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Dear Sir or Madam,

**PLANNING ACT 2008
APPLICATION FOR THE PROPOSED A38 DERBY JUNCTIONS DEVELOPMENT
CONSENT ORDER**

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to:
 - the report dated 8 October 2020 of the Examining Authority (“ExA”), comprising two panel members, Stuart Cowperthwaite (panel lead) and Simon Warder, who conducted an examination into the application made by your clients, Highways England (“the Applicant”) for the A38 Derby Junctions Development Consent Order (“the DCO”) under section 37 of the Planning Act 2008 as amended (“the 2008 Act”);
 - the responses to the further consultation undertaken by the Secretary of State in respect of the application; and
 - the late representations received by the Secretary of State following the close of the examination.
2. The application was accepted for examination on 21 May 2019. The examination begun on 8 October 2019 and was completed on 8 July 2020, following an extension granted by the Secretary of State. The examination was conducted on the basis of written and oral submissions submitted to the ExA and by a series of meetings. The ExA also undertook unaccompanied site inspections.
3. The DCO as applied for would grant development consent for the construction, operation and maintenance of three replacement roundabouts on the A38 in Derby known as the Kingsway, Markeaton and Little Eaton junctions (“the Proposed Development”). The Proposed Development would provide grade separation of the

three existing junctions as it passes to the west and north of Derby city centre. 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 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 with slip roads connecting the A38 to the new roundabout. 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.

4. The Proposed Development is located within the administrative boundaries of Derby City Council (“DCiC”), Erewash Borough Council (“EBC”) and Derbyshire County Council (“DCC”). The Secretary of State is content that the proposals qualify as Nationally Significant Infrastructure Projects (“NSIPs”) under sections 14(1)(h) and 22(1)(b) and (3) of the 2008 Act.
5. Published alongside this letter on the Planning Inspectorate’s website is a copy of the ExA’s Report of Findings and Conclusions and Recommendation to the Secretary of State (“the ExA’s Report”). The main features of the proposal and the site are set out in Chapter 2 of the ExA’s Report, the ExA’s findings and conclusions are set out in Chapters 4 to 8, and the ExA’s overall conclusions and recommendation are in Chapter 9.

Summary of the ExA’s Report and Recommendation

6. The principal issues considered during the examination on which the ExA has reached conclusions on the case for development consent are set out in the ExA’s Report under the following broad headings:
 - Legal and Policy Context (Chapter 3);
 - Findings and Conclusions in relation to policy and factual issues (Chapter 4); which include policy conformity; the environmental statement; transport networks and traffic; air quality; noise and vibration; water environment; biodiversity and ecological conservation; landscape and visual; land use, social and economic; historic environment; climate change; other policy and factual issues;
 - The Habitats Regulations (Chapter 5);
 - Conclusion on the case for making a DCO (Chapter 6);
 - Compulsory Acquisition and Related Matters (Chapter 7);
 - Draft Development Consent Order (Chapter 8);
7. For the reasons set out in the Summary of Conclusions and Recommendations (Chapter 9) of the ExA’s Report, the ExA recommends that the Order be made, as set out in Appendix D to the ExA’s Report.

Summary of Secretary of State’s decision

8. **The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in the application.** This letter is the statement of reasons for the Secretary of

State's decision for the purposes of section 116 of the 2008 Act and regulation 30 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the 2017 Regulations).

Secretary of State's Consideration of the application

9. The Secretary of State's consideration of the ExA's Report, and all other material considerations including the further representations received after the close of the ExA's examination and in response to the Secretary of State's consultation letter of 3 November 2020 are summarised in the following paragraphs. Where not stated in this letter the Secretary of State can be taken to agree with the ExA's findings, conclusions and recommendation as set out in the ExA's Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of the conclusions and recommendations. All "ER" references are to the specified paragraph in the ExA's Report and references to "requirements" are to those in Schedule 2 to the DCO as recommended by the ExA at Appendix D of the ExA's Report.

Legal and Policy Context

10. In determining the application, the Secretary of State notes that under section 104 of the 2008 Act the Secretary of State must have regard to the relevant National Policy Statements; any appropriate marine policy documents, determined in accordance with section 59 of the Marine and Coastal Access Act 2009; any Local Impact Reports submitted; any matters prescribed in relation to the development of the description to which the application relates; and any other matters that the Secretary of State considers to be both important and relevant to the decision. Accordingly, this application needs to be considered in accordance with the National Policy Statement ("NPS") for National Networks ("NPSNN") (ER 3.2.1).
11. The Secretary of State agrees with the ExA that section 104(3) of the 2008 Act has effect in this case (ER 3.2.2) and that he must decide the application in accordance with the NPSNN designated in December 2014, subject to certain exceptions which are not relevant in this case. The Secretary of State agrees with the ExA's assessment of the other legal provisions and agrees these are relevant and important matters to be considered in deciding this application (ER 3.3.6). The Secretary of State confirms that, in considering the application, he has had regard to all the legislation and policy identified by the ExA, including the three Local Impact Reports from Derbyshire County Council ("DCC"), Derby City Council ("DCiC") and Erewash Borough Council ("EBC") referred to at ER 1.4.33 and all relevant development plans and strategies noted at ER 3.7 to 3.9. The Secretary of State has also had regard to environmental information as defined in regulation 3(1) of the 2017 Regulations; and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.
12. The Secretary of State notes that the Design Manual for Roads and Bridges ("DMRB"), whilst not a statutory policy was relied upon by the Applicant in the

preparation of assessments in the Environmental Statement. The Secretary of State notes the DMRB was updated following the preparation of those assessments and like the ExA, is satisfied with the Applicant's approach not to retrofit the Proposed Development to the updated guidance (ER 4.6.3).

Need for the Proposed Development

13. The A38 is part of the Strategic Road Network ("SRN") and provides a route for north-south long-distance journeys by road. Where the A38 passes through the western and northern parts of Derby, the Secretary of State notes that interaction between long-distance journeys and local trips results in delays and queues at the Kingsway, Markeaton and Little Eaton junctions (ER 2.1.2). The Proposed Development aims to improve traffic flow and reduce congestion at the three A38 junctions by allowing through traffic on the A38 to continue without the need to negotiate each of the three roundabouts and traffic signals (ER 4.5.6). The Secretary of State agrees with the ExA that the essential policy justification for the Proposed Development is contained in the NPSNN (ER 4.5.1). The NPSNN sets out a compelling need for the development of the national road network to address congestion, provide safe, expeditious and resilient networks and to support economic growth (ER 4.5.5). Paragraph 4.2 of the NNNPS states that "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" (ER 4.5.2).
14. Paragraph 2.22 of the NPSNN advises that improvements to the road network will help to support economic development, employment and housing. Moreover, paragraph 2.23 of the NPSNN outlines 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" (ER 4.5.5). The Secretary of State notes the Applicant considers the Proposed Development would improve traffic flow and reduce congestion at the three A38 Junctions, offering journey benefits to all vehicles and offers potential to improve segregation and remove conflicts between pedestrians, cyclists and vehicles using the A38. As well as improving congestion issues, the Secretary of State notes that the Proposed Development would improve safety on the highway; noting that the Transport Assessment Report finds that 1,396 collisions would be avoided over a 60 year period as a result (ER 4.5.6). The Secretary of State further notes that the Local Impact Reports do not disagree with the Applicant's assessment of the scale or nature of the existing congestion and delays at the three junctions. The Secretary of State further notes that whilst some objectors have suggested amendments to the Proposed Development or that investment should take the form of improvements for Non Motorised Users ("NMU"), the need to address the congestion problems has not been disputed by any substantive evidence (ER 4.5.7).
15. The Secretary of State notes that the Applicant considers the Proposed Development would provide additional capacity and make journey times more reliable along the A38, and support the economic growth on the west side of Derby. The Secretary of State notes that the Derby City Core Strategy ("DCCS") and the Local Transport Plans consider that future development would be severely restricted if the Proposed Development cannot be funded and delivered (ER 4.5.8).

