adaptation

4.15.101 Bearing in mind that matters such as flood risk and drainage are covered elsewhere, our only question [PD-018] with respect to the climate change adaptation matters considered in this section of the report was to seek clarification as to whether any updates were required to the assessment. The Applicant [REP9-029] said that it had used the latest set of climate projection data available, in accordance with paragraph 4.42 of the NSPNN, and that the Proposed Development would be designed to improve its resilience to climate change through a range of design and material specification measures.

4.15.102 We note the OEMP [REP14-008 MW-CC2] states that "*Highways England will improve the resilience of the Scheme to climate change through a range of design and material specification measures including where practicable: the procurement and use of construction materials with superior properties (such as increased tolerance to fluctuating temperatures), and incorporation of current road design standards and future climate change allowances.*"

Conclusions on climate change policy and factual issues

Introduction

4.15.103 Air quality, health, flood risk, biodiversity, traffic, NMUs, social, economic and case for development matters and conclusions are dealt with elsewhere in this report, as, where necessary, are in-combination effects of climate change with other effects on receptors.

4.15.104 We have examined the proposal against the policies set out in the NPSNN in our consideration of the impacts of the Proposed Development in relation to climate change, carbon emissions and climate change resilience. Further to the submissions by various parties we have also given particular consideration to the requirements of the Climate Change Act 2008 (as amended) and the Paris Agreement 2015.

International obligations and policy considerations

4.15.105 Section 104(4) of the PA2008 refers to a need to consider whether the Proposed Development would lead to the UK being in breach of any of its international obligations. These obligations include the Paris Agreement 2015.

4.15.106 Various parties suggested that the Heathrow judgement provided evidence that the Paris Agreement 2015 had not been complied with. We note that the decision was narrowly drawn to the ANPS not having taken the Paris Agreement into account, that it had not been found that the ANPS was necessarily incompatible with the Paris Agreement 2015 and that no mention was made of the NPSNN. On that basis our view is that the

Heathrow judgement did not establish that there is a conflict between the NPSNN and the Paris Agreement 2015.

4.15.107 Challenges were made by several parties that insufficient account had been taken of the Paris Agreement 2015. We consider that the Applicant's responses to Paris Agreement 2015 human rights matters raised by FoED did not directly address the points made. The human right matters in the Paris Agreement 2015 relate to the effects of climate change. We deal with effect of the Proposed Development on climate change in terms of carbon emissions below and with human rights issues generally elsewhere. As such, we consider that the FoED submissions do not demonstrate that the Proposed Development would infringe the international human rights matters raised in the Paris Agreement 2015 provided that the Proposed Development is compatible with the achievement of the overall carbon reduction targets set out in UK legislation.

4.15.108 The Applicant considered that a quotation from Hansard by the Parliamentary Under-Secretary of State for Transport provided evidence of compliance with the Paris Agreement 2015. The statement was made during a debate on a matter that was not focussed on the highways sector when a one-word answer was given to a question about whether the "*roads programme*" complies with the Paris Agreement 2015. The answer did not refer to any substantiating evidence.

4.15.109 The Applicant referred to other evidence from the M4 Junction 3-12 smart motorway NSIP that, it suggested, showed compliance with the Paris Agreement 2015 but did not provide details to this Examination. We consider that the publicly available evidence provided to that Examination does not sufficiently address the specific point that we are considering. The Applicant also suggested that other evidence would be available to the DfT but was not able to make it available to this Examination.

4.15.110 We consider that not enough robust evidence was presented to the Examination for us to reach a view as to whether the Proposed Development, or the RIS1 or RIS2 programmes of which it is a part, would be consistent with the Paris Agreement 2015. In these circumstances we are unable to conclude whether the Proposed Development would cause the UK to be in breach of its international obligations. The SoST will need to satisfy themself on this matter before making their decision.

4.15.111 The Paris Agreement 2015 does not set out a specific commitment on carbon emissions for the UK. That is provided in the Climate Change Act 2008 (as amended), which is considered below. Compliance with the Climate Change Act 2008 (as amended) would provide a route towards compliance with the Paris Agreement 2015 and contribute towards avoiding a breach of the UK's international obligations. Nevertheless, noting the need to specifically address s104(4) of the PA2008 with respect to international obligations, we consider it necessary to address compliance with the Paris Agreement 2015 as well as compliance with the Climate Change Act 2008 (as amended).

4.15.112 Challenges were made that policies were out of date. Some policy, including the NPSNN and some local policies, have not been explicitly

updated since the Paris Agreement 2015, since the declaration of a climate emergency by DCiC, or since the target of net zero carbon by 2050 was set. Nevertheless, the NPSNN remains the primary source of policy guidance. It has not been shown that local policies outweigh the NPSNN, whether they are up to date or not. Our conclusions regarding the Paris Agreement 2015 and the target of net zero carbon by 2050 are set out in this section of the report and reflected in our recommendation to the SoST.

4.15.113 We agree with the Applicant's view that there is no requirement for us to consider the Proposed Development against locally allocated carbon budgets.

Carbon emissions

4.15.114 With reference to paragraph 5.17 of the NPSNN, the Applicant has identified that the emissions arising as a result of the Proposed Development represent less than 0.01% of the total emissions in any five-year UK carbon budget during which they would arise. We are therefore content that the GHG emissions impact of the Proposed Development on its own would be unlikely to have a material impact on the UK Government meeting the carbon reduction targets in place at the time of the assessment.

4.15.115 At the time the application was made there was a target of an 80% reduction in carbon emissions by 2050. The net zero carbon by 2050 target has been set since the application was submitted. The Applicant has sought to demonstrate that the Proposed Development would not affect the ability of the Government to meet the net zero by 2050 target. We are unable to test this directly as per paragraph 5.16 of the NPSNN as the relevant interim carbon budgets have not been published for the operational year assessment. Therefore, the SoST will need to satisfy themself on that matter before making their decision. Although several parties have suggested that the Proposed Development would result in a breach of the Climate Change Act 2008 (as amended), we find that they have not provided clear evidence that a breach would occur.

4.15.116 We agree with Derby Climate Coalition, FoED and others that the emissions from the Proposed Development should not be seen in isolation. The Applicant was not able to provide an assessment of cumulative impacts of the Proposed Development with other highways developments, particularly given its approach of assessing the proposal against UK carbon budgets.

4.15.117 The Applicant's approach of assessing emissions from the Proposed Development as a proportion of national budgets does not appear to conflict with current policy or guidance. The contribution of the Proposed Development may be relatively small at up to 0.01% but we are not convinced that the Applicant's approach sufficiently considers cumulative effects with other projects or programmes. In our view an appropriate assessment should, as is normal practice for the assessment of cumulative effects for other matters, adopt a reasonably consistent geographical scale. An example of this would be to consider the RIS1 or RIS2 programmes, of which the Proposed Development is a part, against the UK carbon budgets. The Applicant suggested that such an exercise had been undertaken but

was unable to provide any details of it. Based on the above, we are not able to reach a conclusion on cumulative climate change effects.

4.15.118 Therefore, the SoST will need to satisfy themself regarding the cumulative effects of carbon emissions from the Proposed Development with those from other developments on a consistent geographical scale, for example by assessing the cumulative RIS1 or RIS2 programmes (of which the Proposed Development is part) against the UK carbon budget.

4.15.119 We have no reason to doubt that the Applicant has used the latest climate projection data in accordance with paragraph 4.42 of the NPSNN. We accept the Applicant's arguments that nitrogen trifluoride would not be material to the carbon footprint and that NO_2 and ozone are not GHG. We are therefore content that appropriate consideration has been given to them for the purposes of the GHG impact assessment. We note the evidence with respect to the potential for additional emissions at the Kingsway landfill site and conclude that the scale and nature of the works in that area are unlikely to result in any effects that would be material to the conclusions of the assessment.

4.15.120 We note the comments made by several parties with respect to the benefits for GHG mitigation of reducing traffic levels and increasing the use of other modes. However, we also accept the comments made by the Applicant, DCiC and DCC about the requirements to be expected of the Proposed Development and that the overall responsibilities for other modes of transport typically lie with the DfT and the LAs. We are also mindful that paragraph 2.23 of the NSPSNN supports improvements to the SRN and Table 1 advises that it is not realistic for public transport, walking or cycling to represent a viable alternative to the private car for all journeys, particularly, longer or multi-leg journeys. Moreover, we have concluded in Section 4.7 that the Proposed Development would tackle a specific problem with traffic congestion rather than supporting unconstrained traffic growth, in accordance with paragraph 2.24 of the NPSNN. We note the range of measures, including the new and amended footpaths and cycleways, built into the design. It follows that we are satisfied that the Applicant has provided appropriate mitigation of GHG emissions in respect of traffic levels and the use of other transport modes.

4.15.121 Uncertainties were raised about the potential future uptake of low emission vehicles, but we are content that by not accounting for government policy to increase their uptake the Applicant adopted a reasonable worst-case scenario.

4.15.122 Many parties commented on the benefits of trees for GHG mitigation and raised concerns about the loss of trees and the degree to which their carbon sequestration benefits had been properly assessed and whether they would be replaced. Having carefully considered the arguments made, the Applicant's responses to them, including that the assessment assumes that the level of carbon sequestration achieved by the new trees would be as saplings, as well as the comments made by DCiC and DCC, we are satisfied that the assessment has been carried out appropriately. We are, similarly, content with the mitigation measures provided for in the OEMP [REP14-008] and further note the Applicant's aim to deliver a net gain in trees.

4.15.123 We are content with the further GHG mitigation measures secured in the OEMP [REP14-008 MW-CC1] for the monitoring of energy use and for the development and implementation of an Energy and Carbon Plan.

4.15.124 We acknowledge the carbon footprint benchmarking already carried out by the Applicant. With respect to carbon footprint targets, we welcome the Applicant's addition of the OEMP [REP14-008 MW-CC1] provisions for the contractor to reduce their construction phase GHG emissions to below the levels reported in the ES Chapter 14. Noting the comments made by the Applicant, DCiC, DCC and EBC, we consider that the combination of the benchmarking with the mitigation measures built into the design and secured in the OEMP [REP14-008 MW-CC1], including with respect to embodied energy and the use of materials, are likely to ensure that the carbon footprint will not be unnecessarily high. We are therefore happy that the requirements of paragraph 5.19 of the NPSNN have been met.

Climate change adaptation

4.15.125 We are content that the resilience of the Proposed Development to climate change, as well as the combined impacts from climate change and the Proposed Development on the surrounding environment and receptors, has been adequately addressed by the Applicant in accordance with paragraphs 4.36 to 4.47 of the NPSNN. We consider that the assessment of operational effects has appropriately considered the likelihood of climate events and hazards occurring and the consequences of the potential impacts on disruption to the road network, taking account of the identified mitigation measures.

Overall conclusions and recommendations

4.15.126 Our recommendations are subject to the SoST's consideration of matters on which we have not been provided with enough information to determine:

- whether the Proposed Development would lead to the UK being in breach of the Paris Agreement 2015. Whilst there was no evidence that there would be a breach (as per s104(4) of the PA2008) we are unable to confirm there would not be a breach on the evidence submitted;
- consideration of the cumulative effects of carbon emissions from the Proposed Development with those from other developments on a consistent geographical scale, for example by assessing the cumulative RIS1 or RIS2 programmes (of which the Proposed Development is part) against the relevant UK carbon budget;
- whether the Proposed Development would affect the ability of the Government to meet the target of the revised net zero carbon by 2050 that was set (in July 2019) after the application was submitted.

4.15.127 Subject to these caveats, we consider that the Proposed Development would be unlikely to result in an increase in carbon emissions so significant that it would result in any significant effects in respect to climate change or carbon emissions. We have no concerns about the resilience of the Proposed Development to climate change.

4.15.128 Therefore, subject to the SoST's consideration of compliance with the Paris Agreement 2015, cumulative carbon emissions and meeting the target of net zero carbon by 2050, we consider that climate change and carbon emission effects do not weigh significantly for or against the DCO being made. This is considered further in the planning balance in Chapter 6 and the final conclusions in Chapter 9.

4.16 OTHER POLICY AND FACTUAL ISSUES

Introduction

4.16.1 This section deals with matters identified in the NPSNN, NPPF or local policies which, potentially, require consideration when making a decision on a NSIP, but which have not been covered in the preceding sections of this chapter. Having regard also to the issues raised in the Examination it considers:

- land instability and contaminated land;
- waste management and material assets; and
- nuisance.

4.16.2 This section also deals briefly with:

- dust, odour, artificial light, smoke, steam;
- civil and military aviation and defence interests;
- safety;
- security, major accidents and disasters; and
- decommissioning.

4.16.3 The penultimate part of this section considers the combined and cumulative effects of the Proposed Development, after which we then provide our conclusions on the issues considered in this section.

Land instability and contaminated land

Policy context

4.16.4 When considering pollution control, paragraph 4.50 of the NPSNN advises that the ExA and SoS should focus on "*whether the development itself is an acceptable use of the land, and on the impacts of that use, rather than the control of processes, emissions or discharges themselves. They should assess the potential impacts of processes, emissions or discharges to inform decision making, but should work on the assumption that in terms of the control and enforcement, the relevant pollution control regime will be properly applied and enforced.*"

4.16.5 Paragraph 5.117 states that "*Where necessary, land stability should be considered in respect of new development, as set out in the National Planning Policy Framework and supporting planning guidance. Specifically, proposals should be appropriate for the location, including preventing*

unacceptable risks from land instability". Paragraph 5.118 goes on to advise that a preliminary assessment of ground instability should be carried out and that applicants should ensure that any necessary investigations are undertaken to ascertain that their sites are and will remain stable, or can be made so, as part of the development.

4.16.6 Paragraph 178 of the NPPF states that the site should be suitable for its proposed use, taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation, including land remediation.

The application

4.16.7 The parts of the application most relevant to the consideration of land stability and contaminated land issues are:

- Chapter 10: Geology and Soils [APP-048]; and
- Additional Soil and Groundwater Contamination Information Submitted to the EA [REP3-020].

Applicant's assessment

Methodology and baseline

4.16.8 The Applicant said that the assessment was based on the advice provided in DMRB Volume 11, Section 3, Part 11 Geology and Soils and that the methodology also took account of technical guidance produced by DEFRA as well as agencies such as the EA and Contaminated Land: Applications in Real Environments (CL:AIRE) and British Standards.

4.16.9 The baseline assessment makes reference to data sources including:

- 'Envirocheck' Reports (Landmark Information Group);
- data from British Geological Survey Solid and Drift Geology Sheets;
- British Geological Survey borehole logs;
- available site investigation factual and interpretative reports, including the A38 Derby Junctions Ground Investigation Report (ES Appendix 10.1 [APP-222]), the Monitoring Report (ES Appendix 10.2 [APP-223]), the Preliminary Sources Study (ES Appendix 10.3 [APP-224]) and the Preliminary Sources Study addendum (ES Appendix 10.4 [APP-225]); and
- human health and controlled waters risk assessments based on the findings of the ground investigation works and laboratory testing within the Ground Investigation Report (ES Appendix 10.1 [APP-222]).

4.16.10 The Applicant said that fieldwork surveys and consultations with NE, the EA, DEFRA and relevant LAs had been undertaken.

4.16.11 An assessment was made of the likely level of significance of each potential impact by considering the importance or sensitivity of the receptor and the

magnitude of the predicted impact. The Applicant said that professional judgement was applied to the consideration of site-specific factors. It said that the study area included the length of each junction and a buffer zone of 500m around the main construction works.

4.16.12 The assessment describes the geology and topography at each of the junctions and characterises the encountered ground conditions, hydrology and hydrogeology. It also identifies mineral and mining sites and potential sources of contamination.

4.16.13 The assessment said that there were no statutory designated geological sites within the study area, although there were three Local Geological Sites. A detailed Unexploded ordnance (UXO) risk assessment found that there was a low risk of German dropped UXO in the vicinity of Markeaton junction, with the risk of Allied Military UXO varying from low to medium risk depending on the location.

4.16.14 A controlled waters risk assessment and subsequent Detailed Quantitative Risk Assessments (DQRA) found no potential risks from organic contaminants at any of the junctions. Other risks to controlled waters were found to be:

- Kingsway junction: hexavalent chromium, copper, cyanide, lead, nickel, zinc and ammoniacal nitrogen. This was based on risks to freshwater ecosystems (Bramble Brook);
- Markeaton junction: cadmium, copper, lead, zinc, hexavalent chromium and cyanide. This was based on risks to freshwater ecosystems (Markeaton Brook); and
- Little Eaton junction: cadmium and selenium. This was based on risks to drinking water resources (River Derwent – SPZ).

4.16.15 The ground gas risk assessment found, in summary:

- Kingsway junction: The area overlying an historic landfill was classified as Characteristic Situation 3 (Moderate Risk) in accordance with the classification scheme for site gas risk assessment defined in CIRIA C665. The area outside of the landfill was classified as a Characteristic Situation 1 (Very Low Risk);
- Markeaton junction was classified as a Characteristic Situation 1 (Very Low Risk); and
- Little Eaton junction was classified as a Characteristic Situation 2 (Low Risk).

4.16.16 A geotechnical assessment and risk register were also prepared.

Potential impacts

4.16.17 The potential contaminated land impacts prior to mitigation during the construction phase were identified in the ES [APP-048 paragraph 10.8.2]. These included mobilising existing contamination in soil and groundwater, increasing the potential for contaminants to leach into groundwater and for

contaminated surface run off to migrate to surface water and groundwater receptors. Other potential impacts identified include introducing new sources of contamination, such as fuels, chemicals and oils used during construction activities and creating preferential pathways for the migration of soil contamination and ground gases.

4.16.18 Potential impacts on existing geological and soil resources during the construction phase were identified in the ES [APP-048 paragraph 10.8.4] as including the degradation of soil resources from the compaction of soil due to construction activity, temporary and permanent loss of agricultural soils at Little Eaton junction and the generation of waste soils.

4.16.19 The assessment found that no potential adverse impacts were likely to result from the long-term operation of the Proposed Development with the exception of the risk for controlled waters or geology and soils to be affected by spillages arising from road accidents or faulty vehicles. In addition, it considered that agricultural land quality within the floodplain compensation area at Little Eaton junction could change due to an increase in the frequency and duration of flooding.

Design and mitigation measures

4.16.20 The assessment refers to the implementation of design and best practice techniques (comprising legal requirements and construction guidance) in order to mitigate and manage, as far as is practicable, potential impacts on geology and soils due to construction activity. It goes on to identify the range of provisions set out in the OEMP [REP14-008 PW-GEO7, MW-GEO1, MW-GEO7, MW-GEO8, MW-GEO9, MW-GEO11 and MW-GEO12] that would subsequently be included in the CEMP. The measures in the CEMP would be designed to limit the possibility of dispersal and accidental releases of potential contaminants, soil derived dusts and uncontrolled run-off occurring during the construction phase. The OEMP [REP14-008 PW-GEO2, PW-GEO5, MW-GEO2 and MW-GEO6] also contains provisions for further ground investigations during the detailed design phase and sets out procedures for dealing with any unexpected contamination. Materials Management and Soils Management Plans would also be prepared and implemented under the terms of the OEMP [REP14-008 MW-GEO4 and MW-MAT3].

4.16.21 With regard to the UXO risk at Markeaton, the assessment recommends site-specific UXO awareness briefings to all personnel conducting intrusive works and UXO specialist presence on site to support shallow intrusive works. These measures are secured in the OEMP [REP14-008 PW-GEO1].

4.16.22 The main construction compound for the Proposed Development would be at the site of the former landfill to the north of Little Eaton junction. The assessment says that historic ground investigation data indicates the potential for the presence of soft ground and contaminated materials and leachate. Therefore, the surface of the construction compound area would be covered by approximately 600mm of compacted stone to form a trafficable surface for site vehicles and provide a separation layer from the underlying landfill materials to prevent their disturbance and trafficking to

other parts of the site. This matter was raised in the Examination and is considered further below.

Summary of geology and soil effects and potential for pollutant linkage

4.16.23 The assessment summarises the potential effects during the construction and operational phases under the broad headings of:

- human health receptors;
- controlled waters;
- development infrastructure; and
- geology and soil resources.

4.16.24 These broad headings are sub-divided into specific receptors. In each case, the assessment found that, with the identified design and mitigation measures in place, and adherence to appropriate construction and operational practices, the effects on soils and geology would be either negligible or, at worst, minor. Therefore, the assessment considered that the predicted effects would not be significant for the purposes of the EIA.

Issues considered during the Examination

4.16.25 Land stability issues were not raised in the Examination. Contamination issues raised during the Examination included:

- the methodology used for the assessment of impacts on groundwater and the verification of the works;
- whether the proposal would adequately deal with the risk of ground contamination at the Kingsway and Markeaton junctions; and
- the drainage and remediation proposals for the Little Eaton construction compound.

Methodology and verification

4.16.26 In its RR [RR-005] and WR [REP1-020], the EA expressed concern that the use of statistical analysis at Section 6 of the Ground Investigation Report may not be appropriate and that any assessment should be made in the context of potentially complete pollutant linkages. Further, that the analysis did not provide an account of the spatial distribution of the results. The EA was also concerned that not all of the data in the screening tables had been assessed. It also considered that the Geotechnical Risk Register (Table 7.1 of ES Appendix 10.3 [APP-139]) did not identify potentially complete pollutant linkages using the Source-Pathway-Receptor framework or provide a clear Conceptual Site Model as set out in its CLR11 guidance. In view of these concerns, the EA did not comment on the associated DQRA.

4.16.27 FoED was also concerned about the risk of contamination of controlled waters at Kingsway junction [REP7-018]. These matters were raised in our FWQ [PD-005] and discussed in ISH2 [EV-011 EV-012 EV-013].

4.16.28 The Applicant [REP1-003] responded to these concerns and subsequently submitted a Technical Note [REP3-020] containing revised Generic and Detailed Quantitative Risk Assessments for controlled waters at each of the junctions. At ISH2, the EA made further detailed comments on the Technical Note, mainly regarding the lack of assessment of the risk posed to controlled waters receptors from elevated concentration of certain determinands at the Kingsway junction and, to a lesser extent, at the Markeaton junction [REP3-034]. The Applicant produced an Addendum to its Technical Note which clarified the assessment of the determinands (total petrol hydrocarbon concentrations) [REP4-019].

4.16.29 The original Technical Note [REP3-020] found that there would be negligible risk to identified receptors from organic contaminants. The theoretical risk from dissolved metals was considered likely to be influenced by naturally occurring low-level concentrations derived from the strata mineralogy. Therefore, it was considered that there would be a very low risk to the identified receptors from the presence of cadmium, copper and/or nickel concentrations recorded in a very small number of samples at each of the three junctions.

4.16.30 The Addendum to the Technical Note [REP4-019] found that there would be negligible risk to identified receptors from the total petrol hydrocarbon fractions. No remedial works were considered necessary regarding the concentrations of potential contaminants encountered within the groundwater at the three junctions. The Addendum did, however, make recommendations for the disposal of water from the de-watering of excavations.

4.16.31 In its SoCG [REP5-008], the EA confirmed that it had reviewed the additional information submitted by the Applicant and was content that appropriate measures would be put in place to manage potential impacts associated with ground contamination and controlled waters. The necessary measures, in the form of further investigations and the preparation of a Remediation Strategy, are set out in the OEMP [REP14-008 MW-GEO2].

4.16.32 Also in response to EA comments [REP4-027], the Applicant updated the OEMP [REP14-008 MW-GEO3] to require the preparation of a Verification Report to demonstrate that the works had been undertaken in accordance with the Remediation Strategy and to report on their effectiveness. Details of this process would be contained in the CEMP.

Ground contamination

4.16.33 FoED raised a series of questions regarding contaminated land in its submissions [REP7-018 REP8-009 REP9-038 REP11-007]. These concerns were based on information contained in the Applicant's Preliminary Environmental Investigation Report rather than its application submissions. The questions covered the CO_2 released from uncapping the Rowditch landfill site at Kingsway as well as the risk from landfill gas; the risk to construction workers and others needing to pass the site; the risk of entering confined spaces; the risk from carbon dioxide and risks from methane and hydrogen sulphide at Markeaton junction and cadmium and

selenium at Little Eaton. FoED also suggested that there was asbestos at the Kingsway and Markeaton junctions.

4.16.34 The Applicant responded [REP8-007 REP10-009 REP12-006] that the former landfill site at Rowditch is not capped, although part of it is covered by a passive landfill gas venting system. It said that CO_2 and other ground gases would be taken into account in order to ensure the health and safety of construction workers and that a further site investigation was planned to assist in this process. The Applicant also considered that, as the landfill area was uncapped and had a passive landfill gas venting system, no additional CO_2 emissions would arise as a result of the construction works. It said that, as the health and safety of workers was a legal requirement in any case, such matters had been scoped out of the ES assessment.

4.16.35 In response to the concerns over the presence of contaminants, the Applicant [REP8-007 REP10-009 REP12-006] also referred to the results of the DQRA report as outlined above, to the measures and procedures in the OEMP which would protect local residents from contamination risks and to the requirement to produce an Asbestos Management Plan to ensure that material is dealt with in a legally compliant way. Again, such requirements are secured through the OEMP [REP14-008 PW-GEO3, PW-GEO7, PW-GEO8, MW-GEO1, MW-GEO2, MW-GEO5, MW-GEO9 and MW-GEO13].

Little Eaton construction compound

4.16.36 Paragraph 4.16.22 above summarises the Applicant's proposals for dealing with the Little Eaton compound on completion of the construction activity. The compound would be close to SPZs for potable water and the OEMP [REP14-008 PW-WAT1] would require the preliminary works CEMP to include details of pollution risk management measures at the compound, having particular regard to the protection of the SPZs and nearby surface watercourses. The EA was satisfied with those provisions [REP12-013].

4.16.37 EBC was also content with those provisions [REP9-031]. However, in its LIR [REP1-050] and in response to our request for further information [PD-018] it commented that, since the compound would be sited on a former tip, it would be more appropriate for the land not to be restored as a tip. Rather the land should be left in a safe condition and landscaped. [REP9-031],

4.16.38 The Applicant revised the wording of the OEMP [REP14-008 MW-G28] to address EBC's concerns. The latest version requires the compound to be decommissioned and the site suitably restored following consultation with EBC and the landowner. It goes on to say that aspects of the compound may be left in situ where these features were deemed to be of benefit to site conditions, subject to the agreement of the landowner and following consultation with EBC [REP14-008]. EBC confirmed that it was content with these provisions [REP12-009].

Waste management and material assets

Policy Context

4.16.39 Paragraph 5.42 of the NPSNN advises that the Applicant should set out the arrangements proposed for managing any waste produced and should

normally seek to minimise the volumes of waste produced and sent for disposal.

4.16.40 Paragraph 5.43 requires the SoS to consider the extent to which the Applicant has proposed a process to ensure the effective management of hazardous and non-hazardous waste arising during the construction and operational phases. The process should ensure that waste would be properly managed, both on-site and off-site, that, the waste from the proposal facility could be dealt with appropriately by the waste infrastructure and that adequate steps would be taken to minimise the volume of waste arisings.

The application

4.16.41 The part of the application most relevant to the consideration of waste management and material assets issues is Chapter 11: Material Assets and Waste [APP-049].

Applicant's assessment

4.16.42 The Applicant said that the material assets and waste assessment was prepared having regard to the guidance provided in IAN 153/11 Guidance on the Environmental Assessment of Material Resources. It said that the assessment [APP-049 paragraph 11.3.2] used professional judgement and information provided by the project's buildability advisors to identify and quantify the sources, types and quantities of materials required, the cut and fill balance for excavations and the types, quantities of waste and the options for its disposal.

4.16.43 In broad terms, the mitigation measures to be employed during the detailed design and construction phases were identified as:

- waste arisings would be prevented and designed out where practicable;
- opportunities to re-use material resources would be sought; and
- opportunities to support the circular economy would be considered.

4.16.44 The assessment also outlines the provisions of the OEMP and CEMP in relation to waste management and material assets. In particular, it refers to the preparation of a Site Waste Management Plan (SWMP) and a MMP.

4.16.45 With regard to LSEs on material assets, the assessment states that a target of 14% would be set for the use of secondary and recycled aggregates. This would apply to those applications where it would be technically and economically feasible to substitute these alternative materials for primary aggregates. It said that the target would accord with the regional guidelines for the East Midlands[11], and had regard to the location of the Proposed Development which was relatively close to large sources of secondary and recycled aggregates. The assessment said that aggregates that would need to be imported would comprise re-used or recycled content in line with the relevant regional or national percentage targets. The

[11] National and Regional Guidelines for Aggregates Provision in England 2005 to 2020 (DCLG 2009)

Applicant found that the effect of the Proposed Development on material assets would be slight and not significant.

4.16.46 Using good industry practice in the management of the waste materials generated by the proposal, the Applicant considered that an overall recovery rate of 93% could be achieved. That would exceed the Government's 70% by weight target for recovery of non-hazardous construction waste (uncontaminated excavated soil and stones are specifically excluded from this target). The effects were assessed as being slight and not significant.

4.16.47 With regard to waste, the Applicant estimated that the construction of the Proposed Development would generate approximately 17,061 tonnes (approximately 15,965m^3) of non-hazardous construction and demolition waste (excluding earthworks). This was expected to require management off site. Based on a worst-case assumption that all of the non-hazardous construction and demolition waste requiring management off site would be disposed of to landfill, that volume of waste would take up approximately 0.03% of the permitted regional landfill capacity[12].

4.16.48 The Applicant anticipated that some of the cut material from the Kingsway and Markeaton junctions may not be re-usable, given that it would be part sourced from an area used for historic landfilling. On that basis it considered that a total of approximately 45,130m^3 of material would need to be landfilled, which would take up some 0.08% of the permitted regional landfill capacity. On that basis it was estimated the Proposed Development would result in a reduction of less than 1% in the capacity of the regional waste infrastructure. The assessment considered that, in practice, a large proportion of the waste would be likely to be recycled or recovered rather than being disposed of to landfill, further reducing the overall quantity of waste requiring disposal. The effects were, therefore, assessed as being slight and not significant.

Issues raised in the Examination

4.16.49 In its RR [RR-005], the EA suggested that the proposal should aim to achieve a higher target for the re-use of secondary and recycled aggregate than the 14% set out in the ES. It also suggested that the use of Complex Sorting, rather than landfill, should be considered for the disposal of waste material from the Kingsway junction works.

4.16.50 In response [REP1-003], the Applicant considered that the target for secondary and recycled aggregates was appropriate. Nevertheless, it recognised that the 14% target would not stop it from setting a more demanding target during the detailed design and construction phases. It, therefore, undertook to liaise with the construction contractor to determine whether they would be able to work towards the national target of 25%. This approach is contained in the OEMP [REP14-008 MW-MAT4].

4.16.51 In terms of the use of Complex Sorting, the Applicant undertook to carry out supplementary ground investigations to inform the preparation of the Remediation Strategy for the Kingsway junction [REP1-003]. It considered

[12] Based on information published by the EA for the year 2017

that it may be possible to employ a more sustainable approach by undertaking stabilisation/solidification of the excavated material containing asbestos and re-using that material at depth within the earthworks at Kingsway junction. The Applicant said that this would reduce the volume of materials requiring disposal and reduce the volume of fill that would need to be imported to the site. It said that any such works would only be undertaken if they did not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the ES.

4.16.52 These matters were considered in post-ISH2 written submissions. The EA [REP3-034] re-iterated its encouragement to achieve more than the 14% target for secondary and recycled aggregates. It also indicated that the SWMP should seek to minimise the generation of waste and ensure that there would be an auditable waste management chain.

4.16.53 The Applicant essentially maintained its position regarding the target for secondary and recycled aggregates. It also undertook to update the OEMP provisions for the preparation of the SWMP. The latest version of OEMP [REP14-008 MW-WAT1] requires the SWMP to, amongst other things, set out a recording process for the management of waste, including storage and transport on-site and records for waste documentation. It is also required to define measures to minimise waste arisings and to recover waste materials in accordance with the principles of the waste hierarchy, including requirements for waste to be passed to licensed waste carriers, managed at suitably permitted sites, and for the production of custody documentation [REP3-026]. These matters were agreed in the SoCG with the EA [REP5-008].

4.16.54 Derby and Derbyshire Minerals Local Plan Policy MP17 Safeguarding Resources seeks to resist proposals for development which would sterilise or prejudice the future working of important economically workable mineral deposits. However, there is nothing to indicate that the Proposed Development would affect such resources. In its LIR [REP1-031] DCC, as the minerals planning authority for the Little Eaton junction area, indicated that it was content with the Applicant's assessment of waste management and material assets.

Dust, odour, artificial light, smoke and steam

4.16.55 Paragraph 5.84 of the NPSNN advises that the Applicant should assess any LSEs on amenity from emissions of odour, dust, steam, smoke and artificial light and describe these in the ES.

4.16.56 As paragraph 5.81 of the NPSNN notes, the pollution impacts from some of these emissions (e.g. dust and smoke) are covered in the consideration of air emissions. In this case, they are dealt with in Section 4.8 of this report. The effect of artificial lighting is covered in Sections 4.12 and 4.14.

4.16.57 The Applicant's Planning Statement and National Policy Statement Accordance Table [APP-252] considered that emissions of odour, smoke and steam were expected to be negligible. No substantive evidence emerged during the Examination to dispute that assessment.

Common Law Nuisance and Statutory Nuisance

Policy and legal context

4.16.58 Section 158 of the PA2008 provides a defence of statutory authority against claims in civil and criminal proceedings for nuisance, unless the DCO provides otherwise.

4.16.59 Section 79(1) of the Environmental Protection Act 1990 (EPA) establishes the definition of 'statutory nuisance'. The term covers matters such as noise, smoke, or gas emitted from premises, if they either constitute a (common law) nuisance or are prejudicial to health.

4.16.60 Paragraph 4.58 of the NPSNN directs the consideration of possible sources of nuisance, and how they may be mitigated or limited so that appropriate requirements can be included in any subsequent order granting development consent.

4.16.61 Paragraph 5.88 of the NPSNN adds that the decision maker should consider whether there is a justification for the entire authorised project being covered by a defence of statutory authority against nuisance claims. If it cannot conclude that this is justified, it should disapply in whole or in part the defence through a provision in the DCO.

4.16.62 The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP) regulation 5(2)(f) requires that an application must be accompanied by "*a statement whether the proposal engaged one or more of the matters set out in section 79(1) […] of the Environmental Protection Act 1990 and, if so, how the applicant proposes to mitigate or limit them.*"

Applicant's assessment

4.16.63 Article 43 of the rDCO (Appendix D) would provide specific defences where proceedings are brought in the magistrates' court under s82(1) EPA 1990 in relation to certain categories of nuisance within s79(1). These are the categories described in the EPA 1990 s79(1) (g) (noise emitted from premises) and (ga) (noise emitted from or caused by a vehicle, machinery or equipment in a street). It relates to cases brought by individuals or other legal persons (such as companies). It would remain open to the undertaker to raise the general PA2008 s158 defence of statutory authority against proceedings for nuisance taken by the LA under s80, or by individuals in relation to any of the other categories of nuisance under s82.

4.16.64 The Statement of Statutory Nuisance [APP-248] reviews the scope of statutory nuisance potentially arising from the Proposed Development. It identifies the potentially engaged areas of statutory nuisance categories under s79(1) EPA1990 as follows:

- (d) dust arising on business premises;
- (fb) artificial light from premises;
- (g) noise emitted from premises;

- (ga) noise emitted from or caused by a vehicle, machinery or equipment in a street.

4.16.65 Section 79(6A) EPA1990 clarifies that subsection (1)(ga) does not apply to noise made by traffic but could apply to construction vehicles or plant.

4.16.66 In relation to the s79(1) EPA1990 matters that could potentially be engaged the Statement of Statutory Nuisance [APP-248] refers to relevant assessments provided in the ES for Air Quality [APP-043], Landscape and Visual [APP-045] and Noise and Vibration [APP-047]. It concludes that with the mitigation secured in the rDCO (Appendix D) and OEMP [REP14-008] in place, none of the statutory nuisances identified in s79(1) EPA1990 were predicted to arise as a result of the Proposed Development.

Issues considered during the Examination

4.16.67 Our consideration of the Applicant's assessment, mitigation measures and significant effects in relation to the matters that the Applicant considers would potentially engage areas of statutory nuisance categories under s79(1) EPA1990 are addressed elsewhere in this report:

- dust in Section 4.8;
- artificial light in Sections 4.12 and 4.14; and
- noise in Section 4.9.

4.16.68 We questioned [PD-003] why Article 43 of the dDCO submitted with the application [APP-016] included s79(1) EPA1990 statutory nuisance categories (d) and (fb) when the ES did not identify potentially significant effects. In response the Applicant [REP1-004] removed those references.

4.16.69 We asked [PD-005] for comments on the Applicant's assessment of the potential for statutory nuisance and on the provisions in Article 43 of the dDCO. DCiC [REP1-034] considered that there was "*underlying concern that nuisance may occur as a result of construction works. In fact, some degree of disturbance is inevitable due to construction works from a scheme of this scale and nature.*" EBC [REP1-051] had no comments to make. The Applicant [REP2-020] agreed that some disturbance would be inevitable during the construction phase; referred to it not being possible to be definitive about effects before the exact details of the construction works were finalised; considered that significant effects identified in the ES would not necessarily translate into a statutory nuisance; and reiterated that with the secured mitigation it did not envisage that the construction works would result in a statutory nuisance.

Civil and Military Aviation and Defence

4.16.70 Paragraph 5.47 of the NPSNN refers to the importance of UK air space for both civilian and military aviation interests and states that it is essential that the safety of UK aerodromes, aircraft and airspace is not adversely affected by new national networks infrastructure. Paragraph 5.54 states that it is important that new national networks infrastructure does not significantly impede or compromise the safe and effective use of any defence assets.

4.16.71 We sought further information on these issues in our FWQ [PD-005]. The Applicant advised [REP1-005] that it had consulted the Ministry of Defence, the Civil Aviation Authority and the National Air Traffic Control Service during the pre-application period. It said that the Ministry of Defence had confirmed that the application related to a site outside of its statutory safeguarding areas and, therefore, that it had no safeguarding objections to the proposal. The Applicant considered that there would be no other impacts on defence interests, other than the effect on the Army Reserves Centre at Kingsway. It reported that discussions with the Army Reserves Centre confirmed that the Proposed Development would not affect the safe and effective use of defence assets or significantly limit military training. The CA issues in relation to the Army Reserves Centre are dealt with in Chapter 7.

4.16.72 In relation to aviation matters, the Applicant reported REP1-005] consultation with the National Air Traffic Control Service which confirmed that it anticipated no impact from the Proposed Development. It said that no response had been received from the Civil Aviation Authority.

4.16.73 The Applicant concluded that there would be no effects on the operation of civil and military aviation or defence infrastructure or procedures as a result of the Proposed Development [APP-252 REP1-005]. Neither DCC, DCiC or EBC had comments to make on this matter and nothing further arose during the Examination to call into question the Applicant's conclusion.

Safety

Policy context

4.16.74 Paragraph 4.60 of the NPSNN states that developments should take the opportunity to improve safety, including introducing the most modern and effective safety measures where proportionate. Paragraph 4.61 goes on to require the Applicant to undertake an objective assessment of the impact of the Proposed Development on safety. This includes putting in place arrangements for undertaking the road safety audit process (paragraph 4.62) and demonstrating that the Proposed Development would be consistent with the Highways Agency's Safety Framework for the Strategic Road Network and with the national Strategic Framework for Road Safety (paragraph 4.64).

4.16.75 The SoS should be satisfied that all reasonable steps have been taken and will be taken to minimise the risk of road casualties arising from the development and that the proposal would contribute to an overall improvement in the safety of the SRN (paragraph 4.66).

Applicant's assessment

4.16.76 The Applicant advised [APP-252] that the design for the Proposed Development had been carried out in accordance with the relevant sections of the DMRB. Where it had been necessary to depart from the standards in the DMRB, full safety assessments had been carried out and approval sought from HE specialists. It said that the design followed HE's safety governance process which includes the preparation of a Safety Plan, a

Combined Operations report and a combined Safety and Hazard Log Report, all of which need to be signed off by HE's safety governance specialists.

4.16.77 The Applicant further advised that a stage 1 independent Road Safety Audit had been carried out following the preliminary design of the proposal. It said that a stage 2 Road Safety Audit would be carried out following the detailed design phase and that a stage 3 Road Safety Audit would be conducted following the construction phase and prior to opening.

4.16.78 The assessment of road safety in the TAR [REP3-005] sets out details of recorded personal injury collisions at the junctions and compares them to expected national rates. It also considers expected changes to road traffic collisions on nearby roads as a result of the predicted changes in traffic movements on the network.

4.16.79 The assessment used COBALT (Cost and Benefit to Accidents – Light Touch) modelling to appraise the predicted changes in personal injury collisions across the highway network. It appraised the monetary benefits of the road traffic collision savings in accordance with the DfT's Transport Analysis Guidance (WebTAG). The predicted personal injury collisions for both the 'Do-Minimum' and 'Do-Something' cases were evaluated over a period of 60 years from the year that the proposal would be open to traffic in 2024.

4.16.80 The assessment said that the proposal would attract increased flows onto the A38 corridor and increase flows on some roads linked directly to the A38 corridor. It said that this could result in an increase in the number of road-traffic collisions on the A38 corridor itself, but that there would be fewer road traffic collisions overall because:

- traffic flows would reduce on some of the routes directly linked to the A38; and
- accidents at the three junctions would reduce due to the grade-separation of the A38 from local traffic movements and vulnerable user movements.

4.16.81 The assessment found that the number of casualties for vulnerable road-user groups would reduce. This would result in a moderate beneficial impact for cyclists and a slight beneficial impact for other vulnerable road-users. Overall, there was found to be a slight beneficial road safety impact for vulnerable road-users, which was considered not to be significant. The total monetised social cost saving from the reduction of personal injury collisions between the 'Do-Minimum' and 'Do-Something' cases was calculated to be £54.8 million (2010 market prices and discounted to a 2010 present value year).

4.16.82 Over the 60-year evaluation period, the Proposed Development was assessed to save 1,396 personal injury collisions across the whole highway network, which would include savings of eight fatalities and 135 serious casualties [REP3-005].

Issues raised during the Examination

4.16.83 In our FWQ [PD-005] we sought the views of DCC, DCiC and EBC on the Applicant's approach to the issue of safety and whether the Proposed Development would take sufficient opportunities to improve road safety. Whilst DCiC said that it was unclear what opportunities to improve safety, other than the direct benefits of the proposal, had been identified [REP1-034], none of the Councils questioned the Applicant's assessment of road safety.

4.16.84 The safety of the proposed revised access to the Esso PFS and McDonald's Restaurant site at Markeaton junction and the proposed diversions to the footpaths at Breadsall are considered above in Section 4.13. The issue of UXO at the Markeaton junction is covered earlier in this section. No other substantive challenges to the Applicant's assessment of safety emerged during the Examination.

Security, major accidents and disasters

4.16.85 Paragraph 4.74 of the NPSNN states that national security considerations apply across all national infrastructure sectors. The DfT has lead responsibility for security matters concerning national networks and for directing the security approach to be taken. It works with government agencies including the Centre for the Protection of National Infrastructure to reduce the vulnerability of the most 'critical' infrastructure assets.

4.16.86 Paragraph 4.76 advises that the Applicant should only include such information in the application as is necessary to enable the ExA to examine the development consent issues and make a properly informed recommendation on the application.

4.16.87 The Applicant [APP-252] advised that no national security implications had been identified for the Proposed Development. Nevertheless, the detailed design, would, as appropriate, incorporate safety and security standards that meet the requirements of the Centre for the Protection of National Infrastructure.

4.16.88 In our FWQ [PD-005], we sought clarification of the involvement of the Centre for the Protection of National Infrastructure in the proposal. The Applicant responded [REP1-005] that a Critical National Infrastructure site had not been identified within the Order land and that, therefore, the Centre for the Protection of National Infrastructure and DfT had not been consulted. The Applicant said that it would take advice from the Centre for the Protection of National Infrastructure to mitigate any security risks if that position subsequently changed.

4.16.89 Appendix 4.4 of the ES [APP-169] included an evaluation of the vulnerability of the Proposed Development to major accidents and disasters. The methodology was based on the following stages:

- Stage 1: the generation of a long list of possible major events;
- Stage 2: screening of the long list of major events to determine those events that are relevant to the proposal, or where it may have a realistic

sensitivity to a particular event. Any major events that could not realistically occur were omitted from the assessment at that stage;

- Stage 3: a scoping exercise to review the remaining major events to see whether they require further evaluation or design mitigation (scoped in) or whether they would be appropriately mitigated/managed such that consequential environmental effects would be insignificant (scoped out); and
- Stage 4: identification of the need for assessment. Where major events were not scoped out at Stage 3, and where further design mitigation would be unable to remove the potential for the major event to have potential significant environmental effects, the relevant ES chapters identify the potential consequences for receptors, and give a qualitative evaluation of the potential significance of effects as a result of the major event.

4.16.90 For the great majority of potential events, the evaluation found that there was no need to undertake further assessment. The exceptions to this were:

- landfill accidents (gas migration, leachate leakage, asbestos) which are covered in ES Chapter 10: Soils and Geology [APP-048];
- groundwater contamination events affecting SPZs which are covered in Chapters: 10 Geology and Soils and 13: Road Drainage and Water Environment [APP-051];
- floods, which are covered in Chapter 13: Road Drainage and Water Environment;
- air quality events, covered in Chapter 5: Air Quality [APP-043];
- road accidents, dealt with in Chapter 13: Road Drainage and Water Environment;
- dam and flood defence failures which are dealt with in Chapter 13: Road Drainage and Water Environment and the FRAs [REP9-017 REP9-018, APP-231]; and
- energy industry (fossil fuel) events related to the Esso PFS which are covered in ES Chapters 10: Soils and Geology and 13: Road Drainage and Water Environment.

4.16.91 Disease was one of the events identified in the evaluation long list. Since the application was submitted, the public health situation due to Covid-19 has arisen. This matter was raised during the Examination, and is covered in Sections 4.8 and 4.13.

Decommissioning

4.16.92 The Applicant advised [APP-252] that it is very unlikely that the Proposed Development would be demolished after its design life, as the road would have become an integral part of nationally important infrastructure. The end of life assessment of the demolition and decommissioning phase was, therefore, scoped out of the ES assessment. This was agreed by PINs (see Scoping Opinion [APP-167]).

Combined and cumulative effects

4.16.93 Paragraph 4.17 of the NPSNN requires the ExA to consider how significant cumulative effects, and the interrelationship between effects might, as a whole, affect the environment, even though they may be acceptable when considered on an individual basis with mitigation measures in place.

4.16.94 ES Chapter 15 [APP-053] distinguishes between combined and cumulative effects. Combined effects are defined as combinations of impacts that have been identified in the ES which, when acting together, are considered likely to result in a new or different likely significant effect, or an effect of greater significance, than any one of the impacts on their own. Cumulative effects are taken to be impacts which, when considered together with the impacts associated with other planned developments, could result in a new or different likely significant effect or an effect of greater significance than the Proposed Development in isolation. It found that the following combined effects on specific receptors during the construction phase would be significant:

- temporary moderate adverse combined visual, noise, air quality, dust and severance effects on representative properties at Greenwich Drive South, Kingsway Park Close, Kingsway/Raleigh Street, Greenwich Drive North, Windmill Hill Lane, the RSfD, south-east Allestree, Ford Farm Mobile Home Park, Breadsall village; and
- temporary moderate adverse combined visual, noise, air quality, dust and severance effects on recreational users of Greenwich Drive South public open space, NR54, NR68 and RR66, Markeaton Park and the Derwent Valley Heritage Way.

4.16.95 During the operational phase the following combined effects were assessed as being significant:

- temporary moderate adverse (Year 1) combined visual, noise, air quality and severance effects on representative properties at Greenwich Drive South and Greenwich Drive North reducing to slight adverse following maturation of landscape planting;
- permanent moderate adverse combined visual, noise and air quality effects at Lydia House and the Karten building at the RSfD (other buildings within the school would experience no more than a slight adverse combined effect); and
- temporary moderate adverse (Year 1) combined visual, noise, air quality, dust and severance effects on recreational users of the Derwent Valley Heritage Way, reducing to slight adverse following maturation of landscape planting.

4.16.96 Cumulative effects with other developments are considered as necessary for each topic in the earlier sections of this chapter.

4.16.97 In our FWQ [PD-005], we asked DCC, DCiC, EBC, the EA and NE whether they had any comments with regard to combined and cumulative effects. NE did not respond. The other authorities confirmed that they had no comments to make [REP1-022 REP1-033 REP1-034 REP1-051]. The

Applicant's assessment of combined and cumulative effects did not result in any challenges which have not been dealt with already in this chapter.

Overall conclusions on other policy and factual issues

4.16.98 The matters considered in this section gave rise to relatively little dispute during the Examination. Whilst the EA was initially concerned regarding the methodology used in the Applicant's assessment of ground contamination, it was content with the Applicant's clarifications of the contamination risk to ground water. We are satisfied that the Applicant's assessment of land stability and contaminated land is robust.

4.16.99 Requirement 8 of the rDCO (Appendix D), supported by the provisions of the OEMP [REP14-008] would provide the necessary controls, including the production of a Remediation Strategy, to manage potential impacts associated with ground contamination and controlled waters. The OEMP [REP14-008] requirement to prepare a Verification Report ensures that the works would be undertaken in accordance with the Remediation Strategy.

4.16.100 On that basis, although we recognise the concerns expressed regarding the risks in relation to potential contamination at Kingsway and Markeaton, particularly given their locations within built up areas, we find that adequate safeguards would be in place to mitigate the risks. It is also relevant to note that these matters are also covered by other legislation, including health and safety protection for workers. The Applicant and its contractor would be bound by this legislation in addition to the provisions of any DCO.

4.16.101 Whilst the precise end state of the construction compound at Little Eaton has not been established, the provisions of the OEMP [REP14-008] would ensure that EBC and the landowner would be consulted, and the final solution approved, before works commence.

4.16.102 Based on the above, we conclude that the risk posed by the Proposed Development regarding land instability and contaminated land would be minor at worst and not significant for the purposes of the overall planning balance. As such, we are satisfied that the proposal would comply with paragraphs 5.117 and 5.118 of the NPSNN and paragraph 178 of the NPPF.

4.16.103 Regarding waste management and material asset issues, it is disappointing that the Applicant was not able to make a more positive commitment to increasing the proportion of secondary and recycled aggregates to be used in the proposals. However, the target would be reviewed with the contractor, and the present commitment accords with the relevant guidelines for the East Midlands region. The OEMP [REP14-008] would require the SWMP to seek to minimise waste arisings and put in place measures to control the disposal of waste. Therefore, we find that the proposals for waste management and the use of material assets would be satisfactory and accord with paragraphs 5.42 and 5.43 of the NPSNN. As such, we are satisfied that they do not weigh significantly for or against the DCO being made.

4.16.104 The effects of the Proposed Development regarding dust, smoke and artificial light have been dealt with earlier in this chapter. There is nothing to suggest that the proposal would have significant effects regarding odour

or steam. Consequently, we find that the Proposed Development would comply with paragraph 5.84 of the NPSNN and these matters do not weigh significantly for or against the DCO being made.

4.16.105 Our conclusions in Sections 4.8, 4.9 and 4.12 are noted in relation to our consideration of nuisance. We find that the requirement of paragraph 4.58 of the NPSNN to consider potential sources of nuisance and how they may be mitigated and the APFP requirement to provide a statement on statutory nuisance and proposals to mitigate or limit them are satisfied by the Statement of Statutory Nuisance [APP-248], relevant chapters in the ES [APP-043 APP-045 APP-047] and the mitigation secured in the rDCO (Appendix D) and OEMP [REP14-008]. Noting the substantial precedent for similar provisions to Article 43 of the dDCO, the adjustment made during the Examination and the lack of any objections to this provision in response to our direct question, we are satisfied that it is appropriate.

4.16.106 Although the Statement of Statutory Nuisance [APP-248] considered that none of the statutory nuisances identified in s79(1) EPA1990 were predicted to arise, we accept the Applicant's comments about it not being possible to be definitive before the construction details were finalised and DCiC's view that nuisance may occur. Our view is that experience of major project construction demonstrates that even in the best planned and governed projects some unforeseen effects and nuisance can occasionally occur. We have concluded that appropriate mitigation has been provided for relevant effects and therefore consider it likely that any nuisance which might occur would be unforeseen, unavoidable and an inevitable consequence of the Proposed Development. Taking all of those matters together we are content that there is a case for the entire authorised project to be covered by a defence against statutory nuisance claims in accordance with paragraph 5.87 of the NPSNN and as provided by s158 of the PA2008. We find that nuisance does not add any significant weight for or against the DCO being made to that identified elsewhere in this chapter.

4.16.107 We consider that the Applicant has undertaken reasonable steps to establish the effects of the Proposed Development on civil and military aviation and defence assets. There is no indication that it would materially affect these interests. Therefore, we find that the proposal would comply with paragraphs 5.47 and 5.54 of the NPSNN and that these matters do not weigh significantly for or against the DCO being made.

4.16.108 We consider that the Applicant's assessment of safety is well founded and accords with the requirements of paragraphs 4.61, 4.62 and 4.64 of the NPSNN. As such, we accept its findings that the Proposed Development would be likely to result in a reduction of almost 1,400 personal injury collisions over the 60-year assessment period as well as a slight beneficial road safety impact for vulnerable road-users. We consider that, together, these considerations weigh significantly in favour of the DCO being made.

4.16.109 There is nothing to suggest that the Proposed Development poses a material risk to, or is itself vulnerable to, national security considerations. As such, we are satisfied that the requirements of paragraphs 4.74 and 4.76 of the NPSNN are met. We consider that the Applicant has undertaken a methodical evaluation of the risks posed by major accidents and disasters.

We see no reason to believe that the Proposed Development would be particularly vulnerable to any such realistically likely event. These matters, therefore, do not weigh significantly for or against the DCO being made.

4.16.110 We do not consider it necessary to consider the prospect of decommissioning the Proposed Development any further.

4.16.111 Cumulative effects with other developments are considered as necessary for each topic in the earlier sections of this chapter.

4.16.112 We see no reason to disagree with the Applicant's assessment of the combined effects of the Proposed Development. The proposal would result in temporary significant (moderate adverse) effects on a limited number of specific receptors during the construction and operational phases. However, the only permanent significant (moderate adverse) combined effects would be on parts of the RSfD site at Markeaton. The effects would, therefore, be limited in extent and, for the most part limited in duration. Nevertheless, we consider that they weigh significantly against the DCO being made.

4.16.113 Other matters considered in this section do not weigh significantly for or against the DCO being made, apart from a predicted reduction of almost 1,400 personal injury collisions over the 60-year assessment period and the slight beneficial road safety impact for vulnerable road-users. We consider that together these factors weigh significantly in favour of the DCO being made.

5 THE HABITATS REGULATIONS

5.1 INTRODUCTION

5.1.1 This chapter sets out our analysis and conclusions relevant to the HRA. This will assist the SoST, as the competent authority, in performing its duties under Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as codified) (the Habitats Directive) and Council Directive 79/409/EEC on the conservation of wild birds (2009/147/EC), as transposed in the UK through the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').

5.1.2 Regulation 63 of the Habitats Regulations states that if a plan or project is likely to have a significant effect on a European Site designated under the Habitats Regulations (either alone or in-combination with other plans or projects), then the competent authority must undertake an appropriate assessment of the implications for that site in view of its conservation objectives. Consent can only be granted if the appropriate assessment concludes that the integrity of European sites would not be adversely affected, subject to Regulation 64 (considerations of overriding public interest).

