



Department for Transport

Phil Boffey
National Highways
2 Colmore Square
Birmingham
B4 6BN

Natasha Kopala
Head of the Transport and Works Act Orders Unit
Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR

Enquiries: [REDACTED]
Email: transportinfrastructure@dft.gov.uk

Web Site: www.gov.uk/dft

17 August 2023

Dear Sir,

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 National Highways (“the Applicant”), known at the time of the application as Highways England) for the A38 Derby Junctions Development Consent Order (“the DCO”) under section 37 of the Planning Act 2008 as amended (“PA2008”);
- the responses to the further consultation undertaken by the Secretary of State in respect of the application;
- the late representations received by the Secretary of State following the close of the examination;
- the responses to the Secretary of State’s statement of matters dated 2 August 2021.

2. The application was accepted for examination on 21 May 2019. The examination began 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. The ExA’s Report of Findings and Conclusions and Recommendation to the Secretary of State (“the ExA’s Report”) was received by the Secretary of State on 8 October 2020. The Secretary of State issued consultation letters on 3 November 2020 and 30 November 2020 and responses were received to those letters.

3. The Secretary of State made and published a decision on the application on 8 January 2021. That decision was quashed by an Order made by the High Court of Justice on 8 July 2021 and therefore ceased to have effect. The Secretary of State proceeded to further consider the application under rule 20 of the Infrastructure Planning (Examination

Procedure) Rules 2010. On 2 August 2021, the Secretary of State issued the statement of matters, which set out the matters with respect to which the Secretary of State invited further representations for the purposes of his further consideration of the application. The Secretary of State invited the Applicant to make further representations, for the purpose of re-determining the application, by 31 August 2021. Interested Parties were invited to submit further representations on all matters set out in the statement of matters and on the Applicant's response by 26 October 2021. A number of responses were received from the Applicant and other parties, and this was followed by further rounds of consultation on 7 January 2022 and 23 February 2022. These have all been fully considered to inform the decision below.

4. 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") [ER 1.1.2] and the components of the Proposed Development are described in more detail at ER 2.2. The Proposed Development would provide grade separation of three existing junctions of the A38 as it passes to the west and north of Derby city centre. The Proposed Development would therefore mainly take place at three distinct locations spanning some 6km [ER 2.2.4]. 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 [ER 2.2.9]. 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 [ER 2.2.11]. 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 [ER 2.2.18].

5. The Proposed Development is located within the administrative areas of Derby City Council ("DCiC"), Erewash Borough Council ("EBC") and Derbyshire County Council ("DCC") [ER 1.1.3]. The Secretary of State is content that the proposals qualify as a Nationally Significant Infrastructure Project ("NSIP") under sections 14(1)(h) and 22(1)(b) and (3) of the PA2008 [ER 1.1.5].

6. Published alongside this letter on the Planning Inspectorate website is a copy of 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.

7. This decision was delegated by the Secretary of State to the Minister of State for Transport, Huw Merriman. While this decision has not been taken by the Secretary of State, by law, it must be issued in the name of the Secretary of State. All references to the Secretary of State are therefore to the Minister of State on behalf of the Secretary of State.

Summary of the ExA's Report and Recommendation

8. 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);

9. For the reasons set out in the Summary of Conclusions and Recommendations (Chapter 9) of the ExA's Report, the ExA recommends that the DCO be made in the form set out in Appendix D to the ExA's Report.

Summary of Secretary of State's decision

10. **The Secretary of State has decided under section 114 of the PA2008 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 PA2008 and regulation 31(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the 2017 Regulations").

Secretary of State's Consideration of the Application

11. Summarised in the following paragraphs are the Secretary of State's consideration of the ExA's Report and other matters including the further representations received: a) after the close of the ExA's examination, b) in response to consultation letters of 3 November 2020 and 30 November 2020, c) in response to the Secretary of State's statement of matters of 2 August 2021 and d) in response to subsequent consultation letters of 7 January 2022 and 23 February 2022.

12. 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 Report. Paragraph numbers in the ExA's Report are quoted in the form "ER x.xx.xx" as appropriate. 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

13. In determining the application, the Secretary of State notes that under section 104 of the PA2008 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 (which is not relevant in this case as set out in ER 3.3.12); 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.

14. In a Ministerial Statement issued on 22 July 2021, the Secretary of State for Transport announced a review of the National Policy Statement for National Networks (“NPSNN”), beginning later in 2021. This is currently underway and a new draft version was published on 14 March 2023. It is in draft form and has not been designated for the purpose of section 104 of the PA2008. The Secretary of State does not consider the draft revised NPSNN to affect his decision in this particular case and, in any event, has decided not to give it any material weight given that it is not yet adopted policy and it is only in draft form. The Secretary of State is satisfied that as set out in the Ministerial Statement of 22 July 2021, the currently designated NPSNN remains government policy and continues to provide a proper basis on which the Planning Inspectorate can examine, and the Secretary of State can make decisions on, applications for development consent.

15. The Secretary of State therefore agrees with the ExA that section 104(3) of the PA2008 has effect in this case and that he must decide the application in accordance with the NPSNN designated in December 2014, except to the extent that one or more of section 104(4) to (8) of the PA2008 apply [ER 3.2.2]. 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 DCC, DCiC and 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 PA2008. 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.

16. The Secretary of State has had regard that the National Planning Policy Framework (“NPPF”) to which the ExA refers was revised in July 2021 and that the references in the ExA’s Report do not reflect this. However, the relevant sections of the NPPF referenced by the ExA are all also generally contained in the 2021 NPPF. The Secretary of State further considers that none of the additions to the 2021 NPPF, to the extent that they are relevant to the Proposed Development, materially affects the consideration of the Proposed Development under the replaced version. References below are to the 2021 NPPF.

17. The Secretary of State is aware 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 (“ES”). The Secretary of State has taken account that 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

18. 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, 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 NPSNN 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].

19. Paragraph 2.22 of the NPSNN provides 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 has had regard that the Applicant considers the Proposed Development would improve traffic flow and reduce congestion at the three A38 junctions, offering journey time benefits to all vehicles and offers the 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 has taken account of the safety effects of the Proposed Development; 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 agrees with the ExA’s conclusion that this, alongside the slight beneficial road safety impact for vulnerable road users, weigh significantly in favour of the DCO being made [ER 4.16.108]. The Secretary of State further considers 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 has noted that whilst some objectors have suggested amendments to siting and layout of elements of the Proposed Development or that investment should take the form of improvements for public transport or Non-Motorised Users (“NMU”), the need to address the congestion problems at the junctions has not been disputed by any substantive evidence [ER 4.5.7]. The Secretary of State has also not received any such substantive evidence since the examination closed. The Secretary of State agrees with the ExA that the appraisal of alternatives to a road-based scheme was undertaken and sufficient to meet the requirements of the NPSNN [ER 4.5.22].

20. 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 has had regard to the Derby City Core Strategy (“DCCS”) and the Local Transport Plans that consider future development would be severely restricted if the Proposed Development cannot be funded and delivered [ER 4.5.8]. The Secretary of State has had further regard to the DCCS that 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 road improvement schemes in supporting economic growth but considered that there is substantive evidence supported by the Local Planning Authorities’ 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 completion of the Proposed Development would have a direct effect by facilitating planned housing and economic growth [ER 4.5.10].

21. In its response of 31 August 2021 to the statement of matters, the Applicant highlighted that EBC's Revised Growth Options document ("RGO"), published in January 2020, referred to development not being able to commence at sites until works to the A38 junctions are complete. In its response of 26 October 2021 to the statement of matters, DCC noted this reference but highlighted that the RGO was a draft document for consultation, and considered that none of the sites identified in the consultation documents is likely to have any material impact on the assessment of the A38 Derby Junctions scheme. DCC furthermore considers that neither document sets out any policies that may be relevant to the assessment of the Proposed Development. The Secretary of State has considered the comments made by the DCC in relation to the RGO and further understands that the RGO has now been followed by EBC's emerging core strategy, which is currently subject to Examination. The Secretary of State does not consider that the emerging core strategy currently has any impact in relation to the assessment of the Proposed Development. He is therefore satisfied that neither the RGO nor the emerging core strategy will materially affect the ExA's or Secretary of State's consideration of the Proposed Development.

22. The Secretary of State has taken account that the Proposed Development has been the subject of an economic assessment and the ExA considers that the approach taken, which considered its economic, environmental, and social benefits and disbenefits, is consistent with paragraph 4.5 of the NPSNN [ER 4.5.11]. The Secretary of State has noted that Mair Bain, in a response of 26 October 2021 to the statement of matters, said that the Department for Transport's WebTAG guidance and HM Treasury's Green Book have been updated since the assessment and contended that the benefit-cost ratio ("BCR") should be recalculated. The Applicant, in its response of 2 February 2022 to the Secretary of State's consultation of 7 January 2022, stated that the BCR will be re-estimated before a final decision is made to commit construction funds. The Secretary of State, like the ExA, is satisfied that the economic assessment has been undertaken in a way consistent with paragraph 4.5 of the NPSNN. Paragraph 4.5 identifies that the business case provides the basis for investment decisions on road projects and it will normally be based on the Department's Transport Business Case guidance and WebTAG guidance and will assess the economic, environmental and social impacts of a development where the information is proportionate to the development and where such information will be important for the Secretary of State's consideration of the adverse impacts and benefits of a proposed development. Given the economic assessment that has already been undertaken (and its assessment of effects), along with all of the information now available on the economic, environmental and social impacts of the Proposed Development and the way in which the BCR is used to inform investment decisions, the Secretary of State is satisfied that the information already provided is proportionate. Accordingly, the Secretary of State is content that the assessment was appropriately carried out at the time of application and does not consider that it is necessary to recalculate the BCR now in light of the updates that have occurred as the Applicant has confirmed that the BCR will be reassessed before any final decision is made to commit construction funds and that reassessment will take account of those updates. The Secretary of State has taken into account that 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 also help to release constraints on housing and economic development to the west of Derby [ER 4.5.13]. The Secretary of State has not been provided with any evidence that persuades him that the economic, environmental and social impacts of the Proposed Development have changed significantly since the examination closed.