The Secretary of State further notes that the DCCS makes a provision for a minimum of 11,000 new homes and 199ha (gross) of new employment land. Without the additional highway capacity provided to these areas the Secretary of State notes that the planned growth would be adversely affected (ER 4.5.9). The ExA set out that some objectors cast doubt on the efficacy of the Proposed Development in supporting economic growth but considered that there is substantive evidence supported by the Local Planning Authorities and Local Impact Reports that the constrained capacity of the existing junctions is holding back development that would otherwise come forward. Therefore, the Secretary of State agrees with the ExA that that Proposed Development would have a direct effect by facilitating housing and economic growth (ER 4.5.10).

16. The Secretary of State notes that the Proposed Development has been subject to an economic assessment and agrees with the ExA that the approach taken is consistent with paragraph 4.5 of the NPSNN (ER 4.5.11). The Secretary of State also notes the ExA is satisfied that the Proposed Development would be likely to result in significant reductions to delays and congestion at the three junctions, improve highway safety and release constraints on housing and economic development to the west of Derby (ER 4.5.13).
17. The Secretary of State notes that the options appraisal considered alternative layouts for each of the junctions and assessed them against economic, environmental, social and value for money criteria. The Secretary of State further notes that these options were subject to several consultation exercises before the preferred route was finalised (ER 4.5.27). Therefore, the Secretary of State is satisfied that the need for the Proposed Development has been established in accordance with the NPSNN. Moreover, the Secretary of State agrees with the ExA that consideration has been given to alternatives of the Proposed Development and that the proposals meet the requirements for good design and development (ER 4.5.39).
18. Noting the ExA's consideration at ER 4.5.41-4.5.46, the Secretary of State is content that the Proposed Development aligns with relevant local Core Strategies. The ExA highlights that the Proposed Development is supported by the Roads Investment Strategy ("RIS") and was included in RIS 1 and has been reconfirmed in RIS 2 (ER 4.5.47 and 4.5.48). The Secretary of State is content that the scheme would contribute to meeting the need for development of the national road network as established in NPSNN and that it complies with local and national policies.

Transport Networks and Traffic

19. The Secretary of State notes that driver stress assessments have been undertaken by the Applicant for the construction and operational phase of the Proposed Development and the consideration given to this by the ExA to the approach used (ER 4.7.51-4.7.71). With regard to driver stress during the construction phase, the Secretary of State notes that the professional judgement used by the Applicant for the assessment is supported by quantitative traffic modelling. The Secretary of State notes the ExAs comments on the assessment but that the ExA agreed that the Applicant's approach is consistent with industry practice and that the Traffic Management Plan would ensure that the mitigation of local issues would be

appropriately addressed as proposals developed (ER 4.7.65). With regard to driver stress during the operational phase, the Secretary of State notes that the Applicant's assessment is substantially quantitative and that it follows an appropriate methodology (ER 4.7.69). The Secretary of State notes the ExA is satisfied with the Applicant's assessment of driver stress during the construction and operational phase of the Proposed Development (ER 4.7.71) and finds no reason to disagree.

20. The Secretary of State notes the discussion around the impact of construction on local roads, access to local facilities, such as, the Royal Derby Hospital and schools, and car parking (ER 4.7.72-4.7.94). The ExA concluded 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. The Secretary of State agrees with the ExA that some degree of uncertainty is inevitable and is satisfied that an appropriate level of assessment has been carried out. The Secretary of State further notes that the ExA are satisfied that the construction traffic assessments are a reasonable worst-case for the purposes of the identification of environmental impacts and that the potential impacts are mitigated appropriately (ER 4.7.102). With regard to operational traffic, the Secretary of State notes that although a general decrease in traffic levels and congestion on local roads during the operational phase is expected, it appears likely that there would be increases on some local roads and at certain junctions. The Secretary of State notes that the Applicant has proposed interventions to mitigate effects at a small number of junctions (ER 4.7.130). The Secretary of State further notes that there were suggestions to reduce the speed limits and adjust the alignment of the A38 at the Little Eaton Junction but agrees with the ExA's view that there is no reason to disagree with the Applicant's position 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 (ER 4.7.139). The Secretary of State notes the ExA concluded that the evidence suggests that the wider area impact during the operational phase have been considered appropriately and that no further mitigation is necessary for those impacts (ER 4.7.140).
21. The Secretary of State notes there are several locations where local access matters would require further development during the detailed design phase. The Secretary of State notes that the ExA were not aware of any locations where a satisfactory resolution would not be capable of being delivered and were satisfied that appropriate measures were secured in the DCO for consultation during the detailed design phase (ER 4.7.131).
22. The Secretary of State notes and agrees with the ExA 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 meeting unconstrained traffic growth (ER 4.7.152). The Secretary of State agrees with the ExA that appropriate mitigation has been secured in the DCO and this is consistent with the NPSNN and that the mitigation measures are proportionate at Royal School for Death and Cherry Lodge children's residential care home having regard to the Public Sector Equality Duty (ER 4.7.133).

23. The Secretary of State is satisfied that the Proposed Development would be compliant with the NPSNN, is unlikely to result in any unacceptable effects in terms of transport networks and traffic and that these matters do not weigh significantly for or against the DCO being made (ER 4.7.162). Moreover, the Secretary of State agrees with the ExA that moderate driver stress benefits during the operational phase weigh significantly in favour of the DCO being made (ER 6.4.13).

Air Quality

24. The Secretary of State notes and agrees with the ExA that the Applicant has clearly considered vehicle emissions and how tighter emission standards are expected to reduce PM₁₀ and NO₂ emissions, including air quality thresholds and Air Quality Management Areas (“AQMA”) as required by the NPSNN (ER 4.8.123). The Secretary of State agrees with the ExA’s view that proper consideration has been given to construction scenarios and emissions from construction machinery and that appropriate measures have been secured in the DCO and the Outline Environmental Management Plan (“OEMP”) to address uncertainties, unforeseen events, communication and liaison requirements, vehicle emissions and dust mitigation and monitoring during the construction phase (ER 4.8.125).