5.2 POLICY CONTEXT

5.2.1 Paragraph 4.22 of the NPSNN requires the SoS to consider, under the Habitats Regulations, whether the Proposed Development could have a significant effect on the objectives of a European site, or on any site to which the same protection is applied as a matter of policy, either alone or in combination with other plans or projects. Paragraph 4.23 advises that Applicants are required to provide enough information to enable the SoS to carry out an Appropriate Assessment if required. The information provided may also assist the SoS in concluding that an appropriate assessment is not required because significant effects on European sites are sufficiently unlikely that they can be excluded.

5.3 HRA IMPLICATIONS OF THE PROPOSED DEVELOPMENT

5.3.1 The Proposed Development is not "*directly connected with or necessary to the management of*" any of the European sites considered within the Applicant's assessment.

5.3.2 In accordance with Regulation 5(2)(g) of the APFP Regulations, the Applicant provided ES Appendix 8.2: Habitats Regulations Assessment – No Significant Effects Report (NSER) [APP-179] as part of their application, together with screening matrices.

5.3.3 The NSER was undertaken using guidance in the DMRB on the Assessment of Implications (of Highways and/or Roads Projects) on European Sites (including Appropriate Assessment), PINs Advice Note 10: Habitats Regulations Assessment relevant to NSIPs and guidance from the European Commission on Managing Natura 2000 Sites.

5.3.4 The study area for the screening assessment presented in the NSER [APP-179] was defined as:

- sites within 2km of the Proposed Development;
- any SACs within 30km of the Proposed Development where bats are a qualifying feature; and
- instances where the Proposed Development crosses, is adjacent to, upstream of, or downstream of, watercourses designated in part or wholly as SACs, candidate Special Areas of Conservation (cSACs), possible Special Areas of Conservation (pSACs), SPAs, possible Special Protection Areas (pSPAs) or Ramsar sites, as well as to cited SPA bird species where flight paths, feeding or roosting areas may occur outside the SPA boundary.

5.3.5 The Order land is not located within any SAC, cSAC, pSAC, SPA, pSPA or Ramsar sites, nor is it within 2km of such sites. Whilst the Order land is within 30km of six European sites (Gang Mine SAC, Bees Nest and Green Clay Pits SAC, Peak District Dales SAC, South Pennine Moors SAC and SPA, River Mease SAC, West Midlands Mosses SAC and Ramsar), bats are not a qualifying interest feature.

5.3.6 The qualifying interest features of the identified sites are listed in Appendix B of the NSER [APP-179] and screening matrices were provided in Appendix C of the NSER.

5.3.7 The Order land does not cross or lie adjacent to any watercourses which are designated in part or wholly as a SAC, cSAC, pSAC, SPA, pSPA or Ramsar site. The South Pennine Moors SAC/SPA is the nearest SPA site (located approximately 29km to the north of the Kingsway and Markeaton junctions and approximately 25km to the north of Little Eaton junction). However, no effective pathway (hydrological link) is considered to exist regarding the flight paths or feeding areas of birds. The West Midland Mosses Ramsar/ SAC is the nearest Ramsar site (located approximately 30km to the south-west of the Kingsway and Markeaton junctions). Again, no effective pathway is considered to exist in terms of the flight paths or feeding areas of birds.

5.3.8 The Order land does not fall within nor affect the SSSI Risk Impact Zone of any European designated sites. No other potential constraints on European sites were identified and no in-combination effects with other plans or projects are anticipated.

5.3.9 The Applicant did not identify any potential impacts on European sites in any other European Economic Area States.

5.3.10 No European sites or features were identified by any other IP in addition to those screened by the Applicant.

5.3.11 NE was consulted on the NSER (dated 13 December 2018 and included at Appendix E of the NSER). It found that, provided the Proposed Development is undertaken in strict accordance with the details submitted, and provided that relevant good practice is applied, there would be no likely

significant effect on the European sites. NE and the Applicant submitted a SoCG [REP1-009] which, among other things, agreed the findings of the NSER. On this basis we did not consider that it was necessary to prepare a RIES.

5.3.12 No information came to light during the Examination to cast any doubt on the findings of the NSER. Whilst the rDCO (Appendix D) and the OEMP [REP14-008] include provisions to ensure that good practice would be followed during the construction and operational phases of the Proposed Development to avoid pollution and NE has made reference to such measures, these measures are not relied on for the conclusions set out in the Applicant's NSER due to the distances from the scheme to the designated sites.

5.3.13 We are satisfied that the Applicant has correctly identified the relevant European sites and qualifying features/interests for consideration within the NSER and that it has not relied on mitigation measures in reaching this conclusion. We are satisfied with the NSER conclusion and, therefore, conclude that the Proposed Development would have no significant effects on European sites, and therefore no European sites are required to be considered and taken forward to Appropriate Assessment.

5.4 CONCLUSIONS

5.4.1 Our understanding of HRA matters in relation to the Proposed Development is drawn from the information provided in the application, with reference to the Applicant's NSER [APP-179]. No new relevant or important HRA issues or concerns were raised during the Examination by any IPs and NE supported the Applicant's findings in the NSER.

5.4.2 We are satisfied that sufficient consideration has been given to LSEs of the Proposed Development and that such effects can be ruled out due to the lack of effective pathways for effects. On this basis, we conclude that there is no requirement to undertake an Appropriate Assessment of the Proposed Development.

6 CONCLUSIONS ON THE CASE FOR MAKING A DCO

6.1 INTRODUCTION

6.1.1 This chapter sets out our reasoning and conclusions on whether there is a case for the making of a Development Consent Order (DCO) for the Proposed Development.

6.1.2 Our conclusions are based on the provisions of the recommended DCO (rDCO) (Appendix D), the drafting of which is discussed in Chapter 8.

6.1.3 Relevant legislation and policy are identified in Chapter 3. We considered the need for the Proposed Development in Section 4.5 and the potential effects in Chapters 4 and 5.

6.1.4 Following this introduction, this Chapter considers:

- the matters to be taken into account as required by the Planning Act 2008 (PA2008) and other relevant legislation and policy;
- the need case for the Proposed Development;
- the likely impacts of the Proposed Development by topic; and
- the planning balance and conclusions.

6.1.5 Matters in relation to the Compulsory Acquisition (CA) and Temporary Possession (TP) of land and/or rights and the creation of new rights over land will be discussed in Chapter 7.

6.2 MATTERS TO BE TAKEN INTO ACCOUNT

6.2.1 The designated National Policy Statement for National Networks (NPSNN) provides the primary basis for making decisions on development consent applications for national networks Nationally Significant Infrastructure Projects (NSIP) in England by the Secretary of State for Transport (SoST).

6.2.2 Our conclusions on the case for making a DCO are therefore reached within the context of the policies contained in the NPSNN. Also, as indicated in Chapters 3 and 4, we have taken all other relevant law and policy into account. We have had regard to the PSED specifically in relation to the RSfD and Cherry Lodge children's residential care home.

6.2.3 Paragraph 4.2 of the NPSNN advises that, subject to the detailed policies in the NPSNN and the provisions of s104 of the PA2008, there is a presumption in favour of granting development consent for NSIPs that fall within the need for infrastructure established in the NPSNN.

6.2.4 Section 104 of the PA2008 requires the Secretary of State (SoS) to decide an application for a national networks NSIP in accordance with the NPSNN, unless it is satisfied that to do so would:

- lead to the United Kingdom (UK) being in breach of its international obligations;

- be unlawful;
- lead to the SoS being in breach of any duty imposed by or under any legislation;
- result in adverse impacts of the development outweighing its benefits; or
- be contrary to legislation about how the decisions are to be taken.

6.2.5 Paragraph 4.3 of the NPSNN states that "*In considering any proposed development, and in particular, when weighing its adverse impacts against its benefits, the Examining Authority and the Secretary of State should take into account:*

- *its potential benefits, including the facilitation of economic development, including job creation, housing and environmental improvement, and any long-term or wider benefits;*
- *its potential adverse impacts, including any longer-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts.*"

6.2.6 Our conclusions follow from our consideration of all evidence presented to the Examination, including the application documents, the Environmental Statement (ES), the Habitats Regulations Assessment (HRA), the Local Impact Reports (LIR), Statements of Common Ground (SoCG), Relevant and Written Representations, oral submissions at the hearings, answers to questions, responses to requests for information and our Unaccompanied Site Inspections.

6.3 THE NEED CASE FOR THE PROPOSED DEVELOPMENT

6.3.1 The Applicant's need case for the Proposed Development and the benefits arising from it are set out in the Planning Statement [APP-252] and in the Statement of Requirements [REP9-005].

6.3.2 The Applicant's need case and submissions made on it during the Examination are addressed in Section 4.5, where we conclude that we are satisfied that the need for the Proposed Development had been established in accordance with the requirements of the NPSNN.

6.3.3 The benefits arising from the Proposed Development set out in the Applicant's need case [APP-252 REP9-005] include that it would:

- support a 'critical need' to improve the Strategic Road Network (SRN) as recognised in the NPSNN in the context of the projected national growth in traffic levels;
- reduce journey times for users of the A38 and local roads;
- provide additional capacity and facilitate long-term housing and economic development and growth; and that it would
- provide new facilities for non-motorised users (NMUs).

6.3.4 Derby City Council's (DCiC's) LIR [REP1-035] said that the Proposed Development was "*a necessary infrastructure project that is required to deliver a safe, sustainable and efficient transport network*" and that it would "*improve the efficiency of the highway network by reducing congestion, from both the trunk road and local network, and the social, economic and environmental impacts that this has*."

6.3.5 Derbyshire County Council's (DCC's) LIR [REP1-031] stated that the Proposed Development was required "*due to an acknowledged problem with traffic congestion on the A38 as a result of conflict between strategic traffic movements passing through the area and local trips*", that it "*would be likely to deliver congestion relief and increase resilience of the junctions through adding additional capacity*", and that it "*would provide more certainty for existing and prospective new businesses to invest and expand in the area*." DCC considered it to be "*important to the County's wider economic prosperity and would help to deliver new housing developments*" and that it would help "*to achieve a transport system that is both fair and efficient, promotes safer communities and provides better access to jobs and services*."

6.3.6 Erewash Borough Council's (EBC's) LIR [REP1-050] considered that "*the proposals would deliver significant benefits in respect of relieving traffic congestion, supporting the integration and improvement of part of the national network of road infrastructure, as well as supporting development and growth in and around Derby and the surrounding areas*".

6.3.7 Having considered all submissions to the Examination, and with reference to the LIRs and our detailed consideration of relevant matters in Chapters 4 and 5, we are satisfied that the benefits identified by the Applicant would be likely to be delivered by the Proposed Development. We find that those benefits weigh very heavily in favour of the DCO being made.

6.4 LIKELY IMPACTS OF THE PROPOSED DEVELOPMENT

Introduction

6.4.1 In this section we summarise our conclusions on each topic in Chapters 4 and 5, focussing on:

- the Applicant's assessment methodology and findings;
- key issues considered during the Examination;
- the adequacy of mitigation measures and how they are secured;
- compliance with the NPSNN; and
- matters weighing significantly for or against the making of the DCO.

6.4.2 Unless guided otherwise by the NPSNN or otherwise stated below, the matters that we consider weigh significantly for or against the making of the DCO for each topic are the likely significant beneficial or adverse effects identified in Chapter 4.

Environmental Impact Assessment

6.4.3 The Proposed Development is Environment Impact Assessment (EIA) development. Subject to specific concerns on climate change matters set out below, no submissions were made which raised substantive concerns about the overall adequacy of the ES. With the same caveat, the ES and associated information submitted by the Applicant during the Examination provided an adequate overall assessment of the environmental effects of the Proposed Development in accordance with the requirements of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

6.4.4 We have found that, in general terms and subject to specific comments elsewhere in this report, the Applicant has defined the Rochdale Envelope and sufficient controls are in place through the rDCO (Appendix D) and the Outline Environmental Management Plan (OEMP) [REP14-008] to mitigate the effects identified using the Rochdale Envelope. The ES also gives sufficient consideration to alternatives to the Proposed Development.

6.4.5 Regarding Transboundary impacts, we agreed with the Secretary of State for Housing, Communities and Local Government's screening opinion that the Proposed Development is unlikely to have a significant effect either alone or cumulatively on the environment in another European Economic Area State. Consequently, we consider that the EIA process has been undertaken satisfactorily.

Habitats Regulations Assessment

6.4.6 The HRA is a matter for the SoST to undertake as the decision maker and competent authority. Nevertheless, we are satisfied that enough consideration has been given to the likely significant effects of the Proposed Development on European Sites and that such effects can be ruled out due to the lack of effective pathways. On this basis, we conclude that there is no requirement to undertake an Appropriate Assessment of the Proposed Development.

Transport network and traffic

6.4.7 We are satisfied that the Applicant's consideration of baseline conditions, surveys, study area, cumulative effects with other development projects and methodology are appropriate for the purposes of the traffic modelling and driver stress assessment.

6.4.8 In accordance with paragraph 5.204 of the NPSNN, the local highways authorities (LHAs) and local planning authorities (LPAs) have confirmed that the Applicant has consulted with them on the assessment of transport impacts. There is clear evidence that the Applicant has taken account of local models, consistent with paragraph 5.212 of the NPSNN. Although the LHAs have cautioned about the accuracy of the traffic model in certain local situations, we share their overall confidence in its suitability for the purposes of the assessments.

6.4.9 Matters arising during the Examination included congestion on local roads during the construction phase, the potential for gridlock, maintenance of

access to the Royal Derby Hospital and the RSfD, mitigation measures for existing junctions on the local road network, the strengthening of the Ford Lane bridge, public transport, mitigation measures and the processes for updating them during the detailed design phase. Those matters have been considered fully and in our view proportionate, reasonable and focussed mitigation for potential effects are secured in the rDCO (Appendix D); the OEMP [REP14-008] and the TMP [REP14-011], consistent with paragraph 5.215 of the NPSNN.

6.4.10 The results of the traffic modelling are used for the assessment of several topics, including driver stress, noise and vibration, air quality, climate change, safety and social and economic matters. We are satisfied that the traffic modelling, consideration of traffic flows, delays, congestion and associated mitigation during the construction and operational phases are appropriate for use in the assessments for those other topics.

6.4.11 We are satisfied that the Proposed Development tackles a specific problem with traffic congestion on the A38 rather than simply meeting unconstrained traffic growth, as required by paragraph 2.24 of the NPSNN. During the operational phase it would support the need case as it would be likely to reduce journey times and release capacity in the network.

6.4.12 For the driver stress assessment, we find that there would be likely to be a moderate beneficial effect for users of the A38 during the operational phase that would be significant.

6.4.13 Based on the above, we consider that moderate driver stress benefits to A38 users during the operational phase weigh significantly in favour of the DCO being made.

Air quality

6.4.14 We are content that the Applicant's consideration of the study area, selection of receptors, baseline conditions, changes to vehicle emission rates, types of emission, factors considered for the assessment of significant effects, and the methodology are appropriate for the purposes of the air quality assessment. Clear consideration has been given to vehicle emissions, how tighter emission standards are expected to reduce PM_{10} and NO_X emissions, air quality effects over the wider area, relevant statutory air quality thresholds and Air Quality Management Area (AQMA) as required by paragraphs 2.16, 3.6-8 and 5.10-12 of the NPSNN.

6.4.15 Matters arising during the Examination included compliance with the Air Quality Directive (AQD), construction scenarios, emissions from construction machinery, mitigation measures to address uncertainties, unforeseen events, communication and liaison requirements, vehicle emissions, nitrogen dioxide (NO_2) monitoring, dust mitigation and monitoring during the construction phase, related health impacts, including in respect to Covid-19 and mitigation measures. We are satisfied with how those matters were addressed during the Examination. We are content with the consideration of mitigation for potential effects, including those suggested in paragraph 5.15 of the NPSNN, and we are satisfied that necessary measures are secured in the rDCO (Appendix D) and the OEMP [REP14-008].

6.4.16 We have paid particular attention to the AQD, including the potential effects of the Proposed Development on Stafford Street, which is in the Derby Ring Roads AQMA, was non-compliant with the AQD, and for which DCiC is introducing control measures to reduce NO_2 concentrations. The Secretary of State for Environment, Food and Rural Affairs (SoSEFRA) has the sole responsibility for determining compliance against the European Union Directive. Our view is that the Proposed Development would be unlikely to cause any delays in non-compliant areas becoming compliant, or to cause any compliant areas to become non-compliant. The requirements of paragraphs 5.9 and 5.13 of the NPSNN have therefore been satisfied.

6.4.17 We find that the Proposed Development would be unlikely to result in any significant effects with respect to air quality.

6.4.18 Following from the above, we consider that air quality effects do not weigh significantly for or against the DCO being made.

Noise and vibration

6.4.19 We are satisfied that the Applicant's consideration of baseline conditions, study area, identification of Noise Important Areas, baseline surveys, noise models, identification of receptors, cumulative impacts and assessment methodology are appropriate for the purposes of the noise and vibration assessment. We are content that the likely reasonable worst-case noise and vibration effects have been identified.

6.4.20 We have given due consideration to matters arising in the Examination, including the duration of effects, the case for noise and vibration limits, Best Practicable Means, night-time works, road surfacing, noise barriers, noise insulation, temporary rehousing and Noise Important Areas and mitigation measures. The effects at the Royal School for the Deaf Derby (RSfD) and Cherry Lodge children's residential care home have been considered having regard to the PSED. All of those matters have been considered appropriately during the Examination and we are satisfied that appropriate, proportionate and reasonable mitigation has been secured in the rDCO (Appendix D) and the OEMP [REP14-008], consistent with paragraphs 5.196-8 of the NPSNN. We are satisfied that the considerations of paragraph 5.194 of the NSPNN regarding the optimisation of layout have been met, as have the requirements of paragraph 5.199 regarding noise insulation and temporary rehousing and those of paragraph 5.200 with respect to Noise Important Areas.

6.4.21 We considered the potential for significant effects at the RSfD in some depth during the Examination and this led to changes to the proposed mitigation options that we consider to be appropriate.

6.4.22 Likely significant beneficial and adverse effects arising from the Proposed Development in relation to noise and vibration were identified. Following from the above, the matters that we find to weigh significantly in favour of or against the making of the DCO are as set out below.

6.4.23 We find that moderate beneficial reductions in operational traffic noise at three properties in the vicinity of Raleigh Street weigh significantly in favour of the DCO being made.

6.4.24 We find that the following weigh significantly against the DCO being made:

- construction noise above Significant Observed Adverse Effect Levels (SOAEL) at the closest receptors to the construction works between Kingsway junction and Kedleston Road junction, at the Ford Farm Mobile Home Park, at the northern edge of Breadsall, and at the property adjacent to the works at the floodplain compensation area to the west of the Little Eaton junction;
- moderate adverse construction traffic noise at a single residential property on Ashbourne Road, on a small number of roads in the Mackworth and New Zealand residential areas and at the closest receptors at the RSfD;
- construction vibration above SOAEL at approximately 150 residential buildings along the A38 between Kingsway junction and Markeaton junction, at the closest buildings at the RSfD, at the Ford Farm Mobile Home Park, and at the individual property at the southern end of Ford Lane; and
- moderate adverse operational traffic noise at two buildings at the RSfD.

The water environment

6.4.25 With regard to flood risk, we find that the content of the Flood Risk Assessments for each of the junctions make appropriate allowance for climate change and meet the requirements of the NPSNN. With the proposed mitigation measures in place, we are content that the Proposed Development would be likely to lead to a negligible increased risk of flooding. Whilst parts of the proposal fall within Flood Zones 2 and 3, we consider that the Proposed Development as a whole, satisfies the Sequential and Exception Tests.

6.4.26 We are content that adequate provision would be made for the use of Sustainable Drainage Systems and that the surface water drainage system would have the capacity to deal with peak flows and the total volume of surface water discharges without exceeding existing rates. The rDCO (Appendix D) and OEMP [REP14-008] contain provisions to ensure that the surface water drainage system would be properly implemented and maintained.

6.4.27 The proposal would result in a slight adverse impact on groundwater during the construction phase. However, this would be offset by betterment in water quality at Bramble Brook and Dam Brook. The necessary measures to secure this betterment and the protection of water quality elsewhere are set out in the rDCO (Appendix D) and OEMP [REP14-008]. As such, we find that the Proposed Development, would be unlikely to significantly affect water quality.

6.4.28 Overall, we therefore find that the effect of the Proposed Development on the water environment does not weigh significantly for or against the DCO being made.

Biodiversity and ecological conservation

6.4.29 We are satisfied that the application gave proper consideration to the full range of sites, habitats and species and that it attached appropriate weight to the potential impacts of the Proposed Development on them. We also find that the fact that the Applicant did not use Biodiversity Metric Assessment in the assessment of biodiversity does not count against the proposal. Nor does the Applicant's approach to the assessment of NNL, which was based on the NPSNN rather than the National Planning Policy Framework (NPPF), weigh against the proposal.

6.4.30 The Proposed Development has the potential to achieve a range of modest general enhancements in biodiversity and the necessary mitigation measures are secured through the OEMP [REP14-008]. We also find that moderate beneficial operational effects on Dam Brook, protected/notable fish in Dam Brook, otter and aquatic macro-invertebrates weigh significantly in favour of the DCO being made. To that extent, the Proposed Development would comply with relevant NPSNN policies.

6.4.31 The effect of the Proposed Development on the A38 Kingsway Rough Grassland Local Wildlife Site (LWS) weighs against it. However, NPSNN advice is that whilst the SoS should give due consideration to such regional and local designations, LWS designations in themselves should not be used to refuse consent. The effect of the Proposed Development on semi-natural broadleaved woodland weighs significantly against the DCO being made

6.4.32 Notwithstanding the Applicant's commitment to seek to save veteran tree T358, we consider that the most likely outcome is that the tree would be lost. In view of the value placed on veteran trees in the NPSNN, this loss weighs significantly against the Proposed Development. In the planning balance below, we consider whether the national need for, and benefits of, the Proposed Development clearly outweigh the loss of the tree, as required by paragraph 5.32 of the NPSNN.

Landscape and visual

6.4.33 We are content that the methodology used for the assessment of landscape and visual effects was robust and allowed the effects of the Proposed Development to be properly considered in accordance with the relevant policies of the NPSNN.

6.4.34 With the benefit of the additional information submitted by the Applicant during the Examination, we find that the effect of the Proposed Development on the Little Eaton landscape, although large adverse during the construction phase, would reduce to slight adverse when the proposed planting matures in year 15 and beyond. The visual effects would also diminish to slight adverse over the same period. On the other hand, the proposal would reduce the spillage of artificial light at the Little Eaton junction compared with the existing situation.

6.4.35 Having regard to the presence of the existing junction at Little Eaton and the scale, form and extent of the proposed junction, we find that, in both its spatial and visual effects, the Proposed Development would preserve the openness of the Green Belt (GB). As such, it would fall within the exception

set out in paragraph 146(c) of the NPPF and, therefore, would not be inappropriate development in the GB. Consequently, the Proposed Development would accord with NPSNN and NPPF policies for the GB.

6.4.36 The proposed removal of trees at the edge of Markeaton Park was a matter of considerable concern locally. The Applicant developed the details of its proposals for replanting in this area during the Examination. Those proposals are secured through the rDCO (Appendix D) and OEMP [REP14-008]. The new planting would take time to become established. Once mature, however, it would largely restore the landscape character of the edge of Markeaton Park and would provide effective visual screening from the A38. As such, we are satisfied that the landscape and visual effects of the Proposed Development on the Markeaton junction would be no worse than slight adverse in the long term. The proposal would not, therefore, conflict with Derby City Core Strategy policy regarding its effect on the Markeaton Green Wedge.

6.4.37 We also find that the Proposed Development would not adversely affect the outlook of nearby residential occupiers in the long term. Overall, therefore, we consider that the long-term landscape and visual effects of the Proposed Development would not be significant.

6.4.38 We find that the following weigh significantly against the DCO being made:

- temporary large adverse effects during the construction phase on four Landscape Character Areas (LCAs) and four representative viewpoints;
- temporary moderate adverse effects during the construction phase on two LCAs and eight representative viewpoints; and
- moderate adverse effects in Year 1 of the operational phase, reducing to slight adverse or neutral by Year 15, on four LCAs and five representative viewpoints.

Land use, social and economic

6.4.39 In terms of provision for NMUs, we find that the Proposed Development would have adverse effects on particular routes in the construction phase, and beneficial effects in the operational phase. On completion, the Proposed Development would make the necessary linkages with existing routes and, in some cases, would improve accessibility across the A38. Whilst some existing routes would be disrupted, this has been justified on safety grounds. We consider that the alternative routes proposed in these cases would not be excessively long or inconvenient for users.

6.4.40 The Applicant also took account of the needs of disabled users in the design of the footpath and cycleway facilities. We find that the proposed diversion of the public footpath FP3 at Breadsall would be more satisfactory than the retention of the existing route. We are satisfied that appropriate consideration has been given to NMUs. Moreover, during the operational phase, the easing of congestion should improve the reliability of bus journeys passing through the junctions.

6.4.41 We find that the Proposed Development would make adequate provision for the replacement of lost public open space in both quantitative and qualitive terms. The replacement open space would be reasonably well related to existing green spaces and there is nothing to suggest that the proposal would inhibit access to existing green infrastructure.

6.4.42 Regarding the effect of the proposal on human health, we did not find that there would be significant impacts due to reductions in air quality or access to facilities. Conversely, there would be some positive effects related to improved access to services and modest reductions in severance.

6.4.43 In terms of direct impacts on businesses, we find that the effects of the Proposed Development on city centre businesses and the Esso PFS and McDonald's facilities at Markeaton are capable of being satisfactorily mitigated. The necessary measures are secured in the rDCO (Appendix D), the OEMP [REP14-008] and the TMP [REP14-011]. Nor would the proposal adversely affect the agricultural holdings at Little Eaton.

6.4.44 We find that permanent moderate beneficial effects for walkers and cyclists at the Kingsway junction and users of the Regional Cycle Route (RR) 66 between Brackensdale Avenue and Kedleston Road weigh significantly in favour of the DCO being made.

6.4.45 We also conclude that the moderate adverse effects during the construction phase on pedestrians and cyclists using the shared footway and cycleway east of the Kingsway junction, the Markeaton footbridge and the River Derwent bridge on Ford Lane weigh significantly against the DCO being made.

The historic environment

6.4.46 We are satisfied that the Applicant's assessment has identified the significance of the heritage assets and their settings which would be potentially affected by the Proposed Development. The assessment also includes sufficient information to allow the nature and value of the significance of the assets to be understood.

6.4.47 The most important heritage asset to be considered is the Derwent Valley Mills World Heritage Site (DVMWHS). The Applicant's assessment appropriately identifies the contribution which the Little Eaton landscape makes to the understanding of its Outstanding Universal Value (OUV). We consider that the assessment rightly recognises that this contribution takes account of the existing Little Eaton junction.

6.4.48 The Proposed Development would raise the height of the junction and extend the spread of built development to a degree. Whilst the largest part of this development would be located outside of the core area of the Derwent Valley Mills World Heritage Site (DVMWHS) and its buffer zone, there would also be an effect on the setting of the DVMWHS. However, the nature and form of the proposed junction would be similar to the existing junction and its additional scale and height would be relatively modest in relation to its landscape setting. The closure to vehicles of the Ford Lane junction with the A38 would allow an area of former carriageway to be landscaped, resulting in a small benefit to the DVMWHS.

6.4.49 The proposed floodplain compensation area falls within the core area of the DVMWHS. However, it would be capable of being assimilated into the contours of the surrounding landscape and the land would be returned to its agricultural use. On completion therefore, we consider that the lasting effect of the floodplain compensation area on the heritage landscape would be negligible.

6.4.50 Consequently, we find that the Proposed Development would have a limited impact on the relationship between the 'relic' landscape and the industrial heritage of that part of the Derwent Valley which contributes to the OUV of the DVMWHS. Overall, therefore, we find that the Proposed Development would have a slight adverse effect on the OUV of the DVMWHS.

6.4.51 The Proposed Development would also have slight adverse effects on three listed buildings and one Conservation Area. Considered collectively, the slight adverse effects on the DVMWHS and these other designated heritage assets that have been identified would amount to less than substantial harm for the purposes of paragraphs 5.134 and 5.135 of the NPSNN. In reaching this view we have had regard to the very high significance of the DVMWHS. As required by paragraphs 5.132 and 5.134 of the NPSNN, the harm identified is weighed against the public benefits of the proposal in the planning balance below.

6.4.52 We also found that the Proposed Development would lead to slight adverse effects on a relatively limited number of non-designated heritage assets. These effects are not significant for the purposes of the ES. Nevertheless, as required by paragraph 197 of the NPPF, we weigh them in the planning balance.

6.4.53 Based on the above we conclude that the following weigh against the DCO being made:

- less than substantial harm to the OUV of the DVMWHS, noting that the DVMWHS carries very high significance;
- less than substantial harm to the settings of three listed buildings and one Conservation Area; and
- slight adverse effects on several non-designated heritage assets.

Climate change

6.4.54 With reference to paragraph 5.17 of the NPSNN, the Applicant has identified that the emissions arising as a result of the Proposed Development represent less than 0.01% of the total emissions in any five-year UK carbon budget during which they would arise. We are therefore content that the greenhouse gas (GHG) emissions impact of the Proposed Development on in isolation would be unlikely to have a material impact on the UK Government meeting the carbon reduction targets in place at the time of the assessment.

6.4.55 Under an amendment to the Climate Change Act 2008 a new net zero carbon by 2050 target has been set since the application was submitted. The Applicant has sought to demonstrate that the Proposed Development

would not affect the ability of the Government to meet the new target, but we are unable to make a recommendation on this as the relevant interim carbon budgets have not been published. The SoST will need to satisfy themself on that matter before making their decision.

6.4.56 We are not convinced that the Applicant has adequately considered cumulative climate change effects. In our view a more suitable assessment would adopt a reasonably consistent geographical scale by, for example, considering the Road Investment Strategy (RIS)1 or RIS2 programme, of which the Proposed Development is a part, against the UK carbon budgets. The SoST will need to satisfy themself on that matter before making their decision.

6.4.57 With reference to s104 of the PA2008, the evidence for compliance with the Paris Agreement 2015 provided by the Applicant, including a quotation from Hansard, is not sufficient for us to conclude whether or not the Proposed Development, or the RIS1 or RIS2 programmes of which it is a part, would cause the UK to be in breach of its international obligations. The Applicant has suggested that evidence that there would not be a breach of the obligation would be available to the SoST. The SoST will need to satisfy themself on this matter before making their decision.

6.4.58 There were many submissions on climate change issues during the latter stages of the Examination. Matters raised, in addition to those mentioned above, included GHG gases, emissions from landfill, mitigation by reducing traffic or increasing the use of other modes, the future uptake of low carbon vehicles, mitigation through tree planting and the loss of mature trees arising from the proposal. Those matters have been considered appropriately during the Examination and we are satisfied that appropriate mitigation has been secured in the rDCO (Appendix D) and the OEMP [REP14-008], which include the development and implementation of an Energy and Carbon Plan. With the mitigation measures in place we find it likely that the carbon footprint of the Proposed Development would not be unnecessarily high and that therefore the requirements of paragraph 5.19 of the NPSNN are met.

6.4.59 We are satisfied that the Proposed Development has been designed to be resilient to impacts arising from climate change in accordance with paragraphs 4.36 to 4.47 of the NPSNN.

6.4.60 Our recommendations are subject to the SoST's consideration of matters on which we have not been provided with enough information to make a recommendation:

- whether the Proposed Development would lead to the UK being in breach of the Paris Agreement 2015. Whilst there was no evidence that there would be a breach (as per s104(4) of the PA2008) we are unable to confirm there would not be a breach on the evidence submitted;
- consideration of the cumulative effects of carbon emissions from the Proposed Development with those from other developments on a consistent geographical scale, for example by assessing the cumulative RIS1 or RIS2 programmes (of which the Proposed Development is part) against the relevant UK carbon budget;

- whether the Proposed Development would affect the ability of the Government to meet the target of the revised net zero carbon by 2050 that was set (in July 2019) after the application was submitted.

6.4.61 Subject to these caveats, we consider that the Proposed Development would be unlikely to result in an increase in carbon emissions so significant that it would result in any significant effects in respect to climate change or carbon emissions. We have no concerns about the resilience of the Proposed Development to climate change.

6.4.62 Therefore, subject to the SoST's consideration of compliance with the Paris Agreement 2015, cumulative carbon emissions and meeting the target of net zero carbon by 2050, we consider that climate change and carbon emission effects do not weigh significantly for or against the DCO being made.

Other policy and factual issues

6.4.63 Regarding land stability and contaminated land, we are satisfied that the Applicant's assessment was robust. The rDCO (Appendix D) and OEMP [REP14-008] provide the necessary controls, including the production of a Remediation Strategy, to manage potential impacts associated with ground contamination and controlled waters. The OEMP [REP14-008] requirement to prepare a Verification Report ensures that the works would be undertaken in accordance with the Remediation Strategy. We are also content that the proposal would be unlikely to lead to land instability.

6.4.64 Whilst the precise end state of the construction compound at Little Eaton has not been established, the provisions of the OEMP [REP14-008] ensure that EBC and the landowner would be consulted, and the final solution approved by the SoST, before works commence.

6.4.65 Therefore, we conclude that the risks posed by the Proposed Development with respect to land instability and contaminated land would be minor at worst and do not weigh significantly for or against the DCO being made.

6.4.66 We find that, with the measures to be secured in the Site Waste Management Plan and Materials Management Plan, the proposals for waste management and the use of material assets would be satisfactory and accord with the requirements of the NPSNN. As such, they do not weigh significantly for or against the DCO being made.

6.4.67 We have considered possible sources of nuisance and their mitigation and are satisfied that suitable mitigation is secured in the rDCO (Appendix D) and OEMP [REP14-008]. As such, paragraph 4.58 of the NSPNN has been addressed appropriately. We find that nuisance does not add any significant weight for or against the DCO being made to that identified elsewhere in this section.

6.4.68 Odour and steam, civil and military aviation and defence assets, national security, major accidents and disasters and decommissioning do not weigh significantly for or against the DCO being made.

6.4.69 The Proposed Development would result in a potential reduction of almost 1,400 personal injury collisions over the 60-year assessment period and a slight beneficial road safety impact for vulnerable road-users. We consider that, together, these weigh significantly in favour of the DCO being made.

6.4.70 With respect to combined effects, the proposal would result in temporary significant (moderate adverse) effects on a limited number of specific receptors during the construction and operational phases. However, the only permanent significant (moderate adverse) combined effect would be on parts of the RSfD site at Markeaton. The effects would, therefore, be limited in extent and, for the most part limited in duration. Nevertheless, they weigh significantly against the DCO being made.

6.4.71 The cumulative effects of the Proposed Development with other developments are considered above, as necessary for each topic.

6.4.72 Following from the above we find that:

- a potential reduction of almost 1,400 personal injury collisions over the 60-year assessment period together with a slight beneficial road safety impact for vulnerable road-users weighs significantly in favour of the DCO being made; and that
- moderate adverse combined temporary effects on a limited number of specific receptors during the construction and operational phases and moderate adverse permanent effects on parts of the RSfD site weigh significantly against the DCO being made.

6.5 PLANNING BALANCE AND CONCLUSIONS

6.5.1 In reaching our conclusions on the case for making the DCO, we have had regard to NPSNN as the relevant NPS, the NPPF, the LIRs and all other matters which we consider are both important and relevant to the SoST's decision.

6.5.2 Subject to our specific concerns on climate change matters, we consider that the environmental information submitted by the Applicant, including the ES, other environmental information obtained during the Examination and information relevant to the HRA, is adequate in terms of statutory and policy requirements. We have taken it into account, along with all submissions made to the Examination, in reaching our recommendation and our view is that the SoST can rely on it in determining the case for making the DCO.

6.5.3 We have considered the following matters and, for the reasons given above and subject to the SoST's consideration of compliance with the Paris Agreement 2015, cumulative carbon emissions and meeting the target of net zero carbon by 2050, we have concluded that they do not weigh significantly for or against the DCO being made:

- air quality;
- the water environment;
- compliance with Green Belt policy; and

- climate change.

6.5.4 We comment next on the matters weighing significantly in favour of making the DCO and matters weighing significantly against, before considering the balance of issues and reaching our conclusions.

Matters weighing significantly in favour of the DCO being made

6.5.5 The Proposed Development would deliver an NSIP, the need for which has been demonstrated as a matter of UK Government policy.

6.5.6 Paragraph 4.2 of the NPSNN advises that, subject to the detailed policies in the NPSNN and the provisions of s104 of the PA2008, there is a presumption in favour of granting development consent for NSIPs that meet an established national need for infrastructure.

6.5.7 We note the Government's strong policy support for schemes that seek to deliver a well-functioning SRN. In providing junction improvements and new slip roads to the SRN to address congestion and improve performance the Proposed Development would help to deliver this policy in accordance with paragraphs 2.23-2.27 of the NPSNN. In summary, we consider it likely that the Proposed Development would:

- support a 'critical need' to improve the SRN as recognised in the NPSNN in the context of the projected national growth in traffic levels;
- help to deliver a national network that meets the country's long-term needs, supporting a prosperous and competitive economy;
- reduce journey times for users of the A38 and local roads;
- provide additional capacity and facilitate long-term housing and economic development and growth; and that it would
- provide new facilities for Non-Motorised Users.

6.5.8 The other matters that we consider weigh significantly in favour of the DCO being made are:

- moderate driver stress benefits to A38 users during the operational phase;
- moderate beneficial reductions in operational traffic noise at three properties in the vicinity of Raleigh Street;
- moderate beneficial operational effects on Dam brook, protected/notable fish in Dam Brook, otter and aquatic macro-invertebrates;
- permanent moderate beneficial effects for walkers and cyclists at the Kingsway junction and users of the Regional Cycle Route (RR) 66 between Brackensdale Avenue and Kedleston Road; and
- a potential reduction of almost 1,400 personal injury collisions over the 60-year assessment period together with a slight beneficial road safety impact for vulnerable road-users.

Matters weighing significantly against the DCO being made

6.5.9 The matters that we consider weigh significantly against the DCO being made are:

- construction noise above SOAEL at the closest receptors to the construction works between Kingsway junction and Kedleston Road junction, at the Ford Farm Mobile Home Park, at the northern edge of Breadsall, and at the property adjacent to the works at the floodplain compensation area to the west of the Little Eaton junction;
- moderate adverse construction traffic noise at a single residential property on Ashbourne Road, on a small number of roads in the Mackworth and New Zealand residential areas and at the closest receptors at the RSfD;
- construction vibration above SOAEL at approximately 150 residential buildings along the A38 between Kingsway junction and Markeaton junction, at the closest buildings at the RSfD, at the Ford Farm Mobile Home Park, and at the individual property at the southern end of Ford Lane;
- moderate adverse operational traffic noise at two buildings at the RSfD;
- moderate adverse construction effects on the A38 Kingsway Rough Grassland LWS and on semi-natural broadleaved woodland; and the likely loss of veteran tree T358;
- temporary large adverse effects during the construction phase on four LCAs and four representative viewpoints, and temporary moderate adverse effects during the construction phase on two LCAs and eight representative viewpoints;
- moderate adverse effects in Year 1 of the operational phase, reducing to slight adverse or neutral by Year 15, on four LCAs and five representative viewpoints;
- moderate adverse effects during the construction phase on pedestrians and cyclists using the shared footway and cycleway east of the Kingsway junction, the Markeaton footbridge and the River Derwent bridge on Ford Lane;
- less than substantial harm to the OUV of the DVMWHS, noting that the DVMWHS carries very high significance; less than substantial harm to the settings of three listed buildings and one Conservation Area; slight adverse effects on several non-designated heritage assets; and
- moderate adverse combined temporary effects on a limited number of specific receptors during the construction and operational phases and moderate adverse permanent effects on parts of the RSfD.

The planning balance

6.5.10 We make our conclusions based on the framework set out in Chapters 3 and 4. The matters to be taken into account are set out in Section 6.2 and include the balance of potential benefits and potential adverse effects. Our conclusions are subject to the SoST's consideration of compliance with the

Paris Agreement 2015, cumulative carbon emissions and meeting the target of net zero carbon by 2050.

6.5.11 The 'critical need' to improve the SRN to deliver a national network that meets the country's long-term needs and supports a prosperous and competitive economy is a powerful factor that weighs very heavily in favour of the DCO being made. It is supported by a range of specific road-user, NMU and environmental benefits.

6.5.12 On the other side of the balance are adverse noise and vibration effects; a series of temporary adverse effects on an LWS, on woodland, on several landscape character areas and visual receptors; and slight adverse effects on several non-designated heritage assets. There are also a limited number of construction phase effects on pedestrians and cyclists and various adverse combined effects. Whilst significant, the adverse effects would be relatively limited in magnitude, duration and/or in the number of receptors affected.

6.5.13 The proposal would also result in less than substantial harm to the OUV of the DVMWHS and slight adverse effects on the settings of four designated heritage assets. We find that the considerable public benefits of the Proposed Development would overcome the less than substantial harm to the DVMWHS and other designated heritage assets, and therefore find that paragraphs 5.132 and 5.134 of the NPSNN have been satisfied.

6.5.14 We consider that the likely loss of veteran tree T358 would be clearly outweighed by the national need for, and benefits of, the Proposed Development, and therefore find that paragraph 5.32 of the NPSNN has been satisfied.

6.5.15 Overall, and taking all of the above into account, we find that the national need for, and considerable public benefits of, the Proposed Development clearly outweigh all of the adverse effects.

6.5.16 Other matters bring both benefits and adverse effects, but none of those, either individually or cumulatively, lead us to a different conclusion in terms of the overall balance of benefits and adverse impacts.

6.5.17 We have had regard to the findings of the Applicant's No Significant Effects Report and the comments of Natural England and consider that the conclusions of no likely significant effects are supported and that an Appropriate Assessment is not required prior to making the DCO. We see no reason for HRA matters to prevent the making of the DCO.

6.5.18 We therefore find that, subject to the provisions of the rDCO (Appendix D) and subject to the SoST's consideration of compliance with the Paris Agreement 2015, cumulative carbon emissions and meeting the target of net zero carbon by 2050, the case for the making of the DCO for the Proposed Development has been made, and we recommend accordingly.

7 COMPULSORY ACQUISITION AND RELATED MATTERS

7.1 INTRODUCTION

7.1.1 The application included proposals for the CA and TP of land and rights over land, including Statutory Undertakers (SU) land; Special Category Land; and Crown Land.

7.1.2 This chapter discusses whether the evidence before the Examination justifies the granting of those powers, having regard to all relevant legislation and guidance, before providing our conclusions and recommendations.

7.1.3 Land over which CA or TP powers are sought is referred to in this chapter as the Order land.

7.2 LEGISLATIVE REQUIREMENTS

7.2.1 CA powers can only be granted if the conditions set out in s122 and s123 of the PA2008 are met. Specific provisions in respect of SU land, Special Category Land, and Crown Land are set out in Section 7.10.

7.2.2 Section 122(2) states that the land subject to CA must be required for the development to which the development consent relates or must be required to facilitate or be incidental to the development. DCLG CA Guidance[13] states that in respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate.

7.2.3 Section 122(3) states that there must be a compelling case in the public interest to acquire the land, which means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right.

7.2.4 Section 123 requires that one of three procedural conditions in subsections (2) to (4) must be met, namely:

(2) The condition is that the application for the order included a request for CA of the land to be authorised.

(3) The condition is that all persons with an interest in the land consent to the inclusion of the provision.

(4) The condition is that the prescribed procedure has been followed in relation to the land.

7.2.5 Several general considerations also have to be addressed, either as a result of following the applicable guidance or in accordance with legal duties on decision-makers:

[13] Planning Act 2008: guidance related to procedures for the compulsory acquisition of land Department for Communities and Local Government (DCLG) September 2013

- all reasonable alternatives to CA must have been explored;
- the Applicant must have a clear idea of how it intends to use the land subject to CA powers;
- the Applicant must be able to demonstrate that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers; and
- the decision-maker must be satisfied that the purposes stated for the CA are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

7.2.6 Further to Part 1 of Schedule 5 to the PA2008 at paragraph 2, TP powers are capable of being within the scope of a DCO. PA2008 and the associated DCLG CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers as, by definition, such powers do not seek to permanently deprive or amend a person's interests in land. Based on the PA2008 and DCLG CA Guidance, TP requires:

- justification that the TP powers are needed to enable the construction of the Proposed Development;
- demonstration that the TP powers are compatible with Human Rights tests; and
- that there are suitable compensation provisions for interference with a relevant right or interest.

7.2.7 Section 19(7) of the Neighbourhood Planning Act 2017 includes several provisions for TP, including with respect to notice and compensation, and requires that the instrument authorising TP must:

(a) identify the land which is to be subject to TP;

(b) describe the purposes for which TP is required; and

(c) specify the total period of time for which the land may be subject to TP.

7.3 CASE FOR DEVELOPMENT

7.3.1 We considered the case for development in the preceding chapters. In Chapter 6 we conclude that the case for the making of the DCO for the Proposed Development has been made subject to the provisions of the recommended Development Consent Order (rDCO) (Appendix D) and subject to the SoST's consideration of compliance with the Paris Agreement 2015, cumulative carbon emissions and meeting the target of net zero carbon by 2050.

7.4 REQUEST FOR CA AND TP POWERS

7.4.1 The draft Development Consent Order (dDCO) included with the application [APP-016] and all subsequent dDCOs submitted by the Applicant to the Examination up to and including its latest draft version [REP15-005] include

provisions intended to grant the Applicant powers of CA and TP of land and rights over land.

7.4.2 The application was accompanied by:

- an Explanatory Memorandum (EM) [APP-018];
- a Book of Reference (BoR) [APP-022];
- Land Plans [APP-006];
- Special Category Land Plans [APP-007];
- Crown Land Plans [APP-008];
- a Statement of Reasons (SoR) [APP-020]; and
- a Funding Statement [APP-021].

7.4.3 The Examination and the Applicant's due diligence processes led to some of this documentation being updated during the Examination. By the close of the Examination, the most up-to date versions were as follows:

- EM [REP6-004];
- BoR [REP13-002];
- Land Plans [REP9-003];
- Special Category Land Plans [REP2-003];
- Crown Land Plans [REP2-004];
- SoR [REP9-005]; and
- Funding Statement [REP6-006].

7.4.4 These documents set out the land and rights sought by the Applicant together with the reasons for their requirement and the basis on which compensation would be funded. Taken together with submissions made to the Examination they form the basis of our considerations in this chapter.

7.4.5 Chapter 2 sets out our summary description of the Proposed Development. The Applicant describes the Proposed Development and the Order land in the SoR [REP9-005].

7.4.6 Unless noted otherwise, references to the documents in this chapter from this point should be read as references to the latest versions cited above and plot references employed in this Chapter are as per the most recently submitted Land Plans [REP9-003].

7.5 PURPOSES FOR WHICH THE POWERS ARE REQUESTED

7.5.1 The purposes for which the CA and TP powers are requested are set out in the SoR [REP9-005] and the BoR [REP13-002].

7.5.2 CA powers are being sought for the proposed works for reasons including the:

- alteration, realignment, grading and maintenance of highways;
- construction and maintenance of slip roads and link roads;
- construction and maintenance of gantries or similar signage;
- reconfiguration of existing junctions;
- stopping up of existing roads;
- construction and alteration of means of access and egress;
- diversion and maintenance of, and access to, utilities;
- diversion, construction and maintenance of footways and cycle tracks;
- demolition and replacement of a footbridge;
- construction and maintenance of an extension to a railway bridge;
- establishment and maintenance of environmental mitigation and enhancement areas;
- establishment and maintenance of flood storage areas and flood plain compensation areas;
- construction and maintenance of noise barriers; and
- replacement public open space.

7.5.3 TP powers are being sought for the proposed works for reasons including the:

- alteration, realignment and grading of highways;
- construction of slip roads and link roads;
- alterations to existing roads, junctions and an underbridge;
- realignment and stopping up of existing roads;
- construction and alteration of means of access and egress;
- diversion and construction of utilities;
- establishment of environmental mitigation and enhancement;
- construction and realignment of footways and cycle tracks;
- alterations to bus stops;
- extension of a railway bridge;
- construction and maintenance of noise barriers;
- establishment of environmental mitigation areas;
- construction of flood compensation areas;
- construction of temporary construction compounds; and
- establishment of replacement public open space.

7.5.4 The main powers authorising CA are contained in Article 23 (Compulsory acquisition of land) and Article 26 (Compulsory acquisition of rights) of the rDCO (Appendix D). Article 26 allows for rights in land to be acquired as well as the land itself, and for new rights to be created over land.

7.5.5 The land or rights proposed to be acquired permanently or used temporarily are identified using colour-coding on the Land Plans [REP9-003]. Schedule 5 of the rDCO (Appendix D) sets out the purposes for which rights over land may be acquired. Schedule 7 sets out the purposes for which TP may be taken.

7.5.6 Other CA powers sought by the Applicant include Article 28 which provides for the extinguishment of private rights over land and Article 31 which allows the Applicant to acquire only the subsoil beneath, or airspace above, the land. Article 32 would allow the Applicant to appropriate and use land above and below streets in the Order land without having to acquire any part of the street or easement right in it.

7.5.7 The Applicant owns several plots which are potentially subject to known or unknown third-party rights that it considers are, or may be, incompatible with the construction or operation of the authorised development. To ensure that any such rights can be removed (and appropriate compensation provided) the Applicant has included its own land within the land to which the compulsory powers sought would apply.

7.5.8 The main powers authorising TP are contained in Article 33 (Temporary use of land for carrying out the authorised development) which would allow the land set out in Schedule 7 of the rDCO (Appendix D) to be occupied temporarily and would allow the Applicant to remove any buildings or vegetation, construct temporary works and buildings and construct the works listed in Schedule 7. The power would be subject to the time limits set out in Article 25. It would prevent the Applicant having to permanently acquire land which is necessary to construct the authorised development but is not needed permanently.

7.5.9 Article 34 provides for the Applicant to take TP of land within the Order land required for the purpose of maintaining the authorised development and to construct such temporary works as may be reasonably necessary for that purpose for a period of five years from the date on which that part of the authorised development is first used.

7.5.10 Article 35 would allow rights over Order land belonging to SUs to be acquired or for new rights over it to be created. Article 36 includes powers to remove or reposition apparatus belonging to SUs in stopped up streets. Article 37 deals with the recovery of costs of new connections to utilities or communications apparatus from the Applicant.

7.5.11 Article 38 would vest Special Category Land in the Applicant and remove all rights that it was previously subjected to, subject to provisions regarding the acquisition and certification of replacement land as open space. Special Category Land is identified on the Special Category Land Plans [REP2-003].

7.5.12 Article 45 prevents the Applicant from taking, using, entering upon or in any manner interfering with any land or rights of any Crown Land without the

consent in writing of the appropriate Crown authority. Crown Land is identified on the Crown Land Plans [REP2-004].

7.5.13 Other Articles that may interfere with property rights and private interests include Article 15 (Temporary stopping up and restriction of use of streets) and highways; Article 16 (Permanent stopping up and restriction of use of streets and private means of access); and Article 22 (Authority to survey and investigate land).

7.5.14 Our consideration of matters arising during the Examination in respect of the DCO provisions for CA and TP is provided in Section 7.11, below.

7.6 PROCESS FOR THE EXAMINATION OF CA AND TP

7.6.1 Our examination included consideration of all written and oral submissions relevant to CA and TP.

Written process

7.6.2 Relevant representations (RRs) and written submissions from parties stating an objection to the CA or TP provisions in the application, or to the effects of it, or updating on progress in negotiations with the Applicant, were made by:

- the residents of 12 Queensway, Mr & Mrs Gartside [RR-018 REP11-011 REP12-018];
- Freeths LLP on behalf of Millennium Isle of Man Limited [RR-017];
- Hinson Parry & Company on behalf of RSfD [RR-019 AS-022];
- Carter Jonas LLP on behalf of Haven Care Group Ltd [RR-015];
- Singleton Clamp and Partners Ltd or Tim Hancock Associates on behalf of Euro Garages Limited [RR-013 REP1-040 REP3-035 REP3-036 REP4-033 REP6-038 REP6-039 REP6-040 REP9-034 REP10-011 REP11-009 REP12-014 REP14-038 REP15-009 REP15-010];
- McDonald's Restaurants Limited [RR-016 REP1-045 REP3-040 REP4-034 REP6-041 REP9-035 REP10-012 REP15-012];
- Friends of Little Eaton Canal [RR-014 REP1-043];
- Friends of Markeaton Park (FoMP) [REP9-042 REP12-015 REP13-007 REP15-011]; and
- Friends of the Earth Derby (FoED) [REP10-010 REP11-007 REP11-008].

7.6.3 The Applicant responded to each of those submissions [REP2-020 REP4-025 [REP5-010 REP7-007 REP10-009 REP11-003 REP12-006 REP13-006 REP14-029 REP15-007 AS-061].

7.6.4 We raised several questions [PD-003 PD-005 PD-014 PD-018 PD-025] about CA and TP during the Examination, addressing the following issues:

- updates to the BoR, SoR and Land Plans and their accuracy;

- diligent enquiry into land interests;
- the consideration given to alternatives to CA and TP, including modifications to the proposals, particularly in respect to the residential properties in Queensway, Ashbourne Road and Sutton Close;
- the need for CA and TP, particularly in respect to environmental mitigation and enhancement and working space;
- progress regarding voluntary agreements and blight;
- the case for extinguishment of unknown third-party rights;
- whether the limits of deviation (LoD) are appropriately defined;
- the potential during the detailed design phase to reduce the scope of rights required and whether any reductions could be made at this stage;
- updates to the CA Objections Schedule;
- the CA and TP matters raised by relevant parties;
- consent of the appropriate Crown authority;
- matters raised by SUs, potential detriments to their undertakings and the securing of appropriate provisions in the DCO;
- the 'Mundy Covenant' in respect to Markeaton Park;
- whether the current provision of open space is surplus to requirements;
- rights to existing open space and to the proposed replacement land;
- the suitability of the proposed replacement land and the relevant DCO provisions;
- updates to the cost estimates, funding statements and the Road Investment Strategy;
- potential impediments to the Proposed Development;
- the consideration given to human rights, the Equalities Act 2010 and the public sector equality duty (PSED);
- the consideration given to the interests of any Category 3 parties;
- claims for injurious affectation; and
- detailed matters in relation to DCO provisions, including Articles 10, 23, 26, 27, 30, 33, 34, 35, 38 and 45; and Schedules 5, 6, 7 and 9.

7.6.5 The Applicant responded to our questions [REP1-004 REP1-005 REP2-023 REP4-024 REP9-029 REP12-007] and produced several technical notes in support of its responses:

- Human Rights and the Acquisition and Possession of Land for the Scheme [REP6-024];
- Markeaton Junction Alignment Optioneering Summary [REP3-013];
- Markeaton Junction – Development of Proposed Alignment [REP14-024];

- Ashbourne Road Access Summary [REP6-014];
- Sutton Close Access [REP14-028];
- Treatment of Rights over Open Space/Replacement Land [REP3-024];
- Public Open Space Loss and Replacement Land [REP6-023]; and
- Statement on the Protective Provisions for the Statutory Undertakers [REP15-008].

7.6.6 As noted above, the Applicant updated the dDCO, EM, plans, BoR, SoR and Funding Statements during the Examination.

7.6.7 A CA Objections Schedule [REP1-006 Annex G] was provided by the Applicant and updates on negotiations with Affected Persons (APs) were provided in the updates to the SoR (paragraph 6.1.5 and Annex B) that were submitted during the Examination [REP3-010 REP4-005 REP9-005].

Hearings

7.6.8 Three CA Hearings and four Issue Specific Hearings (ISH) dealing with dDCO matters were held, as noted in Chapter 1. Oral submissions were made at the Hearings by parties including the residents of 12 Queensway, RsFD, representatives of Euro Garages Limited and McDonald's Restaurants Limited, FoMP, FoED, DCiC, DCC, EBC and the Applicant. The Applicant provided summaries of its oral submissions and responses to questions raised in them [REP1-014 REP3-014 REP3-015 REP3-026 REP6-015 REP6-016 REP6-017 REP6-019 REP14-019 REP14-023].