23. 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 [ER 4.5.27] and notes the description of options appraisal at ER 2.4. The Secretary of State has further considered 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 and that the alternatives have been assessed in line with paragraphs 4.26 and 4.27 of the NPSNN. Moreover, the Secretary of State agrees with the ExA that the options appraisal for the Proposed Development was properly undertaken and that due consideration has been given to the alternatives to the Proposed Development [ER 4.5.28] and that the proposals meet the requirements for good design and development [ER 4.5.39].

24. The Secretary of State has had regard that the limited evidence presented at the examination did not lead the ExA to believe that the need for the Proposed Development has been eliminated or substantially reduced due to changes in homeworking caused by Covid-19 [ER 4.5.20]. The Secretary of State has taken account that the Applicant, in its response to the Secretary of State's consultation letter of 7 January 2022, highlighted Government statistics on transport use during the Covid-19 pandemic¹. It considered these to suggest that, while public transport usage is still depressed, all other road traffic was almost back to pre-pandemic levels in early December 2021 with a subsequent fall following the 'omicron' outbreak. The Applicant considered the likelihood to be that road traffic will recover again back to pre-pandemic levels in the near future. The Secretary of State agrees with the Applicant and has not been provided with any evidence to show – nor does he consider – that changes to pre-pandemic traffic levels will be so significant as to negate the need for the Proposed Development.

25. Noting the ExA's consideration at ER 4.5.41-4.5.46, the Secretary of State is content that the Proposed Development aligns in principle with relevant local plans and Core Strategies. The ExA highlights that the Proposed Development is supported by the Road 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 satisfied that the Proposed Development 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

26. Following the close of the examination, a number of parties raised concern that the Proposed Development would induce demand and re-route traffic onto local roads. The Secretary of State notes that the ExA has no reason to disagree with the local highway authorities' confidence in the Applicant's traffic model [ER 4.7.50] and agrees that the ExA's conclusion that the Applicant's approach to modelling the specific local circumstances with regard to growth in demand is appropriate [ER 4.7.49]. The Secretary of State agrees with the ExA's conclusion that there is no substantive evidence to dispute the findings 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 [ER 4.5.19].

27. The Secretary of State has taken into account that driver stress assessments have been undertaken by the Applicant for the construction and operational phase of the

¹ [Transport use during the coronavirus \(COVID-19\) pandemic - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/transport-use-during-the-coronavirus-covid-19-pandemic)

Proposed Development and has noted the ExA's consideration of 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 has had regard to the ExA's comments on the assessment but that the ExA agreed that the Applicant's approach is consistent with current industry practice and that the Traffic Management Plan would ensure that the mitigation of local issues would be appropriately addressed as the proposals develop [ER 4.7.65]. With regard to driver stress during the operational phase, the Secretary of State has had regard to the ExA's conclusion that the Applicant's assessment is substantially quantitative, that it follows an appropriate methodology, and that there is some reliance on professional judgement which the ExA had no cause to question [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.

28. The Secretary of State has taken account of the discussion, both at ER 4.7.72-4.7.94 and in response to the statement of matters, around the impact of construction on local roads, access to local facilities such as the Royal Derby Hospital, and car parking. The ExA concluded that there would likely 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 the ExA's satisfaction 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]. The Secretary of State agrees with the ExA that satisfactory consideration and mitigation have been provided for the potential for gridlock, maintenance of access to the Royal Derby Hospital, junctions on the local road network, the strengthening of the Ford Lane bridge, and public transport. The Secretary of State, like the ExA, is satisfied that the concerns raised by several parties have been appropriately addressed [ER 4.7.158].

29. With regard to operational traffic, the Secretary of State has taken account of the ExA's consideration of this at ER 4.7.108-4.7.129. 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, and that the Applicant has proposed interventions to mitigate effects at a small number of junctions [ER 4.7.130]. The Secretary of State has further taken into account 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 impacts during the operational phase have been considered appropriately and that no further mitigation is necessary for those impacts and that the ExA was content with the Applicant's approach [ER 4.7.140].

30. The Secretary of State has considered that there are several locations where local access matters would require further development during the detailed design phase. The Secretary of State has had regard that the ExA was 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]. The Secretary of State notes the ExA's consideration of the operational impacts on specific locations [ER 4.7.132-4.7.137] and has no reason to disagree with this.

31. The Secretary of State 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, 6.4.11]. The Secretary of State concurs with the ExA that appropriate mitigation has been secured in the DCO, Outline Environmental Management Plan ("OEMP") and TMP and this is consistent with paragraph 5.125 of the NPSNN and that the mitigation measures are proportionate at the Royal School for the Deaf Derby ("RSfD") and Cherry Lodge children's residential care home having regard to the Public Sector Equality Duty [ER 4.7.159].

32. 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

The Applicant's assessment

33. The Secretary of State considers that, for the construction phase, the Applicant's air quality assessment concluded that predicted changes in annual mean NO₂ concentrations ranged from -4.4 to +5.0 µg/m³, which were large changes according to the significance criteria [ER 4.8.23]. The Applicant's ES states that the number of receptors predicted to experience large changes is a small proportion of the total and that these include both increases and decreases. The impact of this change on the receptor in Stafford Street is discussed below at paragraphs 41 to 46. The Secretary of State also considers that predicted changes in annual mean PM₁₀ concentrations during construction ranged from -0.5 to +1.4 µg/m³, which were small changes according to the significance criteria [ER 4.8.27], and that, as all predicted PM₁₀ concentrations during the construction phase were well within the objectives and limit values ("LVs"), no significant effects on air quality were anticipated with regard to PM₁₀ [ER 4.8.28].

34. For the operational phase, the Applicant's air quality assessment concluded that the Proposed Development was predicted to decrease NO₂ concentrations by 1.2 µg/m³ at the Stafford Street receptor and all other receptors were expected to achieve the annual and hourly NO₂ LVs [ER 4.8.32]. The Applicant further concluded that predicted changes in annual mean PM₁₀ concentrations range from -0.3 (negligible decrease) to +0.7 µg/m³ (small increase) [ER 4.8.34]. The PM₁₀ concentrations in the opening year were predicted to be within the long- and short-term objectives and LVs, and so no significant effects on air quality were anticipated with regard to PM₁₀ [ER 4.8.35].

35. The Secretary of State has had regard that the ExA has no reason to doubt that the Applicant's consideration of the study area, receptors or baseline conditions is appropriate for the assessment [ER 4.8.51]. The ExA is also content with the approach for PM_{2.5} [ER 4.8.52]. The Secretary of State has no reason to disagree with these conclusions. The Secretary of State does however note that the Environmental Targets (Fine Particulate

Matter) (England) Regulations 2023 were made on 30 January 2023 and came into effect on 31 January 2023. This introduces an annual mean concentration target for PM_{2.5} of 10µg/m³ and a population exposure reduction target of at least 35% to be achieved by the end of 2040. Government policy on how the 2040 target will be achieved is still emerging and the Secretary of State notes that the Limit Values in the Air Quality Standards Regulations 2010 remain in force and are the most relevant limit for the purposes of this decision. As set out in paragraph 3.8 NPSNN, the impact on air quality of road development needs to be seen in the context of reductions in emissions over time and as a result of current and future policies therefore he ascribes neutral weight to the 2040 target.

36. 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 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]. The Secretary of State in particular notes the ExA's conclusion that it is unlikely that emissions from construction machinery would lead to a significant effect on air quality [ER 4.8.84].

37. The Secretary of State 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 statutory air quality thresholds and Air Quality Management Areas ("AQMA") as required by the NPSNN [ER 4.8.123]. The Secretary of State further notes the ExA's acceptance of the Applicant's reasoning for the Proposed Development not leading to significant air quality-related health impacts at the RSfD and Cherry Lodge children's home [ER 4.8.90] and the ExA's satisfaction with the Applicant's overall approach for air quality assessment and mitigation and for NO₂ monitoring during the operational phase [ER 4.8.88, 4.8.126]. The Secretary of State notes the ExA's consideration of the methodology used by the Applicant and its response to the changes to DMRB and that DCiC was content with the updated assessment and that the ExA was content with the mitigation secured to avoid any exceedances of LVs in the construction phase [ER 4.8.113]. The Secretary of State has no reason to disagree with this.

38. 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], and that the ExA was content that appropriate measures have been taken to avoid, mitigate and minimise adverse air quality impacts [ER 4.8.127-4.8.130].