25. The Secretary of State notes that Stafford Street which is in the Derby ring road AQMA was non-compliant with the Air Quality Directive and that the Proposed Development would have the potential to impact air quality in Stafford Street where exceedances of annual objectives and the limit values (“LVs”) are predicted without the Proposed Development (ER 4.8.13). In two of the construction scenarios considered in detail, the Applicant highlighted that the Proposed Development was predicted to increase NO₂ concentrations by 0.1 µg/m³ at the receptor in Stafford Street but considered this to be “an imperceptible change” (ER 4.8.24). DCiC raised some concerns about the predicted increases in NO₂ at Stafford Street, albeit negligible, and that there were some subtle differences in the Applicant’s assessment methodology and Defra’s (ER 4.8.116). The Secretary of State notes the Applicants response to these concerns (ER 4.8.117) and that on balance, the ExA was satisfied that through a combination of measures, including mitigation secured in the DCO, during the construction phase the Proposed Development would be unlikely to cause any delays in non-compliant areas becoming compliant or compliant areas becoming non-compliant (ER 4.8.118). Overall, the Applicant considered that no significant effects on air quality during the construction phase were anticipated in respect of NO₂ (ER 4.8.26).

26. With regard to operational effects on Stafford Street, the Secretary of State notes that the Applicant considered 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. It is further noted that even if Stafford Street remained non-compliant, the impact on air quality associated with the Proposed Development would be imperceptible or an improvement and so would not affect compliance (ER 4.8.106). The Secretary of State notes that this conclusion is reflected in the Statement of Common Ground between the Applicant and DCiC dated March 2020. The Secretary of State notes that 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 and that DCiC welcomed the positive impact of the operational phase of the Proposed Development on the currently non-compliant Stafford Street (ER 4.8.114).

27. The Secretary of State further notes that evidence provided by the Applicant demonstrated the assessment in relation to increases in NO₂ at Stafford Street is conservative and that the Applicant has secured provisions for a later assessment and mitigation when more information is available. The Secretary of State notes that DCiC is legally required to address the compliance issues in Stafford Street and would maintain a high degree of control through its own traffic management measures (ER 4.8.117). Therefore, the Secretary of State notes and agrees with the ExA that the Proposed Development would be unlikely to cause a delay in non-compliant areas becoming compliant, or cause any compliant areas to be non-complaint (ER 4.8.129).
28. The Secretary of State notes the ExA's consideration of the methodology used by the Applicant and their response to the changes to DMRB and that DCiC were content with the updated assessment and that the ExA were content with the mitigation secured to avoid the additional potential exceedances of LV in the operational stage (ER 4.8.113). The Secretary of State has no reason to disagree with this. Overall the Secretary of State notes that the ExA was content with the approach taken to assess and mitigate air quality impacts from the Proposed Development during construction and operation (ER 4.8.124-4.8.126).
29. The ExA acknowledged the Applicant's overall assessment of a slight improvement in air quality that would not be significant (ER 4.8.131) and that subject to the provisions in the DCO, the Proposed Development would be unlikely to result in any significant effects in respect to air quality. The Secretary of State agrees with the ExA that the proposals are compliant with the NPSNN and that air quality does not weigh significantly for or against the DCO being made (ER 4.8.132).

Noise and Vibration

30. The Secretary of State notes that a number of concerns were raised by various parties regarding noise and vibration and the ExA's consideration of this matter at ER 4.9.
31. The Secretary of State notes the ExA explored in depth the Applicant's handling of duration, the case for noise and vibration limits and the appropriateness of best practical means and other mitigation measures during the construction phases (ER 4.9.141). The Secretary of State notes the ExA's conclusion that the consideration of duration in the assessment is consistent with relevant codes of practice and relevant guidance. The Secretary of State agrees with the ExA that the likely reasonable worst-case noise and vibration effects during the construction phase has been identified (ER 4.9.142). The Secretary of State further notes the ExA's conclusion that appropriate consideration has been given to relevant policy for the Proposed Development (ER 4.9.151).

32. With regard to construction, the Secretary of State notes that construction noise levels were predicted to exceed Significant Observed Adverse Effect Levels (“SOAEL”) at a number of locations, and that significant adverse effects were identified at the closest receptors to the construction works at the locations set out in ER 4.9.26. The Secretary of State notes that the potential to reduce the magnitude of construction noise effects would be considered when specific construction details became available and the relevant measures are set out in the OEMP (ER 4.9.27).
33. The Secretary of State notes that construction vibration is estimated to exceed the SOAEL for vibration annoyance at approximately 150 residential buildings along the A38 (ER 4.9.28), and there would be moderate increases in construction traffic noise at a number of residential properties (ER 4.9.30). The ExA set out that monitoring would be undertaken during the construction phase to ensure mitigation measures were being implemented appropriately (ER 4.9.31). The Secretary of State notes that with the ExA said that those matters (among others) weigh significantly against the DCO being made (ER 4.9.153).
34. With regard to the operational phase, the Secretary of State notes that significant noise effects were identified and that mitigation of adverse effects included route selection, use of underpasses, use of low noise surfacing and the installation of permanent noise barriers (ER 4.9.36 and 4.9.37). Moderate reductions in operational traffic noise are predicted at three properties in the vicinity of Raleigh Street, which has an access to the A38 that would be closed during the operational phase (ER 4.9.38).
35. The Secretary of State notes that significant adverse noise effects are predicted at the Royal School for the Deaf Derby (“RSfD”) during both the construction and operational phases, and as a primary mitigation measure a 4 metre high noise barrier is proposed during both phases (ER 4.9.133). RSfD considered the permanent noise barrier should be constructed before demolition of the houses at Queensway. DCiC supported the principle of constructing the noise barrier before the demolition if it was practical and feasible (ER 4.9.125). The Applicant highlighted the uncertainty around timing for CA of Queensway, access issues and site conditions that had to be accounted for. After exploring options around permanent and temporary noise barriers, the Applicant has included a provision in the OEMP for early installation of noise barriers alongside the RSfD (ER 4.9.126 and 4.9.127). The Secretary of State considers there is good evidence of consultation with the RSfD and is satisfied the impacts and mitigation options considered in depth are appropriate for the significant adverse impacts predicted. The Secretary of State notes the Applicant’s need for some flexibility which the ExA considered reasonable and noted the clarification of commitments in the OEMP to provide equivalent mitigation to the 4m barrier prior to the demolition of the Queensway buildings (ER 4.9.133).
36. The Secretary of State notes the concerns raised by the operators of Cherry Lodge children’s residential care home, noting the sensitivity of the children with emotional and behavioural difficulties and the potential for a significant risk of adverse impact on their wellbeing (ER 4.9.128). The Secretary of State notes consideration of this

matter at ER 4.9.129 and that site hoarding will be employed during the construction phase to reduce the magnitude of impact and that Cherry Lodge may qualify for further mitigation measures. Permanent noise barriers are not proposed as the worst effected façade was anticipated to experience a minor increase in noise in the opening year (ER 4.9.129). The ExA noted the DCiC and EBC were content with the proposed mitigation measures as a whole and that the ExA considered that they apply to the specific case of Cherry Lodge (ER 4.9.135). The Secretary of State agrees with the ExA that the OEMP and the DCO provide appropriate mitigation (ER 4.9.147) and is satisfied the relevant requirements in the NPSNN have been met (ER 6.4.20).