Site inspections

7.6.9 Three Unaccompanied Site Inspections were carried out, as noted in Chapter 1. These helped us to develop our understanding of the plots of land proposed to be subject to the CA and TP powers.

7.7 APPLICANT'S OVERALL CASE

7.7.1 The Applicant's case is mainly set out in the SoR [REP9-005]. Detailed supporting information is provided in the ES and alternatives are also considered in the ES [APP-041] and in the Planning Statement and National Policy Statement Accordance Table [APP-252].

7.7.2 The Applicant considered that the powers of CA and TP sought in the dDCO are necessary, proportionate and justified. It considered that the powers sought are in accordance with all relevant statutory provisions and associated guidance and was firmly of the view that there was a compelling case in the public interest for the CA and TP powers sought.

7.7.3 In the SoR [REP9-005], the Applicant addressed the statutory tests and the general considerations which the DCLG CA Guidance indicates should be demonstrated to justify the powers sought. The matters covered include whether:

- reasonable alternatives to CA and TP have been explored;

- the Applicant has a clear idea of how it intends to use the land;
- the proposed acquisition is legitimate, proportionate and necessary;
- there is a compelling case in the public interest;
- there is funding for the acquisition; and whether
- the interference with human rights is proportionate and justified?

7.7.4 These are considered further below. The Applicant's responses to our questions, objections and submissions from other parties and special considerations are addressed below.

Reasonable alternatives to CA and TP

7.7.5 In the SoR [REP9-005] the Applicant sets out the consideration given to alternatives and modifications to the Proposed Development to minimise the potential land take. This included a process of consultation, the choice of the alternatives and modifications that were consulted on, and selection of the chosen option based on the consideration of factors including:

- views of consultees including persons with an interest in the land;
- environmental impacts;
- meeting the objectives for the Proposed Development;
- affordability;
- value-for-money;
- safety and construction; and
- operational considerations.

7.7.6 The Applicant said that none of the alternatives or modifications considered would obviate the need for the CA and TP of land.

The Applicant has a clear idea of how it intends to use the land?

7.7.7 The SoR [REP9-005] records what each plot is to be used for. The Land Plans [REP9-003] show the location of each plot and whether it is for the CA of land, rights over land, or TP.

The proposed acquisition is legitimate, proportionate and necessary?

7.7.8 The SoR [REP9-005 Annex A] set out the compulsory powers sought in relation to each plot of land and references to the works to be carried out at each location. It considers that the land subject to CA powers would be needed for or to facilitate the development or would be incidental to the development.

7.7.9 The SoR [REP9-005] also says that the limits of the land have been drawn as tightly as possible and that any land required outside the existing A38 corridor is required to ensure compliance with design safety standards, to ensure environmental mitigation measures can be implemented, to deliver

open space exchange land or to accommodate highway drainage infrastructure. The Applicant considered that the land included in the dDCO is the minimum land-take required to construct, operate, maintain and mitigate the Proposed Development and that the land-take is necessary to achieve the objectives of the Proposed Development.

7.7.10 TP of land is noted as having been identified to ensure the delivery of the Proposed Development with minimum disruption to stakeholders and users of the existing highway and supporting road network, whilst ensuring the temporary land acquisition is proportionate and only that needed to undertake the works. It includes for drainage in accordance with relevant standards and for the diversion of SUs' apparatus.

There is a compelling case in the public interest?

7.7.11 The needs and benefits of the Proposed Development are set out in the SoR [REP9-005] and in the Planning Statement and National Policy Statement Accordance Table [APP-252] and include that the Proposed Development would:

- support a 'critical need' to improve the SRN as recognised in the NPSNN in the context of the projected national growth in traffic levels;
- reduce journey times for users of the A38 and local roads;
- provide additional capacity and facilitate long-term housing and economic development and growth; and that it would
- provide new facilities for NMUs.

7.7.12 The Applicant's view [REP9-005] is that the Proposed Development is consistent with core policies and that the statutory requirements have been met. As such it considers that "*the presumption in favour of the development set out in Paragraph 4.2 of the NPS NN should be afforded great weight as the public benefits of the Scheme outweigh any residual adverse affects, including private loss, suffered by individual landowners and occupiers. On this basis, Highways England considers that there is a clear and justified case in the public interest for the Scheme*".

There is funding for the acquisition?

7.7.13 The cost estimate for the Proposed Development, as set out in the Funding Statement [REP6-006] is £229 million. The estimate includes all costs up to the opening for traffic and includes allowances for compensation payments relating to the CA and TP of land and potential claims under Part 1 of the Land Compensation Act 1973, section 10 of the Compulsory Purchase Act 1965 and section 152(3) of the PA2008.

7.7.14 The Proposed Development was announced in RIS1 as a committed and, therefore, funded scheme. RIS1 provides certainty of Government funding with over £15 billion to be invested in major roads between 2015/16 and 2020/21. The funding commitment was reiterated in the Highways England Delivery Plan 2015-2020 and in RIS2. The Funding Statement [REP6-006] therefore confirms that the Proposed Development "*will be fully funded by*

the Department for Transport and consequently the Scheme is not dependent on funding contributions from other parties".

7.7.15 Accordingly, the Applicant's view [REP6-006] was that there would be no funding impediment to the delivery of the Proposed Development, or to the payment of compensation to persons affected by CA, TP or a blight claim.

The interference with human rights is proportionate and justified?

7.7.16 The Applicant [REP9-005] has considered potential infringements of human rights as a result of the CA and TP powers sought in the dDCO with respect to Article 1 of The First Protocol, Article 6 and Article 8 of the European Convention on Human Rights. The SoR [REP9-005] sets out details of the Applicant's meetings with each affected landowner and provides detail and justification for the interference of rights in relation to specific plots.

7.7.17 In summary, the Applicant's case [REP9-005] for interference with Articles 1 (the right to peaceful enjoyment of possessions) and 8 (right to respect for private and family life, home and correspondence) is that:

- the significant public benefits that would arise from the Proposed Development would outweigh any harm;
- a compelling case in the public interest for CA has been demonstrated;
- the land over which CA powers are sought are the minimum necessary to deliver the Proposed Development;
- the Proposed Development has been designed to minimise harm while achieving its objectives;
- the interference with human rights is both proportionate and justified; and that
- those affected by the CA and TP powers would be entitled to compensation and the Applicant has the resources to pay such compensation.

7.7.18 In summary, the Applicant's case [REP9-005] with respect to Article 6 (entitlement to a fair and public hearing) is that:

- proper procedures have been followed for both the consultation on the Proposed Development and in determining the CA powers included within the dDCO;
- persons with an interest in the land have been given a full opportunity to comment;
- it has endeavoured to engage with landowners and has had regard to landowner feedback; and that
- there have been opportunities for individuals to submit representations during the Examination.

7.7.19 Chapter 4 and Annex B of the SoR [REP9-005] summarise the Applicant's discussions with landowners and occupiers to acquire the Land by agreement. More detail on the status of negotiations with some of those

parties have also been set out in the relevant SoCGs. Matters outstanding at the close of the Examination are considered below.

7.8 EXAMINATION OF THE APPLICANT'S OVERALL CASE

Introduction

7.8.1 This section sets out our consideration of the responses from the Applicant and other parties to matters raised in relation to the Applicant's overall case. Individual objections and issues are addressed in the next section. This section considers:

- alternatives and whether the proposed acquisition would be legitimate, proportionate and necessary;
- funding and potential impediments;
- human rights; and
- our conclusions on the Applicant's overall case.

Alternatives and whether the proposed acquisition is legitimate, proportionate and necessary

General consideration of alternatives

7.8.2 We consider the Applicant's approach to alternatives to a road-based scheme and the proposed junction layouts in Section 4.5 and are satisfied that the options appraisals were undertaken appropriately.

7.8.3 Responding to our question [PD-005] about the weight given to human rights when deciding between alternatives, the Applicant [REP1-005] said that "*the issue of loss of homes was key in deciding the preferred route*".

7.8.4 We asked [PD-005] for clarification of the account taken of public consultation in the selection of the preferred option. The Applicant [REP1-005] replied that:

- early consultation in 2003 determined the route of the A38 at Little Eaton junction and resulted in the choice of a preferred option that avoided all impacts on residential and business properties but did require the CA of agricultural land and woodland;
- the preferred option for Markeaton junction from the 2002 Road Based Study (RBS) minimised the impacts on the Public Open Space of Markeaton Park and avoided direct impact on the Esso PFS and McDonald's Restaurant but resulted in the loss of the houses on Queensway and Ashbourne Road; and that
- the more recent consultations in 2015 and 2018 received very few comments from parties with land interests, so adjustments to the preferred option or alternatives to the proposed acquisition of land or rights were not considered to be required as a result.

7.8.5 Details of the consideration of alternatives at Kingsway and Little Eaton are provided in ES Appendices 3.1 [APP-162] and 3.2 [APP-163].

Queensway; 257 and 259 Ashbourne Road

7.8.6 Noting that the preferred option for Markeaton junction would require the CA of houses on Queensway and Ashbourne Road, we asked several questions [PD-005 PD-010 PD-014 EV-014 PD-018 PD-025] about the consideration of alternative routes and whether there were any opportunities to modify the design. In particular we were interested to explore whether there was an option to shift the alignment of the main carriageway into the edge of Markeaton Park that could result in a reduced CA of houses, while avoiding significant effect on the petrol filling station and McDonald's site.

7.8.7 The Applicant [REP1-005 REP3-013 REP3-014 REP3-025 REP4-024 REP6-015 REP6-024 REP9-029 REP12-007 REP14-019 REP14-024] responded that:

- it was necessary to widen the carriageway to meet the objectives for reducing journey times;
- the size of the roundabout, central reservation and verges had been reduced to the minimum;
- the alignment was constrained by the geometry of safety standards;
- an option to move the A38 away from the Queensway and Ashbourne Road properties had been considered in the 2002 RBS, but was rejected due to the loss of up to 45m wide by 400m length of public open space in Markeaton Park, severe difficulties in providing the required replacement land as no suitable sites exist within reasonable proximity, the Esso PFS being compulsorily acquired and removed, and a significant portion of the McDonald's Restaurant car park being lost potentially rendering the business unviable and triggering its CA;
- a "*theoretical option*" of avoiding impacts on the filling station and McDonald's sites by swinging the alignment into the Army Reserves land a further into Markeaton Park would potentially reduce the impacts on one or two of the Queensway properties, but not on all of them;
- the "*theoretical option*" would result in additional property acquisition of the Army Reserves land, potentially introduce further Stopping Sight Distance Departures from Standards that may not be granted, and bring issues in respect to loss of public open space and mature trees from Markeaton Park and impacts on Markeaton lake;
- there was not an obvious further alternative to the proposals at Markeaton junction because these proposals had been in the public domain for almost 20 years and had been refined through significant public consultation and engineering refinement;
- at no stage during consultation had it been suggested that the alignment could or should be moved further into Markeaton Park;
- none of the Queensway property owners were objecting to CA;
- the proposed CA approach was necessary and proportionate and ensured that an appropriate balance had been struck to justify the granting of the CA powers sought in the DCO; and that

- paragraph 4.27 of the NPSNN references the RIS programme and says that proportionate option consideration of alternatives will have already been undertaken as part of the investment decision making process and that it "*is not necessary for the Examining Authority and the decision maker to reconsider this process but they should be satisfied that this assessment has been undertaken*".

7.8.8 In relation to an alternative alignment to reduce the need for CA of the houses on Queensway and Ashbourne Road, DCiC [REP12-019] were of the view that:

- in general planning terms the loss of the housing was a lesser cost than the loss of high landscape quality of land from Markeaton Park;
- the land acquired by the CA of the Queensway properties was where the main surface water attenuation features were located, and it was not clear that there was an alternative location for these features;
- it was not for DCiC to contest the alignment or suggest an alternative unless there was a fundamental safety or planning issue, which there was not; and that
- DCiC expressed concern that with the "*theoretical option*" there would be a very poor amenity for residents of the Queensway properties if they were retained and a significant cost to the city of the loss of the tree screen and backdrop for users of Markeaton Park.

7.8.9 Based on submissions made by several parties, it is apparent that local residents place a high value on Markeaton Park.

7.8.10 The Applicant's discussions regarding the acquisition of the Queensway and 257 and 259 Ashbourne Road properties are set out in paragraph 6.1.5 and Annex B of the SoR [REP9-005]. 12 Queensway is considered later in this section. The other properties have either been acquired (including under blight) and are owned by Highways England (HE); or progress has been made to acquire properties by blight; or progress has been made to acquire properties (including tenanted investment properties) by agreement.

253 and 255 Ashbourne Road; 1 and 14 Sutton Close

7.8.11 Noting the need to acquire the gardens of these properties if the proposed access road was provided, we queried [EV-006 PD-010 PD-014 EV-014 PD-018 PD-025 PD-026] the option that was mentioned by the Applicant of a left-in left-out arrangement from each property [REP1-005].

7.8.12 The Applicant [REP3-014 REP3-023 REP3-025 REP4-024 EV-014 REP6-014 REP6-015 REP9-029 REP12-007 REP14-019 REP14-028] responded that:

- geometric and safety constraints at the Markeaton junction, traffic signals, the Toucan crossing and the potential for congestion on the junction and the A56 prevented a direct right turn access into the Ashbourne Road properties or directly into Sutton Close;

- a left-in left-out arrangement would create access difficulties as there was not a safe or convenient place for vehicles that wanted to make a right turn into the properties to make a U-turn;
- a left-in left-out arrangement would raise safety concerns due to the opportunities for inappropriate manoeuvres and would cause significant amenity issues for the owners of these properties; and that
- with respect to 253 and 255 Ashbourne Road "*the owners of both properties consider the access arrangements to be largely academic as they are both intending to submit blight claims*."

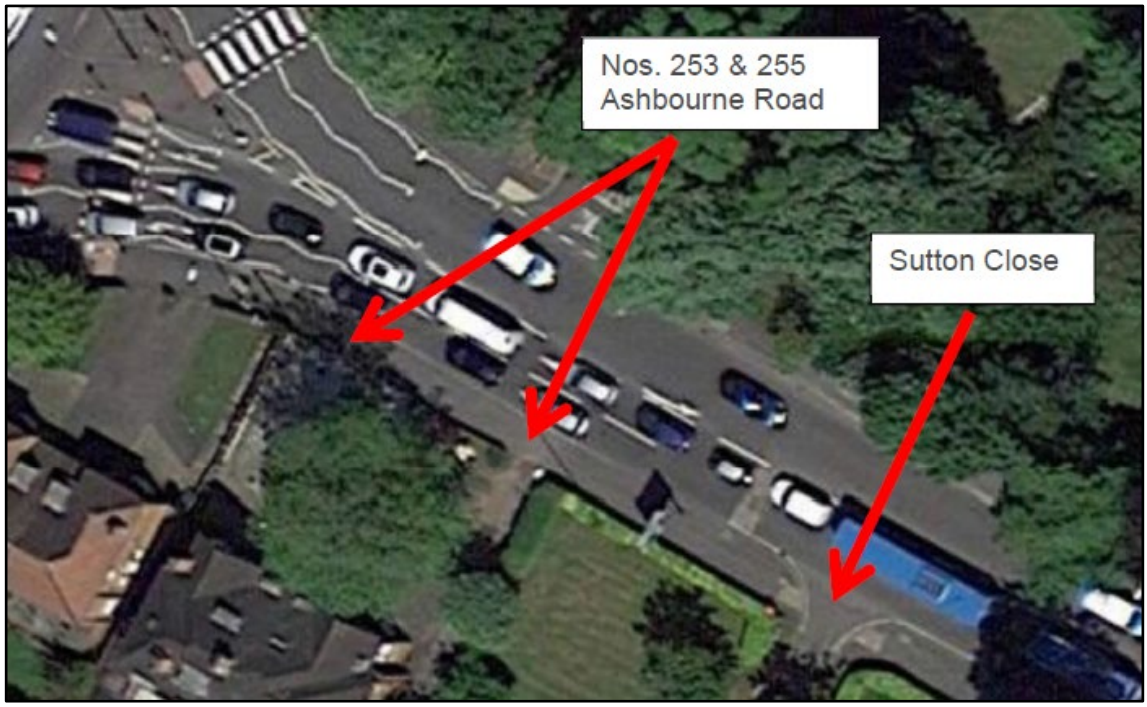

Figure 7.8.1: Current access arrangements [REP6-014 page 3]

7.8.13 DCiC [REP12-019] considered that the Applicant had set out the justification for the access design and had provided clear reasons for their design decisions. DCiC accepted the Applicant's safety decisions based on the proximity of the existing access of 255 and 253 Ashbourne Road to the new signal stop line, design constraints of moving the proposed stop line and safety matters in relation to a left-in and left-out only access. DCiC [REP14-032] saw no reason to question the Applicant's conclusions in terms of traffic generation and queue lengths and was happy to work with the Applicant during the detailed design phase to refine the details.

7.8.14 We questioned [EV-006 EV-014 PD-018] the need for a turning head at the end of the proposed access road to the Ashbourne Road properties and the related need for CA of the parking area to the front of 255 Ashbourne Road (plot 3/15a).

7.8.15 DCiC [REP4-029] considered that the access road would be a private road and therefore they would not be adopting it. On that basis the Applicant [REP6-019 REP9-029] reduced the width of the access road, removed the turning head and changed the land acquisition requirements from CA to TP with Rights for the Sutton Turner Houses land and 253 Ashbourne Rd (plots 3/16a, 3/17 and 3/19) and to TP only for 255 Ashbourne Rd (plot 3/15a).

7.8.16 Paragraph 6.1.5 of the SoR [REP9-005] states that progress has been made to acquire the properties from Sutton Turner Homes by agreement. The Applicant's SoCG with Sutton Turner Homes [REP8-004] states that it was agreed that the access road and boundary features would be the responsibility of each owner to maintain. Items to be included in the compensation package were also agreed and, recognising the charity status of Sutton Turner Homes, the Applicant undertook to discuss progressive payment with them.

7.8.17 The Applicant [REP6-015] advised that both 253 and 255 Ashbourne Road had vulnerable residents and had concerns about the construction phase and subsequent impacts. Towards the end of the Examination it said [REP12-007] that it had accepted a blight notice for 255 Ashbourne Road (Cherry Lodge children's residential care home) and was in ongoing discussions with the owner of that property regarding acquisition by agreement and loss of car parking. It also reported [REP12-007] that the owners of 253 Ashbourne Road had instructed an agent and were considering the submission of a blight notice.

Environmental mitigation and enhancement, flood plain compensation, cycleways, utilities and other works areas

7.8.18 We asked [PD-005] the Applicant to provide more justification of the CA and TP powers requested at several plots for environmental mitigation and enhancement, flood plain compensation or storage areas, cycleways, utilities, road realignment, installation of signage and safety barriers, works to the carriageway or slip roads and amendments to access and egress. In doing so we asked for clarification of why the powers requested could not be reduced. The Applicant [REP1-005] provided further clarifications to supplement the reasons set out in the application SoR [APP-020].

7.8.19 DCiC [REP1-034] required clarification of the Applicant's temporary land use proposals for Markeaton Park and Mackworth Park, and clarification of the proportionality of the CA and TP of Rights sought. The Applicant [REP3-035] provided figures extracted from the ES showing the areas affected by TP, the work activities associated with each area and where public access would be restricted during the construction phase. It said [REP3-035] that the timing of those works and their duration would be developed during the detailed design phase.

7.8.20 DCiC [REP4-029] said that it was satisfied that the powers sought were proportionate and justified and that, subject to the consideration of events in the parks, it was happy that necessary mitigation was secured. The Applicant [REP5-010] further stated that works to create new access to Markeaton Park were planned to take place in the winter months when use of Markeaton Park would be lower, and that Article 33(5) of the dDCO provided for payment for loss or damage as a consequence of TP. In Section 4.13 we find that adequate safeguards and consultation are provided with respect to events in Markeaton Park.

7.8.21 DCiC [REP1-034] also required clarification of the permanent emergency vehicle egress from Markeaton Park. The Applicant [REP3-035] provided

indicative drawings showing permanent emergency access and DCiC [REP4-029] said that it was satisfied with the proposals.

Other matters

7.8.22 DCiC [REP1-034] asked for clarification of how intrusion would be minimised during the maintenance period, where ownership of the noise barrier alongside the RSfD would reside, and what access would be required over DCiC land to maintain it. We asked [EV-006] for clarification of access provisions for other noise barriers. The Applicant [REP3-035] replied by setting out the access requirements and reinstatement measures for mitigation monitoring and maintenance access in Mackworth Park and Markeaton Park. It clarified the details of the noise barriers, including the one alongside the RSfD, and how they would be maintained and accessed.

7.8.23 Noting that the pink area on the application Works Plans [APP-009] would potentially permit several metres of lateral deviation of the proposed carriageways, we queried [PD-005 PD-010 EV-014] how this was consistent with the requested CA powers being proportional and whether the need for CA powers had been minimised appropriately. The Applicant [REP1-005 REP3-014 REP3-015 REP6-015] said that the Works Plans showed the land required to deliver the Proposed Development with the necessary degrees of flexibility to allow detail design and engineering to be carried out at the appropriate time. It said that consent was sought for a realistic worst case in line with the Rochdale Envelope approach to ensure that the Proposed Development was deliverable. The Applicant added a provision to Article 8(a)(i) of the dDCO [REP15-005] to permit lateral deviation of the A38 mainline carriageway and slip roads to a maximum of 1 metre.

7.8.24 Noting that the Proposed Development was at a preliminary design stage, we questioned [PD-005 PD-014 EV-014 PD-018 PD-025] whether the design had progressed to the level of detail required to justify the CA powers sought; the potential for CA and TP to be reduced at a later stage and whether a process for that should be secured; and what weight would be given to human rights in relation to any opportunities to reduce CA and TP during the detailed design phase. The Applicant [REP1-005 REP4-024 REP6-015 REP12-007] responded that:

- the level of detail provided at the preliminary design stage of the Proposed Development was at a higher level than was usual for major highway schemes;
- further refinement would be carried out during the detailed design phase but, due to the robust nature of the preliminary design, it was felt that the identified CA was accurate;
- all the CA land identified would be acquired temporarily at the start of the construction phase and once the Proposed Development was completed only the essential land would be permanently acquired with the remaining land being returned to the landowner;
- the Crichel Down Rules required the Applicant to offer to sell back surplus land to the former owner once the land had become surplus to requirements;

- whilst it was important that the land to be acquired was the minimum needed, this was not an absolute test and the PA2008 s122(2)(b) wording was that it must be "*no more than is reasonably necessary*" and that it was "*proportionate*";
- the land included in the CA provisions was reasonably required for the Proposed Development and the impact of CA on the private loss of those affected versus the public benefits of the Proposed Development had been considered appropriately;
- "*it was not necessary to show that the interference required was the least intrusive interference with Convention rights (Smith v Secretary of State for Trade and Industry [2007] EWHC 1013 (Admin) per Wyn Williams at [42])*"; and that
- Articles 23 and 26 of the dDCO provide that the Applicant could only acquire the land and rights which are necessary for the development of the Proposed Development and should land requirements reduce during the detailed design phase (it is not possible for them to increase) less land would be acquired because the Applicant would not have the power to acquire more land than it needs.

7.8.25 EBC [REP1-051] considered that more land may be needed to compensate for the loss of 30% of the Alfreton Road Rough Grassland LWS. This is addressed in Section 4.11, where we conclude that the Applicant's mitigation proposals are adequate. As such, there would be no need to acquire further land.

Funding and potential impediments

Cost estimate and funding

7.8.26 The Applicant [REP9-029] advised that the Proposed Development had been included as a committed scheme in the RIS2 programme, which was announced on 11 March 2020.

7.8.27 We asked [PD-005] what comfort could be provided of funding being available should the most-likely cost estimate be exceeded and whether the scope of the Proposed Development could be reduced in response to any changes in funding. The Applicant [REP1-005] replied that funding for the Proposed Development had been appraised and approved by the Highways England Investment Decision Committee in relation to the requirements, scope, benefits and objectives of the Proposed Development, but that scope reduction as a result of changes in funding due to external factors could not be ruled out. It said that scope reduction would be a last resort after exercises such as value engineering, and that scope reduction would be subject to a formal change control process so that it would have as little effect on benefits and objectives as possible. The Applicant [REP3-014] later referred to the statutory process for making changes to DCOs, involving an application to the SoST to consider the materiality of any changes and, if required, their detailed consideration.

7.8.28 The Applicant [REP1-005] clarified that government funding had been committed to all works identified in Schedule 1 of the dDCO and included road widening and associated and ancillary development as well as the work

to the three junctions set out in the extract from the Roads Programme provided in the Funding Statement [REP6-006].

7.8.29 The Planning Statement and National Policy Statement Accordance Table [APP-252] notes that the RIS1 programme indicates that the Proposed Development be raised to 'Expressway Standard'. Responding to our concerns [PD-005] about support for the Proposed Development if it was not to that standard, the Applicant [REP1-005] said that design changes required for it to be "*consistent with an aspiration to deliver the expressway concept*" had been incorporated into the design and agreed with the Highways England Expressway Standards team.

Potential impediments

7.8.30 The Applicant [REP1-005] confirmed that all land and rights required for the Proposed Development were included within the Order land.

7.8.31 Several times during the Examination [PD-005 PD-010 PD-018 PD-025] we asked the Applicant for updates on any known impediments, including with respect to other consents. Towards the end of the Examination the Applicant [REP12-007] advised that there were no known impediments from its perspective or that it had been made aware of in discussion with the relevant regulatory authorities. A Consents and Agreements Position Statement was updated by the Applicant during the Examination, with a final version being provided at Deadline 14 [REP14-004].

7.8.32 A letter of no impediment from Natural England (NE) in relation to European Protected Species licensing had been provided with the application [APP-216]. The Environment Agency [REP3-034] raised no concerns relating to the environmental aspects within its remit. DCiC [REP1-034] was content that all impediments had been identified. DCC [REP1-033] raised no concerns or issues. EBC [REP1-051] said that potential impediments had been properly addressed.

Human Rights

7.8.33 Responding to our questions [PD-005] about Category 3 parties, the Applicant [REP1-005] stated that it had taken a cautious approach when listing such parties in the BoR [REP13-002]. It also referred to the mitigation of potential effects, including in relation to noise and opportunities for residents to apply for compensation should the Proposed Development have a negative impact on the value of their properties.

7.8.34 At the first CA Hearing [EV-006], we asked the Applicant to set out its due diligence in identifying tenants of properties that were proposed to be acquired. It said [REP3-025] that questionnaires requesting the details of tenants had been sent out to all freeholders, but this information had not always been acquired. The Applicant thought that many properties were occupied by students, who would be unlikely to respond. It had contacted tenants for properties that it owned, although it did not add the details of its tenants to the BoR [REP13-002] that would no longer have an interest before the Examination ended. It also said that some of its properties were vacant and that it had no intention of reletting them.

7.8.35 We asked [PD-005 PD-014 EV-014 PD-018 PD-025] for more explanation of the need to extinguish unknown third party rights, how the unidentified rights of unidentified third parties could be considered, and of the Applicant's due diligence in establishing the ownership of unregistered plots. The Applicant [REP1-005 REP3-014 REP4-024 REP6-015 REP9-029 REP12-007] replied that:

- it would rely on any agreement in place to acquire land rather than any CA powers granted, unless any agreements that had been signed became unenforceable;
- it had undertaken diligent enquiry to identify relevant interests by way of Land Registry searches and questionnaires;
- only two freehold ownerships had not been identified, which were both unregistered land and smaller parcels of unregistered land were generally as a result of historical errors made before land registration became mandatory in 1990;
- the likelihood of additional unknown interests coming forward was low given the investigation that had been done;
- there was a potential that, despite diligent enquiry, interests in the land (particularly historical rights) may appear later and extinguishing those was required to avoid any impedance to the construction or operational phases of the Proposed Development;
- if the rights were not acquired then the Applicant may find itself held to ransom over land that is required and (potentially great) additional costs being incurred to acquire the interest, which conflicted with its obligation to acquire the land at best value;
- unknown interests are not a separate consideration but are included in the consideration of human rights at the point of granting CA powers;
- Articles 1 and 8 of the European Convention on Human Rights protect those that own and occupy land, while other interests would be dealt with through compensation;
- if landowners were to come forward at a later date, they would not be prejudiced as the impact of the acquisition of their land had been considered and they would have six years from the date of vesting to agree compensation, and apply to the Upper Tribunal (Lands Chamber) for a hearing, giving them a 'fair trial' in line with Article 6 of the European Convention on Human Rights; and that
- it was standard practice for any type of order with CA powers to retain those powers with respect to the whole area.

7.8.36 We asked [PD-005] the Applicant to set out how it had regard to the Equalities Act 2010 and its PSED. The Applicant [REP1-005] provided details of its use of an Equality Impact Assessment at each stage of the process to set out the positive and negative impacts of the Proposed Development and how processes such as stakeholder engagement complied with its PSED.

7.8.37 No parties responded to our invitations [PD-010] to raise any objections to the principles of CA or TP, or to raise any matters with respect to the regard given by the Applicant to human rights, the Equalities Act 2010 or PSED. Residents of the RSfD and Cherry Lodge children's residential care home had been identified as having protected characteristics and the Applicant met the reasonable fees of experts representing them to make sure that they were able to participate in the Examination. British Sign Language interpretation was made available to people attending the hearings in Derby.

Conclusions on the generalities of the Applicant's case

7.8.38 These conclusions are on the generalities of the Applicant's case, as set out and examined above. Our overarching conclusions on CA and TP are set out at the end of this section after we have addressed individual objections, special considerations and the provisions in the dDCO. Our consideration of individual objections and special considerations later in this chapter build from the conclusions reached here.

7.8.39 We are satisfied that the condition in s123(2) of the PA2008 is met because the application for the DCO included a request for CA of the land to be authorised.

7.8.40 The Applicant has considered the statutory tests, DCLG CA Guidance and the interference with human rights.

7.8.41 Following from our consideration of the case for development in the preceding chapters we are satisfied that the need case has been made subject to the provisions of the rDCO (Appendix D) and subject to the SoST's consideration of compliance with the Paris Agreement 2015, cumulative carbon emissions and meeting the target of net zero carbon by 2050. On that basis we are satisfied that the Applicant has established the public benefit derived from the proposed CA.

7.8.42 The purposes for which the CA and TP powers are requested are set out in the SoR [REP9-005]. Based on the matters addressed above and in the preceding chapters, we consider that they are required for the delivery of the Proposed Development. We are satisfied with the Applicant's responses to our questions about the land required for environmental mitigation and enhancement, flood plain compensation, cycleways, utilities and other works areas. Our consideration of the SoR [REP9-005], BoR [REP13-002], Land Plans [REP9-003] and responses to matters raised during the Examination lead us to accept that the Applicant has a clear idea of how it intends to use the land. The powers sought are set out in the rDCO (Appendix D).

7.8.43 The consideration of alternatives and modification is set out in the SoR [REP9-005]. We examined several specific issues with respect to alternatives and modifications.

7.8.44 The Applicant had considered alternative junction layouts and alignments of the A38 at the Markeaton junction. We raised an alternative alignment of the A38, which the Applicant accepted would reduce the need for CA of residential properties on Queensway. We accept the Applicant's reasoning

that this would be at the cost of other impacts, including in relation to loss of highly valued open space, difficulties in securing replacement land and loss of mature trees. We note that DCiC was not supportive of the alternative alignment in planning terms, also citing difficulties in relocating surface water mitigation and amenity concerns for Queensway residents if those properties were retained. None of the APs at properties where CA could potentially be reduced commented. Based on the above we find that there is no case for that alternative to be considered further and are satisfied that reasonable alternative junction layouts and alignments have been considered.

7.8.45 We also explored the potential for modifications in relation to the powers sought at 253 and 255 Ashbourne Road; 1 and 14 Sutton Close. Noting DCiC's comments and the lack of any objections from APs, we have no reason not to accept the Applicant's reasoning for a new access road being required or for that being a private, unadopted road. We note that the powers requested were reduced during the Examination and are content that alternatives have been appropriately considered at this location.

7.8.46 Based on the above we conclude that the Applicant has explored all reasonable alternatives to CA and no other credible alternative could be identified.

7.8.47 We find no compelling evidence to disagree with the Applicant's proposals with respect to the provisions for maintenance, lateral deviation, and the potential to reduce CA and TP during the detailed design phase.

7.8.48 Sufficient evidence has been provided for us to find that costings, including the costs of acquisition and compensation, have been identified appropriately. The Proposed Development is included in the RIS1 and RIS2 programmes and, as such, we are content that there would be unlikely to be a funding impediment to its delivery or to the payment of compensation. We have not seen any evidence of any other likely impediments to the Proposed Development.

7.8.49 Although some land rights have not been identified, the application documents, updates to the BoR [REP13-002] during the Examination and responses to matters raised during the Examination have demonstrated to our satisfaction that the Applicant has applied appropriate due diligence in this respect.

7.8.50 We consider that the Applicant's arguments with respect to the acquisition of unknown third-party rights are reasonable and we are therefore satisfied that regard has been given to the Equalities Act 2010 and PSED.

7.9 INDIVIDUAL OBJECTIONS AND ISSUES

7.9.1 This section sets out our consideration of the objections received from APs and other parties and the Applicant's responses to those. Objections received from SUs are considered in Section 7.10. Our overall conclusions on the

Mr and Mrs Gartside - 12 Queensway

7.9.2 The Applicant has requested powers for the CA of land at plot 4/6 to enable the widening of the A38.

7.9.3 Mr and Mrs Gartside have Category 1 interests as owners and residents and operate a business from the property.

7.9.4 Mr and Mrs Gartside made an RR [RR-018], oral representation at CA Hearing 1 [EV-007] and further submissions [REP11-011 REP12-018] on the progress of their negotiations with the Applicant. They concluded by reporting that their outstanding questions had been answered by the Applicant, that progress had been made with their agreement, and that they no longer wished to participate in the Examination. The Applicant [REP12-006] said that they had formally accepted the compensation package.

7.9.5 Therefore, we do not consider that Mr and Mrs Gartside are objecting to CA.

7.9.6 Based on the above, we are satisfied that the rights sought for the CA of land at plot 4/6, are for a legitimate purpose, that they are necessary and proportionate and that there is a compelling case in the public interest for the powers to be granted.

Millennium Isle of Man Limited

7.9.7 The Applicant has requested powers for the TP of land at plots 8/1, 9/1 and 9/3 for the erection and accommodation of a temporary works compound.

7.9.8 Millennium Isle of Man Limited have Category 2 interests in these plots by virtue of an Option Agreement dated 7 September 2018.

7.9.9 Freeths LLP on behalf of Millennium Isle of Man Limited made a submission [RR-017] stating that it considered the extent of works and land affected would be more than necessary and that there was a lack of clarity regarding what was intended in respect of its land interests or restoration. It did not respond to our request [PD-005] for further details of their concerns and did not make a further submission to the Examination.

7.9.10 The Applicant [REP1-005 REP6-015 REP9-005] reported that a meeting was held on 2 September 2019 to discuss technical matters including the preliminary information for the proposed compound. It said [REP1-005 REP9-005] that layouts and proposals would be finalised during the detailed design phase, that further meetings would be held to include the contractor and that restoration details were provided in Figure 2.12G of the Environmental Masterplan [APP-068]. No further updates were provided during the Examination.

7.9.11 Based on the above, we conclude that the rights sought for the TP of plots 8/1, 9/1 and 9/3 are for a purpose and timescale that have been identified, are compatible with human rights tests, and there are suitable compensation provisions.

RSfD

7.9.12 The Applicant has requested powers for:

- the CA of land at plot 3/22a for the alteration realignment and grading of the A52, alteration of access to RSfD and diversion of utilities;
- the TP and the CA of rights at plot 3/22b for the construction of a southbound diverge slip road and alteration, realignment and grading of highway and alterations to the access to and egress from the A52 to the RSfD;
- the CA of land at plot 3/22c for the construction of an access track and footway/cycle track and for the construction, improvement and realignment of the existing cycle route;
- the CA of land at plot 4/7a for the alteration, realignment and grading of the southbound lane of the A38, for the construction of a southbound diverge slip road off the A38, access track and footway/cycle track, for the construction, improvement and realignment of the existing cycle route, and for the diversion of utilities;
- the CA of land at plot 4/7c for the construction of a drainage pond; and
- the CA of land at plot 4/11 for the construction of an access track and footway/cycle track.

7.9.13 RSfD have Category 1 interests as lessees/tenants and occupiers;

7.9.14 RSfD [RR-019 AS-022 EV-007] raised several issues in relation to features of the school affected by the proposed acquisition, which the Applicant [REP1-005 REP3-014 REP3-025] responded to. Measures regarding those matters were agreed in a SoCG between the RSfD and the Applicant [REP8-003], following which the RSfD did not raise any further concerns.

7.9.15 It follows that we do not consider that the RSfD is objecting to CA or TP.

7.9.16 Based on the above, we are satisfied that the rights sought for the CA of land at plots 3/22a, 3/22c, 4/7a, 4/7c and 4/11, and for the CA of rights at plot 3/22b, are for a legitimate purpose, that they are necessary and proportionate and that there is a compelling case in the public interest for the powers to be granted. We are satisfied that the rights sought for the TP of plot 3/22b are for a purpose and timescale that have been identified, are compatible with human rights tests, and there are suitable compensation provisions.

Haven Care Group Limited – 255 Ashbourne Road

7.9.17 The Applicant has requested powers for:

- the TP of plot 3/15a for the construction and widening of a private means of access; and
- the CA of land at plot 3/15b for the alteration, realignment and grading of the A52 and for the diversion of utilities.

7.9.18 Haven Care Group Ltd has Category 1 interests as lessees/tenants and occupiers, operating Cherry Lodge children's residential care home at the property.

7.9.19 Carter Jonas LLP on behalf of Haven Care Group Ltd made a submission [RR-015] stating that it had significant concerns about the impact during the construction and operational phases of the Proposed Development, the loss of car parking and adverse impacts on the wellbeing of children at the home. It did not respond to our request [PD-005] for further details on their concerns and did not make a further submission to the Examination.

7.9.20 As noted above, the Applicant said [REP12-007] that it had accepted a blight notice for 255 Ashbourne Road and was in ongoing discussions with the owner regarding acquisition by agreement and loss of car parking.

7.9.21 Based on the above, we conclude that the rights sought for the CA of land at plot 3/15b are for a legitimate purpose, that they are necessary and proportionate and that there is a compelling case in the public interest for the powers to be granted. We conclude that that the rights sought for the TP of plot 3/15a are for a purpose and timescale that have been identified, are compatible with human rights tests, and there are suitable compensation provisions.

Euro Garages Limited

7.9.22 The Applicant has requested powers for:

- the TP of plots 3/8a, 3/8b and 3/9a for amendments or alterations to the access and egress for the filling station and fast-food site; and
- the TP and the CA of rights of plot 3/9b for alterations to the access to and egress from the filling station and fast-food site and for the diversion and maintenance of, and access to, utilities.

7.9.23 Euro Garages Limited has Category 1 interests as occupiers of plots 3/8a and 3/8b and owners and occupiers of plots 3/9a and 3/9b.

7.9.24 Singleton Clamp and Partners Ltd or Tim Hancock Associates on behalf of Euro Garages Limited [RR-013 REP1-040 REP3-035 REP3-036 REP4-033 REP6-038 REP6-039 REP6-040 REP9-034 REP10-011 REP11-009 REP12-014 REP14-038 REP15-009 REP15-010] made several submissions in relation to proposed changes in access arrangements that they considered would commercially impact on the service station and lead to a depreciation in the value of the property.

7.9.25 The technical matters raised by Euro Garages Limited and the Applicant's responses to those are considered in Section 4.13, where we conclude that the concerns raised by Euro Garages Limited in respect of highway safety are capable of being resolved during the detailed design phase. Most other matters were resolved during the Examination. The outstanding questions of the loss of direct access to the A38 and any adjustments required to existing access rights would be matters for compensation.

7.9.26 The Applicant [REP4-024] considered that the temporary land take would affect access to the property, rather than the operation of the business, so there would be no payment for temporary loss of land.

7.9.27 Based on the above, we conclude that the rights sought for the CA of rights of plot 3/9b are for a legitimate purpose, that they are necessary and proportionate and that there is a compelling case in the public interest for the powers to be granted. We conclude that the rights sought for the TP of plots 3/8a, 3/8b, 3/9a and 3/9b are for a purpose and timescale that have been identified, are compatible with human rights tests, and there are suitable compensation provisions.

McDonald's Restaurants Limited

7.9.28 Powers were requested for the TP of plots 3/8a and 3/8b for amendments or alterations to the access and egress for the filling station and fast-food site.

7.9.29 McDonald's Restaurants Limited has Category 1 interests as lessees/tenants and occupiers.

7.9.30 McDonald's Restaurants Limited [RR-016 REP1-045 REP3-040 REP4-034 REP6-041 REP9-035 REP10-012 REP15-012] made several submissions in relation to proposed changes in access arrangements that it considered would negatively impact their business.

7.9.31 The technical matters raised by Euro Garages Limited and the Applicant's responses to those are considered in Section 4.13, where we conclude that the concerns raised by McDonald's Restaurants Limited in respect of highway safety are capable of being resolved during the detailed design phase. Most other matters were resolved during the Examination. The outstanding questions of the loss of direct access to the A38, the need to strengthen part of the car park and any adjustments required to existing access rights would be matters for compensation.

7.9.32 The Applicant [REP4-024] considered that the temporary land take would affect access to the site, rather than the operation of the business, so there would be no payment for temporary loss of land.

7.9.33 Based on the above, we conclude that the rights sought for the TP of plots 3/8a and 3/8b are for a purpose and timescale that have been identified, are compatible with human rights tests, and there are suitable compensation provisions.

FoMP and FoED

7.9.34 Neither FoMP nor FoED are recorded as AP's, they have not requested to be considered as such, and we have no substantive reasons to consider that they should be. Nevertheless, those parties have raised several CA matters.

7.9.35 FoMP [REP9-042 REP12-015 REP13-007 REP15-011] and FoED [REP10-010 REP11-007 REP11-008] made several submissions, which included statements that:

- the CA of land was not in the public interest;
- there was "*no benefit in further destruction of public open space*";
- there was no case for CA of the properties on Queensway;
- there was an objection to CA of plots in Markeaton Park, which were contrary to the 'Mundy Covenant';
- decisions on CA powers should be deferred until detailed design was complete; and that
- there were objections to the construction of a utility corridor within Markeaton Park.

7.9.36 We note, and are content with, the Applicant's responses [REP10-009 REP11-003 REP12-006 REP13-006 REP14-029 REP15-007 AS-061].

7.9.37 We have taken account of the views expressed by the FoMP and FoED, together with the Applicant's responses, in our considerations of CA and TP elsewhere in this chapter, including with respect to the Queensway properties, 'Mundy Covenant', Special Category Land and SUs.

The beneficiaries of the 'Mundy Covenant'

7.9.38 DCiC [REP3-027] provided a copy of the 'Mundy Covenant', which conveyed Markeaton Park to DCiC with a restriction that it cannot be used for "*any other purpose than as a Park or open space or place of recreation for the benefit of the public and for their recreation and no buildings shall be erected or used in the Park other than buildings for or in connection with the purposes of education recreation or horticulture*." DCiC [REP11-006] said that it had provided details of the successor of the title (Ms Clarke-Maxwell) to the Applicant.

7.9.39 Neither Ms Clarke-Maxwell, nor any party purporting to be the beneficiary of the 'Mundy Covenant', made a submission to the Examination.

7.9.40 The Applicant [REP4-024 REP6-015 REP6-019 REP9-029 REP12-006 REP12-007 REP14-019] said that:

- it had engaged with Ms Clarke-Maxwell, but had not received any evidence of her being the beneficiary and had not been able to establish that through diligent enquiry;
- Ms Clarke-Maxwell had not objected to the removal of the covenant;
- if it receives evidence that Ms Clarke-Maxwell is a beneficiary then it would enter into a voluntary agreement and consider possible compensatable interest;
- if the land is acquired compulsorily, then a beneficiary would have six years to make a claim for compensation; and that
- the parties to the 'Mundy Covenant' are the Mundy family and DCiC and the public who use the land for its amenity value have no formal Interest in the right; and that, formally, the beneficiary of this right is the Mundy

Family, rather than the public who enjoy the amenity value of Markeaton Park.

7.9.41 It follows that we have no reason to consider that a beneficiary of the 'Mundy Covenant' is objecting to CA or TP.

7.9.42 Based on the above, we are satisfied that the proposed interference with the rights established by the 'Mundy Covenant' are for a legitimate purpose, that they are necessary and proportionate and that there is a compelling case in the public interest for the powers to be granted.

Friends of Little Eaton Canal

7.9.43 Friends of Little Eaton Canal are not recorded as an AP, it has not requested to be considered as such, and we have no substantive reasons to consider that it should be. Nevertheless, it has suggested in an RR [RR-014] that by accessing the main construction compound via the B6179 a precedent could be set for future development on the land.

7.9.44 The Applicant [REP1-005] responded that the access into the compound area would be removed at the end of the construction phase and the land reinstated to its previous condition. We are satisfied with the Applicant's response and consider that the matters raised by the Friends of Little Eaton Canal are not material to our considerations of CA and TP for the Proposed Development.

7.10 SPECIAL CONSIDERATIONS

7.10.1 This section addresses our consideration of the Applicant's case and matters raised during the Examination with respect to:

- Crown Land;
- Special Category Land; and
- Statutory Undertakers.

Crown land

7.10.2 Section 135(1) of the PA2008 precludes the CA of interests in Crown land unless the land is held "*otherwise than by or on behalf of the Crown*", and the appropriate Crown authority consents to the acquisition.

7.10.3 Section 135(2) precludes a DCO from including any provision applying to Crown land or Crown rights without consent from the appropriate Crown authority. This is not limited to CA provisions in a DCO.

7.10.4 The BoR [REP13-002] identifies plots subject to Crown interests, held by the Secretary of State for Defence, and the powers requested by the Applicant:

- CA of land at plots 3/5c, 3/6 and 3/7;
- TP and CA of rights of plot 3/5a; and
- TP of plots 3/5b and 3/5d.

7.10.5 The extent of the land owned by the Crown Estate, or in which there is a Crown interest, is shown on the Crown Land Plans [REP2-004].

7.10.6 The Applicant [REP6-019] provided an email from the Defence Infrastructure Organisation [REP6-026] confirming that the s135 agreement could be dealt with locally by the Head of Estates at the East Midlands Reserve Forces and Cadets Association (EMRFCA) and their solicitor.

7.10.7 Towards the end of the Examination, the Applicant provided a letter from the Head of Estates at the EMRFCA [REP14-031] referring to TP being requested for plots 3/5a, 3/5b and 3/5d and permanent new rights over plot 3/5c. The letter granted "*consent under section 135(1) and (2) of the Act to the inclusion of the Crown land in the DCO for the Scheme and to Highways England's application for powers of compulsory acquisition in respect of all interests in and rights over the land identified above*".

7.10.8 No mention is made of plots 3/6 or 3/7 in EMRFCA's letter and there are inconsistencies in the letter between the powers requested and granted for plots 3/5a, 3/5b and 3/5d.

7.10.9 Given the omissions and inconsistencies in EMRFCA's letter and that it does not fully address the powers requested by the Applicant, we recommend that the powers sought for Crown Land should not be granted until EMRFCA, or the Secretary of State for Defence, has confirmed the necessary consent consistent with the BoR [REP13-002] and in accordance with s135(1) of the PA2008.

Special Category Land

7.10.10 Sections 131 and 132 of the PA2008 make provisions for a Special Parliamentary Procedure in respect of the acquisition of common, open space or fuel or field garden allotments. In this case CA powers are sought for the acquisition of open space land. In order to avoid Special Parliamentary Procedures, s131 and s132 require the SoST to be satisfied that one of a number of circumstances applies, which include that replacement land has been or would be given in exchange for the land to be compulsorily acquired, with the same rights, trusts and incidents. The provisions do not apply to TP.

7.10.11 Paragraph 5.166 of the NPSNN says that existing open space should not be developed unless the land is surplus to requirements or the loss would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location.

7.10.12 Paragraph 5.174 states that consent should not be granted for development on open space unless an assessment has been undertaken either by the local authority or independently, which has shown the open space or the buildings and land to be surplus to requirements, or the Secretary of State determines that the benefits of the Proposed Development (including need) outweigh the potential loss of such facilities, taking account of any proposals made by the Applicant to provide compensatory land.

7.10.13 DCLG (now MHCLG) CA Guidance requires that regard be given to such matters as relative size and proximity of the replacement land when

compared with the land it is proposed to compulsorily acquire. The Guidance further states that land which is already subject to rights of common or to other rights, or used by the public, even informally, for recreation, cannot usually be given as replacement land, since this would reduce the amount of such land.

7.10.14 The BoR [REP13-002 Part 5] and SoR [REP9-005 table 7-1] set out the plots, or parts of plots, identified as open space and the powers requested by the Applicant, which include:

- CA of land required permanently - 26 plots or parts of plots, total area of 7,788m^2;
- TP and CA of permanent rights for access/maintenance – 11 plots or parts of plots, total area of 46,085m^2; and
- TP of land required temporarily – 42 plots or parts of plots, total area of 210,081m^2.

7.10.15 The BoR [REP13-002 Part 5] and SoR [REP9-005 table 7-2] set out the plots, or parts of plots, identified as replacement land, which comprise 42 plots or parts of plots and a total area of 8,484m^2 (7,831m^2 excluding drainage infrastructure). The Applicant has requested CA powers for the replacement land.

7.10.16 The extent of open space and replacement land are shown on the Special Category Land Plans [REP2-003].

7.10.17 The Applicant's [REP9-005] case is that the total area of replacement land is in excess of the open space required permanently for the Proposed Development and that it is of "*relative size and proximity*" in accordance with DCLG CA Guidance.

7.10.18 During the Examination submissions were made about open space and replacement land, and we raised several questions.

Open space surplus to requirements

7.10.19 We asked [PD-005 EV-006 PD-014 EV-014] for details of any assessments made of whether the open space Order land proposed to be acquired was surplus to requirements and whether such an assessment could result in a reduction in the need for the CA of replacement land.

7.10.20 DCiC [REP3-027] stated that there was an overprovision in the locality of the Proposed Development if the two city parks of Allestree Park and Markeaton Park were included. It later [REP6-027] clarified that there was an undersupply within the city centre, which was close to the A38 corridor and reliant on Markeaton Park for its recreational needs. DCiC therefore said that the open space land supply should be considered city wide and, noting the proposed loss of open space in Markeaton Park, that it was entirely appropriate that replacement land should be provided.

7.10.21 FoED [REP6-035] commented that Markeaton Park "*is a city park; people come here from all over the city, especially from wards which are lacking in Public Open Space standards*".

7.10.22 The Applicant [REP1-005 REP4-024 REP6-023] said that:

- it had not concluded that there was an oversupply of open space;
- DCiC did not consider there to be an oversupply of public open space land within the City;
- CA of replacement land was required to fulfil the Applicant's obligations under the PA2008;
- without the acquisition of replacement land, Special Parliamentary Procedure would be required, which would present the potential for significant delay to delivery; and that
- if the replacement land was not required for the purposes of open space the land in question would in any event still be subject to CA for other purposes, as it was otherwise needed to deliver the Proposed Development.

7.10.23 DCiC's initial statement of an overprovision of open space was based on Markeaton Park being fully included for the locality of the Proposed Development. However, and particularly considering the scale of Markeaton Park and noting the comments from FoED, we have no reason not to accept their clarification that it should be considered for the benefit of the city as a whole, including other areas where there is an undersupply of open space. We do not share the Applicant's view that DCiC clearly stated to the Examination that there was an oversupply of public open space land. However, in relation to paragraph 5.174 of the NPSNN, we do conclude that DCiC has carried out an assessment of open space and we find that the assessment does not show that the open space is surplus to requirements.

7.10.24 It follows that paragraph 5.174 then requires the Applicant to demonstrate that loss of public open space would be replaced by compensatory land of equivalent or better provision in terms of quantity and quality in a suitable location. Our consideration of whether the benefits of the Proposed Development (including need) outweigh the potential loss of such facilities is addressed as part of our overall consideration of the Applicant's case for CA, below.

Replacement land

7.10.25 Responding to our questions [PD-005], the Applicant [REP1-005 REP3-014 REP3-024 REP3-025] provided a table showing the rights to be acquired over public open space and clarified that existing rights, including Category 2 rights being removed as a result of the acquisition, would be re-granted to the relevant parties and replicated in any replacement land.

7.10.26 We are satisfied with the provisions of Article 38(4) of the rDCO (Appendix D) that "*the replacement land is to vest in the person(s) in whom the special category land was vested immediately before it was vested in the undertaker and is to be subject to the same rights, trusts and incidents as attached to the special category land.*"

7.10.27 The suitability of replacement land is considered in Section 4.13. where we conclude that the Proposed Development would make adequate provision

for the loss of public open space in both quantitative and qualitive terms. The replacement open space would also be reasonably well related to existing green space.

7.10.28 Based on the above we conclude that:

- there is no need for Special Parliamentary Procedure under s131 and s132 of the PA2008 as "*no less advantageous*" replacement land with the same rights, trusts and incidents would be given in exchange for the public open space to be compulsorily acquired;
- paragraphs 5.166 and 5.174 of the NPSNN would be satisfied as the loss of public open space would be replaced by compensatory land of equivalent or better provision in terms of quantity and quality in a suitable location; and
- DCLG CA Guidance is satisfied as regard has been given to such matters as relative size and proximity of the replacement land when compared with the public open space land it is proposed to compulsorily acquire and that land which is already subject to rights of common or to other rights, or used by the public, even informally, for recreation, is not proposed as replacement land.

Statutory Undertakers

7.10.29 Section 127 of the PA2008 has provisions in relation to CA of land or rights over SUs land. If a SU has made a representation that has not been withdrawn before the end of the Examination, then CA may only be authorised if there is no serious detriment to the carrying on of the undertaking.

7.10.30 Section 138 of the PA2008 has provisions for the removal of SUs' apparatus if the SoS is satisfied that is necessary for the Proposed Development.

7.10.31 The BoR [REP13-002] lists the following SUs as having interests in plots for which powers are requested:

- Cadent Gas Limited (Cadent);
- Severn Trent Water Limited (STW);
- Western Power Distribution (East Midlands) Plc (WPD);
- Openreach Limited;
- CityFibre Limited;
- Virgin Media Limited;
- Hutchinson 3G UK Holdings Limited;
- GTC Utility Construction Limited; and
- Cornerstone Telecommunications Infrastructure Limited.

7.10.32 In addition the SoR [REP9-005 paragraph 7.4.5 or Annex C] mentions MBNL, EE Limited, Telephonica UK Limited, Vodaphone Group Plc, Overhead OFCOM D 3 Mast and E,On UK Plc.

7.10.33 Although Network Rail Infrastructure Limited (Network Rail) is not listed in the SoR [REP9-005] as a SU, we include it in our considerations in this section as it comes under the meaning given by s8 of the Acquisition of Land Act 1981, as referenced by s127(8) of the PA2008.

7.10.34 During the Examination the Applicant [REP1-005 REP3-014 REP3-025] clarified that:

- OFCOM had been included in error, as it is a regulatory body that has no relevant infrastructure interests;
- E.On's distribution network was acquired by Western Power Distribution in 2011, and as such all interests on the title which were held by E.On were now held by Western Power Distribution;
- companies listed in the SoR [REP9-005] do not necessarily appear in the BoR [APP-022] as the interest in land was not registered to them but to the infrastructure company or one of the telecoms operators; and that
- all parties had been contacted by the Applicant in relation to the Proposed Development.