Updated monitoring data

39. The Applicant, in its response of 31 August 2021 to the statement of matters, set out DCiC's updated monitoring data for mean annual NO₂ concentrations at sites with concentrations above the 40µg/m³ objective for the years 2018-2020 (using 2017 as a comparison year). The Applicant considered that the measurements generally indicate a very gradual decrease in NO₂ between 2017 and 2019, with a large decrease in 2020. The Applicant considered that 2020 was an atypical year given lockdown restrictions. In its response of 26 October 2021 to the statement of matters, DCiC echoed this, setting out that data for 2020, and to a lesser degree 2021, has not been representative of 'normal' conditions and as such it would not be appropriate to use this data in updated model verification, as this would have the effect of watering down potential air quality impacts caused by the Proposed Development. DCiC considered that the assessment and the input

data used to predict air quality impacts in the ES remain robust and relevant and that the modelling presented in the examination in 2019-20 gives a more conservative and robust assessment than any updated assessment would, using recent monitoring data. The Secretary of State agrees with this and is content to rely on the data presented during the examination.

40. In its response to the statement of matters, the Applicant also set out the results of Defra's updated Pollution Climate Mapping ("PCM") model, but stated that DCiC's own modelling is more detailed than the PCM model and, although it had not been updated since the examination, it predicts that the only area in Derby that would be noncompliant in 2020 is the northern end of Stafford Street near Burleigh Mews. The Secretary of State's consideration of Stafford Street is set out below at paragraphs 41 to 46. The Applicant also provided additional information on its modelling of two links on the A38 in Derby which has identified that one link is modelled to be above the annual mean NO₂ limit value and this could persist for a number of years beyond 2020. The Applicant however contends that the Proposed Development would make a notable improvement to air quality in these locations as the adjoining footpaths alongside the A38 are moved further from the road. Mair Bain, in her response of 26 October 2021 to the statement of matters, contends that whilst moving the footpaths may mean those using them will be more likely to experience improved air quality around them, that does not mean that the Proposed Development has improved air quality. The Applicant set out in their response of February 2022 that members of the public will spend more time on footpaths than at locations in-between the carriageway and the footpath, and that the exposure to pollution by users of the footpath will be reduced with the Proposed Development due to the relocation of the footpath away from the carriageway. The Applicant also set out that the Air Quality Standards Regulations 2010 require air quality to be assessed at locations where the population will be "exposed for a period which is significant in relation to the averaging period of any limit value" such as a footpath or residential property. With regard to Mair Bain's concerns about the overall impact on air quality, the Secretary of State's conclusion on this is set out below but he is satisfied that moving the footpaths, will result in users of this footpath experiencing improved air quality at this location than would otherwise have been the case. DCiC, in its response of 26 October 2021 to the statement of matters, stated that it could not without more information verify the conclusion of the updated modelling of air quality impacts in the Applicant's response to the statement of matters that construction of the Proposed Development will not give rise to materially worse or materially new air quality effects. The Secretary of State notes that the Applicant, in its response to the statement of matters, states that air quality modelling due to be carried out at the detailed design stage to assess construction impacts as based on updated traffic management proposals had been completed and included in the Construction Environmental Management Plan. Under requirement 3 of the DCO, this must be prepared in consultation with the local planning authority and then approved by the Secretary of State. The Secretary of State therefore considers that DCiC, as the local planning authority, will be given an opportunity to verify this conclusion as part of the required consultation on the Construction Environmental Management Plan and agree any mitigation measures as necessary.

Stafford Street

41. The ExA set out that the Proposed Development would have the potential to impact air quality in Stafford Street in the Derby Ring Roads AQMA, which is non-compliant with the AQD, with exceedances of annual objectives and the LVs 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, albeit negligible, increases in NO₂ at Stafford Street, and about some subtle differences in the Applicant’s assessment methodology and that of the Department for Environment, Food and Rural Affairs (“Defra”) [ER 4.8.116]. The Secretary of State notes the Applicant’s 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 compliant areas to become non-compliant or any delays in non-compliant areas becoming 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]. In light of the ExA’s satisfaction with the matter and the very small magnitude of change at Stafford Street, Secretary of State has no reason to disagree with this.

42. 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 [ER 4.8.106]. However, the Secretary of State notes that DCiC’s 2022 Air Quality Annual Status Report does not show compliance at Stafford Street in 2021.

43. In response to the statement of matters, Friends of the Earth Derby contended that the removal of a bus and cycle lane on Friar Gate has increased traffic and air pollution on Stafford Street. The Secretary of State notes that this measure was part of the Derby Local Air Quality Plan which aimed, in part, to tackle the exceedances at Stafford Street. The Secretary of State does not therefore have any evidence to suggest that this measure worsened air quality on Stafford Street. Nevertheless, this measure is not part of the Proposed Development and the Applicant considered 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 Applicant also re-stated this in response to the concern raised by Friends of the Earth Derby in their reply of February 2022 setting out that they considered that as explored during the examination, the Proposed Development will not affect DCiC’s efforts to address local air quality issues. 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].

44. The Secretary of State further considers 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 has had regard 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]. The Secretary of State notes that the response submitted on behalf of Mair Bain in response to the statement of matters argues that the Secretary of State should impose monitoring measures and any related remedial action requirements in relation to Stafford

Street. The Secretary of State has taken account that DCiC was already monitoring NO₂ in Stafford Street and that DCiC considered it unnecessary to secure further NO₂ monitoring during the construction or operational phases [ER 4.8.74, 4.8.75] and that the ExA considered that suitable controls are in place for Stafford Street if DCiC monitoring suggests that construction methods may be putting compliance with the AQD at risk. The ExA therefore agreed with the Applicant that there is “no need for additional powers in this respect” [ER 4.8.86]. Given these facts, the Secretary of State considers that the imposition of further monitoring in relation to Stafford Street is not required.

45. The Applicant, in its response of 31 August 2021 to the statement of matters, stated that, as traffic management measures on Stafford Street had only become operational in August, it was not at that time possible to state their effect on air quality. The Secretary of State accepts this. The Secretary of State has no reason to disagree with the local authorities’ conclusions that the Proposed Development would not result in a currently compliant zone or agglomeration becoming non-compliant [ER 4.8.110, 4.8.111].

46. DCiC, in its response of 26 October 2021 to the statement of matters, stated that updates to the Pollution Climate Mapping model suggest compliance with national standards and regulations earlier than previously suggested. DCiC further states that this is partly on the assumption that the Stafford Street scheme is completed, which DCiC states was not yet the case, but that nonetheless the previously reported air quality impacts are reduced. The Secretary of State notes that DCiC’s 2022 Air Quality Annual Status Report does not show compliance at Stafford Street in 2021. The Secretary of State therefore considers that the Applicant’s original assessment of NO₂, as summarised at paragraphs 39 and 41 above, represents a reasonable worst-case scenario. The Secretary of State has considered this scenario in coming to his conclusions, which follow.

Conclusion on air quality

47. The Applicant considered that there was a low risk of non-compliance with the Air Quality Directive (“AQD”) in 2021 (the construction year) and therefore that an Air Quality Action Plan was not required for the construction phase [ER 4.8.29]. The Applicant also 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 [ER 4.8.36]. As such, the Secretary of State notes the Applicant’s conclusion that there is a low risk of non-compliance with the AQD during both construction and operation. In addition, DCiC concluded that the Proposed Development is not predicted to result in a zone currently compliant with the AQD becoming non-compliant [ER 4.8.110] and EBC concluded that the Proposed Development would not result in a currently compliant zone or agglomeration becoming non-compliant [ER 4.8.111]. Having considered all of the evidence, the Secretary of State 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-compliant [ER 4.8.129]. The Secretary of State continues to agree with that conclusion in light of all the additional information provided after the close of examination and the likely delays to timing for construction and operation.

48. The Secretary of State notes the Applicant’s conclusion of a temporary slight deterioration in local air quality at properties within the study area during the construction phase [ER 4.8.30]. The Secretary of State has considered the obligation in NPSNN paragraph 5.12 to give air quality considerations substantial weight where, after taking into account mitigation, a project would lead to a deterioration in air quality in a zone/agglomeration. The Secretary of State has had regard to the impact from construction

but given the temporary and slight nature of this impact the Secretary of State considers this temporary and slight impact should carry limited weight against consent being granted in the overall planning balance.

49. In considering these matters, the Secretary of State notes that the time that has elapsed since the examination means that the Proposed Development would no longer be in construction in 2021. The Secretary of State agrees with the ExA that the Applicant has provided robust evidence for a downward trend in NO_x, NO₂ and PM₁₀ [ER 4.8.45, 4.8.53] and so does not consider that the conclusion of a low risk of non-compliance with the AQD during construction would change with a construction year later than 2021.

50. 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 were satisfied 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 does not consider that this conclusion has changed as a result of information received following the ExA's Report. As set out above at paragraph 47, the Secretary of State 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-compliant [ER 4.8.129]. The Secretary of State notes the ExA's conclusion that air quality does not weigh significantly for or against the DCO being made [ER 4.8.132]. The Secretary of State however considers that the temporary deterioration in air quality during construction at some receptors has limited weight against development consent being granted.

Noise and Vibration

51. The Secretary of State has taken account that 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 have 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].

52. 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]. The ExA concludes that moderate adverse construction traffic noise at a number of properties weighs significantly against the DCO being made [ER 6.4.24].

53. The Secretary of State has taken account that construction vibration is estimated to exceed the SOAEL for vibration annoyance at approximately 150 residential buildings along the A38 between Kingsway and Markeaton junctions, the RSfD, the Ford Farm Mobile Home Park and one property at the southern end of Ford Lane [ER 4.9.28], and that there would be moderate increases in construction traffic noise, which were

considered significant, at a number of residential properties and the RSfD [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 the ExA said that those matters weigh significantly against the DCO being made [ER 4.9.153].