The Water Environment

37. The Secretary of State notes the ExA's conclusion that the final versions of the Flood Risk Assessments for each of the junctions meet the requirements of paragraphs 5.92 and 5.93 of the NPSNN and that the ExA were content that they make appropriate allowance for climate change based on the considerations applicable at the three locations (ER 4.10.74). The Secretary of State notes that some parties remained concerned during the examination about the impact of the Proposed Development on flood risk and highlighted recent incidences but the ExA considered that they had not been presented with substantive evidence to demonstrate that the Proposed Development would directly affect, or be affected by, these or similar incidents. The Secretary of State, like the ExA is content that with the proposed mitigation measures in place 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 (ER 4.10.75).
38. The Secretary of State notes that all three junctions and at least part of the Order land would fall within Flood Zone 3. As such the NPSNN and the National Planning Practice Guidance ("NPPG") require the Sequential and Exception Tests to be applied (ER 4.10.37). The Secretary of State notes the Applicant has addressed the Sequential and Exception Test in its Flood Risk Assessments and that neither the Lead Local Flood Authority nor the Environment Agency questioned its findings. The Secretary of State notes and agrees with the ExA's conclusion that, overall, enough information has been provided to make the necessary assessment (ER 4.10.76) and the Secretary of State finds no reason to disagree with that conclusion.
39. The Secretary of State agrees with the ExA that the Proposed Development amounts to Essential Infrastructure, which the NPPG advises can be in Flood Zone 3. The Secretary of State notes the nature of the proposals as alterations to existing linear infrastructure at the three locations and agrees with the ExA's conclusion that, at none of the junctions, could the Proposed Development be re-located to an area of lower flood risk. Therefore, the Secretary of State agrees with the ExA and finds that the Proposed Development meets the Sequential Test (ER 4.10.77).
40. The Secretary of State notes and agrees with the ExA that the need for the Proposed Development and the benefits it would bring have been well established

as set out at ER 4.5 and noted above in this letter (ER 4.10.78). Therefore, given the low level of flood risk posed by the Proposed Development, the Secretary of State agrees with the ExA that the benefits of the Proposed Development outweigh that risk and that the Proposed Development would be safe for its lifetime and notes that the risk of flooding would not increase elsewhere. Therefore, the Secretary of State agrees with the ExA that the Proposed Development meets the Exception Test and that it would comply with paragraphs 5.105 to 5.109 of the NPSNN (ER 4.10.78).

41. The Secretary of State notes that the Proposed Development is located within the Derwent Derbyshire Management Catchment of the Humber River Basin District and that the Humber River Basin Management Plan (“HRBMP”) is therefore relevant to the consideration of the application (ER 4.10.42). The Secretary of State notes that the Water Framework Directive compliance assessments were undertaken for the Kingsway and Little Easton junctions to consider potential risks to waterbodies at Bramble Brook, the River Derwent and Dam Brook (ER 4.10.45-4.10.47) and that the ExA considered the findings of the compliance assessments were not disputed. It is further noted that the ExA having considered the evidence on water quality found that the conclusions of the assessments were reasonable and were satisfied that the Proposed Development would be unlikely to hinder the aims of HRBMP for the waterbodies affected by the Proposed Development (ER 4.10.83). The Secretary of State has no reason to disagree with this.
42. The Secretary of State notes that the ExA agree with the Applicant’s findings that during the construction phase, the Proposed Development would be likely to result in a slight adverse impact on groundwater flows in bedrock and superficial aquifers (ER 4.10.84). However, the Secretary of State notes and agrees with the ExA that this impact would be offset by the betterment in water quality at Bramble Brook and Dam Brook, including further improvements of water quality discharges at some locations compared to the existing situation, and that these improvements would be secured through the DCO and the OEMP. Therefore, the Secretary of State agrees with the ExA that the Proposed Development would not have a harmful effect on water quality (ER 4.10.84) and that the water environment does not weigh significantly for or against the DCO being made (ER 4.10.86). The Secretary of State is also satisfied the relevant requirements of the NPSNN have been met.

Biodiversity and ecological conservation

43. The Secretary of State notes the ExA’s assessment that the application properly considered a full range of sites, habitats and species and that it attached appropriate weight to the potential impacts of the Proposed Development on them (ER 6.4.29).
44. The Secretary of State agrees with the ExA that the Applicant’s approach to assessing No Net Loss is satisfactory and enables the full range of biodiversity gains and losses to be taken into consideration. The Secretary of State also notes the ExA considers that the scope, methodology and assessment findings of the Environmental Statement (“ES”) are generally sound and agrees with the ExA that where matters have been disputed in relation to biodiversity no reason has been found to disagree with the Applicant’s position (ER 4.11.105).

45. The Secretary of State notes that the Proposed Development would result in the complete loss of the A38 Kingsway Roundabout Local Wildlife Site (“LWS”) and that the primary mitigation proposed would be the translocation of species-rich grassland habitats from the site (ER 4.11.57). The Secretary of State notes the ES finds that after mitigation the LWS would experience a moderate adverse effect that was considered significant. The Secretary of State also notes that the need for soil testing and DCiC’s potential need to use the selected translocation site for silt deposition raises a degree of doubt on whether the mitigation proposed in the ES would be achievable. However, the Secretary of State is satisfied that an alternative location is secured through the OEMP in the event the proposed site is no longer available (ER 4.11.94).
46. The Secretary of State notes that there would be moderate adverse construction effects to semi-natural broadleaved woodland and agrees with the ExA that the adverse effect on the woodland, and the A38 Kingsway Rough Grassland LWS weigh significantly against the DCO being made (ER 4.11.109).
47. The Secretary of State further notes the concerns raised in relation to the loss of veteran tree T358 on the east side of the A38 carriageway close to the Markeaton footbridge due to the replacement of this footbridge impinging further in the root protection area and encroaching into the tree canopy area (ER 4.11.71). The Applicant considered opportunities to reduce the impact on the tree but highlighted that this was constrained by the limits of deviation in the DCO and that moving the carriageway west away from the tree would result in more land take at Markeaton Park (ER 4.11.72). The Secretary of State notes that the Applicant will investigate options to retain the tree during the detailed design stage and that these measures are secured in the OEMP (ER 4.11.73). DCiC retained the view that the focus on attempting to retain the tree was preferable to seeking to realign the A38 carriageway given this would result in further impact on Markeaton Park and its associated tree and habitat loss (ER 4.11.74). Paragraph 5.32 of NPSNN sets out that development consent should not be granted that would result in the loss or deterioration of veteran trees unless the national need for and benefits of the development in that location clearly outweigh the loss. The Secretary of State notes the need to replace the footbridge to accommodate the widening of the carriageway and the reasons for it needing to be located where it is proposed (ER 4.11.75). The Secretary of State considers that that the national need for, and benefits of, the Proposed Development clearly outweigh the loss of the veteran tree (ER 4.11.110).
48. The Secretary of State notes that ExA’s conclusion that the Proposed Development has the potential to achieve enhancements in biodiversity and that the mitigation measures necessary to achieve these enhancements are set out in the OEMP and that there is no convincing evidence to demonstrate that they could not be deliverable. The Secretary of State agrees with the ExA that the Proposed Development would result in a modest general enhancement of biodiversity that would not be significant and 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 (ER 4.11.107). However, The Secretary of State agrees with the ExA that the loss of a veteran