7.10.35 The SoR [REP9-005] says that the Applicant is not requesting powers to CA SU land, but that it is requesting powers to acquire land with existing permanent rights in favour of SUs. The SoR [REP9-005 Annex C] provides a schedule of the relevant plots in which each SU has an interest and the powers sought by the Applicant for those plots. The extent of those plots is shown on the Land Plans [REP9-003].

7.10.36 Schedule 9 of the rDCO (Appendix D) includes relevant protective provisions (PPs):

- Part 1 – For the protection of electricity, water and sewerage undertakers;
- Part 2 – For the protection of operators of electronic communications code networks;
- Part 4 – For the protection of Network Rail; and
- Part 5 – For the protection of Cadent Gas Limited.

7.10.37 Towards the end of the Examination the Applicant provided a Statement on the Protective Provisions for the SUs [REP15-008], which summarised the position with Cadent, Network Rail, STW and WPD.

Cadent Gas Limited

7.10.38 Cadent [RR-002 REP1-029 REP4-032] was not satisfied that the s127 or s138 tests could be met until it had PPs in place which adequately protected its existing apparatus and which properly regulated any diversions. On that basis it considered that the powers sought would cause serious detriment to the carrying on of its undertaking.

7.10.39 Both Cadent [REP7-011 REP9-032 REP12-011] and the Applicant [REP10-009 REP12-007 REP13-006 REP14-032] provided updates on their areas of

disagreement regarding the prospective provisions, which included the following:

- Cadent considered that consequential loss should not be excluded from the indemnity, as it considered this was standard legal practice and had been accepted on three previous DCOs. The Applicant argued that there should not be an entitlement to recover consequential losses that were not reasonably foreseeable and that this position was consistent with previous DCOs and with their obligations to manage public money;
- Cadent sought to avoid arbitration on matters such as the withholding or conditioning of its approval to the plan for works. The Applicant argued that independent scrutiny should be allowed and that otherwise there would be unacceptable risks to delivery;
- Cadent considered that "*acceptable insurance*" provisions should be included in the DCO rather than in a side agreement. The Applicant argued that a figure and wording had been agreed and there was no evidence of a need to include it in legislation; and
- there was disagreement around the extent of Cadent's "*assistance obligation*". Cadent felt that the Applicant would simply "*pass the burden*" to it. The Applicant provided detailed reasoning why this was not the case and why Cadent should be obliged to assist.

7.10.40 Section 127 requires Cadent to be protected from serious detriment in undertaking its functions, however it does not protect it from all the costs of doing so. On that basis, we consider that Cadent's disagreements with respect to consequential loss and the assistance obligation are at variance with the tests set out in section 127 of the PA2008. We do not see how having matters subject to arbitration could lead to serious detriment. Noting that Cadent did not dispute the Applicant's statement that insurance provisions have been agreed, we see no reason to include them in the rDCO (Appendix D).

7.10.41 Based on the above, find that that Cadent has not demonstrated that the recommended version of the PPs would lead to serious detriment and recommend accordingly.

Network Rail

7.10.42 The Applicant [REP9-005 REP13-002] has requested powers for:

- the CA of land at plot 8/7 for the alteration of the rail bridge and the construction of a southbound merge slip road onto the A38;
- the CA of land at plot 8/9 for alteration, re-alignment and grading of the northbound and southbound lanes of the A38 and the alteration of the railway bridge and the construction of a southbound merge slip road onto the A38;
- the CA of land and airspace at plot 8/6 for the construction and maintenance of a railway bridge; and

- the TP of plots 8/5 and 8/8 for the alteration, realignment and grading of the northbound and southbound carriageway and alteration and extension to an existing railway bridge.

7.10.43 Network Rail [RR-007 REP1-024 REP1-025] initially considered that:

- there was no compelling case in the public interest for the CA powers;
- it could not be concluded that the new rights and restrictions over the railway land could be created or that the land could be acquired without serious detriment to Network Rail's undertaking;
- rather than requiring CA powers the matters could be resolved by way of negotiation of a framework agreement that described and attached a bridge agreement and deed of easement; and that
- Network Rail should be able to withdraw its objections if the PPs and private agreements could be agreed.

7.10.44 Both Network Rail [REP9-036 REP10-013 REP12-016 REP12-007] and the Applicant [REP3-014 REP3-025 REP4-024 REP6-015 REP9-029 REP10-009 REP11-003 REP13-006] provided updates on their negotiations. Both Network Rail [REP14-041] and the Applicant [REP15-007] stated that the PPs had been agreed. The Applicant [REP14-019] said that the Framework Agreement had one minor point outstanding.

7.10.45 Subject to the SoST confirming with the Applicant and Network Rail that the Framework Agreement has been agreed, we do not consider that Network Rail is objecting to CA or TP and we do not consider that the recommended version of the PPs would lead to serious detriment and recommend accordingly.

STW

7.10.46 STW [RR-009] said that it may seek changes to the PPs and a side agreement with the Applicant but did not provide details of any concerns to the Examination. Towards the end of the Examination the Applicant [REP15-008] said that STW had agreed to the PPs and that a side agreement had been agreed and signed by the Applicant. We did not receive any confirmation of that from STW.

Subject to the SoST confirming with STW that it agrees with the PPs and side agreement, we do not consider that the recommended version of the PPs would lead to serious detriment and recommend accordingly.

WPD

7.10.47 WPD [RR-010] considered that protection of the electricity network had not been adequately addressed, that it did not have enough information to understand if it could fulfil its statutory responsibilities, and that insufficient provision was made for replacement cable routes. It did not respond to our request [PD-005] to provide further information on its concerns.

7.10.48 Towards the end of the Examination the Applicant [REP15-008] said that WPD had agreed to the PPs and that a side agreement had been agreed and signed. We did not receive any confirmation of that from WPD.

7.10.49 Subject to the SoST confirming with WPD that it agrees with the PPs and side agreement, we do not consider that the recommended version of the PPs would lead to serious detriment and recommend accordingly.

Other Statutory Undertakers

7.10.50 The Applicant [REP3-014] noted that the telecoms operators had not made any representations.

7.10.51 We did not receive any objections from any other of the SUs identified earlier in this section and therefore find that s127 of the PA2008 would not be engaged for those parties. We have not been presented with any evidence that would lead us to conclude that there would be any serious detriment to the undertakings of those parties. On that basis we recommend that the PPs in the rDCO (Appendix D) are adopted.

7.11 RELEVANT PROVISIONS IN THE DRAFT DCO

7.11.1 This section addresses CA and TP provisions in the dDCO that were raised during the Examination, in addition to those considered elsewhere in this chapter. In particular, the PPs in Schedule 9 are considered above under SUs.

Article 10 – Consent to transfer benefit of order

7.11.2 Cadent [REP7-011] suggested that the Applicant transfer the benefits of CA powers to it for the diversions to utilities and so on. The Applicant [REP8-007 REP10-009] said that under Article 10(4) it would transfer the benefit of the rights to be acquired under Schedule 5 to Cadent following its exercise of the CA powers. We are content with the Applicant's response, find no reason to conclude that Cadent would not be provided with the necessary powers and see no reason to change Article 10(4) in this respect.

Article 30 – Application of the 1981 Act

7.11.3 Responding to our suggestion [REP9-003], the Applicant [REP1-004] improved the drafting of Article 30(8) in the application dDCO [APP-016] by splitting it into two separate paragraphs.

Article 33 - Temporary use of land for carrying out the authorised development

7.11.4 We raised questions [PD-003 REP1-004 PD-010 PD-015] in relation to whether the Article 33(1)(d) text "*or any other mitigation works in connection with the authorised development*" in the application dDCO [APP-016] could be made more precise. The Applicant [REP1-004 REP3-025 REP3-026 REP4-024 REP5-010 REP6-016 REP6-017] responded to our questions and amended the text to "*or any other mitigation works required in connection with the authorised development as identified in the*

environmental statement". We accept the Applicant's arguments for flexibility and are satisfied with the change.

7.11.5 Article 33(2) provides for 14 days' notice to be made before taking TP. DCiC [REP1-034 REP4-029] considered that a minimum period of 28 days, and preferably 44 days should be provided. The Applicant [REP3-025 REP5-010 REP6-015] said that under the Housing and Planning Act 2016 it would serve a General Vesting Declaration at least three months prior to TP, that it would be working very closely with DCiC alongside the formal notifications, and that any longer periods would be agreed on an individual basis, as appropriate. Noting that DCiC [REP12-019] said that it was content with the Applicant's explanations and that no other AP's raised an objection, we do not consider it necessary to change Article 33(2).

7.11.6 Responding to our question [REP9-003], the Applicant [REP1-004] made a minor correction to Article 33(7) in the application dDCO [APP-016] by replacing a reference to "*paragraph (5)*" with a reference to "*paragraph (6)*".

Schedule 5 – Land in which only new rights etc. may be acquired

7.11.7 Responding to our questions [PD-003 PD-005 PD-010 PD-014], the Applicant [REP1-004 REP1-005 REP3-015 REP3-026 REP4-024] audited the schedule and provided updates during the Examination.

7.11.8 Cadent [REP5-012 REP7-011 REP9-032] considered that the purpose for which rights over land may be acquired as the "*diversion and maintenance of and access to*" be amended to "*for the diversion, operation, maintenance, protection and decommissioning of, and access to*" in order to correspond to Cadent's standard easements. The Applicant [REP8-007 REP10-009 REP12-007] responded, stating that it considered the provisions to be broad enough, particularly given the definition of 'maintain' in Article 2(1) and that Article 10 enabled the Applicant to transfer adequate rights to Cadent. We are satisfied with the Applicant's responses and do not consider that any changes are required to Schedule 5 in this respect.

Schedule 6 – Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants

7.11.9 Responding to our questions [PD-003 PD-010 PD-014 PD-015], the Applicant [REP3-026 REP4-024 REP6-016 REP6-017] said that the schedule was required for the dDCO to only provide for the CA of specific rights in land, rather than the CA of all rights in land, as this was not permitted through the normal compulsory purchase regime. It considered that the s126 of the PA2008 tests were met, and we have no reason to disagree.

Schedule 7 – Land for which temporary possession might be taken

7.11.10 Responding to our questions [PD-003 PD-005 PD-010 PD-014], the Applicant [REP1-004 REP1-005 REP3-015 REP3-026 REP4-024] audited the schedule and provided updates during the Examination.

7.12 CONCLUSIONS AND RECOMMENDATIONS

7.12.1 Our approach to the question of whether and what CA and TP powers we should recommend to the SoST to grant has been to seek to apply the relevant sections of the PA2008, notably s122 and s123, the DCLG CA Guidance, the Human Rights Act 1998 and s19(7) of the Neighbourhood Planning Act 2017; and, in the light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.

7.12.2 We understand, however, that the Applicant's final dDCO [REP15-005] deals with both the Proposed Development itself and CA and TP powers. The case for CA and TP powers could not properly be considered unless and until we had formed a view on the case for the development overall, and the consideration of the CA and TP issues must be consistent with that view.

7.12.3 We considered the case for development in the preceding chapters and in Chapter 6 concluded that the case has been made, subject to the provisions of the rDCO (Appendix D) and subject to the SoST's consideration of compliance with the Paris Agreement 2015, cumulative carbon emissions and meeting the target of net zero carbon by 2050.

7.12.4 In considering the question of whether there is a compelling case in the public interest to acquire the land (s122(3) of the PA2008), we have taken into account the Applicant's case for CA and TP, the individual issues and objections raised and all submissions made to the Examination.

7.12.5 The question that we address here is the extent to which, in the light of the factors set out above, the case is made for CA & TP powers necessary to enable the Proposed Development to proceed.

7.12.6 In this chapter we have considered:

- the need for CA and TP;
- the purposes for which the powers are requested;
- alternatives;
- individual objections and issues;
- Crown Land;
- Special Category Land;
- Statutory Undertakers;
- availability and adequacy of funds;
- potential impediments;
- human rights and the compelling case in the public interest; and
- DCO provisions.

7.12.7 Our recommendations on the granting of CA and TP powers are subject to the Secretary of State for Transport satisfying themself on the following points:

- the SoST's consideration of compliance with the Paris Agreement 2015, cumulative carbon emissions and meeting the target of net zero carbon by 2050;
- the necessary consent from the appropriate Crown authority for the rights sought for plots 3/5a, 3/5b, 3/5c, 3/5d, 3/6 and 3/7 being obtained in accordance with s135(1) of the Planning Act 2008;
- the side agreement (Framework Agreement) between the Applicant and Network Rail being agreed by both parties;
- Severn Trent Water and the Applicant agreeing their side agreement and the protective provisions in Part 1 of Schedule 9 of the Development Consent Order; and
- Western Power Distribution and the Applicant agreeing their side agreement and the protective provisions in Part 1 of Schedule 9 of the Development Consent Order.

7.12.8 In relation to the application for CA powers, we conclude that:

- the land sought for the Proposed Development and subject to CA would be land required for the purposes of s122(2)(a) and (b) of the PA2008 and that it meets the tests set out in that section;
- the Applicant has shown that all reasonable alternatives to CA have been explored and that there are no alternatives which ought to be preferred;
- the Applicant has demonstrated that the extent of land over which powers are sought would be no more than is reasonably required and it is proportionate to the needs of the Proposed Development;
- the private loss to those affected would be mitigated to a large degree by limiting the use of CA powers to land essential to deliver the Proposed Development and by the use of TP powers wherever possible to minimise both land-take and the extent of rights and interests to be acquired;
- with reference to s127 and s138 of the PA2008, no serious detriment to the carrying on of the undertakings of SUs has been demonstrated;
- with reference to s131 and s132 of the PA2008, suitable replacement land would be provided in exchange for open space subject to CA powers and Special Parliamentary Procedures would not be required;
- adequate and secure funding would be available for CA;
- we are satisfied that the Examination has ensured a fair and public hearing, that any interference with human rights arising from implementation of the Proposed Development would be for a legitimate purpose that would justify such interference in the public interest and to a proportionate extent;
- compensation would be available for quantifiable loss; and that
- there would be no disproportionate or unjustified interference with human rights that would conflict with the provisions of the Human Rights Act 1998.

7.12.9 Taking the above factors together, we consider that the SoST can be satisfied that there is a compelling case in the public interest for CA and that the Proposed Development would comply with the PA2008.

7.12.10 Regarding the application for TP powers, we are satisfied that:

- the land to be subject to TP, the purposes for which it would be required and the period for which land might be subject to TP, have been identified; and
- it has been demonstrated that the TP powers are compatible with the relevant human rights tests and that there are suitable compensation provisions.

7.12.11 Therefore, in respect of TP, we find that the Proposed Development would comply with the PA2008 and with s19(7) of the Neighbourhood Planning Act 2017.

7.12.12 We have had regard to the provisions of the Human Rights Act 1998. In some cases, there would be interference with private and family life and home in contravention of Article 8, and interference in the peaceful enjoyment of possessions in contravention of Article 1 of the First Protocol of the Human Rights Act 1998. In relation to Article 6 (entitlement to a fair and public hearing), the Examination has ensured a fair and public hearing. The weight of national policy in favour of the Proposed Development and the wider public interest justifies the interference with human rights. Subject to matters set out in paragraph 7.12.7 above, we conclude that any interference with human rights arising from implementation of the Proposed Development would be proportionate and would strike a fair balance between the rights of the individual and the public interest.

8 DRAFT DEVELOPMENT CONSENT ORDER

8.1 INTRODUCTION

8.1.1 This chapter provides an overview of the Applicant's changes to the dDCO during the Examination, and our changes to the Applicant's final dDCO [REP15-005] to arrive at the rDCO (Appendix D).

8.1.2 A dDCO [APP-016] and an EM [APP-018] were submitted by the Applicant as part of the application. The EM describes the purpose of the dDCO and each of its articles and schedules.

8.1.3 While the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009, (the model provisions) has been repealed, the submission version of the dDCO drew on the model provisions as well as precedent set by made DCOs for highways development under the PA2008. There has been a change of approach to the use of model provisions since the Localism Act 2011, and although they provide a starting point for the consideration of the DCO, precedent cases are generally more appropriate. The application dDCO [APP-016] and subsequent iterations are in the form of a Statutory Instrument as required by s117(4) of the PA2008.

8.1.4 The following sections of this chapter:

- describe the structure and functions of the dDCO;
- summarise the processes used to examine the dDCO and the iterations to the dDCO during the Examination;
- report on our consideration of the dDCO and relevant submissions made by the Applicant and other parties during the Examination;
- set out the changes made to the dDCO during the Examination;
- provide our recommended changes leading to the rDCO (Appendix D); and
- address the relationship between the DCO and other consents and legal agreements.

8.2 STRUCTURE AND FUNCTION OF THE DRAFT DCO

8.2.1 Each iteration of the Applicant's dDCOs contains articles and schedules including requirements and PPs. The articles are contained in seven parts, which are briefly described here and in more detail in the final EM [REP6-004] submitted to the Examination. Our rDCO (Appendix D) has the same structure as the dDCOs.

8.2.2 Part 1 contains the preliminary provisions providing for citation, commencement and terms used in the dDCO, including definitions from the model provisions and precedent DCOs with additions to add certainty. Provisions are included for the disapplication of certain requirements that would otherwise apply under general legislation. Provisions are included to clarify responsibilities for the maintenance of drainage.

8.2.3 Part 2 sets out the principal powers, provides for the grant of development consent for the Proposed Development and allows it to be constructed and operated. It includes provisions in relation to maintenance, LoD, who has the benefit of the Order and how those powers can be transferred.

8.2.4 Part 3 provides for the execution of works in or under the streets, matters relating to the application of the New Roads and Street Works Act 1991 as well as construction and maintenance, classification, stopping up and restrictions, access to works, clearways and traffic regulation.

8.2.5 Part 4 provides supplemental powers relating to the discharge of water, protective works to buildings and the authority to survey and investigate the Order land.

8.2.6 Part 5 contains powers in relation to the CA of land and rights and the TP of land. It includes provisions for time limits, public rights of way, private land, acquisition of subsoil or airspace only, rights under and over streets, SUs, Special Category Land, compensation, and modifications to the compulsory purchase and compensation provisions under general legislation.

8.2.7 Part 6 contains powers in relation to trees and hedgerows.

8.2.8 Part 7 contains several miscellaneous and general provisions in relation to landlord and tenant law, statutory nuisance, PPs, crown rights, certification, notices, arbitration, human remains, and appeals relating to the Control of Pollution Act 1974.

8.2.9 The schedules contain information referred to in the articles, including the description of the authorised development, requirements applying to the authorised development, classification of roads, permanent stopping up of streets and private means of access, land in which only new rights may be acquired, modification of compensation and compulsory purchase enactments, land of which TP may be taken, trees subject to Tree Preservation Orders, PPs and documents to be certified.

8.3 DRAFT DCO EXAMINATION PROCESS AND ITERATIONS

Examination process

8.3.1 We examined the dDCOs through written questions and ISHs, including the following (in each case showing the references to the Applicant's main written responses):

- ISH1 [PD-003 PD-004 EV-003 EV-004]; responses [REP1-004];
- First written questions [PD-005]; responses [REP1-005];
- Rule 17 request for information [PD-007 PD-008]; responses [REP2-023];
- ISH2 [PD-010 PD-011 EV-012]; responses [REP3-015 REP3-026];
- Second written questions [PD-014]; responses [REP4-024];

- ISH3 [PD-015 EV-014 EV-017]; responses [REP6-016 REP6-017];
- Rule 17 request for information [PD-018]; responses [REP9-029];
- Further written questions [PD-025]; responses [REP12-007]; and
- ISH9 [PD-026 EV-027]; responses [REP14-023].

8.3.2 Other parties also made written submissions on the dDCO, including:

- DCiC [REP1-034 REP3-027 REP4-029 REP6-027 REP9-030 REP12-019 REP14-032];
- DCC [REP1-031 REP1-032 REP1-033 REP3-029 REP4-030 REP6-028 REP9-047 REP12-008];
- EBC [REP1-051 REP4-031 REP9-031];
- Environment Agency (EA) [REP1-020 REP1-021 REP1-022 REP3-034 REP4-027 REP6-037 REP9-033 REP12-013];
- Cadent Gas [RR-002 REP1-029 REP4-032 REP7-011 REP9-032 REP12-011];
- Network Rail [RR-007 REP1-024 REP1-025 REP9-036 REP10-013 REP12-016 REP12-007];
- STW [RR-009]; and
- WPD [RR-010].

8.3.3 The Applicant [REP2-020 REP4-025 [REP5-010 REP7-007 REP10-009 REP11-003 REP12-006 REP13-006 REP15-007] responded to each submission.

Iterations

8.3.4 The dDCO was updated several times during the Examination, responding to issues raised by Interested Parties (IPs) and ourselves. With some versions, the Applicant submitted a copy which showed tracked changes from the previous clean copy version. The clean copy versions of the dDCO submitted by the Applicant during the Examination were:

- version 2 [REP1-019];
- version 3 [REP2-007];
- version 4 [REP3-002];
- version 5 [REP4-004];
- version 6 [REP6-002];
- version 7 [REP9-004];
- version 8 [REP14-002]; and
- version 9 [REP15-005].

8.3.5 Each version was helpfully accompanied by a Schedule of Changes [REP1-015 REP2-017 REP3-008 REP4-015 REP6-011 REP9-023 REP14-016 REP15-004] that set out the reasons for the changes at each update.

8.3.6 The Applicant provided one update to the EM during the Examination [REP6-004] together with a version [REP6-005] which showed tracked changes from the version submitted with the application [APP-018].

8.3.7 We issued our schedule of changes to the Applicant's dDCO [PD-017] and invited IPs to comment on it for D8. It was only commented on by the Applicant [REP8-008]. Some of those changes were also the subject of our questions [PD-018 PD-025] and matters discussed at ISH9 [PD-026 EV-027].

8.3.8 The Applicant's final dDCO [REP15-005] was accompanied by a copy [REP15-006] that showed tracked changes to the version submitted with the application [APP-016] and a validation report [REP15-002].

8.3.9 If the Secretary of State decides to make the Order, our rDCO is provided in Appendix D.

8.4 EXAMINATION OF THE DRAFT DCO

8.4.1 In this section we do not report on every change made to the dDCO during the Examination, as many were as a result of typographical errors, or revisions that we feel are not controversial. Also, we do not repeat here our queries that we consider have been adequately justified by the Applicant, thereby not necessitating change to the dDCO.

8.4.2 We do, however, comment on those changes made during the Examination that we consider to be significant because of their effect or because they gave rise to several submissions or questions.

Articles - general matters

Guillotine provisions – Articles 15, 19, 20 and 22

8.4.3 The Applicant introduced a guillotine for consent to be deemed if a consultee did not respond within 28 days.

8.4.4 We raised several questions about whether these provisions had been agreed with the relevant consultees, whether 28 days was an appropriate period, and whether they should include a requirement for any application for consent to contain a statement drawing the consultee's attention to the guillotine [PD-003 PD-010 PD-014 PD-015].

8.4.5 DCiC [REP1-034] was initially nervous about such short deadlines given the complexity and potential need for consultation and debate and suggested that 42 days would be more appropriate. It later [REP3-027 REP4-029] said that the notice periods negated the concern over the guillotine period, with the exception of Article 20 where it questioned whether a notice period of 12 weeks (similar to Article 19) could be applied.

8.4.6 DCC [REP6-028] and EBC [REP4-031] considered it reasonable for a requirement for any application for consent to contain a statement drawing the consultee's attention to the guillotine. DCC [REP6-028] supported DCiC's suggestion for a 12 week consultation period for Article 20, although this was after DCiC [EV-017] reported to ISH3 that it was content with 28 days.

8.4.7 The EA [REP1-021 REP6-037] commented that the provision in Article 20 was of relevance to it and was content with the provision on the basis that it did not apply in respect of water discharges under the Environmental Permitting (England and Wales) Regulations 2016.

8.4.8 The Applicant [REP3-015 REP3-026 REP4-024 REP5-010 REP6-016 REP6-017] considered that 28 days was enough time and consistent with other made DCOs. It did not understand why 12 weeks was being proposed for Article 20 and said that 12 weeks could delay the Proposed Development. The Applicant set out the practical reasons for the 12-week period in Article 19. It added sub-paragraph (8) to Article 20 to clarify that nothing in the Article overrides the requirement for an environmental permit under Article 12 of the Environmental Permitting (England and Wales) Regulations 2016. Based on the EA's comments, we are content with that addition.

8.4.9 We find that a compelling case has not been made for the matters to be considered for consent in respect of Article 20 to be equivalent to the more complex circumstances for Article 19, or that 12 weeks would be justified for Article 20. Based on the above we consider that a 28-day period is appropriate for Article 20.

8.4.10 Noting the unfamiliarity of the local authorities (LAs) with DCOs and that similar provisions have been included in other DCOs, we suggested [PD-017] wording for Articles 15, 19, 20 and 22 to require any application for consent to contain a statement drawing the consultee's attention to the guillotine. The Applicant [REP8-008] did not consider that such provisions were required, since it was "*likely to draw attention to the 28 day provision when it writes to the relevant body*" and that the relevant bodies were aware of the 28 day period.

8.4.11 We are of the view that there is the potential for a lack of awareness about a guillotine being in place when the consents would be applied for. We consider it beneficial for a consent to be properly considered and, therefore, for it not to be given by default unless reasonable measures have been taken. We also note that the 28-day period is perhaps less than some parties are entirely comfortable with and are of the view that highlighting the 28-day guillotine would be helpful for ensuring that the timescale for dealing with consents is reasonable. The Applicant has provided no compelling reason why providing a statement to highlight the guillotine would cause it difficulty. Therefore, on balance, we consider it reasonable and beneficial to include the statement and so have included new sub-paragraphs in Articles 15, 19, 20 and 22 of the rDCO (Appendix D).

Articles – other matters

Article 1 – definition of 'commence'

8.4.12 We [PD-003 PD-010] raised concerns about the potential extent of remedial works for contamination and whether it would be necessary to secure controls for them that are not covered by the definition of 'commence' in the dDCO. Responding, the Applicant [REP1-004] REP3-015] removed "*remedial works in respect of*" from the definition. We are happy with that deletion.

Article 1 – definition of 'maintain'

8.4.13 We asked [PD-003 PD-010 PD-014 PD-015] the Applicant to clarify the extent to which the need to maintain the Proposed Development had been assessed in the Environmental Statement (ES) and whether there was a need for the dDCO to limit the extent of maintenance activities to those which had been considered in the ES. In reply the Applicant [REP3-026 REP4-024 REP6-016 REP6-017] set out what was and what was not considered to be a maintenance activity and added a clarification to the end of the definition for it to exclude "*any activities that would give rise to materially new or materially adverse environmental impacts compared to those assessed in the environmental statement.*" We are satisfied with the clarity that this addition provides.

Article 1 – definition of 'the traffic management plan'

8.4.14 This definition was added by the Applicant following our question [PD-003] about clarifying the status of the Traffic Management Plan (TMP). The addition is helpful.

Article 3 – disapplication of legislative provisions

8.4.15 We questioned [PD-003 PD-010 PD-014 PD-015 PD-017 PD-018 PD-025] whether the proposed disapplications in relation to the Land Drainage Act 1991 had been agreed with relevant parties.

8.4.16 DCiC [REP1-034 REP4-029 REP9-030] raised concerns regarding the implications of the proposed disapplications on its ability to influence the proposed culvert alterations and implementation of the flood risk areas. It reported progress in discussions with the Applicant before advising that it was content with the disapplication based on commitments made to consultation in its SoCG with the Applicant [REP7-020].

8.4.17 DCC [REP4-030 REP9-047] confirmed that it was content with the disapplication. The EA [REP1-021 REP3-034 REP4-027 REP6-037] reported on progress in its discussions with the Applicant before advising [REP9-033] that it was content. In addition, the EA [REP9-033] required the addition of sub-paragraph 3(f) with respect to environmental permits, which was agreed with the Applicant.

8.4.18 The Applicant [REP3-026 REP5-010 REP6-016] provided an explanation of the reasons for the disapplications and responded to the concerns raised.

8.4.19 Based on the above, we are content with the proposed disapplications in relation to the Land Drainage Act 1991 and with the addition of sub-paragraph 3(f).

8.4.20 DCiC [REP1-034 REP3-027] was concerned about how the Applicant's ability to enter streets during construction under Article 11 could be coordinated with its statutory duties to maintain the local road network, particularly given the proposed disapplication of its permit scheme. It later [REP4-029] advised that the matter could be resolved by the inclusion of a suitable process in the TMP. This process was included in a subsequent version of the TMP [REP14-011 Table 3.1 and Section 5.7]. In ISH3 [EV-017] DCiC advised that it was content with the disapplication and with the TMP wording.

8.4.21 DCC [REP6-028] said that it was content with the disapplication of its permit scheme subject to suitable notification of when and what works would be undertaken in sensitive streets under their control. The Applicant [REP7-007] referred to the notification provisions under Article 11 and 12, to which DCC did not raise any further concerns.

8.4.22 Following from the above, we are satisfied with the disapplication of DCiC's and DCC's permit schemes by sub-paragraphs 3(1)(g) and (h).

Article 4 – maintenance of drainage works

8.4.23 Noting that Article 4 did not oblige the Applicant to maintain drainage when it took TP of land, we [PD-017 PD-018] asked the flood authorities whether they were concerned that the dDCO could prevent them from fulfilling their statutory duties in relation to the maintenance of relevant drainage features.

8.4.24 DCiC [REP9-030], DCC [REP9-047] and the EA [REP9-033] all advised that Article 4 would not prevent them from fulfilling their maintenance obligations.

8.4.25 Following from the above, together with the Applicant's clarifications [REP6-016 REP6-017] about the maintenance of drainage while in TP of the land, we are satisfied with Article 4 as drafted.

Article 8 – limits of deviation

8.4.26 Responding to our requests [PD-003 PD-010 PD-014 PD-015] for LoD to be consistent with the assumptions in the ES, the Applicant [REP1-004 REP3-026 REP4-024 REP6-016 REP6-016] clarified its approach and added sub-paragraph 8(a)(i) to specify a limit of lateral deviation for the A38 main carriageway and slip road, and sub-paragraph 8(a)(ii) to limit lateral deviation to the limits assessed in the ES. Those changes have addressed our concerns.

Article 10 – consent to transfer benefit of Order

8.4.27 We are satisfied with the change from National Grid to Cadent to reflect the changes in ownership. We address concerns raised by Cadent in Section 7.11 and conclude that we see no other reason to change this article.

Article 13 – construction and maintenance of new, altered or diverted streets and other structures

8.4.28 DCiC [REP6-027] raised concerns about the potential for it to be required to take on unknown additional maintenance liabilities and how the funding for that would be secured. The Applicant [REP6-016 REP6-017 REP7-007] provided explanations, including that there was no disapplication of s4 of the Highways Act 1980, and made references to potential sources of funding. DCiC [REP9-030] then advised that it had no further concerns and we have no reason to disagree.

Article 14 – classification of roads, etc.

8.4.29 We have no reason to question the addition of paragraph 14(2), which the Applicant [REP15-006] explained as being required for the de-trunking of small areas of carriageway. We welcome the addition of the text at the end of sub-paragraph (7) to ensure that this process would not result in materially new or more adverse effects than assessed in the ES.

Article 20 – discharge of water

8.4.30 We have dealt with consultation periods and the addition of sub-paragraph (8) under general matters, above.

8.4.31 We suggested [PD-003 PD-014 PD-015 PD-017] the addition of model provision 14(5) requiring no damage or interference with the beds or banks of a main river. The EA [REP4-027 REP6-037] supported this addition, while the Applicant [REP5-010 REP8-008] considered that it was not required as the Proposed Development would not be interfering with the banks or beds of a main river.

8.4.32 We note that works are proposed in close proximity to a main river (the River Derwent) and that the project is at a preliminary design stage. This leads us to consider that a provision not to interfere with a main river would provide useful control as the Applicant develops its detailed design and construction proposals. We are also mindful that the EA, which has statutory responsibilities for main rivers, supports the addition and we have not been presented with any compelling reason why such an addition would cause the Applicant difficulty. Following from the above, we have added model provision 14(5) to Article 20 of the rDCO (Appendix D).

8.4.33 We also suggested [PD-003 PD-014 PD-015 PD-017] the addition of a provision for the Applicant not to be relieved of the need to obtain permits or licenses for connections to public sewers or drains or discharge of water. Both DCiC [REP9-030] and DCC [REP9-047] were content with OEMP [REP14-008] provisions for discharges into watercourses. DCiC [REP9-030] and DCC [REP9-047] were happy with our suggested addition, but only DCiC gave any reasons for that, noting that it "*may be a reasonable addition to ensure that the public sewerage company procedures are complied with however Article 20 appears to contain adequate provision*."

8.4.34 The Applicant [REP6-017 REP8-008] did not consider the suggested addition was necessary because it could potentially conflict with the purpose of the article itself, which required the necessary consent from the person responsible for the watercourse (which could be a landowner, SU or other statutory body) and that having to obtain separate consent would cause unnecessary delay.

8.4.35 We consider it appropriate that this article requires consent to be obtained from the person responsible for a watercourse. However, we do not see how this would necessarily address all matters that would be considered under relevant permits or consents and have not been provided with enough evidence from the Applicant to justify that there would be delay that would be damaging. However, having considered the scope of the disapplication of legislative provisions in Article 3, we also note the controls in place in Article 20 and the OEMP [REP14-008] and DCiC's view that Article 20 appears to contain adequate safeguards. Based on the above, our view is that the addition of a provision for the Applicant not to be relieved of the need to obtain permits or licenses for connections to public sewers or drains or discharge of water is not required.

Article 30 – Application of the 1981 Act

Article 33 - Temporary use of land for carrying out the authorised development

8.4.36 We considered these Articles 30 and 33 in Section 7.11 and are content with the changes made by the Applicant.

Article 39 – Felling or lopping of trees and removal of hedgerows

8.4.37 The Applicant added a reference to the hedgerows plan to paragraph (4) in response to our requests [PD-003 PD-014] and we are satisfied with this addition.

Article 43 – Defence to proceedings in respect of statutory nuisance

8.4.38 Responding to our query [PD-003] about why potential artificial light and dust, steam, smell or other effluvia nuisances were included when the ES did not identify potentially significant effects, the Applicant [REP1-004] removed the relevant items (d) and (fb) from sub-paragraph (1). We are content with these deletions.

Article 50 - Appeals relating to the Control of Pollution Act 1974

8.4.39 We asked [PD-014] why the Applicant is given 42 days to lodge an appeal when a Local Authority would have only 10 days to respond. The Applicant [REP14-024] was content to reduce the 42 days to 21 days and updated sub-paragraph (2)(a) accordingly. DCiC [REP6-027] would have preferred longer than 10 days but said that "*this is not considered to be a significant objection to the wording of Article 50.*" EBC [REP4-031] said that the timescales were fair and reasonable. On balance, we are satisfied with the timescales in this article.

Schedule 1 (Authorised Development)

'Further development'

8.4.40 Responding to our question [PD-003], the Applicant summarised [REP1-004] how 'further development' may be expected to correspond to specific Works Nos, but noted that the Proposed Development was at the preliminary design stage and therefore did not want to limit flexibility by

securing this level of detail. Having considered this response we consider that 'further development' has been allocated to Work Nos as far as is reasonable.

'Associated development'

8.4.41 We asked [PD-003 EV-004] for clarification of the need for works described as 'associated development'. The Applicant [REP1-004] provided an indicative table of works considered to be 'associated 'development' and stated that they were all integral to and necessary for the Proposed Development. Having reviewed the Applicant's response we are satisfied that the 'associated 'development' either supports the construction or operation of the principal development or helps to address its impacts and find that DCLG Guidance[14] is satisfied in this respect. Therefore, we are satisfied that 'associated development' is addressed appropriately in the rDCO (Appendix D).

Schedule 2 Part 1 (Requirements) – general matters

'Preliminary works'

8.4.42 We questioned [PD-003 PD-010] how it would be ensured that appropriate mitigation and controls are secured for pre-commencement activities, including preliminary works, if the Construction Environmental Management Plan only comes into force at commencement. In reply, the Applicant [REP1-004 REP3-015 REP3-026] added a definition of 'preliminary works' to Requirement 1, linked to the preliminary works mitigation set out in the OEMP. Requirement 1 also identified 'preliminary works' as a 'part', with provisions being added to Requirements 3, 8, and 14 for relevant mitigation measures to be produced "*for that part*" in advance. Other "*for that part*" mitigation was already identified under Requirements 5, 9 and 16. In addition "*other than the preliminary works*" was added to Requirements 5, 11 and 13 to identify mitigation that would not be required during the preliminary works, consistent with the OEMP. We are therefore satisfied that the preliminary works mitigation, including that set out in the OEMP [REP14-008], is secured appropriately.

Provisions for consultation and agreement

8.4.43 The Applicant's overall approach to the discharging of provisions is for any agreement to be provided by SoST and for other parties, including the LPAs and EA, to be consulted with as appropriate. No parties objected to that approach and we are content that it is appropriate.

8.4.44 We invited [PD-005 PD-010 PD-014 PD-015] comments on whether there were appropriate provisions for consultation during the discharging of Requirements 3, 8, 9, 12, 13 and 14.

8.4.45 DCiC initially [REP1-034] requested consultation on the TMP, for the Lead Local Flood Authority (LLFA) to be consulted on Requirements 12, 13 and 14 and for there to be consultation with the Derwent Valley Mills World

[14] Guidance on associated development applications for major infrastructure projects DCLG April 2013

Heritage Site Partnership (the Partnership). It later [REP4-029] advised that the LLFA was content with consultation being secured with the LPA as the LPA would consult with the LLFA.

8.4.46 DCC [REP1-033 REP3-029 REP4-030 REP6-028] requested consultation on surface drainage and Public Rights of Way, and for there to be consultation with the LLFA and the Partnership. Following its discussions with the Applicant and the Applicant's clarifications [REP2-020], it later advised [REP3-029] that it was content with the provisions for it to be consulted on Requirements 1-21. The Applicant [REP5-010] stated that DCC had agreed to be consulted on behalf of the LLFA and DCC did not disagree. The Applicant [REP5-010] further suggested that consultation with the Partnership be secured in the OEMP, which DCC [REP6-028] considered sufficient.

8.4.47 EBC [REP1-051 REP4-031] did not request any specific provisions and said that it was content.

8.4.48 The EA [REP1-022] requested consultation with it in Requirements 3, 8 and 14 and in the Handover Environmental Management Plan (HEMP). The Applicant added provisions for consultation with the EA to Requirements 3, 8 and 14.

8.4.49 Based on the above and noting that there was no disagreement with the updated requirements, we are satisfied that appropriate provisions are in place for consultation during the discharging of requirements.

Schedule 2 Part 1 (Requirements) – other matters

Requirement 1 - Interpretation

8.4.50 At our request [PD-003 PD-010] a definition of 'core hours' was added to clarify the meaning of the term and to later correct it for Bank Holidays.

Requirement 3 – Construction Environmental Management Plan

8.4.51 Provisions were added at our request [PD-017] following concerns in relation to the control of noise raised by DCiC and EBC and as discussed in Section 4.9. The first of those is for written notification to be provided to relevant LAs in advance of works listed as being permitted outside core hours, except for any emergency works which would be notified as soon as practicable. The second is for written agreement to be required for any other work outside core hours. Both DCiC [REP9-030] and EBC [REP9-031] were content with the changes, as are we.

8.4.52 Responding to our request [PD-010], the Applicant [REP3-015] added new sub-paragraph (4) to clarify the process for the HEMP and we are satisfied with this addition.

8.4.53 We questioned [PD-014 PD-015 PD-017 PD-018] whether provisions to link the HEMP to the OEMP and to record potentially sensitive features should be added to the HEMP as are in place for the CEMP at sub-paragraphs 2(a), (b) and (c). DCiC [REP4-029 REP9-030], DCC [REP4-030 REP6-028 REP9-047], EBC [REP4-031] and the EA [REP4-027 REP6-037 REP9-031] supported

these additions. The Applicant [REP5-010 REP6-016 REP6-017 REP8-008 REP9-029] considered that these provisions were not necessary because "*the DCO is drafted to ensure that each document flows into each other and the relevant material from each will be incorporated.*" The Applicant suggested a minor adjustment to our suggested text if we considered it necessary and we are content with that.

8.4.54 Sub-paragraph (5) requires the CEMP to be converted into the HEMP. Noting that the CEMP is, by definition, focussed on the construction phase, we are concerned that the CEMP could omit some of the OEMP measures that are specific to operation and maintenance matters and would be of particular relevance to the HEMP. On that basis we consider that there is a potential break in the link between the OEMP and the HEMP and, therefore, that there is a flaw in the Applicant's case. Based on the above, we are of the view that the additional provisions to address this concern should be included in the rDCO (Appendix D) and recommend accordingly.

Requirement 4 – Details of consultation

8.4.55 Our suggestion [PD-003 PD-010 PD-014 PD-015 PD-017] of adding a timescale for consultation was supported by DCiC [REP1-034 REP4-029], DCC [REP4-030 REP6-028], EBC [REP4-031] and the EA [REP1-021 REP3-034 REP4-027] who suggested periods ranging from 21 to 28 days. The Applicant [REP3-026 REP5-010 REP6-016 REP6-017 REP7-007 REP8-008] initially said that it was happy to include a 28-day period for consultation but was later of the view that it was not necessary to limit the consultation period and that 28 days was too restrictive as it was not flexible enough and precluded a shorter time period but also a longer time period.

8.4.56 We do not consider that the Applicant has provided a compelling argument for a shorter timescale than 28-days, but we do accept that it may be to the benefit of all parties to have the flexibility to agree a different timescale. Based on the above, our view is that it is reasonable to require a minimum consultation period of 28-days and that there should be some flexibility for that to be changed if agreed in writing between the parties. We therefore recommend that such additional provisions are included in the rDCO (Appendix D).

Requirement 10 – Protected species

8.4.57 Responding to our suggestion [PD-010] the Applicant [REP3-026] added a requirement for consultation with NE that we are satisfied with.

Requirement 13 – Surface and foul water drainage

8.4.58 We are content that the Applicant [REP1-004 REP8-008] has incorporated our suggestions [PD-003 PD-017] to clarify the provisions for maintenance and to clarify that mitigation measures in the CEMP should be reflected in the written details of the surface and foul water drainage system.

Requirement 14 – Flood compensation and storage

8.4.59 We accept the Applicant's [REP15-006] changes to make it clear that there are two areas which will include flood mitigation works.

8.4.60 The EA [REP6-037] was content with a 50% allowance for climate change at the Little Eaton Junction. A 40% allowance for climate change would be appropriate at Kingsway and this was agreed by DCiC [REP7-020]. The Applicant [REP5-010] explained that the different percentages arose from the modelling being driven by main river flows at Little Eaton and by rainfall inputs at Kingsway. Based on the above we are content with the Applicant's changes to the allowances for climate change in sub-paragraphs (3) and (4).

Requirement 15 – Noise mitigation

Requirement 16 – Highway lighting

8.4.61 We [PD-005 PD-014 PD-015] did not consider it necessary to add tailpieces to "*materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement*" in sub-paragraph (2) of Requirement 15 or in sub-paragraph (2) of Requirement 16 and are content that the Applicant has deleted them.

Other schedules

Schedule 3 – Classifications of roads, etc.

8.4.62 Several updates were made during the Examination following the Applicant's discussions with DCiC and DCC. DCiC initially [REP1-034 REP4-029] said that it would welcome more detail being added to Schedule 3 but later [REP9-029] confirmed that it was content with the approach to securing a detailed inventory. DCiC [REP12-019] later confirmed that it was content with the changes made to Part 6 and 7 and did not raise any outstanding issues regarding Schedule 3. DCC [REP6-028] said that its concerns had been addressed. It follows that we are content with Schedule 3 as amended by the Applicant.

Schedule 4 – Permanent stopping up of highways and private means of access & provision of new highways and private means of access

8.4.63 Several updates were made during the Examination following the Applicant's discussions with DCiC and DCC. We asked [PD-015] the Applicant, DCiC and DCC whether any comments from DCIC and DCC had been addressed. The Applicant [REP6-017] reported that all comments from DCiC and DCC had been incorporated. DCC [REP6-028] raised the stopping up of Ford Lane, which we considered in Section 4.7 and concluded that we were satisfied with the Applicant's approach. No other concerns were raised by DCiC or DCC in response to our question. Based on the above we are satisfied with Schedule 4 as amended by the Applicant.

Schedule 5 – Land in which only new rights etc. may be required

Schedule 6 – Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants

Schedule 7 – Land of which temporary possession may be taken

8.4.64 We address Schedules 5, 6 and 7 in Chapter 7 and conclude that no changes are required.

Schedule 9 – Protective provisions

8.4.65 We address Parts 1, 2, 4 and 5 in Chapter 7 and conclude that no changes are required.

8.4.66 Part 3 is for the protection of the EA, who confirmed [REP9-033] that it was content with the provisions, as are we.

Schedule 10 – Documents to be certified

8.4.67 The Applicant provided updates to Schedule 10 in response to our requests [PD-014 PD-015 PD-017 PD-018 PD-025 PD-026] to include all relevant changes and clarification provided during the Examination and for the latest versions to be identified clearly and unambiguously. We note that the Applicant did not provide Examination Library references for documents submitted for D14 and have added those to the rDCO (Appendix D). Otherwise we are satisfied with the updates provided.

8.5 CHANGES TO THE APPLICANT'S FINAL DRAFT DCO

8.5.1 Our reasoning for recommending changes to the final version of the dDCO submitted by the Applicant to the Examination [REP15-005] is set out in the previous section. In this section we summarise the changes included in the rDCO (Appendix D).

Articles 15(7), 19(12), 20(8) and 22(7)

8.5.2 New sub-paragraphs added, requiring applications for consent to include a statement drawing the consultee's attention to a guillotine for consent being deemed if it does not respond within 28 days.

Article 20(9)

8.5.3 New sub-paragraph added, based on model provision 14(5), requiring no damage or interference with the beds or banks of any watercourse forming part of a main river.

Requirement 3(5)

8.5.4 Provisions added for the HEMP to include relevant measures in the OEMP [REP14-008], CEMP and ES and to require the HEMP to record potentially sensitive features.

Requirement 4(2)

8.5.5 A new sub-paragraph is added to require a minimum consultation period of 28-days unless otherwise agreed in writing.

Schedule 10 – Documents to be certified

8.5.6 Examination references are added for documents submitted at D14.

8.6 OTHER LEGAL AGREEMENTS AND CONSENTS

8.6.1 At no stage during the Examination was it considered by the Applicant or LPAs that a planning obligation directly related to the Proposed Development was necessary. We are content with this approach.

8.6.2 A list of other consents required to construct, operate and maintain the Proposed Development was set out by the Applicant in s24 of the application Form [APP-003] and in the Applicant's Consents and Agreements Position Statement [REP14-004] and is summarised in Section 1.8 of this report.

8.6.3 Several times during the Examination [PD-005 PD-010 PD-018 PD-025] we asked for updates on any known impediments, including with respect to other consents. Towards the end of the Examination the Applicant [REP12-007] advised that there were no known impediments from its perspective or that it had been made aware of in discussion with the relevant regulatory authorities.

8.6.4 The Applicant [APP-216] provided letters from NE stating that, based on the information and proposals provided, it saw no impediment to issuing bat or badger mitigation licences, should the DCO be granted.

8.6.5 The EA [REP1-020 REP1-022 REP3-034 REP4-027] said that that it was satisfied that the Applicant was aware of all consents that were required but did not state whether or not they would be likely to be granted.

8.6.6 Matters relating to other consents have been considered throughout the Examination. Given the final positions of NE, the EA, the LAs, and without prejudice to the exercise of discretion by other decision makers, we find no obvious impediments to the delivery of the Proposed Development arising from these consents. If a DCO is made, we consider that there is a reasonable likelihood of outstanding consents being granted.

8.6.7 We conclude that there are no additional matters arising from or relating to other consents which indicate against the grant of the DCO or for which the DCO should additionally provide.

8.6.8 In Chapter 7 we referred to a series of side agreements between the Applicant and SUs, including Network Rail, STW and WPD. In each case the evidence provided to the Examination suggested that there were no substantive areas of disagreement remaining between the parties and that the agreements were close to being signed by all relevant parties. However, no signed evidence of those agreements was presented to the Examination and so the SoST will need to be satisfied that such agreements are concluded.

8.7 CONCLUSIONS

8.7.1 We have had regard to all matters forming the application and put before us at the Examination, including the iterations of the dDCO.

8.7.2 We have considered the Applicant's final draft [REP15-005] and have recommended several changes, which we have included in the rDCO (Appendix D).

8.7.3 We are satisfied that the rDCO (Appendix D) adequately defines the scope of the consent being granted and that it secures the necessary controls and mitigation measures that are consistent with the assessments provided in the ES.

8.7.4 We consider that the rDCO (Appendix D) only includes requirements that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects. On that basis we are of the view that paragraph 4.9 of the NPSNN is satisfied.

8.7.5 If the SoST is minded to make the DCO, it is recommended to be made in the form set out in Appendix D, subject to SoST being satisfied on the following matters raised in the conclusions of Chapters 6 and 7:

- the SoST's consideration of compliance with the Paris Agreement 2015, cumulative carbon emissions and meeting the target of net zero carbon by 2050;
- the necessary consent from the appropriate Crown authority for the rights sought for plots 3/5a, 3/5b, 3/5c, 3/5d, 3/6 and 3/7 being obtained in accordance with s135(1) of the PA2008;
- the side agreement (Framework Agreement) between the Applicant and Network Rail being agreed by both parties;
- STW and the Applicant agreeing their side agreement and the PPs in Part 1 of Schedule 9 of the rDCO; and
- WPD and the Applicant agreeing their side agreement and the PPs in Part 1 of Schedule 9 of the rDCO.

9 SUMMARY OF CONCLUSIONS AND RECOMMENDATION

9.1 INTRODUCTION

9.1.1 This chapter summarises our conclusions arising from the report as a whole and sets out our primary recommendation to the Secretary of State for Transport.

9.2 SUMMARY AND CONCLUSIONS

9.2.1 Our conclusions are subject to the provisions of the recommended Development Consent Order in Appendix D of this report and, in relation to sections 104(4), 104(5) and 104(6) of the Planning Act 2008, subject to the Secretary of State for Transport satisfying themself on the matters identified in Section 9.3.1, below.

9.2.2 In relation to sections 104(2) and 104(3) of the Planning Act 2008, we conclude that making the recommended Development Consent Order would be in accordance with the National Policy Statement for National Networks, relevant development plans and other relevant policy, all of which have been taken into account in this report. Furthermore, we have had regard to matters arising from the Local Impact Reports from Derby City Council, Derbyshire County Council and Erewash Borough Council and to all matters that we consider to be both important and relevant in reaching our conclusions.

9.2.3 Whilst the Secretary of State for Transport is the competent authority under the Habitats Regulations[15] and will make the definitive assessment, we conclude that the Proposed Development would not be likely to have significant effects on European sites, species or habitats and we have taken this finding into account in reaching our recommendation. We consider that it is not necessary to undertake an Appropriate Assessment for the Proposed Development.

9.2.4 We have considered the case for compulsory acquisition and temporary possession of land and rights required to implement the Proposed Development. We conclude that the powers sought are necessary to enable the Applicant to complete the Proposed Development. We find that there is a compelling case in the public interest, that the Applicant has a clear idea of how it intends to use the land, and that funds are available for the implementation. We are satisfied that the compulsory acquisition and temporary possession powers sought by the Applicant are justified, comply with the Planning Act 2008, and should be granted.

9.2.5 We have also had regard to the provisions of the Human Rights Act 1998. In some cases, there would be interference with private and family life and home in contravention of Article 8, and interference in the peaceful enjoyment of possessions in contravention of Article 1 of the First Protocol of the Human Rights Act 1998. In relation to Article 6 (entitlement to a fair and public hearing), the Examination has ensured a fair and public hearing. The weight of national policy in favour of the Proposed Development and

[15] The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations)

the wider public interest qualifies any interference with the human rights affected. We conclude that any interference with human rights arising from implementation of the Proposed Development would be proportionate and strike a fair balance between the rights of the individual and the public interest.

9.2.6 We have had regard to the Public Sector Equality Duty, including with respect to the RSfD and Cherry Lodge children's residential care home. We find that the Proposed Development does not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. We have found no breach of the Public Sector Equality Duty.

9.2.7 As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, we have considered the desirability of preserving listed buildings, their setting and any features of special architectural or historic interest that they possess. Part of the Proposed Development also falls within the setting of the Derwent Valley Mills World Heritage Site (DVMWHS). The Convention Concerning the Protection of the World Cultural and Natural Heritage 1972 is the main international agreement controlling the protection of such cultural and natural heritage sites. We find that the Proposed Development would result in less than substantial harm to the Outstanding Universal Value of Derwent Valley Mills World Heritage Site, or to the settings three listed buildings and one Conservation Area. We attach considerable weight and importance to these harms. We consider that the public benefits of the Proposed Development would overcome the harm to these heritage assets.

9.2.8 As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, we have had regard to the United Nations Environmental Programme Convention on Biological Diversity. The Proposed Development would have a moderate adverse construction effects on the A38 Kingsway Rough Grassland LWS and on semi-natural broadleaved woodland. However, it would also have moderate beneficial operational effects on Dam Brook, protected/notable fish in Dam Brook, otter and aquatic macro-invertebrates as well as a range of modest general enhancements in biodiversity. Overall, therefore, we consider that the Proposed Development would accord with the aims of the United Nations Environmental Programme Convention on Biological Diversity

9.2.9 We find that the Proposed Development would be likely to lead to the loss of one veteran tree. We consider that this loss is clearly outweighed by the national need for, and benefits of, the Proposed Development.

9.2.10 Regarding all other matters and representations received, we have found no important and relevant matters that would individually or collectively lead to a different recommendation to that set out below.

9.2.11 In relation to section 104(7) of the Planning Act 2008, and with the mitigation proposed through the recommended Development Consent Order in Appendix D to this report, we consider that there are no adverse impacts arising from the Proposed Development that would outweigh its benefits.

9.3 RECOMMENDATION

9.3.1 Our findings and conclusions on important and relevant matters are set out in this report. Our recommendations are subject to the Secretary of State for Transport satisfying themself on the following points:

- whether the Proposed Development would lead to the UK being in breach of the Paris Agreement 2015. Whilst there was no evidence that there would be a breach (as per s104(4) of the PA2008) we are unable to confirm there would not be a breach on the evidence submitted;
- consideration of the cumulative effects of carbon emissions from the Proposed Development with those from other developments on a consistent geographical scale, for example by assessing the cumulative RIS1 or RIS2 programmes (of which the Proposed Development is part) against the relevant UK carbon budget;
- whether the Proposed Development would affect the ability of the Government to meet the target of the revised net zero carbon by 2050 that was set (in July 2019) after the application was submitted;
- the necessary consent from the appropriate Crown authority for the rights sought for plots 3/5a, 3/5b, 3/5c, 3/5d, 3/6 and 3/7 being obtained in accordance with s135(1) of the Planning Act 2008;
- the side agreement (Framework Agreement) between the Applicant and Network Rail being agreed by both parties;
- Severn Trent Water and the Applicant agreeing their side agreement and the protective provisions in Part 1 of Schedule 9 of the Development Consent Order; and
- Western Power Distribution and the Applicant agreeing their side agreement and the protective provisions in Part 1 of Schedule 9 of the Development Consent Order.

9.3.2 Subject to the above, we consider that the Proposed Development meets the tests in section 104 of the Planning Act 2008. On that basis, we recommend that the Secretary of State for Transport makes the A38 Derby Junctions Development Consent Order in the form attached at Appendix D to this report.

APPENDICES

APPENDIX A: THE EXAMINATION

APPENDIX B: EXAMINATION LIBRARY

APPENDIX C: LIST OF ABBREVIATIONS

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APPENDIX A: THE EXAMINATION

APPENDIX A: EVENTS IN THE EXAMINATION

The table below lists the main events that occurred during the Examination and the procedural decisions taken by the Examining Authority (ExA).