54. 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 were identified 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]; the ExA concludes that this weighs significantly in favour of the DCO being made [ER 6.4.23]. The Secretary of State accepts the ExA's conclusion that the minimisation of noise and vibration effects was an important factor in the selection of design options, in accordance with paragraph 5.193 of the NPSNN [ER 4.9.138].

55. The Secretary of State has taken account that significant adverse noise effects are predicted at the 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]. The RSfD considered the permanent noise barrier should be constructed before demolition of the houses at Queensway. The 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 compulsory acquisition of the Queensway houses, 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, is satisfied the impacts and mitigation options have been considered in the depth appropriate for the significant adverse impacts predicted, and agrees with the ExA that the secured mitigation measures are proportionate and reasonable [ER 4.9.146]. 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 4.13.107, 4.9.133]. The Secretary of State however notes the ExA's view that the moderate adverse operational traffic noise at the RSfD weighs significantly against the DCO being made [ER 4.9.153].

56. 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 affected 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].

57. The Secretary of State notes the ExA's conclusion that significant adverse effects from noise and vibration have been identified which, subject to the policy context on sustainable development, constitute grounds for development consent not to be granted under the NPSNN [ER 4.9.150]. The Secretary of State agrees with the ExA's consideration, discussed above and at ER 4.9.153, of the noise and vibration matters which weigh significantly against the DCO being made. This is considered further below at paragraph 154 - 156.

The Water Environment

58. 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 was 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 has taken in to account that some parties remained concerned during the examination and in the further post-examination correspondence received on 26 October and 5 December 2021 about the Proposed Development's impact on flood risk, highlighting recent incidents. The ExA considered that it had not been presented with substantive evidence to demonstrate that the Proposed Development would directly affect, or be affected by, these or similar incidents [ER 4.10.75], and the Secretary of State has no reason to disagree.

59. In its response of 25 October 2021 to the statement of matters, the Environment Agency provided information that new climate change allowances for flood risk had been published in July 2021. The Secretary of State, in the consultation letter of 7 January 2022, invited the Applicant to consider the Proposed Development against these allowances. The Applicant, in its response of 2 February 2022, concluded that the change in the climate change allowance would not result in a material change to the flood risk effects and conclusions detailed in the ES. Neither the Environment Agency nor any other party disputed this. 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].

60. The Secretary of State notes that all three junctions and at least part of the DCO 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 sought to address 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.

61. 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].

62. 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 Proposed Development's benefits 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].

63. The ExA concluded that the Proposed Development meets the preference for the use of sustainable drainage systems set out in paragraphs 5.110, 5.111 and 5.230 of the NPSNN and paragraph 169 of the NPPF [paragraph 165 of the NPPF in the ER], and that there is nothing to suggest that the design of the sustainable drainage systems would not comply with the relevant National Standards as required by paragraph 5.100 of the NPSNN [ER 4.10.79]; the Secretary of State agrees with this. The Secretary of State also agrees with the ExA's conclusion that the maintenance arrangements for the drainage system comply with paragraph 5.100 of the NPSNN [ER 4.10.85]. The Secretary of State further agrees with the ExA's findings that the Proposed Development would meet the aims of paragraph 5.113 of the NPSNN in that it would provide adequate surface water storage and attenuation capacity [ER 4.10.80].

64. 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 Eaton 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 highlighted 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.

65. 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 in some betterment in water quality at Bramble Brook and Dam Brook, including further improvements of water quality of 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 with the necessary measures for the betterment in water quality in place, the effect of the Proposed Development on 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 [ER 4.10.79, 4.10.80, 4.10.85].

Biodiversity and Ecological Conservation

66. The Secretary of State has taken in to account 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].

67. The Secretary of State notes concerns raised by Derbyshire Wildlife Trust, EBC and DCiC about the lack of use of Biodiversity Metric Assessment ("BMA") during the examination [ER 4.11.87] and in response to the statement of matters. The Secretary of State notes that the ExA had not been made aware of any policy provision applicable to the Proposed Development which specifically requires the use of BMA [ER 4.11.103] and agrees with the ExA's conclusion that the fact that it has not been used at this stage does not weigh against the proposal [ER 4.11.103]. The Secretary of State welcomes the Applicant's commitment to produce a BMA during the detailed design phase as secured in the OEMP [ER 4.11.89]. 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 that the ExA considers the scope, methodology, and assessment findings of the ES to be generally sound and agrees with the ExA that, where specific matters have been disputed in relation to biodiversity, no reason has been found to disagree with the Applicant's position [ER 4.11.105].

68. 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 Applicant's ES concludes that after mitigation the LWS would experience a moderate adverse residual 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].

69. 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]. There was a measure of agreement between the parties that the Proposed Development would not adversely affect the part of the Alfreton Road Rough Grassland LWS which contributes most to its biodiversity importance [ER 4.11.95]. He agrees with the ExA's conclusion that the overall impact of the Proposed Development on the Alfreton Road LWS would not be significant [ER 4.11.96].

70. 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 existing Markeaton footbridge due to the proposed 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 alter the proposals 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]. NPSNN paragraph 5.32 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 has taken into account 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]. As discussed below at paragraph 73, the Secretary of State considers that the national need for, and benefits of, the Proposed Development clearly outweigh the loss of the veteran tree, in compliance with NPSNN paragraph 5.32. In coming to that conclusion, the Secretary of State has taken into account the points made on behalf of Mair Bain in response to the statement of matters and considers (in accordance with section 104 of the PA2008, and taking account of paragraph 5 of the introduction to the NPPF) that the NPSNN is the appropriate policy document to which regard should be had and in accordance with which his decision must be made.

71. The Applicant summarised its findings on pre-construction surveys and assessments in its response of 31 August 2021 to the statement of matters, concluding that the minor changes in findings from those in the ES do not result in any materially new or materially different environmental effects to those reported in the ES. The Secretary of State is satisfied that all changes in findings since those presented during the examination will, in accordance with the OEMP, be mitigated and presented to Natural England. Natural England did not query or dispute any of these findings. On this basis the Secretary of State is satisfied with the Applicant's conclusion that, while the updated findings show some minor changes to the environmental conditions in the vicinity of the Proposed Development and some minor changes to the design of the Proposed Development, they do not result in any materially new or materially different environmental effects to those reported in the ES. The Secretary of State is satisfied in these circumstances that further or updated environmental information is not necessary. The Secretary of State is therefore content that this information is sufficiently detailed on which to base his decision.

72. The Secretary of State notes the ExA's conclusion that the Proposed Development has the potential to achieve enhancements in biodiversity, 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 would 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]. The Secretary of State agrees with the ExA that the objections raised regarding the effect of the Proposed Development on specific species do not call into question the relevant ES findings [ER 4.11.100] and does not consider that any similar objections raised since the examination call the findings of the ES into question.

73. 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 agrees with the ExA that the NPSNN provides clear guidance on the approach to biodiversity enhancement [ER 4.11.104] and is satisfied the Proposed Development complies with the NPSNN overall in respect to conserving and enhancing biodiversity conservation interests [ER 4.11.108].

Landscape and Visual

74. The Secretary of State has had regard to concerns which 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]. The Secretary of State has no reason to disagree with this.

75. 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 markedly alter the configuration of the junction in a semi-rural setting [ER 4.12.56]. The ExA's view is that the existing junction is a prominent feature in the landscape 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 [ER 4.12.34]. The Secretary of State agrees with the ExA's conclusion that the Proposed Development would not undermine the existing linear character of the local landscape [ER 4.12.57].

76. The ExA's concluded that the proposed embankments at the Little Eaton junction would be acceptable and so there is no need to consider a viaduct further, as suggested by DCC [ER 4.12.58]. The Secretary of State notes that the narrow depth of planting on the south-east side of the Little Eaton junction may limit the effectiveness of screening to a degree; the Secretary of State, like the ExA, welcomes the Applicant's commitment to review the depth of planting and mix of tree species at this location during detailed design [ER 4.12.59]. The DCO and the OEMP include provisions to ensure the implementation and long-term maintenance of the planting at the Little Eaton junction, and the Secretary of State 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].

77. The Secretary of State notes that the Little Eaton junction falls within the Green Belt [ER 4.12.1]. The ExA set out 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 is satisfied 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].

78. 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 agrees with the ExA that the Proposed Development would fall within the exception set out in paragraph 150(c) of the NPPF

(paragraph 146(c) in the ER) 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].

79. 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]. 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]. The Secretary of State agrees with the ExA's conclusion that the landscape and visual effects on the Markeaton junction would be no worse than slight adverse in the long term [ER 4.12.69].

80. The Secretary of State agrees with the ExA's conclusion 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 [ER 4.12.72], having regard to the effects around the Kingsway junction [ER 4.12.70, 4.12.71], at Breadsall [ER 4.12.59], and at Ford Farm [ER 4.12.72].

81. The ExA's conclusion on landscape and visual effects is set out at ER 4.12.73 and 4.12.74. The Secretary of State agrees that the matters highlighted in ER 4.12.77 and 6.4.38 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] and is therefore satisfied the requirements in NPSNN have been met in respect of landscape and visual effects.

Land Use, Social and Economic

82. 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 [ER 4.13.53]. The Secretary of State agrees with the ExA that these effects weigh significantly against the DCO being made [ER 4.13.130]. 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].

83. The ExA set out that the absence of the Markeaton footbridge for around 18 months was identified as a significant temporary adverse effect [ER 4.13.55] which, in agreement with the ExA, the Secretary of State considers weighs significantly against the DCO being made [ER 4.13.130]. 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 [ER 4.13.55]. The Secretary of State notes the ExA's conclusion that the possible

disruption to the Ford Lane footbridge would constitute a temporary adverse effect [ER 4.13.115] which weighs significantly against the DCO being made [ER 4.13.130].