tree weighs against the DCO being made (ER 4.11.110) as do the moderate adverse construction effects on the A38 Kingsway Rough Grassland LWS and the short to medium term moderate adverse effects on the semi-natural broadleaved woodland (ER 4.11.109). The Secretary of State is satisfied the Proposed Development complies with the NPSNN in respect to biodiversity and ecological conservation.

Landscape and Visual

49. The Secretary of State notes that concerns were raised about the Applicant's methodology for landscape and visual effects (ER 4.12.28) but that the ExA considers these were addressed by the Applicant and that the ExA was satisfied that the methodology was 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 (ER 4.12.55).
50. The Secretary of State notes concern was also raised about the impact of the Proposed Development on the landscape at Little Eaton. The proposed junction at Little Eaton would create an elevated section of carriageway over a re-configured roundabout with associated slip roads and embankments and would alter markedly the configuration of the junction in a semi-rural setting (ER 4.12.56). However, the Secretary of State notes the ExA's view that the existing junction is a prominent feature and that much of the additional land take would be used to create planted embankments (ER 4.12.57). Moreover, the Secretary of State also notes that DCC accepted that the photomontages demonstrated that the proposed new embankments would not be significantly higher than the existing embankments and that views from the selected locations would not be noticeably different from the current views once the proposed planting had become established (ER4.12.34). The ExA concluded that the Proposed Development would not undermine the existing linear character of the local landscape (ER 4.12.57).
51. The Secretary of State notes that the DCO and the OEMP include provisions to ensure the implementation and long-term maintenance of the planting at the Little Eaton Junction, and therefore agrees with the ExA 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 (ER 4.12.60).
52. The Secretary of State notes that the Little Eaton junction falls within the Green Belt (ER 4.12.1). The ExA noted that the existing junction is a prominent feature in the landscape and as such affects the openness of the Green Belt. The ExA's view was that the form and function of the existing junction is separated and readily distinguishable from nearby built developments, including Breadsall village and the group of properties to the north of the Little Eaton junction and noted that this distinction would remain for the Proposed Development and would not lead to urban sprawl (ER 4.12.63). The Secretary of State notes that woodland planting on the embankments would further help to absorb the Proposed Development into the landscape and would provide effective visual screening when established (ER 4.12.64).

53. Having regard to the presence of the existing junction at Little Eaton and the scale, form and extent of the proposed junction, the Secretary of State agrees with the ExA and finds the Proposed Development's spatial and visual effects would preserve the openness of the Green Belt. Therefore, the Secretary of State notes and agrees with the ExA that the Proposed Development would fall within the exception set out in paragraph 146(c) of the NPPF and would not be considered as inappropriate development in the Green Belt, therefore according with relevant NPSNN and NPPF policies for the Green Belt (ER 6.4.35).
54. The Secretary of State notes that the proposed removal of trees at the edge of Markeaton Park was a matter of considerable concern for a number of parties (ER 4.12.44 and 4.12.45). The Applicant set out that it had sought to minimise tree loss but that some tree loss would be unavoidable (ER 4.12.48). The ExA agreed that they make a very significant contribution to the landscape character of the area and provide a valuable visual screen between Markeaton Park and the A38 and that there was a lack of clarity over which trees would be lost and replaced. The Secretary of State notes that the Applicant has agreed to plant more trees than are removed and to plant semi-mature trees at the boundary of Markeaton Park and that the proposals for replanting are secured through the DCO and OEMP (ER 4.12.66 and 4.12.67). The Secretary of State notes that once the new planting is matured it would largely restore the landscape character to the edge of Markeaton Park and provide effective visual screening from the A38 (ER 6.4.36).
55. The Secretary of State notes the ExA's conclusion of landscape and visual effects at ER 4.12.73 and 4.12.74. The Secretary of State agrees that the matters highlighted in ER 4.12.77 weigh significantly against the DCO being made. However, the Secretary of State agrees with the ExA that overall the long-term landscape and visual effects of the Proposed Development would not be significant (ER 6.4.37), therefore is satisfied the requirements in NPSNN have been met in respect of landscape and visual effects.

Land use, social and economic

56. The Secretary of State notes the consideration of this matter at ER 4.13.
57. The Secretary of State notes that significant adverse effects have been identified on NMUs during the construction phase due to the disruption of the Kingsway junction cycle and footpath route across this junction. However, the Secretary of State notes the ExA's conclusion that on completion of the proposed works it would result in an improvement of the cycle and footpath route across this junction (ER 4.13.53).
58. The Secretary of State notes that the absence of the Markeaton footbridge for around 18 months was identified as a significant temporary adverse effect. The Secretary of State notes that the Applicant has indicated that it will seek to minimise the rebuilding period and that alternative routes to cross the A38 in the vicinity would be available, albeit they would be less convenient. The Secretary of State agrees with the ExA that a temporary absence of the footbridge is unavoidable, and notes that the replacement bridge would result in a long-term improvement as it would meet current standards for disabled access (ER4.13.55).