Date	Event
19 and 20 August 2019	**Unaccompanied Site Visits** [EV-005]
23 August 2019	**Publication by the ExA of** Rule 6 letter [PD-029] including • Invitation to, and arrangements for, the Preliminary Meeting • Agenda for the Preliminary Meeting • Initial Assessment of Principal Issues • Draft Examination Timetable • Availability of Examination Documents • Our Procedural Decision to hold an ISH on 8 October dealing with the draft Development Consent Order (dDCO)
26 September 2019	**Issue by the ExA of** Notification of topics to be discussed at the ISH on 8 October 2019 [PD-003]
7 October 2019	**Unaccompanied Site Visit** [EV-005]
8 October 2019	**Examination Begins**
8 October 2019	**Preliminary Meeting** [EV-001 EV-002] • Arrangements and agenda for the PM • Notification of hearings to be held in the early stage of the Examination • Initial Assessment of the Principal Issues • Draft Examination Timetable • The availability of RRs and application documents • Our procedural decisions
8 October 2019	**Issue Specific Hearing 1** ISH1 dealing with the dDCO [EV-003 EV-004]
11 October 2019	**Publication by the ExA of**

	Rule 8 letter [PD-006] including • Procedural Decision on final examination timetable • Invitation to submit WRs, final Statements of Common Ground, local impact Reports • Notification of First Written Questions • Record of Unaccompanied Site Visits
29 October 2019	**Issue by the ExA of** • Notification of the date, time and place for hearings on 10, 11 and 12 December 2019 [PD-012]
5 November 2019	**Deadline 1** Deadline for receipt of: • Written summaries of oral contributions at hearings Post-hearing submissions requested by the ExA • The Applicant's updated draft Development Consent Order (dDCO), Explanatory Memorandum (EM), Book of Reference (BoR) and Statement of Reasons (SoR) • Comments on Relevant Representations (RRs) • Written Representations (WRs) • Local Impact Reports from local authorities • Statements of Common Ground (SoCG) requested by the ExA • Responses to the ExA's First Written Questions • Comments on any additional representations or submissions accepted into the Examination prior to the Preliminary Meeting • Representations relating to locations to view at the project or in the surrounding area which are considered to be relevant for the ExA during further Unaccompanied Site Inspections or during an Accompanied Site inspection • Notification of wish to speak at a Compulsory Acquisition Hearing or an Open Floor Hearing • Notification from statutory parties, or a local authority without direct responsibility in the proposed development area, of a wish to be considered an Interested Party View the documents received relating to this deadline
12 November 2019	**Issue by the ExA of**

	• Notification of the date, time and place for an Accompanied Site Inspection on 9 December 2019 (subsequently agreed to be unnecessary) [PD-008] • Notification of topics to be discussed at the ISHs on 10, 11 and 12 December 2019 [PD-008]
18 November 2019	**Issue by the ExA of** Notification of the cancellation of the ISH which was to held on 12 December 2019 and update of the topics to be discussed at the ISH on 11 December [PD-009]
19 November 2019	**Deadline 2** Deadline for receipt by the ExA of: • Comments on submissions for deadline 1 • Applicant's updated dDCO, EM, BoR and SoR • Any further information requested by the ExA under Rule 17 View the documents received relating to this deadline
3 December 2019	**Issue by the ExA of** Agendas for hearings on 10 and 11 December 2019 [PD-011]
10 December 2019	**Compulsory Acquisition Hearing 1** CAH 1 [EV-006 EV-007 EV-008 EV-009]
10 December 2019	**Open Floor Hearing 1** OFH 1 [EV-010]
11 December 2019	**Issue Specific Hearing 2** ISH 2 [EV-011 EV-012 EV-012] covering • Draft Development Consent Order • Transport networks and traffic • Air quality • Noise and vibration • The water environment • Biodiversity and ecological conservation • Landscape and visual impact • Land use, social and economic impact • The historic environment • Other policy and factual issues
19 December 2019	**Deadline 3** Deadline for receipt by the ExA of: • Written summaries of oral contributions at hearings • Post-hearing submissions requested by the ExA

	• Applicant's updated dDCO, EM, BoR and SoR • Any further information requested by the ExA under Rule 17 View the documents received relating to this deadline
7 January 2020	**Issue by the ExA of** Notification of the date, time and place for hearings on 18 and 19 February 2020 [PD-013]
14 January 2020	**Issue by the ExA of** The ExA's Second Written Questions [PD-014]
3 February 2020	**Deadline 4** Deadline for receipt by the ExA of: • Comments on submissions for deadline 3 • Responses to the ExAs Second Written Questions • Applicant's updated dDCO, EM, BoR and SoR • Any further information requested by the ExA under Rule 17 View the documents received relating to this deadline
10 February 2020	**Deadline 5** Deadline for receipt by the ExA of: • Comments on submissions for deadline 4 • Any further information requested by the ExA under Rule 17 View the documents received relating to this deadline
11 February 2020	**Issue by the ExA of** Agendas for hearings on 18 and 19 February 2020 [EV-014]
18 February 2020	**Compulsory Acquisition Hearing 2** CAH2 [EV-018]
18 February 2020	**Issue Specific Hearing 3** ISH3 dealing with the dDCO [EV-017]
18 February 2020	**Unaccompanied Site Visit** [EV-020]
19 February 2020	**Issue Specific Hearing 4** ISH4 [EV-019] covering • Transport networks and traffic • Noise and vibration • The water environment

	• Biodiversity and ecological conservation • Landscape and visual impact • Land use, social and economic impact • Other policy and factual issues
3 March 2020	**Deadline 6** Deadline for receipt by the ExA of: • The Applicant's final dDCO and Explanatory Memorandum • Written summaries of oral contributions at the hearings held on 18 and 19 February 2020 • Post-hearing submissions requested by the ExA, including responses to Air Quality agenda items • The Applicant's clarification of its updated position regarding Air Quality View the documents received relating to this deadline
10 March 2020	**Deadline 7** Deadline for receipt by the ExA of: • Comments on submissions for deadline 6 • Any further information requested by the ExA under Rule 17 View the documents received relating to this deadline
12 March 2020	**Publication by the ExA of** • Agendas for the hearings to be held on 19 March 2020 [EV-022] • The ExA's schedule of changes to the draft DCO [PD-017]
17 March 2020	**Deadline 8** Deadline for receipt by the ExA of: • Comments on submissions for deadline 7 • Comments on the ExA's schedule of changes to the dDCO • Any further information requested by the ExA under Rule 17 View the documents received relating to this deadline
19 March 2020	**Compulsory Acquisition Hearing 3** CAH3 - POSTPONED
19 March 2020	**Issue Specific Hearing 5** ISH5 – POSTPONED

26 March 2020	**Deadline 9** Deadline for receipt by the ExA of: • Comments on submissions for deadline 8 • Applicant's updated BoR, SoR, SoCGs and documents certified under Schedule 10 of the dDCO. • Any further information requested by the ExA under Rule 17 View the documents received relating to this deadline
31 March 2020	**Publication by the ExA of** Rule 8 letter giving notification of a revised date for the completion of the Examination [PD-020]
2 April 2020	**Deadline 10** Deadline for receipt by the ExA of: • Comments on submissions for deadline 9 • Any further information requested by the ExA under Rule 17 View the documents received relating to this deadline
3 April 2020	**Publication by the ExA of** • Notification of a revised Examination timetable including further hearings and information on the use of virtual hearings [PD-021]
8 April 2020	The ExA was under a duty to complete the examination of the application by the end of the period of 6 months beginning with the day after the close of the Preliminary Meeting. The Secretary of State extended the Examination for a period up to 8 September 2020 [OD-005]
21 April 2020	**Publication by the ExA of** • A request for representations on the use of teleconferencing and/or video conferencing technologies for Hearings [PD-022] • A request for representations on whether matters identified by the ExA should be addressed in Hearings or in written submissions [PD-023]
28 April 2020	**Deadline 11** Deadline for receipt by the ExA of: • Responses to the request for representations on the use of teleconferencing and/or video conferencing technologies for Hearings

	• Responses to the request for representations on whether matters identified by the ExA should be addressed in Hearings or in written submissions • Any further information requested by the ExA under Rule 17 View the documents received relating to this deadline
05 May 2020	**Publication by the ExA of** • Further written questions [PD-025] • Notification of the date, time, place and outline arrangements for Hearings on 9, 10 and 11 June and 16, 17 and 18 June 2020 (if required) [PD-024] • Request for notification of a wish to speak at Hearings and/or to access a recording and, if available, a streamed broadcast of Hearings [PD-024]
12 May 2020	**Deadline 12** Deadline for receipt by the ExA of: • Responses to the further written questions • Responses to the request for notification of a wish to speak at Hearings and/or to access a recording and, if available, a streamed broadcast of Hearings • Any further information requested by the ExA under Rule 17 View the documents received relating to this deadline
19 May 2020	**Deadline 13** Deadline for receipt by the ExA of: • Comments on submissions for deadline 12 • Any further information requested by the ExA under Rule 17 View the documents received relating to this deadline
27 May 2020	**Publication by the ExA of** Agendas and detailed arrangements for Hearings on 9, 10 and 11 June and 16, 17 and 18 June 2020 (if required) [PD-026]
9 June 2020	**Compulsory Acquisition Hearing 4** (virtual) CAH 4 [EV-23]
9 June 2020	**Issue Specific Hearing 6** (virtual) ISH 6 [EV-024] covering • Transport networks and traffic

	• Land use, social and economic impacts
9 June 2020	**Issue Specific Hearing 7** (virtual) ISH 7 [EV-025] covering • Biodiversity and ecological conservation • Landscape and visual impact
10 June 2020	**Issue Specific Hearing 8** (virtual) ISH 8 [EV-026] covering • Air quality • Climate change • Other policy and factual issues
10 June 2020	**Issue Specific Hearing 9** (virtual) ISH 9 [EV-027] covering • dDCO
10 June 2020	**Time reserved for further hearings** The ExA gave oral notification at ISH 9 that ISHs 10 to 17 and CAHs 5 to 7 would not be required. This information was also posted in the PINs project website.
18 June 2020	**Deadline 14** Deadline for receipt by the ExA of: • Written summaries of oral contributions at Hearings • Post-Hearing submissions requested by the ExA • Applicant's updated Book of Reference, Statement of Reasons, Statements of Common Ground and documents certified under Schedule 10 of the dDCO • Any further information requested by the ExA under Rule 17 View the documents received relating to this deadline
25 June 2020	**Deadline 15** Deadline for receipt by the ExA of: • Comments on submissions for deadline 14 • Any further information requested by the ExA under Rule 17 View the documents received relating to this deadline
8 July 2020	**Examination closed** [PD-030]

APPENDIX B: EXAMINATION LIBRARY

A38 Derby Junction Improvement Scheme Examination Library

Updated – 09/07/2020

This Examination Library relates to the A38 Derby Junction Improvement Scheme application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document. A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites and will be used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- This is a working document and will be updated periodically as the examination progresses.
- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate, is published to the National Infrastructure Website but is not included within the Examination Library as such advice is not an examination document.
- This document contains references to documents from the point the application was submitted.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

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Adequacy of Consultation responses	AoC-xxx
Relevant Representations	RR-xxx
Procedural Decisions and Notifications from the Examining Authority Includes Examining Authority's questions, s55, and post acceptance s51	PD-xxx
Additional Submissions Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination	AS-xxx
Events and Hearings Includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant's hearing notices, and responses to Rule 6 and Rule 8 letters	EV-xxx
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AS-035	Stephanie Dobson Additional Submission accepted at the discretion of the Examining Authority
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AS-038	Ian Beck Additional Submission accepted at the discretion of the Examining Authority
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EV-015	Highways England Highways England message regarding the Air Quality matters at Issue Specific Hearing 4 on Wednesday 19th February
EV-016	Highways England Highways England message regarding the Notices advertising the Hearings on the 18th and 19th February 2020
EV-017	Recording of Issue Specific Hearing 3 - 18 February 2020
EV-018	Recording of Compulsary Acquisition Hearing 2 - 18 February 2020
EV-019	Recording of Issue Specific Hearing 4 - 19 Februrary 2020
EV-020	Note from the third Unaccompanied Site Inspection – 18 February 2020
EV-021	Highways England Hearing Notice
EV-022	Agenda for Issue Specific Hearing 5 (ISH5) and Compulsory Acquisition Hearing 3 (CAH3) on 19 March 2020 - POSTPONED
EV-023	Recording of Compulsory Acquisition Hearing 4 - 09 June 2020
EV-024	Recording of Issue Specific Hearing 6 - 09 June 2020
EV-025	Recording of Issue Specific Hearing 7 - 09 June 2020
EV-026	Recording of Issue Specific Hearing 8 - 10 June 2020
EV-027	Recording of Issue Specific Hearing 9 - 10 June 2020

Representations

Deadline 1 05 November 2019

Deadline for receipt of:

- Written summaries of oral contributions at hearings
- Post-hearing submissions requested by the ExA
- The Applicant's updated draft Development Consent Order (dDCO), Explanatory Memorandum (EM), Book of Reference (BoR) and Statement of Reasons (SoR)
- Comments on Relevant Representations (RRs)
- Written Representations (WRs)
- Local Impact Reports from local authorities
- Statements of Common Ground (SoCG) requested by the ExA – see Annex E
- Responses to the ExA's First Written Questions
- Comments on any additional representations or submissions accepted into the Examination prior to the Preliminary Meeting

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• Representations relating to locations to view at the project or in the surrounding area which are considered to be relevant for the ExA during further Unaccompanied Site Inspections or during an Accompanied Site inspection • Notification of wish to speak at a Compulsory Acquisition Hearing or an Open Floor Hearing • Notification from statutory parties, or a local authority without direct responsibility in the proposed development area, of a wish to be considered an Interested Party	
REP1-001	Highways England Deadline 1 Submission:8.1 Cover Letter
REP1-002	Highways England Deadline 1 Submission: 8.2 Guide to the application
REP1-003	Highways England Deadline 1 Submission: 8.3 Responses to Relevant Representations
REP1-004	Highways England Deadline 1 Submission: 8.4 - Responses to Examining Authority's Questions on the Draft Development Consent Order
REP1-005	Highways England Deadline 1 Submission: 8.5 - Responses to Examining Authority's First Written Questions
REP1-006	Highways England Deadline 1 Submission: 8.5.1 - Appendices to Support Responses to Examining Authority's First Written Questions
REP1-007	Highways England Deadline 1 Submission: 8.6 - Statement of Common Ground with Derbyshire County Council
REP1-008	Highways England Deadline 1 Submission: 8.8 - Statement of Common Ground with Erewash Borough Council
REP1-009	Highways England Deadline 1 Submission: 8.9 - Statement of Common Ground with Natural England
REP1-010	Highways England Deadline 1 Submission: 8.10 - Statement of Common Ground with Derbyshire Wildlife Trust
REP1-011	Highways England Deadline 1 Submission: 8.11 - Statement of Common Ground with Environment Agency
REP1-012	Highways England Deadline 1 Submission: 8.12 - Statement of Common Ground with Historic England
REP1-013	Highways England Deadline 1 Submission: 8.27 - Statement of Common Ground with Little Eaton Parish Council
REP1-014	Highways England Deadline 1 Submission: 8.30 - Written Summary of Oral Submissions to Issue Specific Hearing on draft Develop Consent Order 8 October 2019

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REP1-015	Highways England Deadline 1 Submission: 8.31 - Schedule of Change to the dDCO
REP1-016	Highways England Deadline 1 Submission: 8.32- Schedule of changes to the Book of Reference
REP1-017	Highways England Deadline 1 Submission: 8.33 - Schedule of Updates to the Statement of Reasons
REP1-018	Highways England Deadline 1 Submission: 8.34 - A comparison of the updated draft Develop Consent Order with the Version Submitted for the Application
REP1-019	Highways England Deadline 1 Submission: 3.1 a - Draft Development Consent Order
REP1-020	Environment Agency Deadline 1 Submission: Written Representation
REP1-021	Environment Agency Deadline 1 Submission: Post-hearing submissions requested by the ExA - Response to Action Points
REP1-022	Environment Agency Deadline 1 Submission: Response to ExA's First Written Questions
REP1-023	Historic England Deadline 1 Submission: Response to ExA's First Written Questions
REP1-024	Network Rail Infrastructure Limited Deadline 1 Submission: Written Representation
REP1-025	Network Rail Infrastructure Limited Deadline 1 Submission: Response to ExA's First Written Questions
REP1-026	Public Health England Deadline 1 Submission: Response to ExA's First Written Questions
REP1-027	Breadsall Parish Council Deadline 1 Submission: Written Representation
REP1-028	Breadsall Parish Council Deadline 1 Submission: Response to the ExA's First Written Questions
REP1-029	Cadent Gas Limited Deadline 1 Submission: Response to the ExA's First Written Questions
REP1-030	Derbyshire County Council Deadline 1 Submission: Written Representation
REP1-031	Derbyshire County Council Deadline 1 Submission: Local Impact Report
REP1-032	Derbyshire County Council Deadline 1 Submission: Written summary of oral contributions at hearings
REP1-033	Derbyshire County Council Deadline 1 Submission: Response to ExA's First Written Questions
REP1-034	Derby City Council Deadline 1 Submission: Response to ExA's First Written Questions and Post-hearing submissions requested by the ExA

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REP1-035	Derby City Council Deadline 1 Submission: Local Impact Report
REP1-036	Derby Cycling Group Deadline 1 Submission: Written Representations
REP1-037	Derby Cycling Group Deadline 1 Submission: Written Representation
REP1-038	Derbyshire Wildlife Trust Deadline 1 Submission: Response to the ExA's First Written Question
REP1-039	ESP Utilities Group Ltd Deadline 1 Submission: Written Representation
REP1-040	Euro Garages Ltd Deadline 1 Submission: Written Representation
REP1-041	Euro Garages Ltd Deadline 1 Submission: Statement of Common Ground - CLEAN
REP1-042	Euro Garages Ltd Deadline 1 Submission: Statement of Common Ground - with track changes
REP1-043	Friends of Little Eaton Canal Deadline 1 Submission: Written Representation
REP1-044	intu Derby Deadline 1 Submission: Written Representation
REP1-045	McDonald's Restaurants Ltd Deadline 1 Submission: Written Representation
REP1-046	McDonald's Restaurants Ltd Deadline 1 Submission: Statement of Common Grounds
REP1-047	Severn Trent Water Limited Deadline 1 Submission: Written Representation
REP1-048	The Beavis Family Deadline 1 Submission: Written Representation
REP1-049	Simon Morris Deadline 1 Submission: Written Representation
REP1-050	Erewash Borough Council Late Deadline 1 submission accepted at the discretion of the ExA: Local Impact Report
REP1-051	Erewash Borough Council Late Deadline 1 submission accepted at the discretion of the ExA: Response to the ExA' First Written Questions
Deadline 2 19 November 2019 **Deadline for receipt by the ExA of:** • Comments on submissions for deadline 1. • Applicant's updated dDCO, EM, BoR and SoR • The Applicant's proposed itinerary for an Accompanied Site Inspection (if required) • Any further information requested by the ExA under Rule 17	
REP2-001	Highways England Deadline 2 Submission: 8.35 - Cover Letter

REP2-002	Highways England Deadline 2 Submission: 2.2 (b) - Land Plans
REP2-003	Highways England Deadline 2 Submission: 2.3 (b) - Special Category Land Plans
REP2-004	Highways England Deadline 2 Submission: 2.4 (a) - Crown Land Plans
REP2-005	Highways England Deadline 2 Submission: 2.5 (b) - Works Plans
REP2-006	Highways England Deadline 2 Submission: 2.6 (b) - General Arrangement Plans
REP2-007	Highways England Deadline 2 Submission: 3.1 (b) - Draft Development Consent Order
REP2-008	Highways England Deadline 2 Submission: 6.1 - Environmental Statement Chapter 7 (a) Landscape and Visual Impact Assessment
REP2-009	Highways England Deadline 2 Submission: 6.1 - Environmental Statement Chapter 7 Landscape and Visual Impact Assessment - Tracked Changes
REP2-010	Highways England Deadline 2 Submission: 6.2 - Figure 7.1A (a) Kingsway and Markeaton Junctions Zone of Theoretical Visibility (ZTV))
REP2-011	Highways England Deadline 2 Submission: 6.2 - Figure 7.5 (a) Representative Viewpoints (8, 10, 12 Amended)
REP2-012	Highways England Deadline 2 Submission: 8.2 (a) - Guide to the Application
REP2-013	Highways England Deadline 2 Submission: 8.7 - Statement of Common Ground Derby City Council
REP2-014	Highways England Deadline 2 Submission: 8.14 - Statement of Common Ground Network Rail
REP2-015	Highways England Deadline 2 Submission: 8.25 - Statement of Common Ground Virgin Media
REP2-016	Highways England Deadline 2 Submission: 8.27 - Statement of Common Ground Little Eaton Parish Council
REP2-017	Highways England Deadline 2 Submission: 8.31 (a) - Schedule of changes to the dDCO
REP2-018	Highways England Deadline 2 Submission: 8.32 (a) - Schedule of Changes to the Book of Reference
REP2-019	Highways England Deadline 2 Submission: 8.34 (a) - A Comparison of the updated draft Development Consent Order with the Version Submitted for the Application

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REP2-020	Highways England Deadline 2 Submission: 8.36 - Applicant's Comments on any Additional Information or Submissions Received by Deadline 1
REP2-021	Highways England Deadline 2 Submission: 8.37 - Additional Photomontages
REP2-022	Highways England Deadline 2 Submission: 8.38 - Cross Section of Kingsway Junction Northern Dumbbell
REP2-023	Highways England Deadline 2 Submission: 8.39 - Responses to the Examining Authority's Rule 17 request for information regarding draft Development Consent Order Schedules 5 and 7 (issued 12 Nov 2019)
REP2-024	Highways England Deadline 2 Submission: 8.40 - Schedule of Updates to Annex A of the Statement of Reasons
Deadline 3 19 December 2019 **Deadline for receipt by the ExA of:** • Written summaries of oral contributions at hearings (if required) • Post-hearing submissions requested by the ExA (if required) • Applicant's updated dDCO, EM, BoR and SoR • Any further information requested by the ExA under Rule 17	
REP3-001	Highways England Deadline 3 Submission - 2.9(a) Classification of Road Plans
REP3-002	Highways England Deadline 3 Submission - 3.1 (c) Draft Development Consent Order
REP3-003	Highways England Deadline 3 Submission - 6.12(a):Outline Environmental Management Plan (OEMP)_clean
REP3-004	Highways England Deadline 3 Submission - 6.12(a):Outline Environmental Management Plan (OEMP) – Tracked
REP3-005	Highways England Deadline 3 Submission - 7.3(a) Transport Assessment Report
REP3-006	Highways England Deadline 3 Submission - 8.13 Statement of Common Ground with Royal School for the Deaf Derby
REP3-007	Highways England Deadline 3 Submission - 8.2 (b) Guide to the Application
REP3-008	Highways England Deadline 3 Submission - 8.31 (b) Schedule of Changes to the dDCO
REP3-009	Highways England Deadline 3 Submission - 8.32(b) Schedule of Changes to the Book of Reference Planning

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REP3-010	Highways England Deadline 3 Submission - 8.33(a) Schedule of Updates to the Statement of Reasons
REP3-011	Highways England Deadline 3 Submission - 8.34 (b) A Comparison of the updated draft Development Consent Order with the Version Submitted for the Application
REP3-012	Highways England Deadline 3 Submission - 8.41 Covering Letter
REP3-013	Highways England Deadline 3 Submission - 8.42 Markeaton Junction Alignment Optioneering Summary
REP3-014	Highways England Deadline 3 Submission - 8.43 Written Summary of Oral Submissions to CAH 10 December 2019
REP3-015	Highways England Deadline 3 Submission - 8.44 Written Summary of Oral Submissions to ISH 11 December 2019
REP3-016	Highways England Deadline 3 Submission - 8.45 Little Eaton Junction Existing & Proposed Rights of Way Plan
REP3-017	Highways England Deadline 3 Submission - 8.46 OEMP Updates Schedule
REP3-018	Highways England Deadline 3 Submission - 8.47 WHS Photomontages
REP3-019	Highways England Deadline 3 Submission - 8.48 Additional Air Quality Information Submitted to DCiC
REP3-020	Highways England Deadline 3 Submission - 8.49 Additional Soil and Groundwater Contamination Information Submitted to the EA
REP3-021	Highways England Deadline 3 Submission - 8.50 Hedgerows within the Order Limits
REP3-022	Highways England Deadline 3 Submission - 8.51 Summary of Amendments to Transport Assessment Report
REP3-023	Highways England Deadline 3 Submission - 8.52 Ashbourne Road Accesses Summary
REP3-024	Highways England Deadline 3 Submission - 8.53 Treatment of Rights over Open Space/Replacement Land
REP3-025	Highways England Deadline 3 Submission - 8.54 Actions Arising out of Compulsory Acquisition Hearing 1 on 10 December 2019 for Deadline 3
REP3-026	Highways England Deadline 3 Submission - 8.55 Actions Arising out of Issue Specific Hearing 2 on 11 December 2019 for Deadline 3

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REP3-027	Derby City Council Deadline 3 Submission - Late Deadline 3 Submission - Post-hearing submission - Accepted at the discretion of the Examining Authority
REP3-028	Breadsall Parish Council Deadline 3 Submission - Post-hearing submission
REP3-029	Derbyshire County Council Deadline 3 Submission - Post-hearing submission and written Summary of oral contributions at hearings
REP3-030	Alan Bradwell Deadline 3 Submission - Post-hearing submission requested by the ExA
REP3-031	Alyson Lee Deadline 3 Submission - Written summary of oral contributions at hearings
REP3-032	Dave Clasby Deadline 3 Submission - Written summary of oral contributions at hearings
REP3-033	Derby Cycling Group Deadline 3 Submission - Post-hearing submission and Written summary of oral contributions at hearings
REP3-034	Environment Agency Deadline 3 Submission - Written Summary of oral contributions at hearings
REP3-035	Euro Garages Limited Deadline 3 Submission - Written summary of oral contributions at hearings
REP3-036	Euro Garages Limited Deadline 3 Submission - Post-hearing submission requested by the ExA
REP3-037	intu Derby Deadline 3 Submission - Post-hearing submission requested by the ExA
REP3-038	Mair Perkins Deadline 3 Submission - Written summary of oral contributions at hearings
REP3-039	Mary Smail Deadline 3 Submission - Written summary of oral contributions at hearings
REP3-040	McDonald’s Restaurants Ltd Deadline 3 Submission - Written summary of oral contributions at hearings
REP3-041	Royal Derby Hospital Deadline 3 Submission - Late Deadline 3 Submission - Post-hearing submission - Accepted at the discretion of the Examining Authority
REP3-042	Simon Morris Deadline 3 Submission
REP3-043	Tony Roelich Deadline 3 Submission - Correspondence relating to creation of A38 Behaviour Change Group

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Deadline 4 **03 February 2020** **Deadline for receipt by the ExA of:** • Comments on submissions for deadline 3 • Responses to the ExA's Second Written Questions • Applicant's updated dDCO, EM, BoR and SoR • Any further information requested by the ExA under Rule 17	
REP4-001	Highways England Deadline 4 Submission - Cover Letter
REP4-002	Highways England Deadline 4 Submission - 2.7(a) Streets, Rights of Way and Access Plans
REP4-003	Highways England Deadline 4 Submission - 2.8(a) Traffic Regulation Measures Plans
REP4-004	Highways England Deadline 4 Submission - 3.1(d) Draft Development Consent Order
REP4-005	Highways England Deadline 4 Submission - 4.1(a) Statement of Reasons - Clean
REP4-006	Highways England Deadline 4 Submission - 4.1(a) Statement of Reasons - Tracked
REP4-007	Highways England Deadline 4 Submission - 4.3(b) Book of Reference - Clean
REP4-008	Highways England Deadline 4 Submission - 4.3(b) Book of Reference - Tracked
REP4-009	Highways England Deadline 4 Submission - 6.3 Environmental Statement Appendix 13.2A (a) Kingsway Flood Risk Assessment
REP4-010	Highways England Deadline 4 Submission - 6.3 Environmental Statement Appendix 13.2B (a) Markeaton Flood Risk Assessment
REP4-011	Highways England Deadline 4 Submission - 8.2 (c) Guide to the Application
REP4-012	Highways England Deadline 4 Submission - 8.11(a) Draft Statement of Common Ground with Environment Agency
REP4-013	Highways England Deadline 4 Submission - 8.17 Draft Statement of Common Ground with Sutton Turner Homes
REP4-014	Highways England Deadline 4 Submission - 8.25(a) Statement of Common Ground with Virgin Media
REP4-015	Highways England Deadline 4 Submission - 8.31(c) Schedule of Changes to the dDCO
REP4-016	Highways England Deadline 4 Submission - 8.32(c) Schedule of Changes to the Book of Reference

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REP4-017	Highways England Deadline 4 Submission - 8.33(b) Schedule of Updates to the Statement of Reasons
REP4-018	Highways England Deadline 4 Submission - 8.34 (c) A Comparison of the updated draft Development Consent Order with the Version Submitted for the Application
REP4-019	Highways England Deadline 4 Submission - 8.57 Technical Note on Controlled Waters Quantitative Risk Assessment
REP4-020	Highways England Deadline 4 Submission - 8.58 Floodplain Compensation Area – Contours Before and After Excavation Works
REP4-021	Highways England Deadline 4 Submission - 8.59 Technical Note on Markeaton Junction Northbound Diverge Slip Road – Access to Euro Garages and McDonald's
REP4-022	Highways England Deadline 4 Submission - 8.60 MOD Safeguarding Letter
REP4-023	Highways England Deadline 4 Submission - 8.61 Ecological Impact Assessment of Alfreton Road LWS
REP4-024	Highways England Deadline 4 Submission - 8.62 Responses to Examining Authority's Second Written Questions
REP4-025	Highways England Deadline 4 Submission - 8.63 Applicant's Responses to Information or Submissions Received by Deadline 3
REP4-026	Highways England Deadline 4 Submission - 8.64 Design – Handover for Operation Process Note
REP4-027	Environment Agency Deadline 4 Submission - Response to the Examining Authority's Second Written Questions
REP4-028	Breadsall Parish Council Deadline 4 Submission - Response to the Examining Authority's Second Written Questions
REP4-029	Derby City Council Deadline 4 Submission - Response to the Examining Authority's Second Written Questions
REP4-030	Derbyshire County Council Deadline 4 Submission - Response to the Examining Authority's Second Written Questions
REP4-031	Erewash Borough Council Deadline 4 Submission - Response to the Examining Authority's Second Written Questions

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REP4-032	Cameron McKenna Nabarro Olswang LLP on behalf of **Cadent Gas Limited** Deadline 4 Submission - Response to the Examining Authority's
REP4-033	Singleton Clamp & Partners Ltd on behalf of **Euro Garages Limited** Deadline 4 Submission - Response to the Examining Authority's
REP4-034	McDonald's Restaurants Ltd Deadline 4 Submission - Response to the Examining Authority's Second Written Questions
REP4-035	Derby City Council Deadline 4 Submission - Response to the Examining Authority's Second Written Questions - Late submission accepted at the discretion of the Examining Authority
REP4-036	Erewash Borough Council Deadline 4 Submission – Supplementary Response to the Examining Authority's Second Written Questions - Late submission accepted at the discretion of the Examining Authority
Deadline 5 10 February 2020 **Deadline for receipt by the ExA of:** • Comments on submissions for deadline 4 • Any further information requested by the ExA under Rule 17	
REP5-001	Highways England Deadline 5 Submission - Cover Letter
REP5-002	Highways England Deadline 5 Submission - 3.3(a) Consents and Agreements Position Statement - Clean
REP5-003	Highways England Deadline 5 Submission - 3.3(a) Consents and Agreements Position Statement - Tracked
REP5-004	Highways England Deadline 5 Submission - 7.4(a) Traffic Management Plan - Clean
REP5-005	Highways England Deadline 5 Submission - 7.4(a) Traffic Management Plan - Tracked
REP5-006	Highways England Deadline 5 Submission - 8.2(d) Guide to the Application
REP5-007	Highways England Deadline 5 Submission - 8.6(a) Statement of Common Ground with Derbyshire County Council
REP5-008	Highways England Deadline 5 Submission - 8.11(b) Statement of Common Ground with Environment Agency
REP5-009	Highways England Deadline 5 Submission - 8.15 Draft Statement of Common Ground with McDonald’s

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REP5-010	Highways England Deadline 5 Submission - 8.66 Applicant's Responses to Information or Submissions Received by Deadline 4
REP5-011	Highways England Deadline 5 Submission - 8.67 Revised Appendix F to the Environmental Statement Appendix 7.2: Arboricultural Impact Assessment Report
REP5-012	Cameron McKenna Nabarro Olswang LLP on behalf of **Cadent Gas Limited** Deadline 5 Submission - Comments on the Draft Development Consent Order
REP5-013	Addleshaw Goddard LLP on behalf of **Network Rail Infrastructure Limited** Deadline 5 Submission - Comments on the Applicant's Responses to the Examining Authority's Second Written Questions
Deadline 6 03 March 2020 **Deadline for receipt by the ExA of:** • The Applicant's final draft Development Consent Order (dDCO) and Explanatory Memorandum • Written summaries of oral contributions at the hearings held on 18 and 19 February 2020 • Post-hearing submissions requested by the ExA, including responses to Air Quality agenda items • The Applicant's clarification of its updated position regarding Air Quality	
REP6-001	Highways England Deadline 6 Submission - Cover Letter
REP6-002	Highways England Deadline 6 Submission - 3.1 (e) Draft Development Consent Order
REP6-003	Highways England Deadline 6 Submission - Draft DCO (3.1(e)) Validation Report
REP6-004	Highways England Deadline 6 Submission - 3.2(a) Explanatory Memorandum to the Draft Proposed Order (Clean)
REP6-005	Highways England Deadline 6 Submission - 3.2(a) Explanatory Memorandum to the Draft Proposed Order (Tracked)
REP6-006	Highways England Deadline 6 Submission - 4.2(b) Funding Statement
REP6-007	Highways England Deadline 6 Submission - 6.12(b) Outline Environmental Management Plan (OEMP) (Clean)
REP6-008	Highways England Deadline 6 Submission - 6.12(b) Outline Environmental Management Plan (OEMP) (Tracked)
REP6-009	Highways England Deadline 6 Submission - 8.2(e) Guide to the Application

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REP6-010	Highways England Deadline 6 Submission - 8.6(b) Statement of Common Ground with Derbyshire County Council
REP6-011	Highways England Deadline 6 Submission - 8.31(d) Schedule of Changes to the dDCO
REP6-012	Highways England Deadline 6 Submission - 8.34(d) A Comparison of the updates draft Development Consent Order with the Version Submitted for the Application
REP6-013	Highways England Deadline 6 Submission - 8.46(a) OEMP Updates Schedule
REP6-014	Highways England Deadline 6 Submission - 8.52(a) Ashbourne Road Accesses Summary
REP6-015	Highways England Deadline 6 Submission - 8.69 Written Summary of Oral Submissions to CAH2 18 February 2020
REP6-016	Highways England Deadline 6 Submission - 8.70 Written Summary of Oral Submissions to ISH3 18 February 2020
REP6-017	Highways England Deadline 6 Submission - 8.72 Applicant's Responses to ExA's Questions for ISH3 18 February 2020
REP6-018	Highways England Deadline 6 Submission - 8.71 Written Summary of Oral Submissions to ISH4 19 February 2020
REP6-019	Highways England Deadline 6 Submission - 8.73 Applicant's Responses to Actions Arising from CAH2 18 February 2020
REP6-020	Highways England Deadline 6 Submission - 8.75 Updated Air Quality Compliance Risk Assessment
REP6-021	Highways England Deadline 6 Submission - 8.77 Noise Assessment – The Averaging Time (T) and the Duration of Impact
REP6-022	Highways England Deadline 6 Submission - 8.78 Technical Note on Supreme Court Decision – Samuel Smith (Tadcaster)
REP6-023	Highways England Deadline 6 Submission - 8.79 Technical Note on Public Open Space Loss and Replacement Land
REP6-024	Highways England Deadline 6 Submission - 8.80 Human Rights and the Acquisition and Possession of Land for the Scheme
REP6-025	Highways England Deadline 6 Submission - 8.81 Maintenance and Repair Strategy Statement

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REP6-026	Highways England Deadline 6 Submission - 8.82 Crown Interests - s135 Consent
REP6-027	Derby City Council Deadline 6 Submission - Written summaries of oral contributions at the hearings held on 18 and 19 February 2020
REP6-028	Derbyshire County Council Deadline 6 Submission - Written summary of oral contributions at Issue Specific Hearing 3 held on 18 February 2020
REP6-029	Derbyshire County Council Deadline 6 Submission - Written summary of oral contributions at Issue Specific Hearing 4 held on 19 February 2020
REP6-030	Derby Climate Coalition Deadline 6 Submission - Written summaries of oral contributions at the hearings held on 18 and 19 February 2020
REP6-031	Derby Cycling Group Deadline 6 Submission - Written summaries of oral contributions at the hearings held on 18 and 19 February 2020
REP6-032	Derby Friends of the Earth Deadline 6 Submission - Written summaries of oral contributions at the hearings held on 18 and 19 February 2020 -ENC1 Air Quality data (East Mids)V2 -Kingsway Island
REP6-033	Derby Friends of the Earth Deadline 6 Submission - Written summaries of oral contributions at the hearings held on 18 and 19 February 2020 - Allestree Flood Map
REP6-034	Derby Friends of the Earth Deadline 6 Submission - Written summaries of oral contributions at the hearings held on 18 and 19 February 2020 - Alvaston Flood Map
REP6-035	Derby Friends of the Earth Deadline 6 Submission - Written summaries of oral contributions at the hearings held on 18 and 19 February 2020-A38 Junctions Markeaton Park
REP6-036	Derby Friends of the Earth Deadline 6 Submission - Written summaries of oral contributions at the hearings held on 18 and 19 February 2020 - Paris Agreement/Climate
REP6-037	Environment Agency Deadline 6 Submission - Written summaries of oral contributions at the hearings held on 18 and 19 February 2020
REP6-038	Euro Garages Limited Deadline 6 Submission - Response to Deadline 6
REP6-039	Euro Garages Limited Deadline 6 Submission - Position Statement
REP6-040	Euro Garages Limited Deadline 6 Submission - Position Statement appendix - A38 Markeaton Roundabout Improvements and Road Safety Audit

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REP6-041	McDonald's Restaurants Ltd Deadline 6 Submission - Response to Deadline 6
REP6-042	Highways England Deadline 6 Submission - 8.74 Applicant's Responses to Actions Arising from ISH4 19 February 2020 - Late Submission accepted at the discretion of the Examining Authority
REP6-043	Erewash Borough Council Deadline 6 Submission - Post Hearing Submission - Late Submission accepted at the discretion of the Examining Authority
Deadline 7 10 March 2020 **Deadline for receipt by the ExA of:** • Comments on submissions for deadline 6 • Any further information requested by the ExA under Rule 17	
REP7-001	Highways England Deadline 7 Submission - Cover Letter
REP7-002	Highways England Deadline 7 Submission - 2.7(b) Streets, Rights of Way and Access Plans
REP7-003	Highways England Deadline 7 Submission - 7.4(b) Traffic Management Plan - Clean
REP7-004	Highways England Deadline 7 Submission - 7.4(b) Traffic Management Plan - Tracked
REP7-005	Highways England Deadline 7 Submission - 8.2(f) Guide to the Application
REP7-006	Highways England Deadline 7 Submission - 8.7(a) Statement of Common Ground with Derby City Council
REP7-007	Highways England Deadline 7 Submission - 8.84 Applicant's Responses to Information or Submissions Received by Deadline 6
REP7-008	Highways England Deadline 7 Submission - 8.85 Veteran Tree Loss T358
REP7-009	Highways England Deadline 7 Submission - 8.86 Supplement to Air Quality Compliance Risk Assessment
REP7-010	Derby City Council Deadline 7 Submission - Response to the Applicants Air Quality submissions
REP7-011	Cameron McKenna Nabarro Olswang LLP on behalf of **Cadent Gas Limited** Deadline 7 Submission - Response to Deadline 7
REP7-012	Cameron McKenna Nabarro Olswang LLP on behalf of **Cadent Gas Limited** Deadline 7 Submission - Appendix 1 - Protective Provisions

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REP7-013	Cameron McKenna Nabarro Olswang LLP on behalf of **Cadent Gas Limited** Deadline 7 Submission - Appendix 2 - Eggborough ExA Report
REP7-014	Cameron McKenna Nabarro Olswang LLP on behalf of **Cadent Gas Limited** Deadline 7 Submission - Appendix 3 - Eggborough Decision Letter
REP7-015	Cameron McKenna Nabarro Olswang LLP on behalf of **Cadent Gas Limited** Deadline 7 Submission - Appendix 4 - The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016
REP7-016	Cameron McKenna Nabarro Olswang LLP on behalf of **Cadent Gas Limited** Deadline 7 Submission - Appendix 5 - The M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016
REP7-017	Cameron McKenna Nabarro Olswang LLP on behalf of **Cadent Gas Limited** Deadline 7 Submission - Appendix 6 - Highways England preferred form protective provisions for Windy Harbour for Cadent
REP7-018	**Derby Friends of the Earth** Deadline 7 Submission - Response to Deadline 7
REP7-019	Addleshaw Goddard LLP on behalf of **Network Rail Infrastructure Limited** Deadline 7 Submission - Response to Applicants Deadline 6 Submissions
REP7-020	Highways England Deadline 7 Submission - 8.7(b) Statement of Common Ground with Derby City Council - Late Submission accepted at the discretion of the Examining Authority
Deadline 8 17 March 2020 **Deadline for receipt by the ExA of:** • Comments on submissions for deadline 7 • Comments on the ExA's schedule of changes to the dDCO (if required) • Comments on RIES (if required) • Any further information requested by the ExA under Rule 17	
REP8-001	Highways England Deadline 8 Submission - Cover Letter
REP8-002	Highways England Deadline 8 Submission - 8.2(g) Guide to the Application
REP8-003	Highways England Deadline 8 Submission - 8.13(a) Statement of Common Ground with Royal School for the Deaf Derby
REP8-004	Highways England Deadline 8 Submission - 8.17(a) Statement of Common Ground with Sutton Turner Houses

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REP8-005	Highways England Deadline 8 Submission - 8.28 Statement of Common Ground with Breadsall Parish Council
REP8-006	Highways England Deadline 8 Submission - 8.34(e) A Comparison of the Updated draft Development Consent Order with the Version Originally Submitted for the Application
REP8-007	Highways England Deadline 8 Submission - 8.88 Applicant's Responses to Information or Submissions Received by Deadline 7
REP8-008	Highways England Deadline 8 Submission - 8.89 Applicant's Comments on the ExA's Schedule of Changes to the dDCO
REP8-009	Derby and South Derbyshire Friends of the Earth Deadline 8 Submission - Response to Deadline 8
Deadline 9 26 March 2020 **Deadline for receipt by the ExA of:** • Comments on submissions for deadline 8 • Written summaries of oral contributions at hearings (if required) • Post-hearing submissions requested by the ExA (if required) • Applicant's updated Book of Reference, Statement of Requirements, Statements of Common Ground and documents certified under Schedule 10 of the dDCO. • Any further information requested by the ExA under Rule 17	
REP9-001	Highways England Deadline 9 Submission - Cover Letter
REP9-002	Highways England Deadline 9 Submission - dDCO Validation Report
REP9-003	Highways England Deadline 9 Submission - 2.2(c) Land Plans
REP9-004	Highways England Deadline 9 Submission - 3.1(f) Draft Development Consent Order
REP9-005	Highways England Deadline 9 Submission - 4.1(b) Statement of Reasons -Clean
REP9-006	Highways England Deadline 9 Submission - 4.1(b) Statement of Reasons - Tracked
REP9-007	Highways England Deadline 9 Submission - 4.3(c) Book of Reference - Clean
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REP9-009	Highways England Deadline 9 Submission - Deadline 9 Submission - 6.1 Environmental Statement Chapter 8(a) - Biodiversity - Clean
REP9-010	Highways England Deadline 9 Submission - 6.1 Environmental Statement Chapter 8(a) - Biodiversity - Tracked

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REP9-011	Highways England Deadline 9 Submission - 6.1 Environmental Statement Chapter 12(a) – People and Communities - Clean
REP9-012	Highways England Deadline 9 Submission - 6.1 Environmental Statement Chapter 12(a) – People and Communities - Tracked
REP9-013	Highways England Deadline 9 Submission - 6.2 Environmental Statement Figure 7.5(a) Representative Viewpoints 1 – 24
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REP9-016	Highways England Deadline 9 Submission - 6.3 Environmental Statement Appendix 8.20(a) Summary of Biodiversity Effects - Tracked
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REP9-019	Highways England Deadline 9 Submission - 6.12(c) Outline Environmental Management Plan (OEMP) - Clean
REP9-020	Highways England Deadline 9 Submission - 6.12(c) Outline Environmental Management Plan (OEMP) - Tracked
REP9-021	Highways England Deadline 9 Submission - 8.2(h) Guide to the Application
REP9-022	Highways England Deadline 9 Submission - 8.29 (Draft) Statement of Common Ground with Sustrans and Derby Cycling Group
REP9-023	Highways England Deadline 9 Submission - 8.31(e) Schedule of Changes to the dDCO
REP9-024	Highways England Deadline 9 Submission - 8.32(d) Schedule of Changes to the Book of Reference
REP9-025	Highways England Deadline 9 Submission - 8.33(c) Schedule of Updates to the Statement of Reasons
REP9-026	Highways England Deadline 9 Submission - 8.34(f) A Comparison of the updated draft Development Consent Order with the Version Submitted for the Application

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REP9-028	Highways England Deadline 9 Submission - 8.91 Applicant's Responses to Information or Submissions Received by Deadline 8
REP9-029	Highways England Deadline 9 Submission - 8.92 Responses to Examining Authority's Further Written Questions
REP9-030	Derby City Council Deadline 9 Submission - Response to The Examining Authority's Rule 17 letter dated 19 March 2020 - This version was accepted at the discretion of the Examining Authority and supersedes the version published on 27 March 2020
REP9-031	Erewash Borough Council Deadline 9 Submission - Response to The Examining Authority's Rule 17 letter dated 19 March 2020
REP9-032	Cameron McKenna Nabarro Olswang LLP on behalf of **Cadent Gas Limited** Deadline 9 Submission - Position Statement
REP9-033	Environment Agency Deadline 9 Submission - Response to The Examining Authority's Rule 17 letter dated 19 March 2020
REP9-034	Euro Garages Limited Deadline 9 Submission - Response to The Examining Authority's Rule 17 letter dated 19 March 2020
REP9-035	McDonald's Restaurants Ltd Deadline 9 Submission - Position Statement
REP9-036	Addleshaw Goddard LLP on behalf of **Network Rail Infrastructure Limited** Deadline 9 Submission - Response to The Examining Authority's Rule 17 letter dated 19 March 2020
REP9-037	Addleshaw Goddard LLP on behalf of **Network Rail Infrastructure Limited** Deadline 9 Submission - Network Rail's preferred Protective Provisions
REP9-038	Derby and South Derbyshire Friends of the Earth Deadline 9 Submission - Accepted at the discretion of the Examining Authority
REP9-039	Derby Climate Coalition Deadline 9 Submission - Response to The Examining Authority's Rule 17 letter dated 19 March 2020 - This version was accepted at the discretion of the Examining Authority and supersedes the version published on 27 March 2020
REP9-040	Derby Climate Coalition Deadline 9 Submission - Comments on Highways England's response to REP6-030 - Accepted at the discretion of the Examining Authority

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REP9-043	Mair Bain Deadline 9 Submission - Response to The Examining Authority's Rule 17 letter dated 19 March 2020 - Accepted at the discretion of the Examining Authority
REP9-044	Anne Morgan Deadline 9 Submission - Markeaton Park Map - Accepted at the discretion of the Examining Authority
REP9-045	Anne Morgan Deadline 9 Submission - Markeaton Park Photo confirmation - Accepted at the discretion of the Examining Authority
REP9-046	Joanna Watson Deadline 9 Submission - Accepted at the discretion of the Examining Authority
REP9-047	Derbyshire County Council Deadline 9 Submission - Response to The Examining Authority's Rule 17 letter dated 19 March 2020 - Late Submission accepted at the discretion of the Examining Authority
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REP10-013	Addleshaw Goddard LLP on behalf of **Network Rail Infrastructure Limited** Deadline 10 Submission - Protective Provisions
Deadline 11 28 April 2020 **Deadline for receipt by the ExA of:** • Responses to the request for representations on the use of teleconferencing and/or video conferencing technologies for Hearings • Responses to the request for representations on whether matters identified by the ExA should be addressed in Hearings or in written submissions • Any further information requested by the ExA under Rule 17	
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REP11-004	Highways England Deadline 11 Submission - 8.98 Statements of Common Ground Position Statement
REP11-005	Breadsall Parish Council Deadline 11 Submission - Response to Deadline 11
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REP11-011	David Gartside Deadline 11 Submission - Response to Deadline 11
Deadline 12 12 May 2020 **Deadline for receipt by the ExA of:** • Responses to the further written questions • Responses to the request for notification of a wish to speak at Hearings and/or to access a recording and, if available, a streamed broadcast of Hearings (if required) • Any further information requested by the ExA under Rule 17	
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REP12-002	Highways England Deadline 12 Submission - 6.12(e) Outline Environmental Management Plan (OEMP) - (Clean) Version 6
REP12-003	Highways England Deadline 12 Submission - 6.12(e) Outline Environmental Management Plan (OEMP) - (Tracked Change) Version 6
REP12-004	Highways England Deadline 12 Submission - 8.2(k) Guide to the Application - Version 11
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REP12-006	Highways England Deadline 12 Submission - 8.100 Applicant's Responses to Information or Submissions Received by Deadline 11 - Version 1
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REP12-010	Erewash Borough Council Deadline 12 Submission - Technical Note - Biodiversity Metric Assessment, Alfreton Road Rough Grassland Local Wildlife Site
REP12-011	CMS Cameron McKenna Nabarro Olswang LLP on behalf of **Cadent Gas Limited** Deadline 12 Submission - Response to the Further Written Questions
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REP12-014	Euro Garages Limited Deadline 12 Submission - Responses to the Further Written Questions
REP12-015	Friends of Markeaton Park Deadline 12 Submission - Responses to the Further Written Questions
REP12-016	Addleshaw Goddard LLP on behalf of **Network Rail Infrastructure Limited** Deadline 12 Submission - Responses to the Further Written Questions
REP12-017	Severn Trent Water Limited Deadline 12 Submission - Response to Deadline 12
REP12-018	David and Marion Gartside Deadline 12 Submission - Update on the agreement with Highways England
REP12-019	Derby City Council Deadline 12 Submission – Late submission accepted at the discretion of the Examining Authority - Response to Further Written Questions
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REP13-007	Friends of Markeaton Park Deadline 13 Submission - Response to Deadline 13
Deadline 14 18 June 2020 **Deadline for receipt by the ExA of:** • Written summaries of oral contributions at Hearings (if required) • Post-Hearing submissions requested by the ExA (if required) • Applicant's updated Book of Reference, Statement of Reasons, Statements of Common Ground and documents certified under Schedule 10 of the dDCO • Any further information requested by the ExA under Rule 17	
REP14-001	Highways England Deadline 14 Submission - Cover Letter
REP14-002	Highways England Deadline 14 Submission - 3.1(g) Draft Development Consent Order
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REP14-006	Highways England Deadline 14 Submission - 6.3 Environmental Statement Appendices Appendix 2.2(a): Environmental Mitigation Schedule - Clean
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REP14-018	Highways England Deadline 14 Submission - 8.46(e) OEMP Updates Schedule
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REP14-021	Highways England Deadline 14 Submission - 8.107 Written Summary of Oral Submissions to ISH7 09 June 2020
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REP14-040	Addleshaw Goddard LLP on behalf of **Network Rail Infrastructure Limited** Deadline 14 Submission - Position Statement of Network Rail Infrastructure Limited

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REP15-003	Highways England Deadline 15 Submission - 8.2(n) Guide to the Application
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APPENDIX C: LIST OF ABBREVIATIONS

APPENDIX C LIST OF ABBREVIATIONS

AEP	Annual Exceedance Probability
AIA	Arboricultural Impact Assessment Report
ALC	Agricultural Land Classification
ANPS	Airports National Policy Statement
AP	Affected Person
APFP	Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
AQD	Air Quality Directive
AQMA	Air Quality Management Area
AQS	(UK) Air Quality Strategy
ASI	Accompanied Site Inspection
BCR	benefit cost ratio
BCWG	Behaviour Change Working Group
BMA	Biodiversity Metric Assessment
BoR	Book of Reference
BPC	Breadsall Parish Council
BPM	Best Practicable Means
BS	British Standard
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CEMP	Construction Environmental Management Plan
COPA	Control of Pollution Act 1974
cSAC	candidate Special Area of Conservation
CSM	Customer and Stakeholder Manager
D	Deadline
DCC	Derbyshire County Council
DCCS	Derby City Core Strategy
DCG	Derby Cycling Group
DCiC	Derby City Council
DCIM	Derby Integrated Catchment Model
DCLG	Department for Communities and Local Government
DCO	Development Consent Order
dDCO	draft Development Consent Order
DEFRA	Department for the Environment, Food and Rural Affairs
DfT	Department for Transport
DMRB	Design Manual for Roads and Bridges
DQRA	Detailed Quantitative Risk Assessment
DVMWHS	Derwent Valley Mills World Heritage Site
DWT	Derbyshire Wildlife Trust
EA	Environment Agency
EBC	Erewash Borough Council
EBCS	Erewash Borough Core Strategy
EIA	Environmental Impact Assessment
EM	Explanatory Memorandum

EMRFCA	East Midlands Reserve Forces and Cadets Association
EPA	Environmental Protection Act 1990
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
FoED	Friends of the Earth Derby
FoMP	Friends of Markeaton Park
FP	Footpath
FRA	Flood Risk Assessment
FWQ	first written questions
FZ	Flood Zone
GB	Green Belt
GHG	Greenhouse gas
ha	hectare
HABAP	Highways Agency Biodiversity Action Plan 2002
HE	Highways England
HEMP	Handover Environmental Management Plan
HGV	heavy goods vehicle
HIA	Heritage Impact Assessment
Hist E	Historic England
HRA	Habitats Regulations Assessment
HRBMP	Humber River Basin Management Plan
IAN	Interim Advice Note
IAPI	Initial Assessment of Principal Issues
IAQM	Institute of Air Quality Management
IP	Interested Party
ISH	Issue Specific Hearing
km	kilometre
LA	local authority
LCA	Landscape Character Area
LED	light-emitting diode
LIR	Local Impact Report
LLFA	Lead Local Flood Authority
LNR	Local Nature Reserve
LoD	limits of deviation
LPA	local planning authority
LSE	Likely Significant Effects
LTP	Local Transport Plan
LTP3	Derby Local Transport Plan (2011-2026)
LV	limit value
LWS	Local Wildlife Site
MMP	Materials Management Plan
NE	Natural England
NERCA	Natural Environment and Rural Communities Act 2006
NNL	no net loss (of biodiversity)
NMU	non-motorised users

NO_2	nitrogen dioxide
NO_X	mono-nitrogen oxides
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance
NPS	National Policy Statement
NPSE	Noise Policy Statement for England
NPSNN	National Policy Statement for National Networks
NSER	No Significant Effects Report
NSIP	Nationally Significant Infrastructure Project
OEMP	Outline Environmental Management Plan
OFH	Open Floor Hearing
OUV	Outstanding Universal Value
PA2008	Planning Act 2008
pSAC	possible Special Area of Conservation
pSPA	possible Special Protection Area
PINs	Planning Inspectorate
PM	Preliminary Meeting
PM_{10}	Particulate Matter$_{10}$
$PM_{2.5}$	Particulate Matter$_{2.5}$
PP	Protective Provision
PSED	Public Sector Equality Duty
RBS	Road Based Study
rDCO	recommended Development Consent Order
RSfD	Royal School for the Deaf Derby
REAC	Record of Environmental Actions and Commitments
RIES	Report on the Implications for European Sites
RIS	Road Investment Strategy
RPA	root protection area
RR	Relevant Representation
SAC	Special Area of Conservation
SFRA	Strategic Flood Risk Assessment
SO_2	sulphur dioxide
SOAEL	Significant Observed Adverse Effect Levels
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SoSEFRA	Secretary of State for Environment, Food and Rural Affairs
SoSHCLG	Secretary of State for Housing, Communities and Local Government
SoST	Secretary of State for Transport
SPA	Special Protection Area
SPZ	source protection zone
SRN	Strategic Road Network
SSSI	Site of Special Scientific Interest
STW	Severn Trent Water
SU	Statutory Undertaker
SuDS	sustainable drainage system
SWMP	Site Waste Management Plan

SWQ	second written questions
TAG	Transport Analysis Guidance
TAR	Transport Assessment Report
tCO_{2e}	tonnes of carbon dioxide equivalent
TMP	Traffic Management Plan
TP	Temporary Possession
TPO	Tree Preservation Order
UK	United Kingdom
USI	Unaccompanied Site Inspection
UXO	Unexploded Ordnance
WFD	Water Framework Directive
WHS	World Heritage Site
WPD	Western Power Distribution
WR	Written Representation
ZTV	zone of theoretical visibility

APPENDIX D: THE RECOMMENDED DCO

S T A T U T O R Y I N S T R U M E N T S

202[ ] No.