84. 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].

85. The ExA concluded that, in addition to the temporary adverse effects identified above, there would be permanent moderate beneficial effects for walkers and cyclists at the Kingsway junction and users of the cycle route between Brackensdale Avenue and Kedleston Road [ER 4.13.115], and that these would weigh significantly in favour of the DCO being made [ER 4.13.129]. The ExA concluded that the safety benefits of the proposed diversion of Breadsall footpath 3 would outweigh the reduction in convenience and attractiveness that it would cause [ER 4.13.69]. 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].

86. The Secretary of State also agrees with the ExA’s conclusion that the Proposed Development’s effect on human health and social cohesion would be largely positive [ER 4.13.122], taking into account the unlikelihood of significant effects on human health [ER 4.13.119] and the modest reductions in severance at the Kingsway and Markeaton junctions [ER 4.13.121] alongside improved access to services [ER 6.4.42].

87. The Secretary of State notes that the Proposed Development would result in the loss of 17 dwellings and that the ExA concluded that this would have a substantial large adverse effect at a very local level, but that there is no firm evidence to demonstrate that the scale of the loss of accommodation would be significant at the neighbourhood level [ER 4.13.123]. The Secretary of State further notes that the Proposed Development would directly affect the operation of the Esso petrol filling station and the McDonald’s Restaurant facilities at the Markeaton junction. The ExA set out that 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 current 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 4.13.99]. As this is a matter for compensation, he considers it does not materially weigh against making the DCO [ER 4.13.102]. The ExA considered that, while the changes would result in more movements through the proposed access than the existing access, this change has been accounted for in modelling, and proposed access to the Esso petrol filling station and the McDonalds Restaurant from the A52 would be capable of operating safely and would be unlikely to lead to undue congestion [ER 4.13.104].

88. 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 policies have been met in respect of land use, social, and economic matters.

The Historic Environment

89. The proposed Little Eaton junction falls within the setting of the Derwent Valley Mills World Heritage Site (“DVMWHS”) and the Darley Abbey Conservation Area (with associated listed buildings), and 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].

90. 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 as a whole, therefore a negligible impact on an asset of very high value [ER 4.14.45]. 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].

91. The ExA set out that the largest part of the Proposed Development would be located outside of the core area of the DVMWHS and its buffer zone but would have an effect on the setting of the DVMWHS [ER 4.14.57]. The ExA noted that the nature and form of the proposed Little Eaton junction would be similar to the existing junction, that its additional height and scale would be relatively modest in relation to its landscape setting, and that the closure to vehicles of the Ford Lane junction would allow an area of former carriageway to be landscaped, resulting in a small benefit to the DVMWHS [ER 4.14.57]. The ExA further noted 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]. The Secretary of State is satisfied with the Applicant’s consideration of potential effects on the DVMWHS in its options appraisal for the layout of the Little Eaton junction [ER 2.4.8 to 2.4.16] and for the floodplain compensation area (both dealt with in Chapter 3 of the ES [APP-041 and APP-070]). 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 [ER 4.14.60], and less than substantial harm to [ER 4.14.69], 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, considers this would weigh against the Proposed Development [ER 4.14.69].

92. The Secretary of State included in the statement of matters a reference to the DVMWHS Management Plan 2020-2025 published in 2021 (“the Management Plan”) and asked interested parties whether they considered that there may be any change in whether the Proposed Development remained consistent with the requirements and provisions of policy, including the Management Plan. The Secretary of State did not receive any comments which suggested conflict with the policies in the Management Plan. In its response of 31 August 2021 to the statement of matters, The Applicant stated that there are no significant changes or themes to the revised Management Plan and, as such,

considered that the Proposed Development remains consistent with the aims of the Management Plan. Taking account of these matters and noting the ExA's conclusion that the Proposed Development would cause less than substantial harm to the OUV of the WHS, the Secretary of State does not consider that the Proposed Development would conflict with the Management Plan.

93. The Secretary of State notes DCC's comments in its response of 26 October 2021 to the statement of matters, highlighting that the United Nations Educational, Scientific and Cultural Organisation ("UNESCO") had requested a State of Conservation report on the DVMWHS due to a concern that planning applications were being granted permission in the DVMWHS despite negatively impacting its OUV. DCC highlighted this to emphasise the importance of the design of new developments within and adjoining the DVMWHS, including the Proposed Development, and how they should seek to minimise impacts on the OUV of the WHS. DCC outlined that it was considering detailed design pursuant to the Requirements with reference to the need to minimise the potential impact of the detailed design of the Proposed Development on the OUV of the DVMWHS. The Secretary of State has regard to UNESCO's position and welcomes the engagement between DCC and the Applicant in relation to the detailed design of the Requirements to ensure potential impact on the OUV is minimised.

94. The Secretary of State notes that the Applicant's assessment found that the Proposed Development would have slight adverse effects on three listed buildings and one conservation area. The Secretary of State acknowledges 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 notes that Historic England and the relevant LPAs were content that the impacts on designated heritage assets had been identified and assessed appropriately [ER 4.14.62]. The Secretary of State agrees with the ExA's conclusion that the Proposed Development would cause less than substantial harm to the settings of these four designated heritage assets [ER 4.14.69, 6.4.53].

95. The Secretary of State notes DCiC 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 of the wall as possible 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 Secretary of State agrees with the ExA's conclusion that the effect of the Proposed Development on Markeaton Park would be slight adverse at worst and not significant [ER 4.14.65] and that there would be slight adverse non-significant effects on eight other non-designated landscape character types and two non-designated historic buildings [ER 4.14.66].

96. 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]. The Secretary of State, like the ExA, weighs the Proposed Development's less than substantial harm to the OUV of the DVMWHS negatively against the Proposed Development in the planning balance, and gives great weight to that harm. The Secretary of State also weighs the Proposed Development's 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 [ER 4.14.69] negatively and gives great weight to that harm.

Climate Change

The Examining Authority's consideration

97. The ExA's recommendation that the DCO should be made was subject to the Secretary of State satisfying himself on a number of matters on which the ExA considered it had not been provided with enough information to determine, set out in ER 4.15.126 as:

- 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 section 104(4) of the PA2008) the ExA was 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 revised target of net zero carbon by 2050 that was set (in July 2019) after the application was submitted.

98. Section 104 of the PA2008 states that the Secretary of State must decide an application for a national network NSIP in accordance with the NPSNN unless he is satisfied that one or more of the following applies: doing so would lead to him being in breach of any duty imposed on him by or under any enactment; doing so would be unlawful by virtue of any enactment; the adverse impact of the Proposed Development would outweigh its benefits; or doing so would lead to the UK being in breach of its international obligations. The UK's international obligations include its obligations under the Paris Agreement, which was ratified by the UK Government in 2016, after the NPSNN was designated in 2014. The UK announced its Nationally Determined Contribution ("NDC") in December 2020. NDCs are commitments made by the Parties (including the UK) under the Paris Agreement. Each Party's NDC shows how it intends to reduce its greenhouse gas emissions to meet the temperature goal of the Paris Agreement and the actions it will take to build resilience to adapt to the impact of rising temperatures. The UK's NDC commits it to reduce net GHG emissions by at least 68% by 2030 compared to 1990.

99. In June 2019, after the Application was submitted, the Government announced a new carbon reduction 'net zero target' for 2050 which was given effect by the Climate Change Act 2008 (2050 Target Amendment) Order 2019. This is a legally binding target for the Government to cut net carbon emissions to zero by 2050 against the 1990 baseline ("the 2050 target", ER 4.15.11). The Climate Change Act requires five-yearly carbon budgets to be set 12 years in advance so as to meet the 2050 target. Six carbon budgets have been adopted. The time periods covering the third ("3CB"), fourth ("4CB"), fifth ("5CB") and sixth ("6CB") budgets are 2018-2022, 2023-2027, 2028-2032 and 2033-2037 respectively. Achieving net zero will require future greenhouse gas emissions to be aligned

with these and any future new or revised carbon budgets that may be set out by Government to achieve the 2050 target. Compliance with the Climate Change Act 2008 (as amended) would provide a route towards compliance with the Paris Agreement [ER 4.15.111]. The ExA considered it necessary, noting the need to specifically address section 104 of the PA2008, to address compliance with the Paris Agreement as well as with the Climate Change Act 2008 (as amended).

100. The Secretary of State notes the concerns raised by a number of parties including Friends of the Earth Derby regarding compliance with the Paris Agreement. Friends of the Earth Derby questioned whether enough account had been taken of the 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 [ER 4.15.38-44]. The ExA dealt with the effect of the Proposed Development on climate change in terms of carbon emissions separately from human rights issues generally and as such concluded that Friends of the Earth Derby's submissions do not demonstrate that the Proposed Development would infringe the international human rights matters in the Paris Agreement, provided that it is compatible with achieving the carbon reduction targets set out in UK legislation [ER 4.15.107].

101. As mentioned above, however, the ExA considered that not enough robust evidence was presented for them to reach a view as to whether the Proposed Development would be consistent with the Paris Agreement [ER 4.15.110], although there was also no evidence that there would be a breach as per section 104(4) of the PA2008 either [ER 4.15.126]. As set out above, the ExA therefore suggested that the Secretary of State should satisfy himself on whether the Proposed Development would lead to the UK being in breach of the Paris Agreement [ER 4.15.126, 9.3.1].