59. The Secretary of State notes that the Transport Management Plan (“TMP”) includes substantive commitments to ensure that the needs of NMUs are properly catered for during the construction phase. The Secretary of State further notes the OEMP and DCO requirement 11 would secure the submission and approval of a detailed TMP, and there are provisions to ensure appropriate consultations take place (ER 4.13.58). The Secretary of State agrees with the ExA that overall the needs of NMUs during the construction and operational phases of the Proposed Development have been addressed and reasonable opportunities have been taken to support non-car users. (ER 4.13.59).
60. The Secretary of State notes that the Proposed Development would have direct effects on the operation of Esso PFS and the McDonald’s Restaurant facilities at the Markeaton junction. The ExA noted the reduction in ‘presence’ of the facilities on the main A38 would be an inevitable consequence of the configuration of the junction layout. The ExA noted that it had become apparent that the option of entry into the facilities from the slip road would not meet safety standards and that it was felt that the provision of advanced signage of the facilities would go some way to mitigate the loss of direct access to the A38 (ER 4.13.101). Whilst this provision had not been agreed at the close of examination, the Secretary of State agrees with the ExA that the extent of any commercial harm is a compensation matter and not one requiring material adjustments to the Proposed Development (ER 4.13.102). The Secretary of State notes the ExA considered that the proposed access to Esso PFS and McDonalds Restaurant from the A52 would be capable of operating safely and would be unlikely to lead to undue congestion (ER 4.13.104).
61. The Secretary of State agrees with the ExA that the likely reasonable worst-case impacts have been identified in respect to land use, social and economic considerations (ER 4.13.128) and is satisfied NPSNN polices have been met in respect of land use, social and economic matters.

The Historic Environment

62. The Secretary of State notes that the proposed Little Easton junction falls within the setting of the Derwent Valley Mills World Heritage Site (“DVMWHS”) and the Darley Abbey Conservation Area and that associated listed buildings, Allestree Hall and Registered Park and Garden are located nearby (ER 4.14.33). The Secretary of State notes that a separate Heritage Impact Assessment (“HIA”) focused on the impact of the Proposed Development on the Outstanding Universal Value (“OUV”) of the DVMWHS (ER 4.14.15). The ExA considered that the Applicant’s 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 (ER 4.14.57).
63. The Secretary of State notes that based on the International Council on Monuments and Sites (“ICOMOS”) guidance the Applicant assessed the Proposed Development to have a slight adverse effect on the OUV of the DVMWHS overall, therefore a negligible impact on an asset of very high value (ER 4.14.45). The Secretary of State notes that Historic England considered that the ICOMOS

guidelines had been followed in the HIA and it was 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 (ER 4.14.51). The Secretary of State notes that DCC and DCiC also agreed with the Applicant's assessment before the close of the examination (ER 4.14.56).

64. The Secretary of State notes that the largest part of the Proposed Development would be located outside of the core area of the DVMWHM and its buffer zone but would have an effect on the setting of the DVMWH. The ExA noted that the nature and form of the proposed Little Eaton junction would be similar to the existing junction and its additional height and scale would be relatively modest in relation to its landscape setting (ER 4.14.57). The Secretary of State also notes that the floodplain compensation area would fall within the core area of DVMWHS but that the lasting effect on the landscape would be negligible (ER 4.15.59). Taking all matters raised into consideration the Secretary of State agrees with the ExA that the Proposed Development would result in a slight adverse effect on the OUV of the DVMWHS. 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 that weight should be. In this case, the Secretary of State notes that the World Heritage Site carries a very high significance (ER 4.14.60) and, therefore notes this would weigh negatively against the Proposed Development.
65. The Secretary of State notes that Applicant's assessment found that the Proposed Development would have slight adverse effects on four designated heritage assets. The Secretary of State notes the designated assets are located a considerable distance away from the Proposed Development and the effect would be on a relatively small part of the setting (ER 4.14.61); and further noting that Historic England and the relevant LPAs were content that the impacts on designated heritage assets had been assessed appropriately (ER 4.14.62).
66. The Secretary of State notes DCiD advised that Markeaton Park is a heritage asset and that the revised entrance would impact the stone boundary walls that form an important part of the enclosure of Markeaton Park. The Secretary of State has taken account that 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 Proposed Development the existing material should be reused at a location to be agreed (ER 4.14.52). The ExA noted that the OEMP secures the re-use of the existing material and the existing gates would be protected during the construction phase and that DCiC was satisfied with the precautions. The ExA concluded that the effect of the Proposed Development on Markeaton Park would be slight adverse at worst and not significant (ER 4.14.65).
67. The Secretary of State notes the ExA's conclusion of matters that weigh against the DCO being made (ER 4.14.69) but also notes the ExA's findings that collectively the effect of the Proposed Development on the DVMWHS and other identified designated heritage assets would amount to less than substantial harm for the purpose of paragraphs 5.134 and 5.135 of the NPSNN (ER 6.4.51). The Secretary of State agrees with the ExA's conclusions of the need for regard to the very high significance of the WHS as required by paragraph 5.131 of the NPSNN

and that this harm should be balanced against the public benefits in the overall decision (ER 4.14.63).

Climate Change

68. The Secretary of State notes the ExA's conclusion that the effects of the Proposed Development on climate and its resilience to climate change, as well as the impacts from climate change combined with the Proposed Development on the surrounding environment and receptors has been adequately addressed and considered by the Applicant in accordance with paragraphs 4.36 to 4.47 of the NNNPS (ER 4.15.125).

The Secretary of State notes that the ExA's recommendation that the Order should be made was subject to the Secretary of State satisfying himself on a number of matters including whether the Proposed Development would lead to the UK being in breach of the Paris Agreement 2015 (ER 9.3.1). The Secretary of State also notes the concerns raised by a number of parties regarding compliance with the Paris Agreement and the ExA's consideration of this matter at ER 4.15.

69. The Secretary of State notes that the Climate Change Act 2008 was amended on 26 June 2019 by the Climate Change Act 2008 (2050 Target Amendment) Order 2019 after the application was submitted. The specific UK commitment on carbon emissions is set out in the Climate Change Act 2008. This amended the 2050 greenhouse gas emissions reduction target from at least 80% to at least 100% lower than the 1990 baseline (ER 4.15.11). Meeting the targets in the Climate Change Act 2008 (as amended) provides a route to compliance with the Paris Agreement, an international obligation.

70. The Secretary of State notes that the Applicant has considered the amendment to the Climate Change Act and sought to demonstrate that the Proposed Development would not affect the ability of the Government to meet the net zero target (ER 4.15.115). The ExA however noted that they could not test this directly as the interim carbon budgets that would reflect the change in the Climate Change Act 2008 (As amended) had not been published for the operational year. The Secretary of State notes that the Committee on Climate Change ("CCC") published its Sixth Carbon Budget Report on 9 December 2020, with recommendations for the 2033 to 2037 period. The Secretary notes the CCC recommended a net reduction of 78% between 1990 and 2035, therefore bringing forward the previous 80% target by nearly 15 years. However, the Secretary of State notes this target has not formally been approved by Parliament. The Secretary of State notes that in accordance with paragraph 5.17 of NNNPS the Applicant has provided evidence of the carbon impact of the project and an assessment against the Government's carbon budgets that are applicable. The Secretary of State notes the Applicant's assessment 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 carbon budget during which they arise (ER 4.15.114).

71. The Secretary of State agrees with the ExA and is satisfied that the greenhouse gas emissions impact of the Proposed Development on its own would be unlikely to have a material impact on the Government meeting the carbon reduction targets (ER 4.15.114). The ExA noted that whilst several parties have suggested the

proposed Development would result in a breach of the Climate Change Act 2008 (as amended), the ExA have no clear evidence of this (ER 4.15.115). The Secretary of State agrees with this conclusion.