INFRASTRUCTURE PLANNING

The A38 Derby Junctions Development Consent Order 202[ ]

Made - - - - ***

Coming into force - - ***

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SCHEDULES

An application has been made to the Secretary of State under section 37 of the Planning Act 2008(**a**)) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(**b**) for an Order granting development consent.

The application was examined by two appointed persons (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(**c**).

The two appointed persons, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, have submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the two appointed persons, has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

The Secretary of State is satisfied that replacement land has been or will be given in exchange for the special category land (as defined in article 38 of this Order), and the replacement land (as defined in that article) has been or will be vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the special category land, and that, accordingly, section 131(4) of the 2008 Act applies.

The Secretary of State is satisfied that the special category (rights) land (as defined in article 38 of this Order), when burdened with any new rights authorised to be compulsorily acquired under this Order, will be no less advantageous than it was before to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public, and that, accordingly, section 132(3) of the 2008 Act applies.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 117, 120, 122, 123, 125, 126, 135,136 and 138 of, and paragraphs 1-3, 10-17, 19-23, 26, 33 and 36 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the A38 Derby Junctions Development Consent Order 202[•] and comes into force on [•].

Interpretation

2.—(1) In this Order except where provided otherwise—

"the 1961 Act" means the Land Compensation Act 1961(**d**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**e**);

"the 1980 Act" means the Highways Act 1980(**f**);

(**a**) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20).
(**b**) S.I. 2009/2264, amended by S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2015/377, S.I. 2017/572; modified by S.I. 2012/1659.
(**c**) S.I. 2010/103, amended by S.I. 2012/635.
(**d**) 1961 c.33.
(**e**) 1965 c.56.
(**f**) 1980 c.66.

"the 1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981(**a**);

"the 1984 Act" means the Road Traffic Regulation Act 1984(**b**);

"the 1990 Act" means the Town and Country Planning Act 1990(**c**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**d**);

"the 2008 Act" means the Planning Act 2008(**e**);

"address" includes any number or address for the purposes of electronic transmission;

"apparatus" has the same meaning as in Part 3 of the 1991 Act;

"authorised development" means the development described in Schedule 1 (authorised development);

"the book of reference" means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

"building" includes any structure or erection or any part of a building, structure or erection;

"carriageway" has the same meaning as in section 329(1) of the 1980 Act;

"the classification of roads plans" means the plans certified by the Secretary of State as the classification of roads plans for the purposes of this Order;

"commence" means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations, investigations for the purpose of assessing ground conditions, contamination or other adverse ground conditions, establishment of working areas and compounds, delivery of construction materials, plant and equipment, erection of any temporary means of enclosure, and the temporary display of site notices or advertisements, and "commencement" is to be construed accordingly;

"the Crown land plans" means the plans certified by the Secretary of State as the Crown land plans for the purposes of this Order;

"cycle track" has the same meaning as in section 329(1) (further provision as to interpretation) of the 1980 Act(**f**);

"electronic transmission" means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

"the engineering section drawings" means the documents certified by the Secretary of State as the engineering section drawings for the purposes of this Order;

"the environmental statement" means the documents certified by the Secretary of State as the environmental statement for the purposes of this Order;

"the flood compensation areas" means the flood compensation areas shown on the engineering section drawings and the works plans;

"the flood storage areas" means the flood storage areas shown on the engineering section drawings and on the works plans;

"footpath" and "footway" have the same meaning as in section 329(1) (further provision as to interpretation) of the 1980 Act;

"the general arrangement plans" means the plans certified by the Secretary of State as the general arrangement plans for the purposes of this Order;

(**a**) 1981 c.66.
(**b**) 1984 c.27.
(**c**) 1990 c.8.
(**d**) 1991 c.22.
(**e**) 2008 c.29.
(**f**) The definition of "cycle track" was amended by section 1 of the Cycle Tracks Act 1984 (c.38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c.54).

"the hedgerows plans" means the plans certified by the Secretary of State as the hedgerows plans for the purposes of this Order;

"highway" has the same meaning as in section 328 (meaning of "highway") of the 1980 Act;

"the land plans" means the plans certified by the Secretary of State as the land plans for the purposes of this Order;

"the limits of deviation" means the limits of deviation referred to in article 8 (limits of deviation);

"the local highway authority" has the same meaning as in section 329(1) of the 1980 Act;

"maintain" includes inspect, repair, adjust, alter, remove, replace or reconstruct in relation to the authorised development and any derivative of "maintain" is to be construed accordingly to the extent assessed in the environmental statement and excludes any activities that would give rise to materially new or materially adverse environmental impacts compared to those assessed in the environmental statement;

"the Order land" means the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily, and described in the book of reference;

"the Order limits" means the limits of the land to be acquired or used permanently or temporarily shown on the land plans and works plans within which the authorised development may be carried out;

"the outline environmental management plan" means the plan certified by the Secretary of State as the outline environmental management plan for the purposes of this Order;

"owner", in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(**a**);

"the permanent speed limit plans" means the plans certified by the Secretary of State as part of the traffic regulations measures plans for the purposes of this Order;

"the relevant planning authority" has the same meaning as in section 173 (the relevant local planning authority) of the 2008 Act;

"the Secretary of State" means the Secretary of State for Transport;

"the special category land plans" means the plans certified by the Secretary of State as the special category land plans for the purposes of this Order;

"statutory undertaker" means any statutory undertaker for the purposes of section 127(8) (statutory undertakers' land) of the 2008 Act;

"street" means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

"street authority" has the same meaning as in section 49 (the street authority and other relevant authorities) of the 1991 Act;

"the streets rights of way and access plans" means the plans certified by the Secretary of State as the streets rights of way and access plans for the purposes of this Order;

"traffic authority" has the same meaning as in section 121A(**b**) (traffic authorities) of the 1984 Act;

"the traffic management plan" means the traffic management plan which establishes the outline rules for the traffic management and temporary road layouts needed to construct the authorised development and certified by the Secretary of State as the traffic management plan for the purposes of this Order;

(**a**) 1981 c.67. The definition of "owner" was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c.34). There are other amendments to section 7 which are not relevant to this Order.

(**b**) This section was inserted by section 168(1) of, and paragraph 70 of Schedule 8 to, the New Roads and Street Works Act 1991 (c.22); and brought into force by S.I. 1991/2288.

"the traffic regulations measures plans" means the plans certified by the Secretary of State as the traffic regulations measures plans for the purposes of this Order;

"the tribunal" means the Lands Chamber of the Upper Tribunal;

"trunk road" means a highway which is a trunk road by virtue of—

(a) section 10(**a**) (general provision as to trunk roads) or section 19(1)(**b**) (certain special roads and other highways to become trunk roads) of the 1980 Act;

(b) an order made or direction given under section 10 of that Act;

(c) an order granting development consent; or

(d) any other enactment;

"the undertaker" means Highways England Company Limited, company number 09346363, whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ;

"watercourse" includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

"the works plans" means the plans certified by the Secretary of State as the works plans for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the airspace above its surface, and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) All distances, directions, areas and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the relevant plans.

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development).

Disapplication of legislative provisions

3.—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development and, within any maintenance period defined in article 34(12), any maintenance of any part of the authorised development–

(a) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (bye-law making powers of the appropriate agency) to the Water Resources Act 1991;

(b) section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991(**c**);

(c) section 32 (variation of awards) of the Land Drainage Act 1991;

(d) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991; and

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(**a**) As amended by section 22(2) of the 1991 Act and paragraph 22 of Schedule 2 to the 2008 Act, and by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c.7).
(**b**) As amended by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c.7).
(**c**) 1991 c.59.

(e) in so far as they relate to the temporary possession of land, the provisions of the Neighbourhood Planning Act 2017(**a**).

(f) Regulation 12 (requirements for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016 in relation to the carrying on of a flood risk activity as defined within Schedule 25 Part 1 Paragraph 3(1) of the said Regulations.

(g) the Traffic Management (Derby City Council) Permit Scheme Order 2013;

(h) the Traffic Management (Derbyshire County Council) Permit Scheme Order 2015.

Maintenance of drainage works

4.—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article "drainage" has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

5.—(1) Subject to the provisions of this Order, including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

Maintenance of authorised development

6. The undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

Planning permission

7. If planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits following the coming into force of this Order that is—

(a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or

(b) required to complete or enable the use or operation of any part of the development authorised by this Order,

then the carrying out, use or operation of such development under the terms of the planning permission does not constitute a breach of the terms of this Order.

Limits of deviation

8. In carrying out the authorised development the undertaker may—

(**a**) 2017 c.20.

(a) deviate laterally from the lines or situations of the authorised development shown on the works plans—

(i) to a maximum of 1 metre in respect of the A38 mainline carriageway and slip road works; and

(ii) to the extent of the limits of deviation shown on those plans and as assessed in the environmental statement for all other works;

(b) deviate vertically from the levels of the authorised development shown on the engineering section drawings—

(i) to a maximum of 0.5 metres upwards or downwards;

(ii) in respect of the excavation of the flood compensation areas and flood storage areas, to a maximum of 0.5 metres downwards but to any distance upwards to ground level;

(iii) in respect of Work No. 7 to a maximum of 1 metre upwards or downwards; and

(iv) in respect of Work No. 1(h), 1(k), 10(a), 10(b), 10(d), 10(e) and 11(a) to a maximum of 2 metres downwards measured from the top of the relevant work,

except that these maximum limits of vertical deviation do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation with the relevant planning authority and the local highway authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement.

Benefit of Order

9.—(1) Subject to article 10 (consent to transfer benefit of Order) and paragraph (2), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of Order

10.—(1) The undertaker may—

(a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) grant to another person ("the lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for a transfer or grant under this article except where the transfer or grant is made to—

(a) Western Power Distribution (company number 03600574, whose registered office is at Avonbank, Feeder Road, Bristol BS2 0TB) for the purposes of undertaking Work No. 9, 21, 22 and 35;

(b) Cadent Gas Limited (company number 10080864, whose registered office is at Ashbrook Court Prologis Park, Central Boulevard, Coventry CV7 8PE for the purposes of undertaking Work No. 9, 21 and 35;

(c) Openreach Limited (company number 10690039, whose registered office is at Kelvin House, 123 Judd Street, London WC1 H 9NP) for the purposes of undertaking Work No. 9, 21, 22 and 35;

(d) Severn Trent Water Limited (company number 02366686, whose registered office is at Severn Trent Water Limited, PO Box 5311, Coventry, CV3 9FL) for the purposes of undertaking Work No. 9, 21, 22, 31 and 35;

(e) Virgin Media Limited (company number 02591237, whose registered office is at Media House, Bartley Wood Business Park, Hook, Hampshire RG27 9UP) for the purposes of undertaking Work No. 9, 21, 22 and 35; or

(f) Hutchison 3G UK Limited (company number 03918124, whose registered office is at Star House, 20 Grenfell Road, Maidenhead, Berkshire SL6 1EH) for the purposes of undertaking Work No. 16.

PART 3

STREETS

Street works

11.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets as are within the Order limits and may—

(a) break up or open the street, or any sewer, drain or tunnel under it;

(b) tunnel or bore under the street;

(c) place apparatus in the street;

(d) maintain apparatus in the street or change its position; and

(e) execute any works required for, or incidental to, any works referred to in sub-paragraphs (a), (b), (c) and (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Subject to article 12 (application of the 1991 Act), the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

Application of the 1991 Act

12.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

(a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3)(**a**) of that Act; or

(b) they are works which, had they been executed by the local highway authority, might have been carried out in exercise of the powers conferred by section 64(**b**) (dual carriageways

(**a**) Section 86(3) defines what highway works are major highway works.
(**b**) As repealed by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c.51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c.22).

and roundabouts) of the 1980 Act or section 184(**a**) (vehicle crossings over footways and verges) of that Act.

(2) In Part 3 of the 1991 Act references to the highway authority concerned are, in relation to works which are major highway works by virtue of paragraph (1), to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

(a) section 56(**b**) (power to give directions as to timing of street works);

(b) section 56A(**c**) (power to give directions as to placing of apparatus);

(c) section 58(**d**) (restriction on works following substantial road works);

(d) section 58A(**e**) (restriction on works following substantial street works); and

(e) schedule 3A(**f**) (restriction on works following substantial street works).

(4) The provisions of the 1991 Act referred to in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved, under those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 15 (temporary stopping up and restriction of use of streets and highways) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(**g**) referred to in paragraph (4) are—

(a) section 54 (advance notice of certain works), subject to paragraph (6);

(b) section 55 (notice of starting date of works), subject to paragraph (6);

(c) section 57 (notice of emergency works);

(d) section 59 (general duty of street authority to co-ordinate works);

(e) section 60 (general duty of undertakers to co-operate);

(f) section 68 (facilities to be afforded to street authority);

(g) section 69 (works likely to affect other apparatus in the street);

(h) section 75 (inspection fees);

(i) section 76 (liability for cost of temporary traffic regulation); and

(j) section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 13 (construction and maintenance of new, altered or diverted streets and other structures)—

(a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act;

(b) means that the undertaker is by reason of any duty under that article to maintain a street to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or

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(**a**) As amended by section 4 of, and paragraph 45 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11); and section 18 of and Schedule 8 to, the New Roads and Street Works Act 1991 (c.22).
(**b**) As amended by sections 40 and 43 of the Traffic Management Act 2004 (c.18).
(**c**) Inserted by section 44 of the Traffic Management Act 2004 (c.18).
(**d**) As amended by section 51 of the Traffic Management Act 2004.
(**e**) Inserted by section 52 of the Traffic Management Act 2004.
(**f**) Inserted by section 52 of, and Schedule 4 to, the Traffic Management Act 2004.
(**g**) All as amended by the Traffic Management Act 2004.

(c) has effect in relation to street works to which the provisions of Part 3 of the 1991 Act apply.

Construction and maintenance of new, altered or diverted streets and other structures

13.—(1) Any highway (other than a trunk road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the highway lies and, unless otherwise agreed in writing with the local highway authority, the highway including any culverts or other structures laid under it must be maintained by and at the expense of the local highway authority from its completion.

(2) Where a highway (other than a trunk road) is altered or diverted under this Order, the altered or diverted part of the highway must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority, that part of the highway including any culverts or other structures laid under it must be maintained by and at the expense of the local highway authority from its completion.

(3) Where a street which is not and is not intended to be a public highway is constructed, altered or diverted under this Order, the street (or part of the street as the case may be) must, when completed to the reasonable satisfaction of the street authority and unless otherwise agreed in writing with the street authority, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(4) In the case of a bridge constructed under this Order to carry a highway (other than or a trunk road) over a trunk road, the highway surface must from its completion be maintained by and at the expense of the local highway authority and the structure of the bridge must be maintained by and at the expense of the undertaker unless otherwise agreed in writing with the local highway authority.

(5) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(6) For the purposes of a defence under paragraph (5), the court must in particular have regard to the following matters—

(a) the character of the street and the traffic which was reasonably to be expected to use it;

(b) the standard of maintenance appropriate for a street of that character and used by such traffic;

(c) the state of repair in which a reasonable person would have expected to find the street;

(d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and

(e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

Classification of roads, etc.

14.—(1) On a date to be determined by the undertaker the roads described in Part 1 (trunk roads) of Schedule 3 are to become trunk roads as if they had become so by virtue of an order under

section 10(2)(**a**) (general provision as to trunk roads) of the 1980 Act specifying that date as the date on which they were to become trunk roads.

(2) On a date to be determined by the undertaker the roads described in Part 2 (de-trunked roads) of Schedule 3 are to cease to be trunk roads as if they had ceased to be trunk roads by virtue of an Order made under section 10(2) of the 1980 Act specifying that date as the date on which they were to cease to be trunk roads.

(3) On a date to be determined by the undertaker the roads described in Part 3 (classified roads) of Schedule 3 are to become classified roads for the purpose of any enactment or instrument which refers to highways classified as classified roads as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

(4) On a date to be determined by the undertaker the roads described in Part 4 (unclassified roads) of Schedule 3 are to become unclassified roads for the purpose of any enactment or instrument which refers to unclassified roads.

(5) On a date to be determined by the undertaker the roads described in Part 5 (speed limits) of Schedule 3 no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of that Part along the lengths of road identified in the corresponding row of column (2) of that Part.

(6) On a date to be determined by the undertaker, the restrictions specified in column (3) of Part 6 (traffic regulation measures (clearways and prohibitions)) of Schedule 3 are to apply to the lengths of road identified in the corresponding row of column (2) of that Part.

(7) Unless otherwise agreed with the relevant planning authority, the public rights of way set out in Part 8 (public rights of way) of Schedule 3 and identified on the streets rights of way and access plans are to be constructed by the undertaker in the specified locations and open for use on a date to be determined by the undertaker provided there are no materially new or adverse effects to those assessed in the environmental statement.

(8) On a date to be determined by the undertaker, the orders specified in column (3) of Part 7 (revocations & variations of existing traffic regulation orders) of Schedule 3 are to be varied or revoked as specified in the corresponding row of column (4) of that Part in respect of the lengths of roads specified in the corresponding row of column (2) of that Part.

(9) The application of paragraphs (1) to (8) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters, including by an instrument made under the 1984 Act where the matter in question could have been included in an order made under that Act or with the written consent of the Secretary of State.

Temporary stopping up and restriction of use of streets and highways

15.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter, divert or restrict the use of any street or highway and may for any reasonable time—

(a) divert the traffic from the street or highway; and

(b) subject to paragraph (3), prevent all persons from passing along the street or highway.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street or highway temporarily stopped up or restricted under the powers conferred by this article, and which is within the Order limits, as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street or highway affected by the temporary stopping up, alteration, diversion or restriction of a street or highway under this article if there would otherwise be no such access.

(4) The undertaker must not temporarily stop up, alter, divert or restrict the use of any street or highway for which it is not the street authority without the consent of the street authority, which

(**a**) As amended by section 22 of the 1991 Act, and by section 1 of, and Schedule 1 to, the Infrastructure Act 2015.

may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

(7) Any application for consent to which paragraph (6) applies must, on the letter accompanying the application, inform the street authority of the time period allowed by that paragraph (6), and inform them that if they do not respond before the end of the time period, then consent will be deemed to have been granted.

Permanent stopping up and restriction of use of streets and private means of access

16.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets and private means of access specified in columns (1) and (2) of Parts 1, 2, 3 and 4 of Schedule 4 (permanent stopping up of highways and private means of access & provision of new highways and private means of access) to the extent specified and described in column (3) of those Parts of that Schedule.

(2) No street or private means of access specified in columns (1) and (2) of Parts 2 and 4 of Schedule 4 (being a street or private means of access to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

(a) the new street or private means of access to be constructed and substituted for it, which is specified in column (4) of those Parts of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or

(b) a temporary alternative route for the passage of such traffic as could have used the street or private means of access to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street or private means of access until the completion and opening of the new street or private means of access in accordance with sub-paragraph (a).

(3) No street or private means of access specified in columns (1) and (2) of Parts 1 and 3 of Schedule 4 (being a street or private means of access to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street or private means of access to be stopped up.

(4) The condition referred to in paragraph (3) is that—

(a) the undertaker is in possession of the land;

(b) there is no right of access to the land from the street or private means of access concerned;

(c) there is reasonably convenient access to the land otherwise than from the street or private means of access concerned; or

(d) the owners and occupiers of the land have agreed to the stopping up.

(5) Where a street or private means of access has been stopped up under this article—

(a) all rights of way over or along the street or private means of access so stopped up are extinguished; and

(b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street or private means of access as is bounded on both sides by land owned by the undertaker.

(6) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) This article is subject to article 36 (apparatus and rights of statutory undertakers in stopped up streets).

Access to works

17. The undertaker may, for the purposes of the authorised development, form and lay out means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Clearways

18.—(1) From such day as the undertaker may determine, except as provided in paragraph (2), no person is to cause or permit any vehicle to wait on any part of the lengths of road described in column (2) of Part 5 (traffic regulation measures (clearways and prohibitions)) of Schedule 3 (classification of roads, etc.) where it is identified in the corresponding row of column (3) of that Part that such lengths of road are to become a clearway, except upon the direction of, or with the permission of, a uniformed constable or uniformed traffic officer.

(2) Nothing in paragraph (1) applies—

(a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—

(i) the removal of any obstruction to traffic;

(ii) the maintenance, improvement, reconstruction or operation of the road;

(iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any electronic communications apparatus as defined in Schedule 3A (the Electronic Communications Code) to the Communications Act 2003(**a**); or

(iv) any building operation or demolition;

(b) in relation to a vehicle being used—

(i) for police, ambulance, fire and rescue authority or traffic officer purposes;

(ii) in the service of a local authority, safety camera partnership or Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;

(iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(**b**); or

(iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services Act 2000(**c**); or

(c) in relation to a vehicle waiting when the person in control of it is—

(i) required by law to stop;

(ii) obliged to stop in order to avoid an accident; or

(iii) prevented from proceeding by circumstances outside the person's control.

(3) No person is to cause or permit any vehicle to wait on any part of the roads described in paragraph (1) for the purposes of selling, or dispensing of, goods from that vehicle, unless the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispensed.

(4) Paragraphs (1), (2) and (3) have effect as if made by order under the 1984 Act, and their application may be varied or revoked by an order made under that Act or any other enactment

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(**a**) 1984 c.12.
(**b**) 1991 c.56.
(**c**) 2000 c.26.

which provides for the variation or revocation of such orders or with the written consent of the Secretary of State.

(5) In this article, "traffic officer" means an individual designated under section 2 (designation of traffic officers) of the Traffic Management Act 2004(**a**).

Traffic regulation

19.—(1) This article applies to roads in respect of which the undertaker is not the traffic authority.

(2) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development—

(a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;

(b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;

(c) authorise the use as a parking place of any road;

(d) make provision as to the direction or priority of vehicular traffic on any road; and

(e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(3) The power conferred by paragraph (2) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (2) may have effect both before and after the expiry of that period.

(4) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).

(5) The undertaker must not exercise the powers conferred by paragraph (2) unless the undertaker has—

(a) given not less than—

(i) 12 weeks' notice in writing of the undertaker's intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or

(ii) 4 weeks' notice in writing of the undertaker's intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,

to the chief officer of police and to the traffic authority in whose area the road is situated; and

(b) advertised the undertaker's intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by the undertaker under paragraph (2)—

(a) has effect as if duly made by, as the case may be—

(i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or

(ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act,

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(**a**) 2004 c.18.

and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and

(b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(**a**).

(7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (2) within a period of 24 months from the opening of the authorised development.

(8) Before exercising the powers conferred by paragraph (2) the undertaker must consult such persons as the undertaker considers necessary and appropriate and must take into consideration any representations made to the undertaker by any such person.

(9) Expressions used in this article have the same meaning as in the 1984 Act.

(10) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

(11) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.

(12) Any application for consent to which paragraph (11) applies must, on the letter accompanying the application, inform the traffic authority of the time period allowed by that paragraph (11), and inform them that if they do not respond before the end of the time period, then consent will be deemed to have been granted.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

20.—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, maintenance or use of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(**b**).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(**a**) 2004 c.18.

(**b**) 1991 c.56. Section 106 was amended by section 35(1) and (8) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c.43) and 99 of the Water Act 2003 (c.37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c.29).

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to Homes England, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(**a**) have the same meaning as in that Act.

(7) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application, that person is deemed to have granted consent or given approval, as the case may be.

(8) Any application for consent to which paragraph (7) applies must, on the letter accompanying the application, inform the person who receives an application for consent of the time period allowed by that paragraph (7), and inform them that if they do not respond before the end of the time period, then consent will be deemed to have been granted.

(9) The undertaker must not, in carrying out or maintaining works under this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(10) Nothing in this article overrides the requirement for an environmental permit under article 12 of the Environmental Permitting (England and Wales) Regulations 2016.

Protective works to buildings

21.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or

(b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may (subject to paragraph (5)) enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works to a building under this article the undertaker may (subject to paragraphs (5) and (6))—

(a) enter the building and any land within its curtilage; and

(b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

(a) a right under paragraph (1) to carry out protective works to a building;

(b) a right under paragraph (3) to enter and survey any building and any land within its curtilage;

(c) a right under paragraph (4)(a) to enter a building and any land within its curtilage; or

(d) a right under paragraph (4)(b) to enter land,

(**a**) 1991 c.57.

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 49 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

(a) protective works are carried out under this article to a building; and

(b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152(**a**) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) In this article "protective works" in relation to a building means—

(a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and

(b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

Authority to survey and investigate the land

22.—(1) The undertaker may for the purposes of this Order enter on any land within the Order limits or which may be affected by the authorised development and—

(a) survey or investigate the land (including any watercourses, ground water, static water bodies or vegetation on the land);

(b) without limitation on the scope of sub-paragraph (a), make any excavations, trial holes or boreholes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer, subsoil and groundwater and remove soil and water samples and discharge water samples onto the land;

(c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes or boreholes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(**a**) As amended by S.I. 2009/1307.

(3) Any person entering land under this article on behalf of the undertaker—

(a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and

(b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes or boreholes.

(4) No trial holes or boreholes are to be made under this article—

(a) in land located within the highway boundary for which the local highway authority is the highway authority, without the consent of the local highway authority; or

(b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either the local highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

(a) under paragraph (4)(a) in the case of the local highway authority; or

(b) under paragraph (4)(b) in the case of a street authority,

that authority is deemed to have granted consent.

(7) Any application for consent to which paragraph (6) applies must, on the letter accompanying the application, inform the local highway authority or street authority of the time period allowed by that paragraph (6), and inform them that if they do not respond before the end of the time period, then consent will be deemed to have been granted.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

23.—(1) The undertaker may acquire compulsorily so much of the Order land as is required to carry out or to facilitate, or is incidental to, the authorised development, or is required as replacement land.

(2) This article is subject to paragraph (2) of article 26 (compulsory acquisition of rights) and paragraph (8) of article 33 (temporary use of land for carrying out the authorised development).

Compulsory acquisition of land – incorporation of the mineral code

24. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(**a**) are incorporated into this Order subject to the modifications that—

(a) paragraph 8(3) is not incorporated;

(b) for "the acquiring authority" substitute "the undertaker"; and

(c) for "undertaking" substitute "authorised development".

(**a**) 1981 c.67.

Time limit for exercise of authority to acquire land compulsorily

25.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

(a) no notice to treat is to be served under Part 1 of the 1965 Act; and

(b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 30 (application of the 1981 Act).

(2) The authority conferred by article 33 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker from remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

26.—(1) The undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 23 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive covenants as may be required for the purpose specified in relation to that land in column (2) of that Schedule and relating to that part of the authorised development specified in column (3) of that Schedule.

(3) The power to impose restrictive covenants under paragraph (1) is exercisable only in respect of plots specified in column (1) of Schedule 5.

(4) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants)), where the undertaker acquires a right over land or the benefit of a restrictive covenant, the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 6 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

Public rights of way

27.—(1) The public rights of way identified in columns (1) to (3) of Parts 1 and 2 of Schedule 4 (permanent stopping up of highways and private means of access & provision of new highways and private means of access) and shown on the streets rights of way and access plans are to be extinguished on the date of the expiry of the notice given under paragraph (2).

(2) Prior to the extinguishment of each of the public rights of way identified in columns (1) to (3) of Parts 1 and 2 of Schedule 4 and shown on the streets rights of way and access plans, the undertaker must erect a site notice at each end of the rights of way to be extinguished no less than 28 days prior to the extinguishment of that right of way.

(3) The notice to be erected under paragraph (2) must include—

(a) details of the public rights of way to be extinguished;

(b) the date on which the extinguishment will take effect;

(c) details of any public rights of way being provided in substitution; and

(d) details of the places where a copy of this Order and the documents listed in Schedule 10 (documents to be certified) may be inspected.

Private rights over land

28.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

(a) from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act,

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or burden of the restrictive covenant—

(a) from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker within the Order limits which are required to be interfered with or breached for the purposes of this Order are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 35 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of it;

(iii) the undertaker's entry onto it; or

(iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Modification of Part 1 of the 1965 Act

29.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1)(**a**) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4" substitute "section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 25 (time limit for exercise of authority to acquire land compulsorily) of the A38 Derby Junctions Development Consent Order 202[•]".

(3) In section 11A(**b**) (powers of entry: further notice of entry)—

(a) in subsection (1)(a), after "land" insert "under that provision"; and

(b) in subsection (2), after "land" insert "under that provision".

(4) In section 22(2) (interests omitted from purchase), for "section 4 of this Act" substitute "article 25 (time limit for exercise of authority to acquire land compulsorily) of the A38 Derby Junctions Development Consent Order 202[•]".

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

"(2) But see article 31(3) (acquisition of subsoil or airspace only) of the A38 Derby Junctions Development Consent Order 202[•], which excludes the acquisition of subsoil or airspace only from this Schedule"; and

(b) after paragraph 29, end insert—

"PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 21 (protective works to buildings), 33 (temporary use of land for carrying out the authorised development) or 34 (temporary use of land for maintaining the authorised development) of the A38 Derby Junctions Development Consent Order 202[•]."

Application of the 1981 Act

30.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of Act), for subsection 2 substitute—

"(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order."

(4) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from ", and this subsection" to the end.

(5) Omit section 5A(**c**) (time limit for general vesting declaration).

(**a**) As inserted by section 202(1) of the Housing and Planning Act 2016 (c.22).
(**b**) As inserted by section 186(3) of the Housing and Planning Act 2016 (c.22).
(**c**) Inserted by section 182(2) of the Housing and Planning Act 2016 (c.22).

(6) In section 5B(**a**) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A" substitute "section 118(**b**) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 25 (time limit for exercise of authority to acquire land compulsorily) of the A38 Derby Junctions Development Consent Order 202[•]".

(7) In section 6(**c**) (notices after execution of declaration), in subsection (1)(b), for "section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981" substitute "section 134(**d**) (notice of authorisation of compulsory acquisition) of the Planning Act 2008".

(8) In section 7 (constructive notice to treat), in subsection (1)(a), omit "(as modified by section 4 of the Acquisition of Land Act 1981)".

(9) In Schedule A1(**e**) (counter-notice requiring purchase of land not in general vesting declaration) for paragraph 1(2) substitute—

> "(2) But see article 31(3) (acquisition of subsoil or airspace only) of the A38 Derby Junctions Development Consent Order 202[•], which excludes the acquisition of subsoil or airspace only from this Schedule."

(10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 31(modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace only

31.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in paragraph (1) of article 23 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or the airspace over the land referred to in paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and

(c) Section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

Rights under or over streets

32.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised

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(**a**) As inserted by section 202(2) of Schedule 3 to the Housing and Planning Act 2016 (c.22).
(**b**) As amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25, to the Localism Act 2011 (c.20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c.2).
(**c**) As amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c.22).
(**d**) As amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 (c.20) and S.I. 2012/16.
(**e**) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c.22).

development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

(a) any subway or underground building; or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is a statutory undertaker to whom section 85 (sharing of cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

33.—(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 25(2) (time limit for exercise of authority to acquire land compulsorily)—

(a) enter on and take temporary possession of—

(i) the land specified in column (1) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and

(ii) any other Order land in respect of which no notice of entry has been served under section 11(**a**) (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act (other than in connection with the acquisition of rights only);

(b) remove any buildings and vegetation from that land;

(c) construct temporary works (including the provision of means of access) and buildings on that land; and

(d) construct any permanent works specified in relation to that land in column (2) of Schedule 7 (land of which temporary possession may be taken), or any other mitigation works required in connection with the authorised development as identified in the environmental statement.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(ii).

(3) The undertaker must not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 7 (land of which temporary possession may be taken); or

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(**a**) Section 11 was amended by section 14 of, paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No.1) and S.I. 2009/1307.

(b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the condition and level it was in on the date on which possession of the land was first taken by the undertaker or such other condition as may be agreed with the owners of the land; but the undertaker is not required to—

(a) replace a building removed under this article;

(b) restore the land on which any permanent works (including ground strengthening works) have been constructed under paragraph (1)(d); or

(c) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(5) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (4) does not prevent the undertaker giving up possession of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from—

(a) acquiring new rights over any part of that land under article 26 (compulsory acquisition of rights); or

(b) acquiring any part of the subsoil of or airspace over (or rights in the subsoil of or airspace over) that land under article 31 (acquisition of subsoil or airspace only).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(11) Section 13(**a**) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) Paragraph (1)(a)(ii) does not authorise the undertaker to take temporary possession of any land which the undertaker is not authorised to acquire under article 23 (compulsory acquisition of land) or article 26 (compulsory acquisition of rights).

Temporary use of land for maintaining the authorised development

34.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

(a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;

(**a**) Section 13 was amended by section 139, paragraph 27 of Schedule 13 and Schedule 23 of the Tribunals, Courts and Enforcement Act 2007 (c.15).

(b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and

(c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

(a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land explaining the purpose for which entry is to be taken.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the condition and level it was in on the date on which possession of the land was first taken by the undertaker or such other condition as may be agreed with the owners of the land.

(6) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (5) does not prevent the undertaker giving up possession of the land.

(7) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (7).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) In this article "the maintenance period", in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Statutory undertakers

35.—(1) Subject to the provisions of article 26(3) (compulsory acquisition of rights), Schedule 9 (protective provisions) and paragraph (2), the undertaker may—

(a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, any Order land belonging to statutory undertakers; and

(b) extinguish the rights of, or remove or reposition the apparatus belonging to, statutory undertakers over or within the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—

(a) Part 3 (street works in England and Wales) of the 1991 Act; and

(b) article 36 (apparatus and rights of statutory undertakers in stopped up streets).

Apparatus and rights of statutory undertakers in stopped up streets

36.—(1) Where a street is stopped up under article 16 (permanent stopping up and restriction of use of streets and private means of access), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 16 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

(a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or

(b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

(a) the execution of the relocation works required in consequence of the stopping up of the street; and

(b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

(a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

(a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and

(b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

"relocation works" means work executed, or apparatus provided, under paragraph (2); and

"statutory utility" means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(**a**).

Recovery of costs of new connections

37.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 35 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 35, any person who is—

(a) the owner or occupier of premises the drains of which communicated with that sewer; or

(b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 36 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this article—

"public communications provider" has the same meaning as in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003; and

"public utility undertaker" means a gas, water, electricity or sewerage undertaker.

Special category land

38.—(1) The special category land is not to vest in the undertaker until the undertaker has acquired the replacement land and the Secretary of State (in consultation with the relevant planning authority) has certified that a satisfactory scheme for the provision of the replacement land as open space and a satisfactory timetable for the implementation of the scheme has been received from the undertaker.

(2) On the requirements of paragraph (1) being satisfied, the special category land is to vest in the undertaker and be discharged from all rights, trusts and incidents to which it was previously subject.

(3) On the requirements of paragraph (1) being satisfied, the rights to be acquired over the special category (rights) land are to vest in the undertaker and the special category (rights) land is to be discharged from all private rights to which it was previously subject in accordance with article 28(2) (private rights over land).

(4) On the date on which the replacement land is laid out and provided in accordance with the scheme requirements at paragraph 38(1), the replacement land is to vest in the person(s) in whom the special category land was vested immediately before it was vested in the undertaker and is to be subject to the same rights, trusts and incidents as attached to the special category land.

(5) In this article—

"the special category land" means the land numbered 1/1c, 1/1d, 1/2, 1/4a, 1/4b, 2/1a, 2/1d, 2/1e, 2/1g, 2/1h, 2/1i, 2/2c, 2/5, 2/6, 2/7b, 2/10, 3/1u, 3/1y, 3/1z, 3/1aa, 3/2l, 3/2m, 3/2n, 3/2q,

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(**a**) 2003 c.21.

4/1a, 4/1e, 4/1g, 4/2a, 4/2e, 4/2f, 4/2g, 4/2h, 4/2i, 4/2j, 4/2k, 4/2l, 4/2o, 4/2p, 4/14 and 4/15 in the book of reference and on the special category land plans and forming part of open space which may be acquired compulsorily under this Order;

"the special category (rights) land" means the land numbered 1/4b, 2/1b, 2/1c, 2/1f, 2/7a, 2/8, 2/9, 3/1w, 3/1x, 4/1b and 4/1d in the book of reference and on the special category land plans and forming part of open space over which rights may be acquired compulsorily under this Order;

"the replacement land" means the land identified as such and numbered 2/1r, 2/1s, 2/2p, 2/2q, 2/2s, 2/2t, 3/1y, 3/2r, 3/22c, 3/23, 3/24, 3/25, 3/26, 3/27, 4/1a, 4/2a, 4/2b, 4/2c, 4/2d, 4/2e, 4/2f, 4/2g, 4/2h, 4/2i, 4/2j, 4/2k, 4/2l, 4/2m, 4/2n, 4/2o, 4/2p, 4/3, 4/4, 4/5, 4/6, 4/7a, 4/7b, 4/7c, 4/8, 4/9, 4/10, 4/11, 4/12, 4/13a, 4/14 and 4/15 in the book of reference and on the special category land plans.

PART 6

OPERATIONS

Felling or lopping of trees and removal of hedgerows

39.—(1) The undertaker may fell or lop any tree or shrub, or cut back its roots, within or overhanging land within the Order limits if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph 39(1), the undertaker must—

(a) do no unnecessary damage to any tree or shrub;

(b) pay compensation to any person for any loss or damage arising from such activity; and

(c) take steps to avoid a breach of the provisions of the Wildlife and Countryside Act 1981(**a**) and the Conservation of Habitats and Species Regulations 2017(**b**) or any successor acts and regulations.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits and as shown on the hedgerows plans that is required to be removed.

(5) In this article "hedgerow" has the same meaning as in the Hedgerows Regulations 1997(**c**) and includes important hedgerows.

Trees subject to tree preservation orders

40.—(1) The undertaker may fell or lop any tree described in Schedule 8 (trees subject to tree preservation orders), cut back its roots or undertake such other works described in column (2) of that Schedule relating to the relevant part of the authorised development described in column (3) of that Schedule, if the undertaker reasonably believes it to be necessary to do so to prevent the tree or shrub—

(**a**) 1981 c.69.
(**b**) S.I. 2017/1012.
(**c**) S.I.1997/1160.

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

(a) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity;

(b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act is not to apply although where possible the undertaker is to seek to replace any trees which are removed; and

(c) the undertaker must consult the relevant planning authority prior to that activity taking place.

(3) The authority given in paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

PART 7

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

41.—(1) This article applies to—

(a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

42. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.

Defence to proceedings in respect of statutory nuisance

43.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(**a**) in relation to a nuisance falling within paragraph (g) or (ga) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(**b**); or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(iii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protective provisions

44. Schedule 9 (protective provisions) has effect.

Crown Rights

45.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee—

(a) to take, use, enter upon or in any manner interfere with any land or rights of any description—

(i) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;

(ii) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land;

(iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or

(b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown Land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

(**a**) 1990 c.43.
(**b**) 1974 c.40.

Certification of plans etc.

46.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of each of the plans and documents set out in Schedule 10 (documents to be certified) for certification that they are true copies of the plans and documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

47.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

(a) by post;

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(**a**) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) addressing it to that person by name or by the description of "owner", or as the case may be "occupier", of the land (describing it); and

(b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

(a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;

(b) the notice or document is capable of being accessed by the recipient;

(c) the notice or document is legible in all material respects; and

(d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(**a**) 1978 c.30.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article "legible in all material respects" means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

48. Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Removal of human remains

49.—(1) In this article "the specified land" means the land within the Order limits.

(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Before any such remains are removed from the specified land the undertaker must give notice of the intended removal describing the specified land and stating the general effect of the following provisions of this article by—

(a) publishing a notice for two successive weeks in a newspaper circulating in the area of the authorised development; and

(b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the relevant planning authority.

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

(a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or

(b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must be determined on the application of either party in a summary

manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

(a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or

(b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or

(c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or

(d) it is determined that the remains to which any such notice relates cannot be identified,

then subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves are to be re-interred in individual containers which are to be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

(a) a certificate of re-interment or cremation is to be sent to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and

(b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the undertaker to the relevant planning authority.

(12) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(14) Section 25 of the Burial Act 1857(**a**) (offence of removal of body from burial ground) does not apply to a removal carried out in accordance with this article.

Appeals relating to the Control of Pollution Act 1974

50.—(1) The undertaker may appeal in the event that a local authority issues a notice under section 60 (control of noise on construction sites), or does not give consent or grants consent but subject to conditions, under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974.

(2) The appeal process is as follows—

(a) any appeal by the undertaker must be made within 21 days of the date of the notice of the decision, or the date by which a decision was due to be made, as the case may be;

(b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the local authority and

(**a**) 1857 c.81.

affix a notice to a conspicuous object on or near the site of the works which are the subject of such appeal, which must give details of the decision of the local authority and notice that an appeal has been made together with the address within the locality where the appeal documents may be inspected and details of the manner in which representations on the appeal may be made;

(c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal ("the appointed person") and must notify the appeal parties of the identity of the appointed person, a start date and the address to which all correspondence for their attention should be sent;

(d) the local authority must submit their written representations to the appointed person in respect of the appeal within 10 business days of the start date and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

(e) the appeal parties must make any counter-submissions to the appointed person within 10 business days of receipt of written representations under sub-paragraph (d); and

(f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(3) The appointment of the person under sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal, the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required under sub-paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 business days of the agreed date but must otherwise be in accordance with the process and time limits set out in sub-paragraphs 50(2)(c) to 50(2)(e).

(6) On an appeal under this paragraph, the appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the local authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(7) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside the relevant time limits.

(8) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(9) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(10) Except where a direction is given under sub-paragraph (11) requiring some or all of the costs of the appointed person to be paid by the local authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) The appointed person may give directions as to the costs of the appeal and as to the parties by whom such costs are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the relevant Planning Practice Guidance published by the Department for Communities and Local Government or such guidance as may from time to time replace it.

Signed by authority of the Secretary of State for Transport

Signed
Title
Date Department

SCHEDULES

SCHEDULE 1 Articles 2, 5 and 6

AUTHORISED DEVELOPMENT

The authorised development is a nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act, and associated development within the meaning of section 115(2) of the 2008 Act, comprising:

In the administrative area of Derby City Council:

Kingsway

Work No.1 – shown on sheet(s) no.1 of the works plans being the alteration, re-alignment and grading of the northbound and southbound lanes of the A38 totalling approximately 1.2 kilometres in length to include –

(a) the construction of a drainage attenuation pond and pipe outfall into Bramble Brook adjacent to the altered A38 (Work No.1) including a private means of access;

(b) the diversion of the existing Bramble Brook and connection into a new section of culvert;

(c) the construction of a flood storage area with piped outfall return to Bramble Brook adjacent to the drainage attenuation pond (Work No. 1(a));

(d) the extension of the existing Bramble Brook culvert 152 metres in length;

(e) the extension of the existing Bramble Brook culvert for a length of 30 metres in a north westerly direction below the southbound A38 merge slip road (Work No. 5) and the realigned A38 (Work No.1);

(f) the construction of flood storage areas;

(g) the improvement of a non-segregated footway/cycle track 80 metres in length on each side of Lyttelton Street;

(h) the construction of a gantry or similar signage 55m south of the southbound A38 diverge slip road (Work No. 4) at chainage 1850m;

(i) the widening of the Brackensdale Avenue east and west underbridges;

(j) works to effect the stopping up of part of the entry and exit lanes off Brackensdale Avenue which connect to the A38;

(k) the construction of a gantry or similar signage at chainage 2080m;

(l) works to effect the stopping up of the entry and exit lanes of Raleigh Street which connect to the A38; and

(m) the alteration of part of Brackensdale Avenue slip road which connects to the A38.

Work No. 2 – shown on sheet no. 1 of the works plans being the construction of a northbound diverge slip road off the A38 570 metres in length that begins at the realigned A38 (Work No. 1) and connects to the Kingsway West Roundabout (Work No. 6(a)) to include—

(a) the construction of highway drainage attenuation, outfall and access.

Work No. 3 - shown on sheet no. 1 of the works plans being the construction of a northbound merge slip road 550 metres in length off the Kingsway West Roundabout (Work No. 6(a)) connecting into the realigned A38 (Work No. 1), to include –

(a) the construction and realignment of a section of the National Cycling Network (No. 68 & 54) and the Regional Route (No. 66) 170 metres in length, as shown on the streets rights of way and access plan.

Work No. 4 – shown on sheet no. 1 of the works plans being the construction of a southbound A38 diverge slip road 540 metres in length that begins at the realigned A38 (Work No. 1) and connects into the Kingsway East Roundabout (Work No. 6(b)).

Work No. 5 – shown on sheet no. 1 of the works plans being the construction of a southbound A38 merge slip road 510 metres in length beginning at the Kingsway East Roundabout (Works No. 6(b)) and connecting to the realigned A38 (Work No. 1)

Work No. 6 – shown on sheet no. 1 of the works plans being the alteration, realignment and grading of the A5111, to include –

(a) the construction of a roundabout (the Kingsway West Roundabout) connecting to the northbound diverge slip road (Work No. 2) and the northbound merge slip road (Work No. 3);

(b) the construction of a roundabout (the Kingsway East Roundabout) connecting to the southbound diverge slip road (Work No. 4) and the southbound merge slip road (Work No. 5);

(c) the construction of a link road 65 metres in length connecting the Kingsway East Roundabout and the Kingsway West Roundabout including the construction of an over bridge;

(d) the construction of 2 controlled crossings in an east and west bound direction;

(e) the construction, improvement and widening of an existing footway to a non-segregated footway/cycle track 110 metres in length;

(f) the construction, improvement and widening of an existing footway to a non-segregated footway/cycle track 20m in length; and

(g) the construction of a footway/cycle track 300 metres in length linking the A5111 Kingsway to Greenwich Drive south and the National Cycle Routes

Work No. 7 – shown on sheet no. 1 of the works plans being the construction of a link road 220 metres in length connecting the Kingsway East Roundabout (Work No. 6(b)) and Kingsway Park Close to include –

(a) the construction of a new junction and footways;

(b) the reconfiguration of the existing junction between Lyttelton Street and Kingsway Park Close; and

(c) the construction, improvement and realignment of the existing footway/cycle track approximately 50m in length including a controlled crossing

Work No. 8 – shown on sheet no. 1 of the works plans being the establishment of environmental mitigation areas to the west and east of the realigned A38 (Work No. 1) at

(a) Mackworth Park; and

(b) Kingsway Hospital.

Work No. 9 – shown on sheet no. 1 of the works plans being the diversion of utilities to accommodate the realignment of the A38, to include the diversion of:

(a) an 11kV electricity cable by 720 metres;

(b) an 11kV electricity cable by 137 metres;

(c) an 11kV electricity cable by 115 metres;

(d) an 11kV electricity cable by 115 metres;

(e) a telecoms cable by 45 metres;

(f) a telecoms cable by 72 metres;

(g) a foul sewer pipe by 33 metres;

(h) a water trunk main by 474 metres;

(i) a water trunk main by 61 metres;

(j) an 11 kV electricity cable by 61 metres;

(k) a 132 kV electricity cable by 61 metres; and

(l) a gas main by 61 metres.

Markeaton

Work No.10 shown on sheet no. 2 of the works plans and being the alteration, realignment and grading of the northbound and southbound lanes of the A38 totalling 1.25 kilometres in length to include –

(a) the construction of a gantry or similar signage 105 metres south of the A38 northbound diverge slip road (Work No. 11) at chainage 2310;

(b) the construction of a gantry or similar signage 115 metres south of the A38 northbound merge slip road (Work No. 12) at chainage 2890;

(c) the demolition of the existing Markeaton Park footbridge and the construction of a replacement footbridge including reconfigured ramps and steps;

(d) the construction of a gantry or similar signage 20 metres south of the northbound diverge slip road connecting to Kedleston Road (Work No. 17) at chainage 3250; and

(e) the construction of a gantry or similar signage 70 metres north of the A38 northbound diverge slip road (Work No. 17) at chainage 3375.

Work No. 11 – shown on sheet no. 2 of the works plans and being the construction of a northbound diverge slip road 330 metres in length beginning at the realigned A38 (Work No. 10) and connecting to Markeaton Junction Roundabout (Work No. 16(a)), to include –

(a) the construction of a gantry or similar signage 35 metres north of the northbound A38 diverge slip road (Work No. 11) at chainage 2500;

(b) works to effect the stopping up of Enfield Road entry and exit roads onto the realigned A38 including a turning head (Work No. 10); and

(c) amendments to the access and egress for the filling station and fast-food site.

Work No. 12 – shown on sheet no. 2 of the works plans and being the construction of a northbound merge slip road 255 metres in length beginning at the Markeaton Junction Roundabout (Work No. 16(a)) and connecting to the realigned A38 (Work No. 10).

Work No. 13 – shown on sheet no. 2 of the works plans and being the construction of a southbound diverge slip road 275 metres in length beginning at the realigned A38 (Work No. 10) and connecting to Markeaton Junction Roundabout (Work No. 16(a)), to include –

(a) the construction of a pumping station adjacent to the realigned A38 (Work No. 10) to include associated drainage works;

(b) a pond; and

(c) an access track and footway/cycle track.

Work No. 14 – shown on sheet no. 2 of the works plans and being the construction of a southbound merge slip road 280 metres in length beginning at the Markeaton Junction Roundabout (Work No. 16(a)) and connecting to the realigned A38 (Work No. 10)

Work No. 15 – shown on sheet no. 2 of the works plans and being the construction, improvement and realignment of the existing cycle Regional Route (No. 66) 1.2 kilometres in length adjacent to the realigned A38 (Work No. 10).

Work No. 16 – shown on sheet no. 2 of the works plans and being the alteration realignment and grading of the A52, to include –

(a) the construction of a roundabout (the Markeaton Junction Roundabout) connecting the realigned A52 (Work No. 16) with the northbound A38 diverge and merge slip roads (Work Nos 11 and 12) and the southbound A38 diverge and merge slip roads (Work Nos 13 and 14) including the construction of two over bridges;

(b) the construction of a new junction for access to and egress from Markeaton Park 110 metres in length including a roundabout and a park & ride bus stop;

(c) the construction and alteration of a private means of access to Sutton Close and 253 and 255 Ashbourne Road;

(d) works to the entrance of Markeaton Park and the construction of a new emergency only access from Markeaton Park 20 metres in length;

(e) relocation of approximately 186m in length of the boundary wall to Markeaton Park;

(f) alterations to the access to and egress from the filling station and fast-food site;

(g) alterations to the access to and egress from the A52 to the Royal School for the Deaf; and

(h) removal and relocation of a mobile phone mast.

Work No. 17 - shown on sheet no. 2 of the works plans and being the realignment and grading of the A38 northbound diverge slip road 200 metres in length connecting to the realigned A38 (Work No. 10) to Kedleston Road.

Work No. 18 - shown on sheet no. 2 of the works plans and being the realignment and grading of the A38 southbound merge slip road 185 metres in length connecting Kedleston Road with the realigned A38 (Work No. 10).

Work No. 19 – shown on sheet no. 2 of the works plans and being the construction of a temporary compound area/material storage area.

Work No. 20 – shown on sheet no. 2 of the works plans being the establishment of environmental mitigation areas to the west and east of the realigned A38 (Work No. 10).

Work No. 21 – shown on sheet No. 2 of the works plans being the diversion and construction of a utility corridor housing multiple utility apparatus as specified in this work no., including the diversion of:

(a) an 11kv cable by 627 metres;

(b) an 11kv cable by 625 metres;

(c) an 11kv cable by 623 metres;

(d) a foul sewer pipe by of 480 metres;

(e) a foul sewer pipe by of 269 metres;

(f) a foul sewer pipe by of 506 metres;

(g) a cadent medium pressure pipe by 654 metres;

(h) a combined sewer pipe by 512 metres;

(i) a mains water pipe by 491 metres;

(j) a telecoms cable by 1146 metres;

(k) a telecoms cable by 785 metres; and

(l) a telecoms cable by 847 metres.

Work No. 22 – shown on sheet no. 2 of the works plans being the diversion of utilities to accommodate the realignment of the A38 (Work No. 10), to include the diversion of:

(a) an 11kV electricity cable by 309 metres;

(b) an 11kV electricity cable by 7 metres;

(c) a water trunk main by 773 metres;

(d) a foul sewer pipe by 308 metres;

(e) a foul sewer pipe by 25 metres;

(f) a telecoms cable by 28 metres;

(g) a telecoms cable by 414 metres; and

(h) a telecoms cable by 17 metres.

In the administrative area of Derby City Council, Derbyshire County Council and Erewash Borough Council:

Little Eaton

Work No. 23 – shown on sheet no.3 of the works plans and being the alteration, re-alignment and grading of the northbound and southbound lanes of the A38 totalling 1.3 kilometres in length to include –

(a) works to effect the stopping up and diversion of a section of the Breadsall Footpath (No. 7) 100 metres in length as shown on the streets rights of way and access plan and works to effect the stopping up and diversion of a private means of access 100 metres in length;

(b) the alteration and extension of the existing flood arch bridge;

(c) the alteration and extension of the existing railway bridge;

(d) the construction of two new bridges over Little Eaton Roundabout (Work No. 30(a)).

Work No. 24 – shown on sheet no. 3 of the works plans and being the construction of a northbound diverge slip road 215 metres in length beginning at the realigned A38 (Work No. 23) and connecting to Little Eaton Roundabout (Work No. 30(a)).

Work No. 25 – shown on sheet no.3 of the works plans and being the construction of a northbound merge slip road 380 metres in length beginning at Little Eaton Roundabout (Work No. 30(a)) and connecting to the realigned A38 (Work No. 23).

Work No. 26 – shown on sheet no. 3 of the works plans and being the construction of a southbound diverge slip road 540 metres in length beginning at the realigned A38 (Work No. 23) and connecting to Little Eaton Roundabout (Work No. 30(a)), to include –

(a) the alteration and extension of an existing culvert 125 metres in length;

(b) the alteration and extension of an existing culvert 290 metres in length under the realigned A38 (Work No. 23);

(c) the diversion of the existing Dam Brook watercourse by 340 metres connecting to the culvert beneath the A61 (Alfreton Road);

(d) works to effect the stopping up and diversion of a section of the Breadsall Foot Path (No. 3) for a distance of 405 metres as shown on the streets rights of way and access plan;

(e) the construction of two drainage attenuation ponds and piped outfall into Dam Brook including the construction of a private access to the attenuation ponds;

(f) ecology mitigation including ponds;

(g) the construction of a segregated left lane to the A61; and

(h) a flood alleviation channel including environmental mitigation measures.