102. The Applicant's ES assessed Greenhouse gas ("GHG") emissions (measured as carbon dioxide equivalent and referred to as 'carbon emissions') for the Proposed Development during the operational phase in net terms between the emissions predicted with and without the Proposed Development in the opening year of 2024 and the design year of 2039 [ER 4.15.22]. The Applicant then assessed the calculated emissions against the UK's carbon budgets [ER 4.15.21]. Emissions during the construction phase included activity specific to the Proposed Development [ER 4.15.20] and were directly compared to the carbon budget [ER 4.15.22].

103. The Applicant in Chapter 14 of its ES carried out an assessment of the Proposed Development against the third, fourth and fifth carbon budgets. The sixth carbon budget, published in December 2020, was not published at the time the ExA's report was submitted [ER 4.15.22]. The ExA noted that the Applicant had sought to demonstrate that the Proposed Development would not affect the ability of the Government to meet the 2050 target, but considered that it was unable to test this [ER 4.15.115] and recommended that the Secretary of State should satisfy himself on whether the Proposed Development would affect the Government's ability to meet the 2050 target [ER 4.15.126, 9.3.1].

104. The ExA was not convinced that the Applicant's approach sufficiently considers cumulative effects with other projects or programmes [ER 4.15.117], and noted that the Applicant was not able to provide an assessment of the cumulative impacts of the Proposed Development with other highways developments [ER 4.15.116]. The ExA therefore recommended that the Secretary of State should satisfy himself 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 Road Investment Strategy (“RIS”) 1 or RIS2 programmes against the carbon budget [ER 4.15.118, 4.15.126, 9.3.1].

105. The Secretary of State in the statement of matters invited further representations from the Applicant and interested parties on:

- the carbon impact of the development; the implications, if any, of the development in relation to the Paris Agreement and the UK’s nationally-determined contribution under the Paris Agreement, the 2050 target in the Climate Change Act 2008, and carbon budgets (including the 6CB); and, whether the increase in carbon emissions resulting from the development is so significant that it would have a material impact on the ability of the Government to meet its carbon reduction targets; and
- the direct, indirect and cumulative likely significant effects of the development on climate, including greenhouse gas emissions and climate change adaptation.

106. The Secretary of State also issued a follow-up consultation letter on 7 January 2022 asking the Applicant to update its response to the statement of matters to provide or identify an assessment of the cumulative effects of GHG emissions from the Proposed Development with other existing and/or approved projects on a local, regional and national level on a consistent geographical scale. The Secretary of State on 23 February 2022 issued a further consultation letter asking other interested parties to provide any comments on the Applicant’s response.

Carbon budgets, targets and obligations

107. The Applicant set out in its ES 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 [ER 4.15.29], and the Secretary of State notes that the ExA was therefore content that the GHG emissions of the Proposed Development on its own would be unlikely to have a material impact on the UK Government meeting the carbon budgets in place at the time of the assessment [ER 4.15.114]. The ExA considered that 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 [ER 4.15.117]. The ExA also 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 had no clear evidence of this [ER 4.15.115].

108. As mentioned above, the Applicant’s ES was produced before the 2050 target came into effect. The ExA questioned during the examination whether the Applicant’s approach to assessing carbon emissions adequately considered the Government’s updated net zero target [ER 4.15.45]. The Applicant responded that at the time revised carbon budgets to reflect net zero had not been published [ER 4.15.46]. Since the close of the examination, the 6CB has been set in legislation which does take account of net zero. In the Applicant’s response to the statement of matters (31 August 2021), the Applicant assessed the impact of the Proposed Development on carbon emissions from construction and operation for all carbon budgets which have been set in legislation, including 6CB. The Secretary of State is therefore satisfied that the updated assessment accounts for net zero in this respect.

109. The Applicant further set out in Table 2-2 of its response to the statement of matters that the Proposed Development’s net carbon emissions would equate to 0.0022% of the UK’s carbon budget for 3CB, 0.0043% of 4CB, 0.0011% of 5CB, and 0.0023% of 6CB. The Applicant however noted that this assessment is conservative and considered it to be an overestimate as the expected uptake of new electric vehicles is higher than the proportions

used in the national projections included in the version of Defra's Emissions Factor Toolkit ("EFT") that was available at the time and used to provide the assessment (paragraph 2.2.7 of the response to the statement of matters). The Secretary of State considers that this accords with the ExA's conclusion that the Applicant adopted a reasonable worst-case scenario by not accounting for Government policy to increase the uptake of low emission vehicles [ER 4.15.121]. The Applicant in its response of 31 August 2021 to the statement of matters also referenced the Department for Transport's 'Decarbonising Transport: A Better, Greener Britain' ("TDP"), published in July 2021, as outlining a number of commitments by the Government to remove all emissions from road transport to achieve the net zero target by 2050. The Applicant said this would have a direct impact on road user emissions (paragraph 2.2.9). The Applicant also highlighted that in July 2021, it published its own 2030/2040/2050 Net Zero Highways plan that included commitments to ensure its maintenance and construction activities reach net zero by 2040 and road user emissions on the strategic road network reach net zero by 2050 (paragraph 2.2.11).

110. DCC, in its response of 26 October 2021 to the statement of matters, considered that little detail on electric vehicle uptake reducing vehicle emissions had been provided, and no reference was provided to the possible magnitude of the impacts of the TDP. The Secretary of State considers that these points have been addressed by the further detail provided by the Applicant on the use of the updated EFT (version 11) and the TDP sensitivity test, in its response of 2 February 2022 to the consultation letter of 7 January 2022.

111. The letter submitted on behalf of Mair Bain in response to the statement of matters, and the attached expert report, identified discrepancies between the ES and the Applicant's response to the statement of matters. In the consultation letter of 7 January 2022, the Secretary of State requested an explanation from the Applicant for the difference between the figures presented in Chapter 14 of the ES and the figures in the Applicant's response of 31 August 2021 on the Proposed Development's impact on the carbon budgets. The Applicant, in its response of 2 February 2022, explained that the figures differed because of a refinement in the assessment methodology (with the figures in the ES having been based on the average annual emissions during the 60-year period assessed) and an update to the EFT (v10). The Applicant also provided a further update to these figures in light of the latest EFT (v11) and the 2021 emissions factors, which the Applicant recommended should be used by the Secretary of State in making his decision on the Proposed Development. The Secretary of State has considered the figures in the Applicant's response of 31 August 2021 as updated by its response of 2 February 2022 in his conclusion on the matter.

112. The Secretary of State notes that the Applicant concluded in its response of 31 August 2021 to the statement of matters that the then-predicted maximum net impact on any carbon budget would be 0.0043% and that this would not have a material effect on the Government's ability to comply with carbon budgets (paragraph 2.2.16). In response to the Secretary of State's request of 7 January 2022 for additional information relating to the cumulative effects of the Proposed Development on climate, the Applicant on 2 February 2022 provided updated figures on the impact of the Proposed Development on each of the carbon budgets using an updated version of its carbon tool as well as the newly available EFT v11 (as opposed to v8 used in the original assessment) which took account of the higher predicted uptake rates of electric vehicles. The Applicant also presented the results of its sensitivity test to reflect the policies in the TDP in relation to operational emissions. The Secretary of State notes that the revised assessment using EFT v11 set out by the Applicant is emissions of 0.0390Mt CO₂e during 3CB, 0.0592Mt CO₂e during 4CB,

0.0119Mt CO₂e during 5CB and 0.0122Mt CO₂e during 6CB (table 1). The Secretary of State notes that these figures mean that the Proposed Development's net contribution to any carbon budget will be a maximum of 0.0030% (0.0015% of 3CB, 0.0030% of 4CB, 0.00069% of 5CB and 0.0013% of 6CB). The Secretary of State notes that these figures represent a lower impact on each of the carbon budgets than those in the ES and considered by the ExA. However, the Secretary of State acknowledges that the period of 3CB ended in 2022 and that table 1 of the Applicant's response on 2 February 2022 sets out the carbon produced in 3CB relates to 18 months of a 3.5 year period of construction. The Secretary of State has assumed construction will now take place entirely in 4CB and that the emissions in 3CB therefore move to 4CB. This would amount to emissions in 4CB of 0.0982Mt CO₂e which translates to an impact of 0.00504% on 4CB. Given there would be a likely reduction in operational emissions during this period than those previously set out, resulting from the delay in construction, the Secretary of State is satisfied that this represents a worst case scenario. This means the maximum impact for the Proposed Development would be 0.00504% of any carbon budget which remains lower than the impact considered acceptable by the ExA [ER 4.15.114].

113. The Secretary of State is aware that the EFT v11 toolkit has some limitations around its use for predictions beyond 2030 where it is being used to estimate carbon for schemes that take traffic on or off London roads. However, the Secretary of State recognises that all modelling has limits and includes a level of uncertainty and, given the distance between the Proposed Development and London, considers that there is no evidence this issue would significantly affect the assessment of the Proposed Development's impact on the carbon budgets.

114. The Secretary of State considers that the majority of operational emissions related to the Proposed Development result from vehicle usage and that the TDP includes a range of non-planning policies which will help to reduce carbon emissions over the transport network as a whole over time (including policies to decarbonise vehicles and radically reduce vehicle emissions) and help to ensure that carbon reduction commitments are met. As set out above, the Applicant's most recent assessment of the Proposed Development's impact on the carbon budgets takes account of the TDP.