72. The Secretary of State notes that the ExA has recommended that further consideration should be given to the cumulative effects of carbon emissions from the Proposed Development and proposed that this should be undertaken in relation to consideration of the cumulative effects of the Road Investment Strategy (“RIS”) 1 and 2. The Secretary of State is satisfied that appropriate consideration was taken of the carbon impacts of the RIS programmes during their development and that any impact is not incompatible with the national wide carbon targets and commitments of the Government. The Secretary of State considers that the cumulative assessment of the RIS is a matter for national consideration and as mentioned above, is satisfied that appropriate consideration was given during the RIS’s development. The Secretary of State is content with the assessment undertaken by the Applicant and that it is in accordance with paragraphs 5.17 and 5.18 of NPSNN. The Secretary of State is satisfied that any increase in carbon emissions that would result from the Development is not so significant that it would have a material impact on the ability of the Government to meet its carbon reduction targets and that having regard to s104(4) of the PA2008 would not result in a breach of international obligations.

The Habitats Regulations Assessment

73. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”), the Secretary of State is required to consider whether the Proposed Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on a European Site designated under the Habitats Regulations. The Proposed Development is not directly connected with or necessary to the management of any European Site. The Secretary of State must therefore undertake an appropriate assessment if likely significant effects on the conservation objectives of a European Site, either alone or in combination with other plans or projects cannot be ruled out. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the project will not, either on its own or in combination with other plans and projects, adversely affect the integrity of such a European Site, unless there are no feasible alternatives or imperative reasons of overriding public interest apply.

74. The Secretary of State has considered the ExA’s assessment at Chapter 6 of the ExA’s Report of the likely significant effects of the Proposed Development. The Applicant identified six European Sites located within 30 kilometres of the Proposed Development: Gang Mine Special Area of Conservation (“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 (ER 5.3.5). The Secretary of State notes that the ExA, having considered the relevant evidence, is satisfied that the Proposed Development would have no adverse effect, either alone or in combination with other plans or projects, on any European site or its qualifying features (ER 5.3.8), a view which is confirmed by Natural

England (ER 5.3.11). The Secretary of State agrees with the ExA and concludes it is not necessary to carry out an appropriate assessment (ER 5.4.2).

Conclusion on the case for Development Consent

75. The Secretary of State notes that in reaching their conclusions on the case for the Proposed Development, the ExA has had regard to the NNNPS, the NPPF the Local Impact Reports and all other matters which it considers both important and relevant to the Secretary of State's decision, including the concerns and objections raised by those who made submissions on the application (ER 6.5.1).
76. There is strong Government 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 Secretary of State considers that the Proposed Development would help to deliver this policy in accordance with paragraphs 2.23 – 2.27 of the NPSNN. The Secretary of State agrees with the matters considered by the ExA in relation to the Proposed Development (ER 6.5.7). The Secretary of State agrees with the ExA that 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 (together with the matters set out at ER 6.5.8) weigh very heavily in favour of the DCO being made (ER 6.5.11).
77. The Secretary of State agrees with the ExA's conclusion of the matters that weigh significantly against the DCO being made (ER 6.5.9) and agrees that while significant, the adverse effects would be relatively limited in magnitude, duration and/or the number of receptors affected (ER 6.5.12). However, the Secretary of State agrees with the ExA that overall the national need for, and considerable public benefits of, the Proposed Development clearly outweigh all of the adverse effects (ER 6.5.15). The Secretary of State therefore agrees with ExA that the case for making the DCO for the Proposed Development has been made (ER 6.5.18).

Compulsory Acquisition and Related Matters

78. The Secretary of State has considered the compulsory acquisition ("CA") powers sought by the Applicant in accordance with sections 122, 123 and 127 of the 2008 Act, the Human Rights Act 1998 and relevant guidance. The Secretary of State notes the ExA's consideration of CA and temporary possession ("TP") related matters at Chapter 7 of the ExA's Report. It is noted that there were a number of individual outstanding objections at the end of the examination. The Secretary of State notes and agrees with the ExA's consideration and conclusion on each of these (ER 7.9).

Crown Land

79. The Secretary of State notes that the Applicant requested CA and TP powers over plots of land held by the Secretary of State for Defence (ER 7.10.4). However, given the omissions and inconsistencies in the letter provided by the Head of Estates at the East Midlands Reserve Forces and Cadets Association ("EMRFCA") and the powers that were requested by the Applicant (ER 7.10.7-7.10.9), the

Secretary of State asked for clarification in his letter dated 3 November 2020. The Secretary of State notes from EMRFCA letter dated 7 December 2020 that the consent provided is consistent with the Applicant's request, therefore is satisfied for the related plots of land to be included in the DCO.

Special Category Land

80. The Secretary of State notes that CA powers are sought for the acquisition of open space land that falls within the definition of sections 131 and 132 of the 2008 Act, requiring the DCO to be subject to special parliamentary procedure unless the Secretary of State can be satisfied that replacement land has been or would be provided in exchange for the land to be compulsory acquired, with the same rights, trusts and incidents (ER 7.10.10).

81. The Secretary of State notes the details of the area of open space land where CA powers are requested (ER 7.10.14), including the total area of land that would be provided as replacement land (ER 7.10.15). The Secretary of State notes that the proposed replacement land would be on the opposite side of the A38 at Queensway and would link with an existing area of open space to the northeast at Mill Pond (ER 4.13.75). The Secretary of State notes that no evidence emerged during the examination to question the size or value of the replacement open space land at Kingsway and the ExA found no reason to disagree with the Applicant's justification of this element of the proposal. The Secretary of State notes the ExA's overall conclusion that the proposal would result in a small additional area of public open space, and that they found the replacement land would be "no less advantageous" than the area to be lost. The Secretary of State notes that the ExA found that the replacement land would be publicly accessible and therefore did not consider that the proposal would harm the poorest sectors of society by taking the land away (ER 4.13.76). The Secretary of State accordingly agrees with the ExA's conclusion that there is no need for Special Parliamentary procedure under sections 131 and 132 of the 2008 Act, and that paragraphs 5.166 and 5.174 of the NPSNN and the provisions in the Department for Communities and Local Government Compulsory Acquisition Guidance are satisfied (ER 7.10.28).

Statutory Undertakers

Network Rail

82. The Secretary of State notes that the Applicant has requested CA and TP powers over land held by Network Rail ("NR"). The Secretary of State notes that rather than requiring CA powers NR initially considered that the matters could be resolved by the way of a framework agreement (ER 7.10.43). The Secretary of State notes the Applicant and NR confirmed the Framework Agreement had one minor point outstanding at the close of the examination (ER 7.10.44). The Secretary of State requested an updated from both parties in his letter dated 3 November 2020. However, the Secretary of State notes from NR's email dated 17 November 2020 that they do not consider the grant of the DCO to be contingent on the Framework Agreement being completed.