Work No. 27 – shown on sheet no. 3 of the works plans and being the construction of a southbound merge slip road 280 metres in length beginning at the Little Eaton Roundabout (Work No. 30(a)) and connecting to the realigned A38 (Work No. 23).

Work No. 28 – shown on sheet no.3 of the works plans and being the works to stop up Ford Lane, to include –

(a) the construction of a turning head.

Work No. 29 – shown on sheet no.3 of the works plans and being works to alter Ford Lane Bridge.

Work No. 30 – shown on sheet No. 3 of the works plans and being the alteration, realignment and grading of the A61 (Alfreton Road), to include –

(a) the alteration of a roundabout (Little Eaton Roundabout) connecting the realigned A61 (Work No. 30) with the northbound A38 diverge and merge slip roads (Works Nos 24 and 25) the southbound A38 merge slip roads (Works Nos 26 and 27) the realigned B6179 (Work No. 30(b)) and Ford Lane (Work No. 30(c));

(b) the realignment and grading of the B6179 to connect to Little Eaton Roundabout (Work No. 30(a));

(c) the realignment and grading of Ford Lane to connect with Little Eaton Roundabout (Work No. 30(a));

(d) the construction and diversion of the existing National Cycle Network Route No. 54 around Little Eaton Roundabout (Work No. 30(a)) connecting to the B6179 for 340 metres; and

(e) works to effect the stopping up and relocation of the private means of access adjacent to the realigned Alfreton Road.

Work No 31 – shown on sheet no. 3 of the works plans and being the construction of a flood plain compensation area from the River Derwent adjacent to the existing A38 including access; and

(a) the diversion of a foul sewer by approximately 244 metres in length.

Work No 32 – shown on sheet no. 3 of the works plans and being the erection and accommodation of a temporary works compound.

Work No 33 – shown on sheet no. 3 of the works plans and being the realignment of Ford Lane and reconfiguration of the junction with Lambourn Drive.

Work No. 34 – shown on sheet no. 3 of the works plans and being the reconfiguration of the junction between the A6 Duffield Road and Ford Lane.

Work No. 35 – shown on sheet no. 3 of the works plans being the diversion of utilities to accommodate the realignment of the A38, to include the diversion of:

(a) an 11kV electricity cable by 106 metres;

(b) an 11kV electricity cable by 409 metres;

(c) a water trunk main by 326 metres;

(d) a water trunk main by 332 metres;

(e) a foul sewer pipe by 521 metres;

(f) a cadent medium pressure gas pipe by 192 metres;

(g) a telecoms cable by 84 metres;

(h) a telecoms cable by 221 metres;

(i) a combined sewer pipe by 86 metres; and

(j) an 11 kV electricity cable by 211 metres.

Work No. 36 – shown on sheets nos 1, 2, 3 and 4 of the works plans being the installation of advanced directional signage, safety barriers and associated equipment.

Work No. 37 – shown on sheet no. 3 of the works plans being the establishment of environmental mitigation areas to the north of the realigned A38 (Work No. 10).

In connection with the construction of any of those works, further development within the Order limits consisting of—

(a) alteration to the layout of any street permanently or temporarily, including but not limited to increasing or reducing the width of the carriageway of the street by reducing or increasing the width of any kerb, footpath, footway, cycle track or verge within the street; and altering the level of any such kerb, footpath, footway, cycle track or verge;

(b) works required for the strengthening, improvement, maintenance or reconstruction of any street;

(c) refurbishment works to any existing bridge;

(d) the strengthening, alteration or demolition of any structure;

(e) ramps, means of access including private means of access, public rights of way, cycle tracks and crossing facilities;

(f) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, barriers, pumping stations, parapets, drainage, outfalls, ditches, wing walls, highway lighting, fencing and culverts;

(g) street works, including breaking up or opening up a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street;

(h) works to place, alter, remove or maintain street furniture or apparatus in a street, or apparatus in other land, including mains, sewers, drains, pipes, cables, ducts and lights;

(i) works to alter the course of or otherwise interfere with a watercourse, including private water supplies;

(j) landscaping, noise bunds and barriers, works associated with the provision of ecological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;

(k) works for the benefit or protection of land affected by the authorised development;

(l) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures, earthworks (including soil stripping and storage, site levelling), remediation of contamination;

(m) the felling of trees;

(n) working sites, storage areas, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction-related buildings, temporary worker accommodation facilities, welfare facilities, construction lighting, haulage roads and other buildings, machinery, apparatus, works and conveniences; and

(o) the provision of other works including pavement works, kerbing and paved areas works, signing, signals, gantries, road markings works, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development.

SCHEDULE 2

Article 5

REQUIREMENTS

PART 1

REQUIREMENTS

Interpretation

1. In this Schedule—

"CEMP" means the construction environmental management plan;

"contaminated land" has the same meaning as that given in section 78A of the Environmental Protection Act 1990;

"core hours" means the working hours of 7:30 to 18:00 Monday to Friday excluding Bank Holidays and 8:00 to 13:00 on Saturdays;

"County Archaeologist" means the individual nominated or appointed as such by the relevant planning authority;

"Ecological Clerk of Works" means the individual appointed as such by the undertaker;

"HEMP" means the handover environmental management plan, being the CEMP to be developed towards the end of the construction of the authorised development which is to contain—

(a) the environmental information needed for the future maintenance and operation of the authorised development;

(b) the long-term commitments to aftercare, monitoring and maintenance activities relating to the environmental features and mitigation measures that will be required to ensure the continued long-term effectiveness of the environmental mitigation measures as set out in the OEMP and the prevention of unexpected environmental impacts during the operation of the authorised development; and

(c) a record of the consents, commitments and permissions resulting from liaison with statutory bodies;

"preliminary works" means the works set out in table 1.1 of the outline environmental management plan and for the purposes of these requirements the preliminary works are a part and where any requirement allows discharge for a part, discharge may be sought for the preliminary works only;

"protected species" means species which are subject to protection under the laws of England or which are European protected species.

Time limits

2. The authorised development must not commence later than the expiration of 5 years beginning with the date on which this Order comes into force.

Construction Environmental Management Plan

3.—(1) No part of the authorised development is to commence until a CEMP for that part has been prepared in consultation with the relevant planning authority, the local highway authority and the Environment Agency and submitted to and approved in writing by the Secretary of State.

(2) The CEMP must—

(a) be substantially in accordance with the outline environmental management plan certified under article 46 (certification of plans etc.);

(b) contain a record of all the sensitive environmental features that have the potential to be affected by the construction of the proposed development;

(c) incorporate the measures referred to in the environmental statement as being incorporated in the CEMP;

(d) require adherence to the core hours, except for—

(i) night time closures for Markeaton footbridge demolition and installation of a new footbridge;

(ii) junction and slip road tie-in works to existing highways;

(iii) installation of bridge decks;

(iv) installation of sign gantries;

(v) installation of temporary and permanent line markings;

(vi) overnight traffic management measures, as agreed with the local highway authority;

(vii) works associated with traffic management and signal changes; and

(viii) any emergency works.

Provided that written notification of the extent, timing and duration of each activity is given to relevant local authorities in advance of any works that are to be undertaken outside of core hours, except for any emergency works, which are to be notified to the relevant local authorities as soon as is practicable.

Any other work carried out outside the core hours or any extension to the core hours will only be permitted if there has been prior written agreement of the relevant environmental health officer provided that the activity does not result in materially new or materially worse environmental effects as reported in the environmental statement.

(3) The authorised development must be constructed in accordance with the approved CEMP.

(4) Prior to completion of construction the undertaker will prepare a HEMP in consultation with the relevant planning authority, the local highway authority and the Environment Agency and submit it to the Secretary of State for its written approval.

(5) Upon completion of construction of the authorised development the CEMP must be converted into the HEMP as approved under sub-paragraph (4). The HEMP must:

(a) be substantially in accordance with the relevant HEMP provisions included in the OEMP and CEMP;

(b) contain a record of all the sensitive environmental features that have the potential to be affected by the operation and maintenance of the proposed development; and

(c) incorporate the measures referred to in the environmental statement as being incorporated in the HEMP.

(6) The authorised development must be operated and maintained in accordance with the HEMP approved under sub-paragraph (5).

Details of consultation

4.—(1) With respect to any requirement which requires details to be submitted to the Secretary of State for approval under this Schedule following consultation with another party, the details submitted must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted and the undertaker's response to that consultation.

(2) At the time of submission to the Secretary of State for approval, the undertaker must provide a copy of the summary report referred to under sub-paragraph (1) to the relevant consultees referred to in the requirement in relation to which approval is being sought from the Secretary of State.

(3) The consultation with another party referred to under sub-paragraph (1) is to be for a minimum period of 28 days unless otherwise agreed in writing by the relevant consultee.

(4) The undertaker must ensure that any consultation responses are reflected in the details submitted to the Secretary of State for approval under this Schedule, but only where it is appropriate, reasonable and feasible to do so, taking into account considerations including, but not limited to, cost and engineering practicality.

(5) Where the consultation responses are not reflected in the details submitted to the Secretary of State for approval, the undertaker must state in the summary report referred to under sub-paragraph (1) the reasons why the consultation responses have not been reflected in the submitted details.

Landscaping

5.—(1) No part of the authorised development other than the preliminary works is to commence until a written landscaping scheme for that part has been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority and the local highway authority.

(2) No part of the authorised development, is to commence until an arboricultural walkover survey and tree survey for that part, taking due regard to the guidance in British Standard 5837:2012, have been undertaken to identify any significant constraints posed by trees.

(3) The landscaping scheme prepared under sub-paragraph (1) must be based on the outline environmental management plan and the results of the surveys undertaken under sub-paragraph (2).

(4) The landscaping scheme prepared under sub-paragraph (1) must include details of hard and soft landscaping works, including—

(a) location, number, species, size and planting density of any proposed planting;

(b) cultivation, importing of materials and other operations to ensure plant establishment;

(c) proposed finished ground levels;

(d) hard surfacing materials;

(e) details of existing trees to be retained, with measures for their protection during the construction period; and

(f) implementation timetables for all landscaping works.

Implementation and maintenance of landscaping

6.—(1) All landscaping works must be carried out in accordance with the landscaping scheme approved under Requirement 5.

(2) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(3) Any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

Fencing

7. Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with the Manual of Contract Documents for Highway Works except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development.

Land and groundwater contamination

8.—(1) No part of the authorised development is to commence until a contamination risk assessment has been produced for that part which is to include details of—

(a) any existing sources of contamination within the Order limits that may be affected by the carrying out of the authorised development;

(b) any reasonably required protective measures to ensure that the carrying out of the authorised development does not make worse any adverse conditions or risks associated with such existing sources of contamination; and

(c) appropriate remediation strategies and mitigation measures to address any historic contamination which is shown to be having significant, unacceptable effects on the environment within the context of the proposed works,

and the assessment has been submitted to and approved in writing by the Secretary of State following consultation with the Environment Agency.

(2) The steps and measures that are identified as necessary for the purposes of carrying out the authorised development in the assessment referred to in sub-paragraph (1) must be implemented as part of the authorised development.

(3) In the event that contaminated material which was not previously identified in the environmental statement, including impacted groundwater, is found at any time when carrying out the authorised development, the undertaker must cease construction of the authorised development in the vicinity of that contamination and must report it immediately in writing to the Secretary of State, the Environment Agency and the relevant planning authority, and in agreement with the Environment Agency and the relevant planning authority undertake a risk assessment of the contamination, and sub-paragraphs (4) and (5) will apply.

(4) Where the undertaker determines that remediation is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be prepared submitted to and approved in writing by the Secretary of State following consultation with the Environment Agency and the relevant planning authority.

(5) Remedial measures must be carried out in accordance with the approved scheme.

Archaeology

9.—(1) No part of the authorised development is to commence until for that part a scheme for the investigation and mitigation of areas of archaeological interest, reflecting the mitigation measures included in chapter 6 of the environmental statement, with provision for sub-written schemes of investigation for each area and each phase (evaluation or detailed excavation or watching brief), has been prepared in consultation with the relevant planning authority, agreed with the County Archaeologist and submitted to and approved in writing by the Secretary of State.

(2) The authorised development must be carried out in accordance with the archaeological framework strategy and sub-written schemes of investigation referred to in sub-paragraph (1) unless otherwise agreed in writing by the Secretary of State.

(3) A programme of archaeological reporting, post excavation and publication required as part of the archaeological framework strategy and sub-written schemes of investigation referred to in sub-paragraph (1) must be agreed with the County Archaeologist and implemented within a timescale agreed with the County Archaeologist and deposited with the Historic Environment Record of the relevant planning authority within two years of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority.

(4) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be—

(a) retained in situ and reported to the County Archaeologist as soon as reasonably practicable; and

(b) subject to appropriate mitigation as set out in the archaeological framework strategy and mitigation agreed with the County Archaeologist.

(5) No construction operations are to take place within 10 metres of the remains referred to in sub-paragraph (4) for a period of 14 days from the date the remains are reported to the County Archaeologist under sub-paragraph (4) unless otherwise agreed in writing by the Secretary of State.

(6) On completion of the authorised development, suitable resources and provisions for long term storage of the archaeological archive will be agreed with the County Archaeologist.

Protected species

10.—(1) In the event that any protected species which were not previously identified in the environmental statement or nesting birds are found at any time when carrying out the authorised development the undertaker must cease construction works near their location and report it immediately to the Ecological Clerk of Works.

(2) The undertaker must prepare a written scheme for the protection and mitigation measures for any protected species that were not previously identified in the environmental statement or nesting birds found when carrying out the authorised development in consultation with Natural England. Where nesting birds are identified works should cease within 10 metres of the nest until birds have fledged and the nest is no longer in use.

(3) The undertaker must implement the written scheme prepared under sub-paragraph (2) immediately and construction in the area specified in the written scheme must not recommence until any necessary licences are obtained to enable mitigation measures to be implemented.

Traffic management

11.—(1) No part of the authorised development other than the preliminary works is to commence until a traffic management plan for the construction of the authorised development substantially in accordance with the traffic management plan (application document reference 7.4) has been submitted to and approved in writing by the Secretary of State following consultation with the local highway authority.

(2) The authorised development must be constructed in accordance with the approved traffic management plan.

Detailed design

12.—(1) The authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the works plans and the engineering section drawings, unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority and local highway authority on matters related to their functions and provided that the Secretary of State is satisfied that any amendments to the works plans and the engineering section drawings showing departures from the preliminary design would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement.

(2) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding works plans or engineering section drawings and the undertaker must make those amended details available in electronic form for inspection by members of the public.

Surface and foul water drainage

13.—(1) No part of the authorised development other than the preliminary works is to commence until written details of the surface and foul water drainage system, reflecting the mitigation measures in the CEMP and in chapter 13 of the environmental statement, including

means of pollution control, have been submitted to, and approved in writing, by the Secretary of State following consultation with the relevant planning authority and the local highway authority.

(2) The drainage system must be constructed in accordance with the approved details referred to in sub-paragraph (1) unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority and the local highway authority.

(3) The surface and foul water drainage system must be constructed in accordance with the approved details referred to in sub-paragraph (1) and subsequently maintained.

Flood compensation and storage

14.—(1) No part of the authorised development at Little Eaton is to commence until a detailed floodplain compensation scheme for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the Environment Agency.

(2) No part of the authorised development at Kingsway is to commence until a detailed flood storage scheme for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority.

(3) The scheme prepared under sub-paragraph (1) must provide suitable floodplain compensation for any flood waters that would be displaced by the authorised development in the 1 in 100 year event including 50% allowance for climate change.

(4) The scheme prepared under sub-paragraph (2) must provide suitable flood storage for any flood waters that would be displaced by the authorised development in the 1 in 100 year event including a 40% allowance for climate change.

(5) The schemes must be fully implemented as approved and subsequently maintained.

Noise Mitigation

15.—(1) No part of the authorised development is to commence until written details of proposed noise mitigation in respect of the use and operation of that part of the authorised development have been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority.

(2) The written details referred to in sub-paragraph (1) must either reflect the mitigation measures included in the environmental statement and the noise barriers must be provided in the locations shown on the environmental mitigation plan(s) or, where the mitigation proposed materially differs from the mitigation identified in the environmental statement, the undertaker must provide evidence with the written details submitted that the mitigation proposed would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement.

(3) The noise mitigation must be constructed in accordance with the approved details referred to in sub-paragraph (1) and must be retained thereafter.

Highway lighting

16.—(1) No part of the authorised development is to commence until a written scheme of the proposed highway lighting to be provided for that part of the authorised development has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and (in the case of proposed lighting for any highway for which the undertaker is not, or will not be following implementation of article 16, the highway authority) the local highway authority.

(2) The standard of the highway lighting to be provided by the scheme referred to in sub-paragraph (1) must either reflect the standard of the highway lighting included in the environmental statement or, where the standard of the highway lighting proposed materially differs from the standard of the highway lighting identified in the environmental statement, the undertaker must provide evidence with the written scheme submitted for approval that the standard of the highway lighting proposed would not give rise to any materially new or

materially worse adverse environmental effects in comparison with those reported in the environmental statement. The standard of the highway lighting must encompass the specification, level of provision, light spillage, intensity and brightness of the highway lighting.

(3) The authorised development must be carried out in accordance with the scheme approved under sub-paragraph (1).

(4) Nothing in this requirement restricts the lighting of the authorised development during its construction or where temporarily required for maintenance.

Approvals and amendments to approved details

17. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved under this Schedule, the approved details are taken to include any amendments that may subsequently be approved or agreed in writing by the Secretary of State.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

18.—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement (including agreement or approval in respect of part of a requirement) included in this Order, the Secretary of State must give notice to the undertaker of the decision on the application within a period of 8 weeks beginning with—

(a) the day immediately following that on which the application is received by the Secretary of State;

(b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 19; or

(c) such longer period as may be agreed between the parties.

(2) Subject to sub-paragraph (3), in the event that the Secretary of State does not determine an application within the period set out in sub-paragraph (1), the Secretary of State is taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where—

(a) an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement included in this Order;

(b) the Secretary of State does not determine such application within the period set out in sub-paragraph (1); and

(c) the application is accompanied by a report referred to in paragraph 4 stating that, in the view of a body required to be consulted by the undertaker under the requirement in question, the subject matter of the application is likely to give rise to any materially new or materially worse environmental effects in comparison with those reported in the environmental statement,

then the application is taken to have been refused by the Secretary of State at the end of that period.

Further information

19.—(1) In relation to any part of an application made under this Schedule, the Secretary of State has the right to request such further information from the undertaker as is necessary to enable the Secretary of State to consider the application.

(2) In the event that the Secretary of State considers such further information to be necessary, the Secretary of State must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the Secretary of State does not give such notification within this 21 day period the Secretary of State is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 18 and in this paragraph.

(4) In this paragraph, "business day" means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(**a**).

Register of requirements

20.—(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in an electronic form suitable for inspection by members of the public a register of those requirements contained in Part 1 of this Schedule that provide for further approvals to be given by the Secretary of State.

(2) The register must set out in relation to each such requirement the status of the requirement, in terms of whether any approval to be given by the Secretary of State has been applied for or given, providing an electronic link to any document containing any approved details.

(3) The register must be maintained by the undertaker for a period of 3 years following completion of the authorised development.

Anticipatory steps towards compliance with any requirement

21. If before this Order came into force the undertaker or any other person took any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

SCHEDULE 3

Articles 14 and 18

CLASSIFICATION OF ROADS, ETC.

PART 1

TRUNK ROADS

(1) *Area*	*(2)* *Length of road*
Kingsway	
Derby City Council	A38 northbound carriageway between point A and point B, as shown

(**a**) 1971 c.80.

	on Sheet 1 (Kingsway junction) of the classification of roads plans, comprising of 1200 metres.
Derby City Council	A38 northbound diverge slip road onto Kingsway West Roundabout between point C and point D, as shown on Sheet 1 (Kingsway junction) of the classification of roads plans, comprising of 588 metres.
Derby City Council	A38 northbound merge slip road onto the A38 northbound carriageway between point E and point F, as shown on Sheet 1 (Kingsway junction) of the classification of roads plans, comprising of 302 metres.
Derby City Council	A38 southbound carriageway between point G and point H, as shown on Sheet 1 (Kingsway junction) of the classification of roads plans, comprising of 1200 metres.
Derby City Council	A38 southbound diverge slip road onto Kingsway East Roundabout between point I and J, as shown on Sheet 1 (Kingsway junction) of the classification of roads plans, comprising of 315 metres.
Derby City Council	A38 southbound merge slip road onto the A38 southbound carriageway between point K and point L, as shown on Sheet 1 (Kingsway junction) of the classification of roads plans, comprising of 528 metres.
Derby City Council	Reference M Kingsway West Roundabout from point R to point N, as shown on Sheet 1 (Kingsway junction) of the classification of roads plans, comprising of 118 metres.
Derby City Council	Kingsway West Roundabout junction Overbridge link road between points N and R and points O and Q, as shown on Sheet 1 (Kingsway junction) of the classification of roads plans, comprising of 70 metres.
Derby City Council	Reference P Kingsway East Roundabout circulatory carriageway, comprising 208 metres, as shown on Sheet 1 (Kingsway junction) of the classification of roads plans.
Markeaton	
Derby City Council	A38 northbound carriageway road between point BB and point CC, as shown on Sheet 2 (Markeaton junction) of the classification of roads plans, comprising of 1234 metres.
Derby City Council	A38 southbound carriageway road between point PP and point QQ, as shown on Sheet 2 (Markeaton junction) of the classification of roads plans, comprising of 1239 metres.
Derby City Council	A38 northbound diverge slip road onto Markeaton junction roundabout between point DD and point EE, as shown on Sheet 2 (Markeaton junction) of the classification of roads plans, comprising 372 metres.
Derby City Council	A38 northbound diverge slip road onto the A38 northbound carriageway between point JJ and point KK, as shown on Sheet 2 (Markeaton junction) of the classification of roads plans, comprising 275 metres.
Derby City Council	A38 northbound diverge slip road onto Kedleston Road between point LL and point MM, as shown on Sheet 2 (Markeaton junction) of the classification of roads plans, comprising 225 metres.
Derby City Council	A38 southbound merge slip road from Kedleston Road onto the A38 southbound carriageway between point NN and point OO, as shown on Sheet 2 (Markeaton junction) of the classification of roads plans, comprising 207 metres.
Derby City Council	A38 southbound diverge slip road onto Markeaton junction roundabout between point RR and point SS, as shown on Sheet 2

	(Markeaton junction) of the classification of roads plans, comprising 307 metres.
Derby City Council	A38 southbound merge slip road onto the A38 southbound carriageway between point XX and point YY, as shown on Sheet 2 (Markeaton junction) of the classification of roads plans, comprising 286 metres.
Little Eaton	
Derbyshire County Council	A38 northbound carriageway road between point ZZ and point A1, as shown on Sheet 3 (Little Eaton junction) of the classification of roads plans, comprising of 1267 metres.
Derbyshire County Council	A38 southbound carriageway road between point K1 and point L1, as shown on Sheet 3 (Little Eaton junction) of the classification of roads plans, comprising of 1300 metres.
Derbyshire County Council	A38 northbound diverge slip road onto Little Eaton junction roundabout between point B1 and point C1, as shown on Sheet 3 (Little Eaton junction) of the classification of roads plans, comprising 441 metres.
Derbyshire County Council	A38 northbound merge slip road onto the A38 northbound carriageway from Little Eaton junction roundabout between point I1 and point J1, as shown on Sheet 3 (Little Eaton junction) of the classification of roads plans, comprising 340 metres.
Derbyshire County Council	A38 southbound diverge slip road onto Little Eaton junction roundabout between point M1 and N1, as shown on Sheet 3 (Little Eaton junction) of the classification of roads plans, comprising 524 metres.
Derbyshire County Council	A38 southbound diverge slip road onto the A61 Alfreton road between point O1 and P1, as shown on Sheet 3 (Little Eaton junction) of the classification of roads plans, comprising 260 metres.
Derbyshire County Council	A38 southbound merge slip road onto the A38 southbound carriageway from Little Eaton junction roundabout between point V1 and point W1, as shown on Sheet 3 (Little Eaton junction) of the classification of roads plans, comprising 426 metres.

PART 2

DE-TRUNKED ROADS

(1) *Area*	*(2)* *Length of road*
Markeaton	
Derby City Council	Reference A1 The whole length of the circulatory carriageway on Markeaton junction as shown on Sheet 4 (Markeaton junction) of the classification of roads plans, comprising 206 metres.
Little Eaton	
Derbyshire County Council	Reference B1 The whole length of the circulatory carriageway on Little Eaton junction as shown on Sheet 5 (Little Eaton junction) of the classification of roads plans, comprising 230 metres.

PART 3

CLASSIFIED ROADS

(1)	*(2)*

Area	*Length of road*
Kingsway	
Derby City Council	A511 Kingsway Road carriageway between point T and V and point U on Sheet 1 (Kingsway junction) of the classification of roads plans, comprising 182 metres.
Markeaton	
Derby City Council	A52 Ashbourne Road carriageway between points FF and HH and points II and GG on Sheet 2 (Markeaton junction) of the classification of roads plans, comprising 264 metres.
Derby City Council	Reference TT Markeaton roundabout circulatory carriageway, comprising 210 metres, as shown on Sheet 2 (Markeaton junction) of the classification of roads plans.
Derby City Council	A52 Ashbourne Road carriageway between points UU and VV and point WW on Sheet 2 (Markeaton junction) of the classification of roads plans, comprising 87 metres.
Little Eaton	
Derbyshire County Council	B6179 Alfreton Road northbound carriageway between points F1 and H1 and point G1 on Sheet 3 (Little Eaton junction) of the classification of roads plans, comprising 49 metres.
Derbyshire County Council	Reference Q1 Little Eaton Roundabout circulatory carriageway, comprising 348 metres, as shown on Sheet 3 (Little Eaton junction) of the classification of roads plans.
Derbyshire County Council	A61 Alfreton Road southbound carriageway between point R1 and point S1 on Sheet 3 (Little Eaton junction) classification of roads plans, comprising 106 metres.
Derbyshire County Council	A61 Alfreton Road northbound carriageway between point T1 and point U1 on Sheet 3 (Little Eaton junction) classification of roads plans, comprising 106 metres.

PART 4

UNCLASSIFIED ROADS

(1) *Area*	*(2)* *Length of road*
Kingsway	
Derby City Council	Kingsway park close link road between points W and Y and point X, as shown on Sheet 1 (Kingsway junction) of the classification of roads plans, comprising 224 metres.
Derby City Council	Kingsway park close road between point Z and point AA, as shown on Sheet 1 (Kingsway junction) of the classification of roads plans, comprising 27 metres.
Markeaton	
Derby City Council	Markeaton park access road between point X1 and point Y1, as shown on Sheet 2 (Markeaton junction) of the classification of roads plans, comprising 94 metres.
Derby City Council	Reference Z1 Markeaton park access circulatory carriageway, as shown on Sheet 2 (Markeaton junction) of the classification of roads plans, comprising 58 metres.
Little Eaton	
Derbyshire County	Ford lane between point D1 and point E1, as shown on Sheet 3 (Little

Council	Eaton junction) of the classification of roads plans, comprising 24 metres.

PART 5

SPEED LIMITS

(1) *Area*	*(2)* *Road name, number and length*	*(3)* *Speed limit*
Kingsway		
Derby City Council	A38 northbound carriageway starting at the point 74 metres south of the tip of the nosing of the A38 northbound diverge slip road at Kingsway junction to the point 172 metres north of the tip of the nosing of the A38 northbound diverge slip road at Kingsway junction for a total distance of 246 metres, as shown on Sheet 1 (Kingsway junction) of the speed limit plans.	National speed limit
Derby City Council	A38 northbound carriageway starting at the point 172 metres north of the tip of the nosing of the A38 northbound diverge slip road at Kingsway junction to the point 254 metres north of the tip of the nosing of the A38 northbound merge slip road at Kingsway junction for total distance of 954 metres, as shown on Sheet 1 (Kingsway junction) permanent speed limit plans.	50 miles per hour
Derby City Council	A38 northbound diverge slip road starting from the diverge with A38 northbound carriageway to the point where it meets new Kingsway West Roundabout for a total distance of 588 metres, as shown on Sheet 1 (Kingsway junction) of the speed limit plans.	National speed limit
Derby City Council	A38 northbound merge slip road starting from the new Kingsway West Roundabout to the point where it merges with A38 northbound carriageway for a total distance of 302 metres, as shown on Sheet 1 (Kingsway junction) permanent of the speed limit.	50 miles per hour
Derby City Council	A38 southbound carriageway starting at the point 328 metres north of the tip of the nosing of the A38 southbound diverge slip road at Kingsway junction to the point 69 metres north of the tip of the nosing of the A38 southbound merge slip road at Kingsway junction for a total distance of 954 metres, as shown on Sheet 1 (Kingsway junction) of the speed limit plans.	50 miles per hour
Derby City Council	A38 southbound carriageway starting at the point 69 metres north of the tip of the nosing of the A38 southbound merge slip road at Kingsway junction to the point 178 metres south of the tip of the nosing of the A38 southbound merge slip road at Kingsway junction a total distance of 247m, as shown on Sheet 1 (Kingsway junction permanent) of the speed limit plans.	National speed limit
Derby City Council	A38 southbound diverge slip road starting from the	50 miles per

	diverge with A38 southbound carriageway to the point where it meets the Kingsway East Roundabout for a total distance of 315 metres, as shown on Sheet 1 (Kingsway junction) of the speed limit plans.	hour
Derby City Council	A38 southbound merge slip road starting from Kingsway East Roundabout to the point where it merges with A38 southbound carriageway for a total distance of 528 metres, as shown on Sheet 1 (Kingsway junction) of the speed limit plans.	National speed limit
Derby City Council	From the Kingsway East Roundabout the entire length of Kingsway Overbridge link road (eastbound and westbound) including Kingsway West Roundabout, a total distance of 348 metres, as shown on Sheet 1 (Kingsway junction) of the speed limit plans.	40 miles per hour
Derby City Council	A38 new Kingsway East Roundabout, the whole length of the circulatory carriageway for a total distance of 208 metres, as shown on Sheet 1 (Kingsway junction) of the speed limit plans.	40 miles per hour
Derby City Council	A5111 Kingsway eastbound carriageway starting at A38 new Kingsway East Roundabout to the point 182 metres east of the new Kingsway East Roundabout a total distance of 182 metres, as shown on Sheet 1 (Kingsway junction) of the speed limit plans.	40 miles per hour
Derby City Council	A5111 Kingsway westbound carriageway starting at the point 182 metres east of A38 new Kingsway East Roundabout to where it meets new Kingsway East Roundabout for a total distance of 182 metres, as shown on Sheet 1 (Kingsway junction) of the speed limit plans.	40 miles per hour
Derby City Council	Kingsway Park Close link road (northbound and southbound) starting at the new Kingsway East Roundabout to the point 224 metres north west of the new Kingsway East Roundabout for a total distance of 224 metres, as shown on Sheet 1 (Kingsway junction) of the speed limit plans.	30 miles per hour
Derby City Council	Kingsway park close starting at the junction with Kingsway Park Close Link road to the point 27 metres east of the junction, for a total distance of 27 metres as shown on Sheet 1 (Kingsway junction) of the speed limit plans.	30 miles per hour
Markeaton		
Derby City Council	A38 northbound carriageway starting at the point 260 metres south of the tip of the nosing of the A38 northbound diverge slip road at Markeaton junction to the point 430 metres north of the tip of the nosing of the A38 northbound merge slip road at Markeaton junction for a total distance of 1234 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans.	50 miles per hour
Derby City Council	A38 southbound carriageway starting at the point 398 metres north of the A38 southbound diverge slip road at Markeaton junction to the point 357 metres south of the A38 southbound merge slip	50 miles per hour

	road at Markeaton junction for a total distance of 1239 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans. .	
Derby City Council	A38 northbound diverge slip road starting from the diverge with A38 northbound carriageway to the point where it meets Markeaton junction roundabout for a total distance of 372 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans.	30 miles per hour
Derby City Council	A38 northbound merge slip road starting at the point 194 metres south of the tip of the nosing of the A38 northbound merge slip road to the point where it merges with the A38 northbound carriageway for a total distance of 275 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans.	50 miles per hour
Derby City Council	A38 southbound diverge slip road starting from the diverge with A38 southbound carriageway to the point where it meets the A38 Markeaton junction roundabout for a total distance of 307 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans.	50 miles per hour
Derby City Council	A38 southbound merge slip road starting from Markeaton junction roundabout to the point where it merges with A38 southbound carriageway for a total distance of 286 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans.	50 miles per hour
Derby City Council	A38 Markeaton junction, for the whole length of the circulatory carriageway for a total distance of 210 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans.	30 miles per hour
Derby City Council	A52 Ashbourne Road westbound carriageway starting from Markeaton junction roundabout (west side) to the point 232 metres west of the Markeaton junction roundabout for a total distance of 232 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans.	30 miles per hour
Derby City Council	A52 Ashbourne Road eastbound carriageway starting from a point 232 metres west of the Markeaton junction roundabout (west side) along its length to the point 194 metres south of the tip of the nosing of the A38 northbound merge slip road for a total distance of 255 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans.	30 miles per hour
Derby City Council	A52 Ashbourne road westbound carriageway starting at a point 87 metres east of the Markeaton junction roundabout (east side) along its length to the point where it joins the A38 Markeaton junction for a total distance of 87 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans.	30 miles per hour
Derby City Council	A52 Ashbourne road eastbound carriageway starting at a Markeaton junction roundabout (east side) to the point 87 metres east of the Markeaton junction for a total distance of 87 metres as shown	30 miles per hour

	on Sheet 2 (Markeaton junction) of the speed limit plans.	
Derby City Council	Entire length of the new access road starting at the A52 Ashbourne Road into Markeaton park including the roundabout for a total distance of 246 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans.	30 miles per hour
Derby City Council	A38 northbound diverge slip road starting from the diverge with the A38 northbound carriageway along its length to the point where it merge with Kedleston Road junction for a total distance of 225 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans.	50 miles per hours
Derby City Council	A38 southbound merge slip road starting from Kedleston Road along its length to the point where it merge with the A38 northbound carriageway for a total distance of 207 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans.	50 miles per hour
Little Eaton		
Derbyshire County Council	A38 northbound carriageway starting at a point 231 metres west of the tip of the nosing of the A38 northbound diverge slip road at Little Eaton junction to a point 341 metres north of the tip of the nosing of the A38 northbound merge slip road at Little Eaton junction for a total distance of 1267 metres, as shown on Sheet 3 (Little Eaton junction) of the speed limit plans.	National speed limit
Derbyshire County Council	A38 southbound carriageway starting at a point 280 metres north of the tip of the nosing of the A38 southbound diverge slip road to a point 185 metres west of the tip of the nosing of the A38 southbound merge slip road at Little Eaton junction for a total distance of 1300 metres, as shown on Sheet 3 (Little Eaton junction) of the speed limit plans.	National speed limit
Derbyshire County Council	A38 northbound diverge slip road starting from the diverge with A38 northbound carriageway to the point where it meets Little Eaton junction roundabout for a total distance of 441 metres, as shown on Sheet 3 (Little Eaton junction) of the speed limit plans.	National speed limit
Derbyshire County Council	A38 northbound merge slip road starting from Little Eaton junction roundabout to the point where it merges with the A38 northbound carriageway for a total distance of 340 metres, as shown on Sheet 3 (Little Eaton junction) of the speed limit plans.	National speed limit
Derbyshire County Council	A38 southbound diverge slip road starting from the diverge with A38 southbound carriageway to the point where it meets the Little Eaton junction roundabout, a total distance of 524 metres, as shown on Sheet 3 (Little Eaton junction) of the speed limit plans.	National speed limit
Derbyshire County Council	A38 southbound merge slip road starting from Little Eaton junction roundabout to the point where it merges with A38 southbound carriageway	National speed limit

	for a total distance of 426 metres, as shown on Sheet 3 (Little Eaton junction) of the speed limit plans.	
Derbyshire County Council	A38 southbound link road starting from diverge with A38 southbound diverge slip road to the point where it meets A61 Alfreton Road southbound carriageway for a total distance of 260 metres, as shown on Sheet 3 (Little Eaton junction) of the speed limit plans.	National speed limit
Derbyshire County Council	A38 Little Eaton junction for the whole length of the circulatory carriageway, a total distance of 348 metres, as shown on Sheet 3 (Little Eaton junction) of the speed limit plans.	60 miles per hour
Derbyshire County Council	A61 Alfreton Road (northbound and southbound) starting at Little Eaton Roundabout to a point 106 metres south of the Little Eaton Roundabout for a total distance of 106 metres, as shown on Sheet 3 (Little Eaton junction) of the speed limit plans.	60 miles per hour
Derbyshire County Council	B6179 Alfreton Road (northbound and southbound) starting at Little Eaton Roundabout to a point 49 metres north of the Little Eaton junction roundabout for a total distance of 49 metres, as shown on Sheet 3 (Little Eaton junction) of the speed limit plans.	40 miles per hour
Derbyshire County Council	Ford Lane starting at Little Eaton Roundabout to a point 24 metres west of the Little Eaton Roundabout for a total distance of 24 metres, as shown on Sheet 3 (Little Eaton junction) of the speed limit plans.	30 miles per hour

PART 6

TRAFFIC REGULATION MEASURES (CLEARWAYS AND PROHIBITIONS)

(1) *Area*	*(2)* *Road name, number and length*	*(3)* *Measures*
Kingsway		
Derby City Council	A38 northbound carriageway From point A to point K on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, for a total distance of 1200 metres.	Clearway (to include verges and hard strips)
Derby City Council	A38 northbound diverge slip road onto Kingsway West Roundabout From point C to point D on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, for a total distance of 588 metres.	Clearway (to include verges and hard strips)
Derby City Council	A38 northbound merge slip road onto the A38 northbound carriageway From point J to point B on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, for a total distance of 302 metres.	Clearway (to include verges and hard strips)

Derby City Council	Kingsway West Roundabout From point E to point F on Sheet 1 (Kingsway junction) of the traffic regulations plans, for a total distance of 208 metres.	Clearway (to include verges and hard strips)
Derby City Council	A38 southbound carriageway From point N to point M on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, for a total distance of 1200 metres.	Clearway (to include verges and hard strips)
Derby City Council	A38 southbound diverge slip road onto the Kingsway East Roundabout From point L to point O on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, for a total distance of 315 metres.	Clearway (to include verges and hard strips)
Derby City Council	A38 southbound merge slip road onto the A38 southbound carriageway From point P to point Q on (Kingsway junction) of the traffic regulations measures plans, for a total distance of 528 metres.	Clearway (to include verges and hard strips)
Derby City Council	Reference AB Kingsway East Roundabout For the whole length of the circulatory carriageway around Kingsway West Roundabout, a length of 208 metres, as shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans.	Clearway (to include verges and hard strips)
Derby City Council	Kingsway junction Overbridge Link Road From points E and F to points G and H on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, for a total distance of 70 metres.	Clearway (to include verges and hard strips)
Derby City Council	Kingsway Park close link Road From points V and Y and points W and X on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, for a total distance of 190 metres.	(Prohibition and Restriction of waiting) (No waiting) (At Any Time)
Derby City Council	Reference A Cherry Tree close to the junction with A5111 Kingsway road westbound carriageway, as shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans.	Prohibition (No right turn)
Derby City Council	Reference N The whole length of the circulatory carriageway on Markeaton junction as shown on Sheet 2 (Markeaton	Clearway(to include verges and hard strips)

	junction) of the traffic regulations measures plans, for a total distance of 206 metres.	
Markeaton		
Derby City Council	A38 northbound carriageway From point A and B on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, for a total distance of 1234 metres.	Clearway (to include verges and hard strips)
Derby City Council	A38 northbound diverge slip road onto Markeaton junction roundabout From point C to point D on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, for a total distance of 372 metres.	Clearway (to include verges and hard strips)
Derby City Council	A38 northbound merge slip road onto the A38 northbound carriageway from point O to point P for a distance of 275 metres, as shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans.	Clearway (to include verges and hard strips)
Derby City Council	A38 southbound carriageway from point S to point T for a total distance of 1239 metres, as shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans.	Clearway (to include verges and hard strips)
Derby City Council	A38 southbound diverge slip road onto Markeaton junction roundabout from point W to point X, for a total distance of 307 metres, as shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans.	Clearway (to include verges and hard strips)
Derby City Council	A38 southbound merge slip road onto A38 southbound carriageway from point AC to point AD for a total distance of 286 metres, as shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans.	Clearway (to include verges and hard strips)
Little Eaton		
Derbyshire County Council	A38 northbound carriageway from point A to point B for a total distance of 1267 metres, as shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans.	Clearway (to include verges and hard strips)
Derbyshire County Council	Reference E The entire length of Little Eaton circulatory carriageway, a distance of 348 metres, as shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans.	Clearway (to include verges and hard strips)
Derbyshire County Council	A38 northbound diverge slip road onto Little Eaton junction roundabout from point C to point D	Clearway (to include verges and hard strips)

	for a total distance of 441 metres, as shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans.	
Derbyshire County Council	A38 northbound merge slip road onto the A38 northbound carriageway from point I to point J, a total distance of 340 metres, as shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans.	Clearway (to include verges and hard strips)
Derbyshire County Council	A38 southbound carriageway from point K to point L, for a total distance of 1300 metres, as shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans.	Clearway (to include verges and hard strips)
Derbyshire County Council	A38 southbound diverge slip road onto Little Eaton junction roundabout from point M to point N, a total distance of 524 metres, as shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans.	Clearway (to include verges and hard strips)
Derbyshire County Council	A38 southbound diverge slip road onto the A61 southbound carriageway from point O to point P, a total distance of 260 metres, as shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans.	Clearway (to include verges and hard strips)
Derbyshire County Council	A38 southbound merge slip road onto A38 southbound carriageway from point U to point V, a total distance of 426 metres, as shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans.	Clearway (to include verges and hard strips)

PART 7

REVOCATIONS & VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS

(1) *Area*	*(2)* *Road name, number and length*	*(3)* *Title of Order*	*(4)* *Revocations or variations*
Kingsway			
Derby City Council	A38 northbound carriageway into Kingsway junction from point A01 to point B01 shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, a total distance	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.

	of 566 metres.		
Derby City Council	Reference C01 The entire length of Kingsway circulatory carriageway a total distance of 495 metres as shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A56 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over the existing circulatory carriageway.
Derby City Council	Kingsway junction onto the A38 northbound carriageway from point D01 to point E01 shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, a total distance of 491 metres.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derby City Council	A38 southbound carriageway onto Kingsway junction from point F01 and point G01 shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, a total distance of 475 metres.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derby City Council	Kingsway junction onto the A38 southbound carriageway from point L01 and point M01 shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, a total distance of 549 metres.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derby City Council	A5111 Kingsway eastbound from point R to point S shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, a total distance of 180 metres.	Derby City Council (Prohibition and Restriction of Waiting) No Waiting at Any Time	Order to be varied (Varying the length of the A5111 Kingsway eastbound carriageway to which the order applies to accord with the realigned A5111 Kingsway. (H24, H25 and H26) (803)
Derby City Council	A5111 Kingsway westbound from point T to point U shown on	Derby City Council (Prohibition and Restriction of	Order to be varied (Varying the length of the A5111 Kingsway

	Sheet 1 (Kingsway junction) of the traffic regulations measures plans, a total distance of 180 metres.	Waiting) No Waiting at Any Time	westbound carriageway to which the order applies to accord with the realigned A5111 Kingsway. (H24, H25 and H26) (803)
Derby City Council	Kingsway Park Close from point Z to Point AA shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, a total distance of 60 metres.	Derby City Council (Prohibition and Restriction of waiting) (No stopping) (Rural Clearway) (At Any Time) (Carriageway only)	Order to be varied over this length.
Derby City Council	Reference C01 Kingsway roundabout Circulatory carriageway for the whole length of the circulatory carriageway around Kingsway junction shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, a total distance of 487 metres.	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2707	Order to be amended to remove 40mph speed limit over the entire length of circulatory carriageway.
Derby City Council	Kingsway junction onto the A38 northbound carriageway from point D01 to point E01 shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, a total distance of 491 metres.	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2707	Order to be amended to remove existing 40mph speed limit over this length.
Derby City Council	A38 southbound carriageway into Kingsway junction from point F01 and point G01 shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, a total distance of 475 metres.	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2707	Order to be amended to remove existing 40mph speed limit over this length.
Derby City Council	A5111 Kingsway eastbound carriageway from point H01 to point I01 shown on Sheet 1 (Kingsway junction) of the traffic	Derby City Council (Speed Order) (40mph Speed Limit)	Order to be varied to remove the existing 40mph speed limit over this length.

	regulations measures plans, a total distance of 30 metres.		
Derby City Council	A5111 Kingsway westbound carriageway from point J01 to point K01 shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, a total distance of 30 metres.	Derby City Council (Speed Order) (40mph Speed Limit)	Order to be varied to remove the existing 40mph speed limit over this length.
Markeaton			
Derby City Council	A38 northbound carriageway on to Markeaton junction from Point A01 and point C01 shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 510 metres.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derby City Council	Reference D01 The entire length of Markeaton circulatory carriageway a total distance of 206 metres as shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derby City Council	Markeaton junction into the A38 northbound carriageway from point E01 and point G01 shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 500 metres.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derby City Council	A38 southbound carriageway into Markeaton junction from point K01 and point I01 shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 494 metres.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derby City Council	Markeaton junction	The A38 Trunk Road	Clearway order to be

	into the A38 southbound carriageway from point J01 and point L01 shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 510 metres.	(Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	varied to remove the existing clearway over this length.
Derby City Council	A38 northbound carriageway diverge slip road onto the Kedleston Road from point Q01 to point R01 shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 180m.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derby City Council	A38 southbound merge slip road from Kedleston Road from point S01 to point T01 shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 197metres.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derby City Council	A38 northbound carriageway onto Markeaton junction from Point A01 and point C01 shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 510 metres.	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2707	Order to be amended to remove existing 40mph speed limit over this length.
Derby City Council	Reference D01 The whole length of the circulatory carriageway on Markeaton junction as shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 206 metres.	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2707	Order to be amended to cover realigned circulatory carriageway 40mph speed limit over the length.
Derby City Council	Markeaton junction into the A38 northbound carriageway from point E01 and point	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed	Order to be amended to remove existing 40mph speed limit over this length.

	G01 shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 500 metres.	limit and derestriction) Order 2006 No. 2707	
Derby City Council	A38 southbound carriageway into Markeaton junction from point K01 and point I01 shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 494 metres.	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2707	Order to be amended to remove existing 40mph speed limit over this length.
Derby City Council	Markeaton junction into the A38 southbound carriageway from point J01 and point L01 shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 510 metres.	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2707	Order to be amended to remove existing 40mph speed limit over this length.
Derby City Council	A52 Ashbourne Road from points F and G and points AE and AF shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 204 metres.	Derby City Council (Speed order) (40mph speed limit)	Order to be varied to remove existing 40mph speed limit to 30mph speed limit over this length. (C6) (5003)
Derby City Council	A52 Ashbourne Road (westbound) from point E and point I shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 70 metres.	Clearway	Clearway extents to be varied along the length.
Derby City Council	A52 Ashbourne Road (eastbound) from point H and point J shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 90 metres.	Clearway	Clearway extents to be varied along the length.
Derby City Council	A52 Ashbourne Road (eastbound)	Derby City Council (Prohibition and	Order to be varied (Varying the length of

	from point Z and point Y shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 80 metres.	Restriction of Waiting) (No waiting (at any time))	A52 Ashbourne Road eastbound and westbound carriageway to which the order applied to accord with the realigned A52 Ashbourne Road) (108) (H20, I20) (202)
Derby City Council	A52 Ashbourne Road (westbound) from point AA and point AB shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 80 metres.	Derby City Council (Prohibition and Restriction of Waiting) (No waiting (at any time))	Order to be varied (Varying the length of A52 Ashbourne Road eastbound and westbound carriageway to which the order applied to accord with the realigned A52 Ashbourne Road) (108) (H20, I20) (202)
Derby City Council	Reference 1 Enfield Road diverge from the A38 northbound carriageway, as shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans.	7.5T Weight limit restriction	Order to be varied.
Derby City Council	Reference 2 An extent of 10 metres from A38 northbound carriageway with the junction Enfield Road as shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans.	No Entry	Order to be revoked.
Derby City Council	Reference 3 A52 Ashbourne Road eastbound diverge from the existing Markeaton roundabout as shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans.	7.5T Weight limit restriction	Order to be varied to move weight limit restriction to point Z.
Derby City Council	Reference 4 Queensway access to private properties, from A52 Ashbourne	Derby City Council (Prohibitions of driving of motor vehicles exemptions 1	Order to be revoked to remove existing moving vehicle restriction principal

	Road eastbound carriageway as shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 300 metres.	and 2) (Moving Vehicle Restrictions) (Principal Order)	order over this length. (H20, I19 and I20) (5103)
Derby City Council	Reference 5 Exit Road from Markeaton Park on to the A52 Ashbourne Road eastbound carriageway as shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans.	No Entry	Order to be revoked.
Little Eaton			
Derbyshire County Council	A38 northbound carriageway into Little Eaton junction from point A01 and point B01 shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 468 metres.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derbyshire County Council	Reference C01 A38 Little Eaton junction circulatory carriageway, the entire length of the circulatory carriageway a total distance of 230 metres as shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derbyshire County Council	Little Eaton junction into the A38 northbound carriageway from point D01 and point E01 shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 660 metres.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derbyshire County Council	A38 southbound carriageway into Little	The A38 Trunk Road (Between A50 Derby	Clearway order to be varied to remove the

	Eaton roundabout from point H01 and point I01 shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 680 metres.	Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	existing clearway over this length.
Derbyshire County Council	A38 southbound diverge slip road to A61 southbound carriageway from point J01 and point K01 shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 260 metres.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derbyshire County Council	Little Eaton junction into the A38 southbound carriageway from point P01 and point Q01 shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 480 metres.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derbyshire County Council	A61 Alfreton Road (southbound carriageway) from point L01 to M01 shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 75 metres.	Clearway	Order to be varied to remove the existing clearway over this length.
Derbyshire County Council	A61 Alfreton Road (northbound carriageway) From point O01 to N01 shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 75 metres.	Clearway	Order to be varied to remove the existing clearway over this length.
Derbyshire County Council	A61 Alfreton Road (southbound carriageway) from point Q to point R on Sheet 3 (Little Eaton junction) of the traffic regulations measures	Clearway	Order to be varied (varying the length of A61 Alfreton Road southbound carriageway) to which the order applied).

	plans, for a total distance of 111 metres.		
Derbyshire County Council	A61 Alfreton Road (northbound carriageway) from point S to point T on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, for a total distance of 111 metres.	Clearway	Order to be varied (varying the length of A61 Alfreton Road northbound carriageway to which the order applied).
Derbyshire County Council	B6179 Alfreton Road (northbound and southbound) From point F to point G on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, for a total distance of 50 metres.	Clearway	Order to be varied (varying the length of B6179 Alfreton Road northbound carriageway to which the order applied).
Derbyshire County Council	A38 northbound carriageway into Little Eaton junction from point A01 to point B01 on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 460 metres	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2707	Order to be varied to vary the length of national speed limit.
Derbyshire County Council	Little Eaton junction onto A38 northbound carriageway from point D01 to point E01 on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 660 metres.	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2707	Order to be varied to vary the length of national speed limit.
Derbyshire County Council	Reference C01 A38 Little Eaton junction circulatory carriageway, the entire length of the circulatory carriageway, a total distance of 210 metres as shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans.	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2707	Order to be varied to remove national speed limit over this length.
Derbyshire County	A38 southbound	The A38 Trunk Road	Order to be varied to

Council	carriageway onto Little Eaton junction from point H01 to Point I01 on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 680 metres.	(A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2707	vary the length of national speed limit.
Derbyshire County Council	A38 southbound link road to A61 southbound carriageway from point J01 and point K01 shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 260 metres.	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2708	Order to be varied to vary the length of national speed limit.
Derbyshire County Council	Little Eaton junction onto A38 southbound carriageway from point P01 to point Q01 on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 480 metres	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2708	Order to be varied to vary the length of national speed limit.
Derbyshire County Council	A61 Alfreton Road (southbound carriageway) from point L01 to M01 shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 75 metres.	National Speed Limit	Order to be varied to remove national speed limit over this length.
Derbyshire County Council	A61 Alfreton Road (northbound carriageway) from point O01 to N01 shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 75 metres.	National Speed Limit	Order to be varied to remove national speed limit over this length.
Derbyshire County Council	Ford Lane from points R01 and T01 to point S01 on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, for a total distance of 30 metres.	Clearway	Clearway extents to be revoked.

Derbyshire County Council	Ford Lane from point H to point W on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, for a total distance of 20 metres.	Clearway	Clearway extents to be varied over this length.
Derbyshire County Council	Ford Lane (northbound and southbound carriageway) from points R01 and T01 to point U01 on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, for a total distance of 112 metres.	National Speed Limit	Order to be varied to remove national speed limit over this length.

PART 8

PUBLIC RIGHTS OF WAY

(1) *Area*	*(2)* *Status and length of public right of way*
Kingsway	
Derby City Council	169 metres footway/cycle track from point AA to point AC to point AB shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	89 metres footway/cycle track from point AD to point AE shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	128 metres footway/cycle track from point AF to point AK shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	84 metres footway/cycle track from point AC to point AG shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	141 metres footway/cycle track from point AH to point AI shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	198 metres footway/cycle track from point AJ to point AL shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	20 metres footway/cycle track from point AM to point AN shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	22 metres footway/cycle track from point AO to point AP shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	16 metres footway/cycle track from point AQ to point AR shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	166 metres footway from point AP to point AU shown on Sheet 1

	(Kingsway junction) of the streets rights of way and access plans.
Derby City Council	119 metres footway from point AQ to point AT shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	62 metres footway from point AW to point AV shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	38 metres footway from point AX to point AY shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	41 metres footway/cycle track from point BB to BD shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Markeaton	
Derby City Council	98 metres footway/cycle track from point AA to AB shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	17 metres footway/cycle track from point AD to AE shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	19 metres footway from point AE to AF shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	10 metres footway from point AG to AH shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	130 metres footway from point AI to BJ shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	105 metres footway from point BK to AM shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	43 metres footway/cycle track from point AK to AL shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	73 metres footway/cycle track from point AM to AN to BL to AO shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	27 metres footway/cycle track from point AO to AP shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	68 metres footway/cycle track from point AQ to AR shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	277 metres footway/cycle track from point AS to AV to AT shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	24 metres footway/cycle track from point AX to BA shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	658 metres footway/cycle track from point BD to BE shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	84 metres footway/cycle track from point BF to BG to BH to BI shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	85 metres footway/cycle track from point AZ to AY to BA shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	312 metres footway/cycle track from point AV to BN shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	618 metres footway/cycle track from point AW to BN to AX to AY as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	28 metres footway/cycle track from point BB to BC as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Little Eaton	
Derbyshire County	442 metres of footway/cycle track from point AA to AB to AC shown

Council	on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.
Derbyshire County Council	62 metres of footway/cycle track from point AD to AE shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.
Derbyshire County Council	150 metres of footway/cycle track from point AH to AI shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.
Derbyshire County Council	25 metres of footway/cycle track from point AF to AG shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.
Derbyshire County Council	80 metres of footway/cycle track from point AJ to AK shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.