115. The Secretary of State does not agree with the concerns raised in the report submitted on behalf of Mair Bain to the 23 February 2022 consultation that the Applicant, in its response to the 7 January consultation, may have undertaken double counting between emission reductions in the EFT v11 and the TDP. The EFT v11 uses baseline assumptions of electric vehicle uptake rather than the more ambitious TDP trajectory, and so does not include additional policies included under the TDP such as phasing out the sale of non-zero emission road vehicles by 2040.

116. The Secretary of State acknowledges the importance of climate change at the local, national and international level and the contribution GHGs make to this. Section 6.2 of the latest IEMA guidance 'Assessing Greenhouse Gas Emissions and Evaluating their Significance' ("the IEMA Guidance") notes that "The 2050 target (and interim budgets set to date) are, according to the CCC, compatible with the required magnitude and rate of GHG emissions reductions required in the UK to meet the goals of the Paris Agreement, thereby limiting severe adverse effects". This guidance also sets out that, "Carbon budgets allow for continuing economic activity, including projects in the built environment, in a controlled manner".

117. The Applicant considered that there was no specific guidance regarding significance levels for GHG emission impacts [ER 4.15.21]. The Secretary of State considers that there

is no set significance threshold for carbon. Assessing significance is a matter of judgment. The latest IEMA guidance at section 6.1 refers back to three overarching principles in its original 2010 guidance that it considered to be particularly relevant in considering significance: GHG emissions from all projects will contribute to climate change, the largest interrelated cumulative environmental effect; the consequences of a changing climate have the potential to lead to significant environmental effects on all EIA topics; and that GHG emissions have a combined environmental effect that is approaching a scientifically defined environmental limit and as such any GHG emission or reductions in these might be considered significant. The latest IEMA guidance states that it builds on those principles noting: when evaluating significance, all new GHG emissions contribute to a negative environmental impact, but some projects will replace existing development or baseline activity that has a higher GHG profile and the significance of a project's emissions should therefore be based on its net impact over its life time, which may be positive, negative or negligible; where GHG emissions cannot be avoided, the goal of the EIA process should be to reduce the project's residual emissions at all stages; and where GHG emissions remain significant, but cannot be further reduced, approaches to compensate the project's remaining emissions should be considered.

118. The IEMA guidance considers that the crux of significance is not whether a project emits GHG emissions, nor even the magnitude of GHG emissions alone, but whether it contributes to reducing GHG emissions relative to a comparable baseline consistent with a trajectory towards net zero by 2050 (section 6.2). The IEMA guidance addresses significance principles and criteria in section 6.3 and Figure 5 and advises (amongst other things) that: a project that follows a 'business-as-usual' or 'do minimum' approach and is not compatible with the UK's net zero trajectory, or accepted aligned practice or area-based transition targets, results in significant adverse effects; a project that is compatible with the budgeted science-based 1.5 degree Celsius trajectory (in terms of rate of emissions reduction) and which complies with up-to-date policy and 'good practice' reduction measures to achieve that has a minor adverse effect that is not significant – such a project may have residual emissions but it is doing enough to align with and contribute to the relevant transition scenario to keep the UK on track towards net zero by 2050 with at least a 78% reduction by 2035 and thereby potentially avoiding significant adverse effects; and a project that achieves emissions mitigation that goes substantially beyond the reduction trajectory, or substantially beyond existing and emerging policy compatible with that trajectory, and has minimal residual emissions, is considered to have negligible effect that is not significant and such a project is playing a part in achieving the rate of transition required by nationally set policy commitments.

119. The Secretary of State notes that the Proposed Development will result in an increase in carbon emissions. The Secretary of State does not consider that net zero means consent cannot be granted for development that will increase carbon emissions. The Secretary of State considers that, as set out in NPSNN paragraph 5.18, it is necessary to continue to evaluate whether (amongst other things) the increase in carbon emissions resulting from the Proposed Development would have a material impact on the ability of Government to meet its carbon reduction targets. As set out below at paragraphs 122 - 124, the carbon budgets should meet the goals of the Paris Agreement meaning a proposal which is compatible with the 2050 target and interim carbon budgets is consistent with the approach to addressing the severe adverse effects of climate change.

120. The Secretary of State considers that the approach outlined in paragraph 112 aligns with the approach to significance set out in the most recent IEMA Guidance, and notes DCiC's conclusion in its response of 26 October 2021 to the statement of matters that the

Applicant's approach to assessing the Proposed Development against the sixth carbon budget is appropriate. The Secretary of State considers that the approach set out in the NPSNN continues to be relevant in light of international obligations and domestic obligations related to reducing carbon emissions that have been introduced since the NPSNN was designated. The Secretary of State notes that the carbon budgets are economy-wide and not just targets in relation to transport. The Secretary of State considers that the Proposed Development's contribution to overall carbon levels is very low and the Secretary of State considers that its contribution will not have a material impact on the ability of Government to meet its legally binding carbon reduction targets, including 6CB which has been considered after the examination concluded.

121. The Secretary of State notes that the Applicant's ES sets out how construction impacts will be mitigated including through the CEMP. Emissions relating to the operational phase, other than vehicle usage, will be reduced where possible through measures such as confining the use of lighting to locations where road safety is a priority (see ES Chapter 14, Table 14.12). The Secretary of State is content that these measures will help to reduce carbon emissions where this is possible and that such measures are secured by requirements in the DCO.

122. With regard to the Paris Agreement, the UK's NDC commits it to reduce net GHG emissions by at least 68% by 2030 compared to 1990. This represents an increase of ambition on the 5CB, which covers the period 2028-2032. The Government has set out wider policies around net zero in 'The Net Zero Strategy: Build Back Greener', published by Government in October 2021 and the Carbon Budget Delivery Plan published in March 2023 (together referred to as the 'Net Zero Strategy') set out policies and proposals for decarbonising all sectors of the UK economy to meet the 2050 target. It identified how the UK will therefore need to overachieve on 5CB to meet its international climate targets and stay on track for 6CB. This strategy set out the action Government will take to keep the UK on track for meeting the UK's carbon budgets and 2030 NDC and establishes the UK's longer-term pathway towards net zero by 2050. The Secretary of State has no reason to consider that the Proposed Development will hinder delivery of either the TDP or Net Zero Strategy. The Secretary of State is satisfied, in light of the net construction and operation emissions that have been identified, that consenting the Proposed Development will not affect the delivery of the Net Zero Strategy, or net zero in principle, nor will it have a material impact on the ability to meet the national targets, including 5CB (and overachievement of in the Net Zero Strategy) or the 6CB, and it will not lead to a breach of the UK's international obligations in relation to the Paris Agreement or any domestic enactments or duties. Given the compatibility with the carbon budgets set out above, the Secretary of State also agrees with the ExA's conclusion that Friends of the Earth Derby's submissions (which includes submissions made after the examination closed) do not demonstrate that the Proposed Development would infringe the international human rights matters in the Paris Agreement [ER 4.15.107].

123. The Secretary of State also notes the recent progress report of the Climate Change Committee ("CCC") submitted to Parliament on 23 June 2023. The CCC's advice was that the rate of emissions reductions in the UK will need to significantly increase to meet its 2030 NDC and the sixth carbon budget. The Government has not yet responded to the CCC's report. However, the Secretary of State notes that the CCC's advice is not planning policy and there are other policy mechanisms available outside of the PA2008 and NPSNN which can address any difficulties in meeting the NDC and/or the 6CB. The Secretary of State therefore gives the CCC's advice neutral weight.

124. Overall, the Secretary of State considers that: over time the net carbon emissions resulting from the Proposed Development's operation will decrease as measures to reduce emissions from vehicle usage are delivered; the magnitude of the increase in carbon emissions resulting from the Proposed Development is predicted to be a maximum of 0.00504% of any carbon budget and therefore very small; and there are policies in place to ensure these carbon budgets are met, such as the TDP and the Applicant's own Net Zero Highways plan published in July 2021. The Secretary of State is satisfied that the Proposed Development is compatible with these policies and that the very small increase in emissions that will result from the Proposed Development can be managed within Government's overall strategy for meeting net zero and the relevant carbon budgets. The Secretary of State considers that there are appropriate mitigation measures secured in the DCO to ensure carbon emissions are kept as low as possible and that the Proposed Development will not materially impact the Government's ability to meet its net zero targets.

Cumulative Assessment of the impact of GHG emissions

125. The Secretary of State sought additional information from the Applicant in the statement of matters on the assessment of the cumulative impact of GHG emissions. Following the Applicant's response of 31 August 2022, the Secretary of State made a further request for information relating to this matter on 7 January 2022. The Applicant responded to this further request on 2 February 2022.

126. In its response of 2 February 2022, the Applicant states that it follows the advice set out in the DMRB guidance for the design and evaluation of the impact of any of its road schemes so as to ensure consistency in how any scheme is progressed and how the outcomes are evaluated.

127. The Applicant in its response of 31 August 2021 refers to its assessment of direct and indirect GHG emissions in Chapter 14 (Climate) of its ES. The Secretary of State also notes that Chapter 14 of the ES sets out that the study area adopted for the carbon emissions assessment covers all direct carbon emissions arising from activities undertaken within the boundary of the Proposed Development during its construction and operation, and includes indirect emissions embedded within construction materials, arising as a result of the energy used for their production, as well as emissions arising from the transportation of materials, waste and construction workers to and from the site. Chapter 14 of the Applicant's ES further sets out that the study area for the assessment of GHG emissions arising during the Proposed Development's operation includes both direct emissions arising from energy use within the Proposed Development's boundary and emissions from road users which are presented for the whole traffic model study area. In the consultation letter of 7 January 2022, the Secretary of State requested a definition of the 'whole traffic model study area' and clarification as to what assessment had been carried out in relation to it. The Applicant provided a relevant definition and clarification in its response of 2 February 2022. The Secretary of State notes that the expert report submitted on behalf of Mair Bain in response to the statement of matters claims that some sub-types of emissions have not been reported. The Secretary of State considers that the scope of the Applicant's assessment of carbon emissions complies with the NPSNN, EIA Regulations and relevant guidance including the DMRB and is sufficient to inform the Secretary of State's decision on this matter.