83. Moreover, the Secretary of State notes and agrees with the ExA that the recommended version of the protective provisions would not lead to a serious detriment to the carrying out of NR's undertaking (ER 7.10.45).

Seven Trent Water

84. The Secretary of State notes that by the end of the examination the Applicant and Severn Trent Water ("STW") had agreed to the protective provisions and that a side agreement had been agreed and signed, although the ExA had not received confirmation from STW (ER 7.10.46). The Secretary of State notes from STW's email dated 11 September 2020 that the agreement was reached on 31 July 2020 and reiterates that STW has no objection to the scheme or the content of the draft DCO.

Western Power Distribution

85. The Secretary of State notes that at the end of the examination the Applicant had advised that Western Power Distribution ("WPD") had agreed to the protective provisions and that a side agreement had been agreed and signed but that this was not confirmed to the ExA by WPD (ER 7.10.48). The Secretary of State notes that the Applicant reiterated its position in its email dated 17 September 2020 copying in WPD's lawyers and that WPD confirmed that the agreement has been reached in its email dated 8 October 2020.

Overall conclusion

86. The Secretary of State has considered the CA and TP of land and rights that would be acquired to implement the Proposed Development and agrees with the ExA's conclusion that the powers sought are necessary to enable the Applicant to complete the Proposed Development. The Secretary of State finds 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 of the Proposed Development (ER 9.2.4). The Secretary of State is content that the weight of national policy in favour of the Proposed Development and the wider public interests justify 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 (ER 7.12.12).

87. The Secretary of State has considered all objections and issues in relation to CA and TP powers noted at ER 7.4 to ER 7.9 and agrees with the ExA's overall conclusion at ER 7.12.8 including that:

- the land subject to CA would be required for the purposes of s122(2)(a), (b) and (c) of the 2008 Act and the tests in that section are met;
- no serious detriment to the carrying on of undertakings of Statutory Undertakers has been demonstrated in relation to sections 127 and 138 of the 2008 Act;
- suitable replacement land would be provided in exchange for open space subject to CA powers and Special Parliamentary Procedure is not required;

- the requirements of the Human Rights Act 1998 in relation to the interference of individual rights are satisfied.

88. The Secretary of State accordingly agrees with the ExA that the compulsory acquisition and temporary possession powers sought by the Applicant are justified and comply with the 2008 Act, and should be granted (ER 9.2.4).

Late Representations (outside formal consultation)

89. The Secretary of State received representations in relation to ongoing matters after the close of the examination from the following:

- Applicant dated 11 November 2020 regarding protective provisions and a side agreement with STW. This is addressed above at paragraph 84.
- Applicant dated 17 September 2020 regarding protective provisions and side agreement with WPD. This is addressed above at paragraph 85.
- STW dated 11 September 2020 regarding a side agreement. This is addressed in paragraph 84.
- WPD dated 8 October regarding protective provisions and a side agreement with the Applicant. This is addressed above at paragraph 85.

90. The Secretary of State also received a number of late representations after the close of examination and outside the formal consultation raising concerns about the Proposed Development. The Secretary of State does not consider that anything in this correspondence constitutes new evidence, or raises a new issue, which needs to be referred to interested parties before he proceeds to a decision.

General Considerations

Equality Act 2010

91. The Secretary of State has had regard to the public sector equality duty set out in section 149(1) of the Equality Act 2010 and the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not share it. The Secretary of State has concluded in light of the ExA's findings and conclusions that the Proposed Development is not likely to result in any significant differential impacts on any of the protected characteristics referred to in section 149(7). On that basis there is no breach of the public sector equality duty.

Natural Environment and Rural Communities Act 2006

92. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006 ("the 2006 Act"), must have regard to the purpose of the conservation of biodiversity and must in particular have regard to the United Nations Environmental Programme on Biological Diversity of 1992 when making a decision on whether to grant development consent. The Secretary of State notes that the ExA has had regard to the 2006 Act and the biodiversity duty as set out in the relevant sections of Chapters 4 and 5 of the ExA's Report. In reaching a decision to grant development consent, the Secretary of State has had due regard to conserving biodiversity.

Modifications to the Order by the Secretary of State

93. The following modifications have been made to the Order:

- article 2(1) (interpretation) the definition of “electronic transmission” has been amended to reflect the Secretary of State’s position; and the definition of “tribunal” has been removed as the term is only used in article 48 (arbitration);
- article 8(b) (limits of deviation) has been slightly reworked to reflect what the Secretary of State believes was intended (following wording used in the A585 Windy Harbour DCO);
- article 10(4) (consent to transfer benefit of Order) has been amended in line with the Applicant’s consultation response;
- article 18(4) (clearways), the Secretary of State was unclear for the need of his written consent as there was no explanation in the Explanatory Memorandum. That text has therefore been removed;
- article 33(9) (temporary use of land for carrying out the authorised development) the Secretary of State has removed the references to subparagraphs (a) and (b). The Applicant’s consultation response of 4 December 2020 states there is no intention to acquire permanent rights in relation to land (or the subsoil or airspace) listed in Schedule 7 save where the land is also identified in Schedule 5. There is no cross over of land between these respective Schedules;
- article 38(5) (special category land) has been amended in line with the Applicant’s consultation response;
- article 43(1) (defence to proceedings in respect of statutory nuisance), the Secretary of State was unclear for the need to refer to paragraph (ga) in section 79(1) of the Environmental Protection Act 1990. The Explanatory Memorandum provides no explanation and so this reference has been removed;
- article 46 (certification of plans etc.), the Secretary of State has inserted a new paragraph (2) to allow for amendments to a plan or document to reflect his decision to make the Order;
- article 50 (appeals relating to the Control of Pollution Act 1974) has been removed. It is the Secretary of State’s view that the appeal mechanisms under the 1974 Act and the provisions under article 48 (arbitration) are sufficient.

Secretary of State’s overall conclusion and decision

94. For all the reasons given in this letter, the Secretary of State considers that there is a clear justification for authorising the Proposed Development. The Secretary of State notes the matters that the ExA considers he needed to satisfy himself of (ER 9.3.1) and that these have all been addressed as set out above. The Secretary of State has therefore decided to accept the ExA’s recommendation at section 9.3 of the ExA’s Report and is today making the A38 Derby Junctions Development Consent Order, subject to the changes referred to above. The Secretary of State is satisfied that none of these changes constitute a material change and is therefore satisfied that it is within the powers of section 114 of the 2008 Act for him to make the DCO as now proposed.

Challenge to decision

95. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at Annex A to this letter.

Publicity for decision

96. The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 31 of the 2017 Regulations.

Yours faithfully,

Natasha Kopala

ANNEX A

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The A38 Derby Junctions Development Consent Order 2021 (as made) is being published on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/east-midlands/a38-derby-junctions/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).