SCHEDULE 4

Articles 15 and 25

PERMANENT STOPPING UP OF HIGHWAYS AND PRIVATE MEANS OF ACCESS & PROVISION OF NEW HIGHWAYS AND PRIVATE MEANS OF ACCESS

In relating this Schedule to the streets rights of way and access plans, the provisions described in this Schedule are shown on the streets rights of way and access plans in the following manner—

(a) Existing highways to be stopped up, as described in column (2) of Part 1 and Part 2 of this Schedule, are shown by thick black diagonal hatching (as shown in the key on the streets rights of way and access plans) over the extent of the area to be stopped up, which is described in column (3) of Part 1 and Part 2 of this Schedule.

(b) New highways to be substituted for a highway to be stopped up (or which are otherwise to be provided), as included in column (4) of Part 2 of this Schedule, are shown by red cross-hatching (for trunk roads), blue cross-hatching (for other classified roads and highways) and solid blue shading (for public rights of way) (as shown in the key on the streets rights of way and access plans and are given a reference label (containing a capital letter in a circle) and will be a road unless otherwise stated beneath its reference letter in column (4) of Part 2 of this Schedule.

(c) Private means of access to be stopped up, as described in column (2) of Parts 3 and 4 of this Schedule, are shown by solid black shading (as shown in the key on the streets rights of way and access plans) over the extent of the area to be stopped up described in column (3) of Parts 3 and 4 of this Schedule, and are given a reference label (a lower case letter in a circle).

(d) New private means of access to be substituted for a private means of access to be stopped up (or which are otherwise to be provided), as included in column (4) of Part 4 of this Schedule, are shown by blue diagonal hatching (as shown in the key on the streets rights of way and access plans) and are given a reference label (a number in a circle).

PART 1

HIGHWAYS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

(1) *Area*	*(2)* *Highways to be stopped up*	*(3)* *Extent of stopping up*	*(4)* *New Highway to be substituted/provided*
Kingsway			

N/A	N/A	N/A	N/A
Markeaton			
Derby City Council	Footpath/cycle track From A38 northbound carriageway in a westerly direction to Greenwich Drive North.	Entire length of footway/cycle track from point A01 to A02 (a total distance of 23 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	N/A
Derby City Council	Footpath/cycle track From A38 northbound carriageway in a westerly direction to Greenwich Drive North.	Entire length of footway/cycle track from point A03 to A04 (a total distance of 9 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	N/A
Derby City Council	Footpath/cycle track From A38 southbound carriageway in an easterly direction to Thurcroft Close.	Entire length of footway/cycle track from point A45 to A46 (a total distance of 11 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	N/A
Derby City Council	Footpath/cycle track from the A38 southbound carriageway, north of the Markeaton junction, in a easterly direction.	Length of footway/cycle track from point A27 to A28 (a total distance of 4 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	N/A
Derby City Council	Enfield Road exit from the A38 northbound carriageway	Reference A07 An extent of 19 metres from the junction with the A38 northbound carriageway to Enfield Road as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	N/A
Derby City Council	Enfield Road entry on to the A38 northbound carriageway	Reference A08 An extent of 12 metres from the junction with the Enfield Road to the A38 northbound carriageway as shown	N/A

		on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	
Derby City Council	Footways/cycle track west of the A38 northbound carriageway.	Entire length of footway/cycle track on point A50, a total distance of 7 metres as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	N/A
Little Eaton			
Derbyshire County council	Ford Lane	Reference A02 A length of 112 metres north of its junction with the A38 northbound carriageway, as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.	N/A

PART 2

HIGHWAYS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW HIGHWAYS WHICH ARE OTHERWISE TO BE PROVIDED

(1) *Area*	*(2)* *Highway to be stopped up*	*(3)* *Extent of stopping up*	*(4)* *New Highway to be substituted/provided*
Kingsway			
Derby City Council	A38 northbound carriageway	Reference A04 Existing A38 northbound carriageway starting from Kingsway junction roundabout to a point 98 metres south of the Kingsway junction roundabout as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.	Reference A and B as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans. Reference A - Realigned A38 northbound carriageway starting at a point 74 metres south of the tip of the nosing of the A38 northbound diverge slip road at Kingsway junction to the point 254 metres north of the tip of the nosing of the A38 northbound merge slip road at Kingsway junction, a

			total distance of 1200 metres. Reference B - New A38 northbound diverge slip road starting from the diverge with A38 northbound carriageway to the point where it meets the new Kingsway junction roundabout, a total distance of 588 metres.
Derby City Council	Kingsway Junction Circulatory carriageway	Reference A05 The whole length of Kingsway junction circulatory carriageway, an extent of 495 metres, as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.	Reference C, D and E as shown on Sheet 1 (Kingsway junction) of the rights of way and access plans. Reference C - New Kingsway West Roundabout, a total distance of 118 metres. Reference D - New Kingsway Junction Overbridge link road for a length of 70m. Reference E - New Kingsway East Roundabout, a total distance of 208 metres.
Derby City Council	N/A	N/A	Reference F as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans. New A38 northbound merge slip road starting from new Kingsway junction roundabout to the point where it merges with A38 northbound carriageway, a total distance of 302 metres.
Derby City Council	Footway-68 (north of the existing A38 northbound carriageway and south of Greenwich Drive	Reference A09, A10 and A12 To be stopped up for a distance of 176 metres on Sheet 1 (Kingsway	New footway/cycle track from point AA to AC to AB for a length of 169 metres as shown on Sheet 1

	South)	junction) of the streets rights of way and access plans.	(Kingsway junction) of the streets rights of way and access plans.
Derby City Council	N/A	Reference A11 To be stopped up for a distance of 23 metres on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.	New footway/cycle track from point AC to AG for a length of 84 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	Brackensdale Avenue link road with the A38 northbound carriageway	Reference A13 An extent of link road from Brackensdale avenue to the A38 northbound carriageway, starting at the point 35 metres north of where it meets Brackensdale avenue junction to the A38 northbound carriageway, a total length of 106 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.	Reference G as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans. New Kingsway Park Close link road starting at its junction with the new Kingsway East Roundabout for a length of 224 metres in a north easterly direction to meet the existing Kingsway Park Close.
Derby City Council	N/A	N/A	New footway/cycle track from point AO to AP for a length of 22 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	Raleigh street junction with the A38 southbound carriageway.	Reference A18 An extent of 50 metres east from the Raleigh Street junction with the A38 southbound carriageway as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.	Reference G (as described above) as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	Footway	Reference A21 To be stopped up for a distance of 30 metres on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.	Footway/Cycle track from point AM to AN for a length of 20 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	Ashbourne Road exit	Reference A22	Reference J and K as

	from the A5111 eastbound carriageway	An extent of 12 metres from the junction with the A5111 eastbound and the A38 northbound carriageway as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.	shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans. Realigned A5111 Kingsway eastbound and westbound starting at Kingsway East Roundabout to the point 182 metres east of the Kingsway East Roundabout, a total distance of 182 metres.
Derby City Council	N/A	N/A	Reference I and L as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans. Reference I - Realigned A38 southbound carriageway starting at a point 328 metres north of the tip of the nosing of the A38 southbound diverge slip road at Kingsway junction roundabout to the point 177 metres south of the tip of the nosing of the A38 southbound merge slip road at Kingsway junction roundabout, a total distance of 1200 metres. Reference L - New A38 southbound merge slip road starting from new Kingsway East Roundabout to the point where it merges with A38 southbound carriageway, a total distance of 528 metres.
Derby City Council	N/A	N/A	Reference H as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.

			New A38 southbound diverge slip road starting from the diverge with A38 southbound carriageway to the point where it meets the new Kingsway East Roundabout, a total distance of 315 metres.
Derby City Council	N/A	N/A	New footway/cycle track from point AD to AE for a length of 89 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway/cycle track from point AF to AK for a length of 128 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway/cycle track from point AH to AI for a length of 141 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway/cycle track from point AJ to AL for a length of 198 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway/cycle track from point AQ to AR for a length of 16 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway from point AP to AU for a length of 166 metres as shown on Sheet 1

			(Kingsway junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway from point AQ to AT for a length of 119 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway from point AW to AV for a length of 62 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway/cycle track from point BB to BD for a length of 41 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway from point AX to AY for a length of 38 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Markeaton			
Derby City Council	N/A	N/A	References A and B as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans. Reference A - Realigned A38 northbound carriageway starting at the point 259 metres south of the tip of the nosing of the A38 northbound diverge slip road at Markeaton junction roundabout to the point 429 metres north of the tip of the nosing of the A38 northbound merge slip road at Markeaton junction roundabout, a total distance of 1234

			metres. Reference B - New A38 northbound diverge slip road starting from the diverge with A378 northbound carriageway to the point where it meets Markeaton junction roundabout, a total distance of 372 metres.
Derby City Council	Markeaton junction Circulatory carriageway	Reference A21 The whole length of Markeaton circulatory carriageway, an extent of 206 metres, as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	Reference C as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans. New Markeaton junction circulatory carriageway, an extent of 210 metres.
Derby City Council	N/A	N/A	Reference D and E as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans. Realigned A52 Ashbourne Road westbound and eastbound carriageway starting at Markeaton junction roundabout to a point 237 metres west from the Markeaton junction roundabout, a total distance of 237 metres.
Derby City Council	N/A	N/A	Reference F as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans. New A38 northbound merge slip road starting from the Markeaton junction roundabout to the point where it merges with the A38 northbound

			carriageway, a total distance of 275 metres.
Derby City Council	N/A	N/A	Reference G as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans. Reference G-Realigned A38 northbound diverge slip road onto Kedleston Road junction from the start of the diverge from the A38 northbound carriageway along its length to its meets with junction Kedleston Road, a length of 262 metres.
Derby City Council	N/A	N/A	Reference H as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans Realigned southbound merge slip road onto the A38 southbound carriageway from the start of the junction with the Kedleston Road along its length of 171 metres to where it meets with A38 southbound carriageway.
Derby City Council	N/A	N/A	References I and J as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans. Reference I-Realigned A38 southbound carriageway starting at the point 398 metres north of the A38 southbound diverge slip road nosing at Markeaton junction to the point 357 metres south of the A38 southbound merge slip

			road at Markeaton junction roundabout, a total distance of 1239 metres. Reference J-New A38 southbound diverge slip road starting from the diverge with A38 southbound carriageway to the point where it meets the A38 Markeaton junction roundabout, a total distance of 307 metres.
Derby City Council	A52 Ashbourne Road with the A38 circulatory	Reference A47 To be stopped up for a distance of 14 metres as shown on Sheet 2 (Markeaton junction) rights of way and access plans.	Reference K and L as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans. Reference K - Realigned A52 Ashbourne Road eastbound carriageway starting at the Markeaton junction roundabout to the point 87 metres east of the Markeaton junction roundabout, a total distance of 87 metres. Reference L - Realigned A52 Ashbourne Road westbound starting at the point 87 metres west of the Markeaton junction roundabout to the point where it meets the Markeaton junction roundabout, a total distance of 87 metres.
Derby City Council	N/A	N/A	Reference M as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans. New A38 southbound merge slip road starting from

			Markeaton junction roundabout to the point where it merges with A38 southbound carriageway, a total distance of 286 metres.
Derby City Council	Footway/cycle track on the east side of the A38 northbound carriageway	Reference A10 To be stopped up for a distance of 53 metres as shown on Sheet 2 (Markeaton junction) rights of way and access plans.	Realigned footway/cycle track from point AA to AB (a total distance of 98 metres) on the south west side of the Markeaton junction roundabout, as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	Realigned footway from point AI to BJ (a total distance of 130 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	Realigned footway from point BK to AM (a total distance of 185 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	Footbridge crossing the A38 northbound and southbound carriageway.	Entire length of footbridge and ramps, a total distance of 226 metres from point A23 to A24 as shown on Sheet 2 (Markeaton junction) rights of way and access plans.	New footway/cycle track including footway/cycle track bridge from point AV TO BN (a total distance of 312 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	Footway/cycle track on the north side of the A38 northbound carriageway	To be stopped up for a distance of 44 metres from point A25 to A26 as shown on Sheet 2 (Markeaton junction) rights of way and access plans.	New footway/cycle track from point AS to AV to AT (a total distance of 277 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway/cycle

			track from point AW to BN to AX to AY (a total distance of 618 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	Realigned footway/cycle track from point BD to BE (a total distance of 658 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	Realigned footway/cycle track from point AD to AE (a total distance of 17 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	Realigned footway from point AE to AF (a total distance of 19 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway from point AG to AH (a total distance of 10 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway/cycle track from point AK to AL (a total distance of 43 metres)as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway/cycle track from point AM to AN to BL to AO (a total distance of 73 metres) as shown on Sheet 2 (Markeaton

			junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway/cycle track from point AO to AP (a total distance of 27 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway/cycle track from point AQ to AR (a total distance of 68 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway/cycle track from point AX to BA (a total distance of 24 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway/cycle track from point BF to BG to BH to BI (a total distance of 84 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	Realigned footway/cycle track from point AZ to AY to BA (a total distance of 85 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	Realigned footway/cycle track from point BB to BC (a total distance of 28 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Little Eaton			
Derbyshire County	N/A	N/A	References A and B,

Council			as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans. Reference A - Realigned A38 northbound carriageway starting at a point 231 metres west of the tip of the nosing of the A38 northbound diverge slip road at Little Eaton junction to the point 341 metres north of the tip of the nosing of the A38 northbound merge slip road at Little Eaton junction, a total distance of 1267 metres. Reference B - New A38 northbound diverge slip road starting from the diverge with A38 northbound carriageway to the point where it meets the Little Eaton junction roundabout, a total distance of 441 metres.
Derbyshire County Council	N/A	N/A	Reference D, as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans. Realigned B6179 Alfreton Road starting at Little Eaton junction roundabout to the point 49 metres north of the Little Eaton junction roundabout, a total distance of 49 metres.
Derbyshire County Council	Little Eaton circulatory carriageway	Reference A09 The entire length of the existing Little Eaton circulatory carriageway, an extent	Reference E New Little Eaton Junction roundabout, a length of 348

		of 230 metres, and maintenance access, as shown on Sheet 3 (Little Eaton junction) streets rights of way and access plans.	metres, as shown on Sheet 3 (Little Eaton junction) streets rights of way and access plans.
Derbyshire County Council	A38 northbound carriageway	Reference A10 A total length of 518 metres on A38 northbound carriageway commencing at the existing Little Eaton junction in a northerly direction, as shown on Sheet 3 (Little Eaton junction) streets rights of way and access plans	Reference A (as described above) and F as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans. Reference F - New A38 northbound merge slip road starting from Little Eaton junction roundabout to the point where it merges with the A38 northbound carriageway, a total distance of 340 metres. .
Derbyshire County Council	A38 southbound carriageway	Reference A11 and A12 A total extent of 460 metres on the A38 southbound carriageway from the existing Little Eaton roundabout in a northerly direction, as shown on Sheet 3 (Little Eaton junction) rights of way and access plans.	References G, H and I as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans. Reference G - Realigned A38 southbound carriageway starting at a point 278 metres north of the tip of the nosing of the A38 southbound diverge slip road at Little Eaton junction to the point 183 metres west of the tip of the nosing of the A38 southbound merge slip road at Little Eaton junction, a total distance of 1300 metres. Reference H - New A38 southbound diverge slip road starting from the diverge with A38 southbound carriageway to the

			point where it meets the Little Eaton junction, a total distance of 524 metres. Reference I - New A38 southbound diverge slip road starting from the diverge with the A38 southbound diverge slip road at Little Eaton junction to the point where it meets the A61 Alfreton Road southbound carriageway, a total distance of 188 metres.
Derbyshire County Council	N/A	N/A	Reference J and K as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans. Reference J - Realigned A61 Alfreton Road southbound carriageway starting at Little Eaton junction roundabout to the point 106 metres south of the Little Eaton junction roundabout, a total distance of 106 metres. Reference K - Realigned A61 Alfreton Road northbound carriageway starting at a point 106 metres south of the Little Eaton junction roundabout to the point where it meets the Little Eaton junction roundabout, a total distance of 106 metres.
Derbyshire County Council	N/A	N/A	Reference C as shown on Sheet 3 (Little Eaton junction) of the

			streets rights of way and access plans. Reference C-Realigned Ford Lane starting at Little Eaton junction roundabout to the point 24 metres west of the Little Eaton junction roundabout, a total distance of 24 metres.
Derbyshire County Council	A38 southbound carriageway	N/A	Reference L as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans. New A38 southbound merge slip road starting from Little Eaton junction roundabout to the point where it merges with A38 southbound carriageway, a total distance of 426 metres.
Derbyshire County Council	N/A	N/A	Realigned footway/cycle track from point AA to AB to AC for a length of 442 metres as show on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.
Derbyshire County Council	N/A	N/A	Realigned footway/cycle track from point AD to AE for a length of 62 metres as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.
Derbyshire County Council	N/A	N/A	New footway/cycle track from point AF to AG for a length of 25 metres as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.
Derbyshire County Council	N/A	N/A	New footway/cycle track from point AH

			and AI for a length of 150 metres as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.
Derbyshire County Council	N/A	N/A	New footway/cycle track from point AJ and AK for a length of 80 metres as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.

PART 3

PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

(1) *Area*	*(2)* *Private means of access to be stopped up*	*(3)* *Extent of stopping up*
Kingsway		
N/A	N/A	N/A
Markeaton		
Derby City Council	Footways/cycle track between houses No. 18 and 20 Queensway, from the Queensway access Road heading in an easterly direction.	Entire length of footway/cycle track from point A14 to A15, a total distance of 30 metres as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	Access to private property (House No. 4 Queensway)	Reference B02 An extent of 10 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	Access to private property (House No. 6 Queensway)	Reference B03 An extent of 10 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	Access to private property (House No. 8 Queensway)	Reference B04 An extent of 10 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	Access to private property (House No. 10 Queensway)	Reference B05 An extent of 10 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	Access to private property (House No. 12 Queensway)	Reference B06 An extent of 10 metres from the junction with footways to the private property as shown on

		Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	Access to private property (House No. 14 Queensway)	Reference B07 An extent of 10 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	access to private property (House No. 16 Queensway)	Reference B08 An extent of 10 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	Access to private property (House No. 18 Queensway)	Reference B09 An extent of 5 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	Access to private property (House No. 2 Queensway)	Reference B12 An extent of 3 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	Access to private property (House no. 257 Ashbourne Road)	Reference B15 An extent of 3 metres from the junction with A52 Ashbourne Road westbound carriageway properties as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	access to private property (House No. 20 Queensway)	Reference B16 An extent of 4 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	access to private property (House No. 22 Queensway)	Reference B17 An extent of 3 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	Access to private property (House No. 24 Queensway)	Reference B18 An extent of 3 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	Access to private property (House No. 26 Queensway)	Reference B19 An extent of 3 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	Access to private property (House No. 30 Queensway)	Reference B20 An extent of 3 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	Access to private property (House No. 32 Queensway)	Reference B21 An extent of 3 metres from the junction with

		footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Little Eaton		
N/A	N/A	N/A

PART 4

PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW PRIVATE MEANS OF ACCESS WHICH ARE OTHERWISE TO BE PROVIDED

(1) *Area*	*(2)* *Private means of access to be stopped up*	*(3)* *Extent of stopping up*	*(4)* *New private means of access to be substituted/provided*
Kingsway			
Derby City Council	Reference B02 Access to private property from Kingsway Park Close	An extent of 22 metres north from the junction with the Kingsway Park Close as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.	Reference 1 Realigned private means of access on Kingsway park close link road, 230m south of the junction with Lyttleton Street road as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	Reference 2 A new private means of access to a buried tank on A38 northbound diverge slip road, starting at a point 180 metres south of Kingsway West Roundabout, a total distance of 19 metres including 20 metres turning head as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	Reference 3 A new private means of access to proposed balancing pond on A38 northbound carriageway, starting at a point 369 metres north of the tip of the nosing of A38 northbound diverge slip road, a distance of 35 metres including

			the 20 metres length of turning head as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Markeaton			
Derby City Council	-	-	Reference 1 A new private means of access to a buried tank off new footway/cycle track (BN to AX), a total distance of 11 metres as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	Access to private property No. 253 Ashbourne Road	Reference B13 An extent of 1 metres from the A52 Ashbourne Road westbound carriageway to private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	Reference 2 From the A52 Ashbourne Road westbound carriageway to private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	Access to private property No. 255 Ashbourne Road	Reference B14 An extent of 1 metres from the A52 Ashbourne Road westbound carriageway to private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	Reference 2 From the A52 Ashbourne Road westbound carriageway to private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	Access to properties on Sutton Close	Reference B22 An extent of 5 metres from the A52 Ashbourne Road westbound carriageway to Sutton Close as shown on Sheet 2 (Markeaton junction) streets rights of way and access plans.	Reference 2 From the A52 Ashbourne Road westbound carriageway to private properties on Sutton Close as shown on Sheet 2 (Mareaton junction) of the streets rights of way and access plans.
Little Eaton			
Derbyshire County Council	Access to private land	Reference B01 Access to private land (a length of 14m) from the A61 Alfreton	Reference 1 Access to private land (a length of 14m) from the A61 Alfreton

		northbound carriageway, as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.	road northbound carriageway at a point 170 metres south of the existing Little Eaton roundabout, as shown on Sheet 3 (Little Eaton junction) of the rights on way and access plans.
Derbyshire County Council	-	-	Reference 2 A new private means of access to new balancing ponds, starting from the A61 Alfreton road southbound carriageway including the entire length of roads around ponds (a total distance of 256 metres)as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.

SCHEDULE 5

Article 26

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

(1) *Plot reference number shown on land plans*	*(2)* *Purpose for which rights over land may be acquired*	*(3)* *Relevant part of the authorised development*
Land Plans – Sheet 1		
1/3a	Required for the establishment and maintenance of environmental mitigation and enhancement areas	Work No. 8
1/3b	Required for the establishment and maintenance of environmental mitigation and enhancement areas and the diversion and maintenance of and access to utilities and the establishment and maintenance of flood storage areas	Work No. 1, 8 and 9
1/4b	Required for the establishment of environmental mitigation and enhancement and the diversion and maintenance of and access to utilities	Work No. 8 and 9
Land Plans – Sheet 2		
2/1b	Required for the diversion and maintenance of and access to utilities and the establishment	Work No. 8 and 9

	and maintenance of environmental mitigation and enhancement	
2/1c	Required for the construction of a diverge slip road and for the establishment of environmental mitigation and enhancement areas and the construction of highway drainage attenuation	Work No. 2 and 8
2/1f	Required for the construction of a cycle track and the diversion and maintenance of and access to utilities	Work No. 3 and 9
2/1o	Required for the construction and reconfiguration of the junction between Lyttelton Street and Kingsway Park Close and the diversion and maintenance and access to utilities	Work No. 7 and 9
2/1p	Required for the construction and reconfiguration of the junction between Lyttelton Street and Kingsway Park Close and the diversion and maintenance and access to utilities	Work No. 7 and 9
2/7a and 2/8	Required for the diversion construction and maintenance of a cycle track	Work No. 3
2/9	Required for the construction and maintenance of a cycle track and the diversion and maintenance of and access to utilities	Work No. 3 and 9
2/13a	Required to construct a link road and the diversion and maintenance and access to utilities	Work No. 7 and 9
2/19a	Required to construct a link road and the diversion and maintenance of and access to utilities and the construction of footways	Work No. 7 and 9
2/19b	Required to construct a link road and the diversion and maintenance of and access to utilities and the reconfiguration of Lyttelton junction	Work No. 7 and 9
Land Plans – Sheet 3		
3/1p and 3/1q	Required for the construction of a northbound diverge slip road and the diversion and maintenance of and access to	Work No. 11 and 22

	utilities and the stopping up of the Enfield Road entry and exit roads	
3/1w and 3/1x	Required for the diversion and maintenance of and access to a utility corridor and construction of a new emergency access	Work No. 16 and 21
3/5a	Required for the alteration, realignment and grading of highway; the construction, improvement and realignment of cycle track and the diversion and maintenance of and access to utilities	Work No. 10, 15 and 22
3/9b	Required for alterations to the access to and egress from the filling station and fast-food site and the diversion and maintenance of utilities	Work No. 16 and 22
3/16a, 3/17 and 3/19	Required for the construction and alteration of a private means of access	Work No. 16
3/22b	Required for the construction of a southbound diverge slip and alteration realignment and grading of highway and the construction and maintenance of a noise barrier and alterations to the access to and egress from the A52 to the Royal School for the Deaf	Work No. 13 and 16
Land Plans - Sheet 4		
4/1b	Required for the diversion and maintenance of and access to a utility corridor and for the demolition of a footbridge and replacement of a footbridge	Work No. 10 and 21
4/1d	Required for the alteration, realignment and grading of a highway	Work No. 10, 21 and 22
4/7b	Required for the construction and maintenance of a noise barrier	Work No. 13
Land Plans – Sheet 6		
6/2	Required for the construction and maintenance of a flood plain compensation area and the diversion and maintenance of and access to utilities	Work No. 31
Land Plans – Sheet 7		
7/5	Required for the construction and maintenance of a flood plain compensation area and the diversion and maintenance of and access to utilities	Work No. 31

Land Plans – Sheet 8		
8/6	Required for the access construction and maintenance of a railbridge	Work No. 23
8/23b, 8/25c and 8/21	Required for the diversion and maintenance of and access to utilities	Work No. 35
Land Plans – Sheet 9		
9/6b	Required for the alteration, realignment and grading of northbound and southbound carriageways, the construction of a southbound diverge slip road and the diversion and maintenance of and access to utilities	Work No. 23, 26 and 35

SCHEDULE 6

Article 26

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or imposition of a restrictive covenant as they apply as respects compensation for the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

"(5) (a) If—

(a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 6 to the A38 Derby Junctions Development Consent Order 202[•] (the "A38 Derby Junctions Order"));

(b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 6 to the A38 Derby Junctions Order) to acquire an interest in the land; and

(c) the acquiring authority enter on and take possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right."

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(**a**) has effect subject to the modifications set out in sub-paragraph (2).

(**a**) 1973 c.26.

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

(a) for "land is acquired or taken from" substitute "a right or restrictive covenant over land is purchased from or imposed on"; and

(b) for "acquired or taken from him" substitute "over which the right is exercisable or the restrictive covenant enforceable".

Application of Part 1 of the 1965 Act

4. Part 1 of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 29 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 23 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 26(1) (compulsory acquisition of rights)—

(a) with the modifications specified in paragraph 5; and

(b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

(a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or

(b) the land over which the right is or is to be exercisable, or the restriction is or is to be enforceable.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

"**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act."

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

(a) section 9(4) (failure by owners to convey);

(b) paragraph 10(3) of Schedule 1 (owners under incapacity);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 23), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(**a**) (powers of entry: further notices of entry), 11B(**b**) (counter-notice

(**a**) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c.22).
(**b**) Section 11B was inserted by section 187(3) of the above Act.

requiring possession to be taken on specified date), 12 (unauthorised entry) and 13 (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(6) Section 20 (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 29(4) is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A of the 1965 Act substitute—

"SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT IN NOTICE TO TREAT

Introduction

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or a restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 30 (application of the 1981 Act) of the A38 Derby Junctions Development Consent Order 202[•] in respect of the land to which the notice to treat relates.

(2) But see article 31(3) (acquisition of subsoil or airspace only) of the A38 Derby Junctions Development Consent Order 202[•] which excludes the acquisition of subsoil or airspace only from this Schedule.

(2) In this Schedule, "house" includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory ("the owner") may serve a counter-notice requiring the acquiring authority to purchase the owner's interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

(a) withdraw the notice to treat,

(b) accept the counter-notice, or

(c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served ("the decision period").

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the house, building or factory.

Determination by the Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right of the imposition of the restrictive covenant would—

(a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or

(b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making the determination, the Upper Tribunal must take into account—

(a) the effect of the acquisition of the right or the imposition of the covenant,

(b) the use to be made of the right or covenant proposed to be acquired or imposed, and

(c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawing of the notice.

15. Any dispute as to the compensation is to be determined by the Upper Tribunal."

SCHEDULE 7

Article 33

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) *Plot Reference Number shown on land plans*	*(2)* *Purpose for which temporary possession may be taken*	*(3)* *Relevant part of the authorised development*
Land Plans – Sheet 1		
1/3c	Required for the establishment of environmental mitigation and enhancement.	Work No. 8
1/4a	Required for the establishment	Work No. 8

	of environmental mitigation and enhancement.	
Land Plans – Sheet 2		
2/1a	Required for the establishment of environmental mitigation and enhancement	Work No. 8
2/1d	Required for the construction of a northbound merge slip road and construction and realignment of a cycle track	Work No. 3
2/1n	Required for the construction of a link road and the construction and maintenance of a noise barrier	Work No. 7
2/1r	Required for the widening of the Brackensdale Avenue east and west underbridges, the alteration of part of the entry and exit lanes off Brackensdale Avenue which connects to the A38 and the reconfiguration of the existing junction between Lyttelton Street and Kingsway Park Close	Work No. 1 and 7
2/1s	Required for the alteration of part of the entry and exit lanes off Brackensdale Avenue which connects to the A38 and works to effect the stopping up of part of the entry and exit lanes off Brackensdale Avenue which connect to the A38	Work No. 1
2/1t	Required for works to effect the stopping up of part of the entry and exit lanes off Brackensdale Avenue which connect to the A38	Work No. 1
2/1u	Required for the alteration, realignment and grading of highway	Work No. 1
2/3	Required for the establishment of environmental mitigation and enhancement	Work No. 8
2/6	Required for the construction of a cycle track and establishment of environmental mitigation and enhancement	Work No. 3 and 8
2/13c	Required to construct a link road	Work No. 7
Land Plans – Sheet 3		
3/1aa	Required for the diversion and construction of a utility corridor	Work No. 21

3/1b, 3/1c and 3/1d	Required for the alteration, realignment and grading of the A38	Work No. 10
3/1g and 3/1h	Required for works to effect the stopping up of the entry and exit lanes of Raleigh Street which connect to the A38; and the improvement and realignment of a cycle track	Work No. 1 and 15
3/1i	Required for the alteration, realignment and grading of highway and the construction, improvement and realignment of a cycle track	Work No. 10 and 15
3/1j	Required for the alteration, realignment and grading of the A38	Work No. 10
3/1n	Required for the construction of the A38 and the northbound diverge slip road	Work No. 10 and 11
3/1t and 3/8b	Required for alterations to the access and egress from the filling station and fast-food site	Work No. 16
3/1v	Required for the construction of a new junction for access to and egress from Markeaton Park including a roundabout and a park & ride bus stop; works to effect the stopping up of the entrance to Markeaton Park; new emergency access from Markeaton Park and relocation of the boundary wall to Markeaton Park	Work No. 16
3/4	Required for the alteration, realignment and grading of highway and the construction, improvement and realignment of the existing cycle track and access to undertake utility diversion works	Work No. 10, 15 and 22
3/5b	Required for the alteration, realignment and grading of highway and the construction of a southbound merge slip road	Work No. 10 and 14
3/5d	Required for the construction of a temporary construction compound	Work No. 19
3/8a and 3/9a	Required for amendments to the access to and egress from the filling station and fast-food site	Work No. 11
3/15a	Required for the construction and alteration of a private	Work No. 16

	means of access	
Land Plans – Sheet 4		
4/1c	Required for the construction of a southbound merge slip road and access to undertake utility diversion works	Work No. 14 and 21
4/1f	Required for the establishment of environmental mitigation and enhancement areas	Work No. 20
4/1h and 4/7d	Required to establish environmental mitigation and enhancement areas	Work No. 20
4/13b	Required for the establishment of environmental mitigation and enhancement areas	Work No. 20
Land Plans – Sheet 5		
5/1 and 5/2	Required to establish environmental mitigation and enhancement areas	Work No. 20
Land Plans – Sheet 7		
7/1a, 7/1b, 7/2, 7/1d and7/1c	Required for the reconfiguration of highway and a junction	Work No. 34
7/1f and 7/12	Required for the realignment of Ford Land and the reconfiguration of the junction with Lambourn Drive and the alteration of Ford Lane Bridge	Work No. 29 and 33
7/6, 7/7a and 7/7b	Required for the construction of flood compensation area	Work No. 31
7/17a	Required for the alteration, realignment and grading of carriageway and the construction of a southbound merge slip road and works to effect the stopping up and diversion of a section of a footpath and works to effect the stopping up and diversion of a private means of access	Work No. 23 and 27
7/14	Required for the alteration, realignment and grading of the carriageway and the construction of a southbound merge slip road	Work No. 23 and 27
7/17c	Required for the alteration, realignment and grading of the northbound and southbound lanes of the carriageway and the southbound merge slip road	Work No. 23 and 27
7/9, 7/8, 7/1e, 7/10, and 7/11	Required for the realignment of Ford Lane and the reconfiguration of the junction with Lambourn Drive	Work No. 33

7/1g	Required for the establishment of environmental mitigation areas	Work No. 37
7/1h and 7/1i	Required for alterations to a bridge on Ford Lane	Work No.29
7/1j and 7/13	Required for works to stop up a highway and carry out works on a bridge	Work No. 28 and 29
Land Plans – Sheet 8		
8/1	Required for the erection and accommodation of a temporary works compound	Work No. 32
8/2, 8/3a and 8/3c	Required for the alteration, realignment and grading of the northbound and southbound carriageways and the construction of a southbound merge slip road	Work No.23 and 27
8/5 and 8/8	Required for the alteration, realignment and grading of the northbound and southbound carriageway and alteration and extension to an existing railway bridge	Work No. 23
8/18 and 8/19	Required for the realignment and grading of Ford Lane to connect to the Little Eaton Roundabout	Work No. 30
8/10b	Required for the alteration, realignment and grading of the northbound and southbound lanes, construction of a southbound merge slip road and the alteration, realignment and grading of carriageway	Work No. 23, 27 and 30
8/10c and 8/11	Required for the construction of a southbound diverge slip road and the alteration, realignment and grading of carriageway	Work No. 26 and 30
8/4h, 8/15, 8/16b, 8/24b and 8/25b	Required for the alteration, realignment and grading of northbound and southbound carriageway, construction of a southbound diverge slip road and the erection and accommodation of a works compound	Work No. 23 and 26
Land Plans – Sheet 9		
9/1, 9/2, 9/3, 9/4	Required for the erection and accommodation of a temporary works compound	Work No. 32

SCHEDULE 8

Article 40

TREES SUBJECT TO TREE PRESERVATION ORDERS

(1) *Name of Order/Type of tree*	*(2)* *Work to be carried out*	*(3)* *Relevant part of the authorised development*
Land at Royal School for the Deaf, Land at the R.S.D Ashbourne Road, Derby (TPO No. 456)	Tree Removal	Work No. 13
Northern boundary of playing field and adjacent to 32 Queensway, Royal School for the Deaf (160)	Tree Removal	Work No. 13
Land to the north and east of Queensway, Land to the north of Markeaton Street (116)	Tree Removal	Work No. 10
Land at Sturgess Fields (197)	Tree Removal	Work No. 10

SCHEDULE 9

Article 44

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part of this Schedule—

"alternative apparatus" means—

(a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(**a**), belonging to or maintained by that utility undertaker;

(b) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and

(c) in the case of a sewerage undertaker—

(i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(**b**); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act(**c**),

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other

(**a**) 1989 c.29.
(**b**) 1991 c.56.
(**c**) Section 104 was amended by section 42(3) of the Flood and Water Management Act 2010 (c.29).

accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"functions" includes powers and duties;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed; and

"utility undertaker" means—

(a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

(b) a water undertaker within the meaning of the Water Industry Act 1991; and

(c) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

On street apparatus

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus in stopped up streets

4.—(1) Where any street is stopped up under article 16 (permanent stopping up and restriction of use of streets and private means of access), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 15 (temporary stopping up and restriction of use of streets and highways), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 21 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

6. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this

Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 48 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker

as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

9.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) are to be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker, in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

(7) In relation to works which will or may be situated on, over, under or within 10 metres measured in any direction of any electricity apparatus, the plan to be submitted to the utility undertaker under sub-paragraph (1) must be detailed, include a method statement and describe—

(a) the exact position of the works;

(b) the level at which they are proposed to be constructed or renewed;

(c) the manner of their construction or renewal;

(d) the position of all electricity apparatus; and

(e) by way of detailed drawings, every alteration proposed to be made to such apparatus.

Expenses and costs

10.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 48 (arbitration) to be necessary then, if such placing involves cost exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2) 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 those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and

(b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise of any proceedings necessary to resist the claim or demand.

Cooperation

12. Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the

authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

13. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

14. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

15. In this Part of this Schedule—

"the 2003 Act" means the Communications Act 2003(**a**);

"electronic communications apparatus" has the same meaning as in the electronic communications code;

"the electronic communications code" has the same meaning as in section 106(**b**) (application of the electronic communications code) of the 2003 Act;

"electronic communications code network" means—

(a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the undertaker is providing or proposing to provide;

"electronic communications code operator" means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

"infrastructure system" has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 (infrastructure system) of that code; and

"operator" means the operator of an electronic communications code network.

16. The exercise of the powers conferred by article 35 (statutory undertakers) is subject to Part 10 (undertaker's works affecting electronic communications apparatus) of the electronic communications code.

17.—(1) Subject to sub-paragraphs (2) to (4), if as a result of the authorised development or its construction, or of any subsidence resulting from the authorised development—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it by reason, or in consequence of, any such damage or interruption.

(**a**) 2003 c.21.
(**b**) Section 106 was amended by section 4 of the Digital Economy Act 2017.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 48 (arbitration).

(5) This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or

(b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(c) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

18.—(1) The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this Part of this Schedule—

"the Agency" means the Environment Agency;

"construction" includes executing, placing, altering, replacing, relaying, removing and excavating and "construct" and "constructed" shall be construed accordingly;

"drainage work" means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

"fishery" means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

"main river" means all watercourses shown as such on the statutory main river maps held by the Agency and the Department for Environment Food and Rural Affairs including any structure or appliance for controlling or regulating the flow of water in or out of the channel;

"plans" includes sections, drawings, specifications, calculations and method statements;

"specified work" means so much of any work or operation authorised by this Order as is in, on, under, over or within 8 metres of a drainage work or is otherwise likely to—

(a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

(b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;

(c) cause obstruction to the free passage of fish or damage to any fishery;

(d) affect the conservation, distribution or use of water resources; or

(e) affect the conservation value of the main river and habitats in its immediate vicinity;

"watercourse" includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer.

19.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 28.

(3) Any approval of the Agency required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) in the case of a refusal must be accompanied by a statement of grounds of refusal;

(c) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval; and

(d) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work, fishery or water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(c).

20. Without limiting paragraph 19, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

21.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 20, must be constructed—

(a) without unreasonable delay in accordance with the plans approved or settled under this Part of this Schedule; and

(b) to the reasonable satisfaction of the Agency,

and the Agency shall be entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of the specified work to which the protective works relate.

(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (4) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the

Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing shall be recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency shall not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 28.

22.—(1) Subject to sub-paragraph (7) the undertaker must from the commencement of the construction of the specified works until the date falling 12 months from the date of completion of those works ("the maintenance period"), maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) Upon the expiry of the maintenance period, the drainage work must be maintained by the highway authority of the highway to which the specified work relates.

(3) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the person liable for maintenance to repair and restore the work, or any part of such work, or (if the person liable for maintenance so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the specified work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(4) Subject to sub-paragraph (6), if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (3) on the person liable for maintenance, the person has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is reasonably necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing shall be recoverable from that person.

(5) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these Protective Provisions the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker must cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(6) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (3), the Agency shall not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 28.

(7) This paragraph does not apply to—

(a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of this Order from doing so; or

(b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

23. If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure reasonably incurred by the Agency in so doing from the undertaker.

24. If by reason of construction of a specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence

or use the equipment no less effectively than was possible before the obstruction within 24 hours of the undertaker becoming aware of such obstruction.

25.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in a fishery during the construction of any specified work.

(2) If by reason of—

(a) the construction of any specified work; or

(b) the failure of any such work,

damage to a fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are required under sub-paragraph (2), the Agency may take those steps and any expenditure reasonably incurred by the Agency in so doing shall be recoverable from the undertaker.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any reasonable expenditure reasonably incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

26. The undertaker must repay to the Agency all reasonable costs, charges and expenses which the Agency may reasonably incur—

(a) in the examination or approval of plans under this Part of this Schedule;

(b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and

(c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

27.—(1) The undertaker must make reasonable compensation for costs and losses which may be reasonably incurred or suffered by the Agency by reason of—

(a) the construction of any specified works comprised within the authorised works; or

(b) any act or omission of the undertaker, its employees, contractors or agents or other whilst engaged upon the construction of the authorised works.

(2) For the avoidance of doubt, in sub-paragraph (1)—

"costs" includes—

(a) expenses and charges; and

(b) staff costs and overheads;

(c) legal costs;

"losses" includes physical damage.

(3) The undertaker must make reasonable compensation for liabilities, claims and demands arising out of or in connection with the authorised development or otherwise out of the matters referred to in sub-paragraph (1)(a) and (b).

(4) For the avoidance of doubt, in sub-paragraph (3)—

"claims" and "demands" include as applicable—

(a) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand;

(b) any interest element of sums claimed or demanded;

"liabilities" includes—

(a) contractual liabilities;

(b) tortious liabilities (including liabilities for negligence or nuisance);

(c) liabilities to pay statutory compensation or for breach of statutory duty; and

(d) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(5) The Agency must give to the undertaker reasonable written notice of any such claim or demand.

(6) The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.

(7) The Agency must not compromise or settle any such claim or demand or make any admission which might be prejudicial to the claim or demand without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(8) The Agency must at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or losses.

(9) The Agency must, at the request of the undertaker, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid its reasonable expenses reasonably incurred in so doing.

(10) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

(11) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, demands or losses to the extent they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.

28. Any dispute arising between the undertaker and the Agency under this Part of this Schedule will, if the parties agree, be determined by arbitration under article 48 (arbitration), but will otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Transport or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

PART 4

FOR THE PROTECTION OF NETWORK RAIL

29. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 43, any other person on whom rights or obligations are conferred by that paragraph.

30.—(1) In this Part of this Schedule—

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail by the Secretary of State in exercise of their powers under section 8 of the Railways Act 1993(**a**);

(**a**) 1993 c.43.

"Network Rail" means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006(**a**)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"protective works" means any works specified by the engineer under paragraph 33(4);

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; and

"specified work" means so much of any of the authorised development as is or is to be situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

31.—(1) Where under this Part of this Schedule Network Rail is required to give its consent, or approval in respect of any matter, that consent, or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

32.—(1) The undertaker must not exercise the powers conferred by articles 15 (temporary stopping up and restriction of use of streets). 16 (permanent stopping up and restriction of use of streets and private means of access), 17 (access to works), 20 (discharge of water), 21 (protective works to buildings), 22 (authority to survey and investigate the land), 23 (compulsory acquisition of land), 26 (compulsory acquisition of rights), 28 (private rights over land), 31 (acquisition of subsoil or airspace only), 32 (rights under or over streets), 33 (temporary use of land for carrying out the authorised development), 34 (temporary use of land for maintaining the authorised development), 35 (statutory undertakers), 39 (felling or lopping of trees and removal of hedgerows) and 40 (trees subject to tree preservation orders) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act or the 1981 Act as applied by this Order in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(**a**) 2006 c.46.

(3) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of electronic communications code network operators: preliminary notices) of the 1990 Act or article 35 (statutory undertakers) in relation to any right of access of Network Rail to railway property, but such right of access may be extinguished or diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent under this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

33.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 48 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not communicated disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to communicate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not communicated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's reasonable opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation decommissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works in question until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

34.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 33(4) must, when commenced, be constructed—

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 33;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work or a protective work, the undertaker must, regardless of any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its employees, contractors or agents or any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its employees, contractors or agents.

35. The undertaker must—

(a) at all times afford reasonable facilities to the engineer for access to a specified work or a protective work during its construction; and

(b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or a protective work or the method of constructing it.

36. Network Rail must at all times afford reasonable facilities to the undertaker and its employees, contractors or agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

37.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work or a protective work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations or additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which are expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work or a protective work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work or the protective work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work or the protective work is to be constructed, Network Rail must assume construction of that part of the specified work or protective work and the undertaker must, regardless of any approval of the specified work or protective work in question under paragraph 33, pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work or protective work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 38(a), provide such details of the formula or method of calculation by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

38. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 33(3) or in constructing any protective works under the provisions of paragraph 33(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work or a protective work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work or a protective work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer be required to be imposed by reason or in consequence of the construction or failure of a specified work or a protective work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work or a protective work.

39.—(1) In this paragraph—

"EMI" means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

"Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 33 for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 33) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified under sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the

method of their execution must be selected at the reasonable discretion of Network Rail, and in relation to such modifications paragraph 33 has effect subject to this sub-paragraph.

(6) If at any time prior to the completion of the authorised development and regardless of any measures adopted under sub-paragraph (3) the testing or commissioning of the authorised development causes EMI, the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and

(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 34.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 43(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 38(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 48 (arbitration) to the Institution of Civil Engineers is to be read as a reference to the Institution of Engineering and Technology.

40. If at any time after the completion of a specified work or a protective work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work or the protective work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work or protective work in such state of maintenance as not adversely to affect railway property.

41. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work or a protective work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

42. 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 by the undertaker to Network Rail.

43.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction or maintenance of a specified work or a protective work or the failure of it;

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work or a protective work,

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or protective work or any such failure, act or omission and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision will not (if it was done without negligence on the part of Network Rail or its employees, contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior written consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or a protective work or any such act or omission as mentioned in sub-paragraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

44. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable pursuant to this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 43) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

45. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

46. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

(a) any railway property shown on the works plans or the land plans and described in the book of reference;

(b) any lands, works or other property held in connection with any such railway property; and

(c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

47. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

48. The undertaker must give written notice to Network Rail where any application is proposed to be made by the undertaker for the Secretary of State's consent under article 10 (consent to transfer benefit of order) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

49. The undertaker must no later than 28 days from the date that the plans and documents referred to in article 46 (certification of plans etc.) are certified by the Secretary of State provide a set of those plans and documents to Network Rail in a format specified by Network Rail.

PART 5

FOR THE PROTECTION OF CADENT GAS LIMITED

Application

50. The following provisions apply for the protection of Cadent, unless otherwise agreed in writing between the undertaker and Cadent.

Interpretation

51. In this Part of this Schedule—

"alternative apparatus" means appropriate alternative apparatus to the reasonable satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Cadent for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

"Cadent" means Cadent Gas Limited and/or its successors in title and/or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

"commence" has the same meaning as in article 2(1) of the Order and commencement shall be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement include operations consisting of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in

respect of any contamination or other adverse ground conditions, establishment of working areas and compounds, and delivery of construction materials, plant and equipment;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"facilities and rights" for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Cadent's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including retain, lay, construct, inspect, protect, use, access, replace, renew or remove;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"rights" includes restrictive covenants, and in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which:

(a) are or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 7(2) or otherwise; or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 55(2) or otherwise.

On Street Apparatus

52.—(1) This Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provision of Part 3 of the 1991 Act, except for -

(a) Paragraphs 52 (apparatus of Cadent in stopped up streets), 57 (retained apparatus: protection of Cadent), 58 (expenses) and 59 (indemnity); and

(b) Where sub-paragraph (2) applies, paragraph 55 (removal of apparatus) and 56 (facilities and rights for alternative apparatus).

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but is not wholly replaced within the existing public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

Apparatus of Cadent in stopped up streets

53.—(1) Where any street is stopped up under article 16 (permanent stopping up and restriction of use of streets and private means of access), if Cadent has any apparatus in the street or accessed via that street Cadent is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Cadent, or procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph shall affect any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 55.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 15 (temporary stopping up and restriction of use of streets and highways), Cadent will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as it would have been entitled to do immediately before such temporary stopping up or diversion in respect of any apparatus which at the time of the stopping up or diversion was in that highway

(3) The Protective Provisions in this Part of this Schedule apply and take precedence over article 36(2) to (7) to the Order which shall not apply to Cadent.

Protective works to buildings

54.—(1) The undertaker must exercise the powers conferred by article 21 (protective work to buildings), so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent (such consent not to be unreasonably withheld or delayed) and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of Cadent or any interruption in the supply of gas by Cadent, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

(a) pay compensation to Cadent for any loss sustained by it; and

(b) indemnify Cadent against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by Cadent, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of Cadent or its contractors or workmen; and Cadent will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement, admission of liability or compromise thereof shall be made by Cadent, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

55.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any interest in land of Cadent, or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of Cadent, otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between Cadent and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Cadent or affect the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent

unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure or secure the consent to and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent or other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule shall prevail.

(4) Any agreement or consent granted by Cadent under paragraph 57 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph 54(1).

(5) As a condition of an agreement between the parties under sub-paragraph (1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement or other interest of Cadent in such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where the undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 55 do not apply, the undertaker must, unless Cadent agrees otherwise:

(a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; or

(b) (where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

Removal of apparatus

56.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 54, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and, the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account sub-paragraph 56(1)) the necessary facilities and rights:

(a) for the construction of alternative apparatus; and

(b) subsequently for the maintenance of that apparatus.

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be

constructed save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and the undertaker.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

57.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed then the terms and conditions to which those facilities and rights are subject in the matter may be referred to arbitration in accordance with paragraph 63 (arbitration) of this Part of this Schedule and the arbitrator may make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of Cadent

58.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

(3) The undertaker must not commence any specified works until Cadent has given written approval of the plan so submitted.

(4) Any approval of Cadent under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and

(b) must not be unreasonably withheld or delayed and Cadent must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).

(5) Cadent may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must only be executed in accordance with -

(a) the plan, submitted under sub-paragraph (1), as approved or as amended from time to time by agreement between the undertaker and Cadent; and

(b) all conditions imposed under sub-paragraph (4)(a), and Cadent is entitled to watch and inspect the execution of those works.

(7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement

(8) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 49 to 51 and 54 to 56 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 55(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works -

(a) the undertaker must implement an appropriate ground mitigation scheme; and

(b) Cadent retains the right to carry out further necessary protective works for the safeguarding of its apparatus and can recover any such costs in accordance with paragraph 58.

(11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances.

(12) In this paragraph "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works reasonably believes to be existing or imminent) which are likely to cause danger to persons or property.

Expenses

59.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand all charges, costs and expenses reasonably anticipated (subject to Cadent first providing to the undertaker a detailed design and estimate which is to be agreed between the parties) or reasonably incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent;

(i) using its own compulsory purchase powers to acquire any necessary rights under sub-paragraph 55(3) if it elects to do so; or

(ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;

(g) any watching brief pursuant to sub-paragraph 57(6).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 63 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs must be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(c) An amount which apart from this sub-paragraph would be payable to Cadent in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

60.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the 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 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, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker must—

(a) bear and pay on demand accompanied by an invoice or claim from Cadent, the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and

(b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs properly incurred by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief does not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of-

(a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and

(b) any part of the authorised development carried out by Cadent in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 10;

(c) any indirect or consequential loss of any third party arising from any such damage or interruption, which is not reasonably foreseeable.

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering its representations.

(5) Cadent must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies and if reasonably requested to do so by the undertaker Cadent must provide an explanation of how the claim has been minimised.

Enactments and agreements

61. Except where this Part of this Schedule provides otherwise, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

62.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or Cadent requires the removal of apparatus under sub-paragraph 55(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 57, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

(2) Whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted to Cadent or the taking of action by Cadent, it must not be unreasonably withheld or delayed.

Access

63. If in consequence of the agreement reached in accordance with sub-paragraph 54(1) or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

64. Save for differences or disputes arising under sub-paragraphs 55(2) and 55(4) any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 48 (arbitration).

Notices

65. Notwithstanding article 47 (service of notices) any plans submitted to Cadent by the undertaker pursuant to sub-paragraph 57(1) must be sent via email to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com as well as via post to Plant Protection, Cadent Gas Limited, Brick Kiln Street, Hinckley, Leicestershire, LE10 0NA, or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

SCHEDULE 10

Article 46

DOCUMENTS TO BE CERTIFIED

(1) *Document*	*(2)* *Document Reference/revision and date*	*(3)* *Examination Reference*
Book of reference – Regulation 5(2)(d)	Document 4.3(b) - 19 May 2020	REP13-002
Classification of Roads Plans	Document 2.9(a) - 19 December 2019	REP3-001
Crown Land Plans - Regulation 5(2)(n) and 5(4)	Document 2.4(a) - 19 November 2019	REP2-004
Engineering Section Drawings – Regulations 5(2)(o) 5(4) and 6(2)	Document 2.10 - 23 April 2019	APP-014
Environmental Statement - Regulation 5(2)(a), excluding chapters 7, 8, 12; figures 7.1A and 7,5; and appendices 2.1, 2.2, 7.2, 8.20, 13.2A and 13.2B	Documents 6.1, 6.2 and 6.3 - 23 April 2019	APP-039 to APP-240, excluding APP-045, APP-046, APP-050, APP-085, APP-091, APP-159, APP-160, APP-177, APP-217, APP-229 and APP-230
Environmental Statement – Regulation 5(2)(a), chapters 7(a), 8(a), 12(a); appendices 2.2(a), 7.2(a), 8.20(a), 13.2A(a) and 13.2B(a); and	Documents 6.1, 6.2 and 6.3 Chapter 7(a) – November 2019 Chapter 8(a) – 26 March 2020	REP2-008, REP9-009, REP9-011, REP-14-[tbc], REP2-010, REP9-013, REP9-014, REP9-015, REP9-017 and REP9-018

figures 7.1(a) and 7.5(a)	Chapter 12(a) – 26 March 2020 Appendix 2.2(a) – June 2020 Appendix 7.2(a) – 26 March 2020 Appendix 8.20(a) – 26 March 2020 Appendix 13.2A(a)- 26 March 2020 Appendix 13.2B(a) – 3 February 2020 Figure 7.1A(a) – 19 November 2019 Figure 7.5(a) – 26 March 2020	
Environmental Statement Addendum	Document 6.14	REP14-010
General Arrangement Plans - Regulation 5(2)(o)	Document 2.6(b) – 19 November 2019	REP2-006
Hedgerows Plans – Regulation 8(1)(c)(ii)	Document 8.50 – 19 December 2019	REP3-021
Land Plans - Regulation 5(2)(i) and 5(4)	Document 2.2(c) – 26 March 2020	REP9-003
Location Plans - Regulation 5(2)(d)	Document 2.1 – 23 April 2019	APP-005
Outline Environmental Management Plan	Document 6.12(f) – 18 June 2020	REP14-008
Special Category Land Plans	Document 2.3(b) – 19 November 2019	REP2-003
Streets Rights of Way and Access Plans – Regulation 5(2)(k) 5(4) and 6(2)	Document 2.7(b) – 10 March 2020	REP7-002
Traffic Management Plan	Document 7.4(c) – 18 June 2020	REP14-011
Traffic Regulations Measures Plans	Document 2.8(a) – 3 February 2020	REP4-003
Works Plans - Regulation 5(2)(j) and 5(4)	Document 2.5(b) – 19 November 2019	REP2-005

EXPLANATORY NOTE

(This note is not part of the Order)

The Order authorises Highways England to undertake alterations, realignment and grading of three sections of the A38 known Kingsway, Markeaton and Little Eaton and to carry out all associated works.

The Order permits Highways England to acquire, compulsorily or by agreement, land and rights in land and to use the land for this purpose.

The Order also makes provision in connection with the maintenance of the authorised development.

A copy of the plans, engineering section drawings, book of reference and environmental statement mentioned in this Order and certified in accordance with article 46 (certification of plans etc.) may be inspected free of charge during working hours at Highways England, Floor 5, Two Colmore Square, 38 Colmore Circus, Birmingham B4 6BN.