128. The Secretary of State notes that the Applicant's response of 2 February 2022 set out that the traffic model used to support the scheme assessment is inherently cumulative with regard to operational carbon emissions. This is because traffic models include data

on the emissions resulting from the Proposed Development and the adjoining Strategic Road Network and the Local Road Network as well as other schemes promoted by the Applicant in the vicinity of the Proposed Development that have a high certainty of being progressed. The Applicant also sets out that this was informed by discussion with the relevant planning authorities and took account of national Government regional growth rates. The Secretary of State notes comments regarding the lack of specific reference of greenhouse gas emissions in the original ES and Transport Assessment in the response on behalf of Mair Bain to the statement of matters, but considers that the Applicant has sufficiently clarified the methodology by which carbon emissions were cumulatively assessed through the reasoning provided since the statement of matters was issued.

129. The Secretary of State notes that the response to the statement of matters submitted on behalf of Mair Bain contended that an appropriate study area needs to be established by reference to the environmental effect in question, and that the Applicant has not properly considered an appropriate study area for the assessment of carbon impacts. The Applicant provided more information to justify its approach in its response to the Secretary of State's consultation letter of 7 January 2022, stating that for construction impacts, in addition to activities within the site boundary, it also considered emissions arising outside it (arising from activities such as the transportation of waste, materials and workforce). The Applicant also stated that for operational impacts the study area was selected to take account of road users taking different long-distance routes due to the Proposed Development. In addition to road users, the operational emissions from maintenance and energy used during the operational phase are recorded from activities within the site boundary and include emissions outside the site, for example in respect of the lifecycle of materials used.

130. With regard to operational carbon, the Applicant's approach to assessing the impact on carbon emissions (as outlined in its response to the Secretary of State's consultation letter of 7 January 2022) is to consider the changes in carbon emissions resulting from the Proposed Development by comparing changes in the road traffic on the Strategic Road Network and Local Road Network between the 'without scheme scenario' and the 'with scheme scenario', with the former providing the baseline for assessment. The traffic model used in this assessment considers the Proposed Development, other nearby schemes promoted by the Applicant, foreseeable developments promoted by third parties, and national government regional traffic growth rates, excluding known planning developments already included in the traffic model. The Applicant considers that as both the with and without scheme scenarios include all likely developments and traffic growth factors, the assessment is inherently cumulative as regard to operational carbon emissions. The Secretary of State notes that the Applicant's methodology considers development on a national level, with specific local developments assessed in detail (and then excluded from the traffic growth rates) where likely to have an influence on the Proposed Development and on the area the Proposed Development is likely to influence. The Secretary of State is satisfied overall that the Applicant has provided sufficient information in respect of existing and approved projects for the purposes of the EIA Regulations, as well as proposed projects, to consider the cumulative effects of the Proposed Development.

131. The Secretary of State notes the ExA's suggestion that the Secretary of State should consider 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 against the relevant carbon budget [ER 4.15.126]. The Secretary of State further notes that, in the expert reports submitted on behalf of Mair Bain in response to the statement of matters and the 2 February 2022

consultation letter, an alternative approach to the cumulative assessment of the Proposed Development's GHG emissions is suggested. That is the approach of evaluating the Proposed Development's effects in isolation from those of other schemes by the Applicant and foreseeable developments by third parties (called 'solus' in the reports) and separately evaluating the Proposed Development's effects in addition to those of other schemes by the Applicant and foreseeable developments by third parties (called 'cumulative' in the reports). The Applicant in its response of 2 February 2022 disagreed with the suggested approach and stated that using the emissions called 'cumulative' in the expert reports would result in a very large over-estimate of additional emissions from the Proposed Development.

132. The responses submitted on behalf of Mair Bain make reference to case law in support of the above suggestion setting out that information about other developments is available to the Applicant to enable it to perform a proper cumulative carbon assessment, and that this should have been taken into account. The response of 2 February 2022 cites the judgement in *Pearce v Secretary of State for Business, Energy and Industrial Strategy* [2021] EWHC 326 (Admin). The Secretary of State notes that this case was not about the assessment of carbon impacts but that it draws a distinction between 'solus' and 'cumulative' effects. The Secretary of State recognises that an assessment of cumulative effects is required to be undertaken for this Proposed Development. For the reasons set out below, the Secretary of State considers an appropriate assessment of cumulative effects to have been carried out and this provides adequate information to enable the Secretary of State to understand the cumulative effects of the Proposed Development on carbon emissions.

133. The Secretary of State considers that as there is no single prescribed approach to assessing the cumulative impacts of carbon emissions, there are a number of ways such an assessment can acceptably be undertaken and that this does not necessarily need to be done at RIS level (as suggested by the ExA) or on the basis suggested by the expert reports submitted on behalf of Mair Bain. Furthermore, the Secretary of State considers that whilst an assessment at RIS level would provide a cumulative assessment of the RIS schemes that are planned or being delivered, it would not capture other development which causes carbon emissions. Additionally, the Secretary of State does not consider there to be a policy or legal justification for the assertion, made in the expert report submitted on behalf of Mair Bain to the statement of matters, that the approach called 'absolute' is "actually the real measure of impact on the environmental factor/receptor". The Secretary of State also notes that for the impact and effect of carbon emissions on climate change, unlike other environmental topics, there is only a single receptor impacted by carbon emissions (the atmosphere) and it is a global one. The Secretary of State considers that as carbon budgets and the 2050 target relate to the whole of the UK economy and society and are legally binding, they reflect what the UK's impact will be on this receptor as they set out what carbon levels can reasonably be expected to occur in the future (because they represent a legal limit on what can be emitted). It is therefore considered that these legally binding budgets provide a reasonable reference point for considering the effects of carbon from the Proposed Development and that these legally binding budgets are relevant to a consideration of cumulative effects in that they represent the limit of the emissions that are permitted within each carbon budget period from a range of sectors including transport. The Secretary of State therefore considers that the Applicant's approach which takes account of these carbon budgets for the purposes of its cumulative assessment is reasonable, proportionate, and accords with the principles set out in the IEMA guidance that a) GHG emission impacts are global rather than affecting one localised area and b)

there is no basis for selecting one or more particular cumulative projects for assessment over any other(s).

134. With regard to assessing the cumulative impact of emissions on climate and the geographical scale used in such an assessment, the Applicant in its response of 2 February 2021 has set out that carbon budgets (which as set out above aim to limit the significant effects of climate change) are only set out at a national scale and that these are themselves cumulative as they are a sum of carbon emissions for a range of sectors. The Applicant considered that it was unable to produce a baseline at a local or regional scale and that there was therefore no reasonable basis upon which it can assess the effects of carbon emissions for anything other than at the national level. The Secretary of State does not consider that there are any other Government carbon reduction targets within the scope of NPSNN paragraph 5.18. In particular, the Secretary of State considers that the sectoral pathways set out in the Net Zero Strategy, which the response on behalf of Mair Bain to the Secretary of State's 23 February 2022 consultation letter contends constitute such targets, are indicative figures on which to plan and make policy to meet whole-economy emissions targets; these sectoral pathways are not therefore statutory targets. The Secretary of State's conclusion on the Proposed Development's impact on the Net Zero Strategy is discussed above. The Secretary of State accepts that the only statutory carbon targets are those at a national level. The Secretary of State notes the non-statutory target set out in DCiC's 'Derby's Climate Change Strategy' and DCC's 'Climate Change Strategy: Achieving Net Zero, 2021-2025'. As neither council nor any other party raised a conflict with these strategies, the Secretary of State has no evidence to suggest that the Proposed Development would give rise to conflicts with these.

135. Indeed, the Secretary of State notes the explicit policy support for the implementation of the Proposed Development in local development plans and policies [ER 3.7.5, 3.8.5, 3.8.6]. The Secretary of State notes that EBC's Local Impact Report, found that the Proposed Development would not comply with its climate change policies but considered that this conflict would be outweighed by the wider benefits of the Proposed Development [ER 4.5.43].

136. In addition, the Secretary of State notes that there have been a number of High Court challenges brought in respect of other nationally significant road schemes and other projects in the last year on the basis that the project's carbon impact was not assessed against local targets and the Court has ruled that the Secretary of State's approach in those cases to give no weight to local carbon budgets was rational (see *Bristol Airport Action Network v. SSLUHC* [2023] EWHC 171 at 170-171).

137. The Secretary of State also notes that the Applicant's approach to cumulative assessment of carbon emissions for road schemes was recently challenged in the case of *R (Boswell) v Secretary of State for Transport* [2023] EWHC 1710. The Court concluded that the Applicant's approach to assessing cumulative effects was lawful and complied with the Infrastructure Planning (Environmental Assessment Regulations) 2017 and that the Secretary of State had not acted unlawfully in concluding that he had sufficient information to assess the cumulative effects of the road schemes in issue in that case. The approach and methodology adopted by the Applicant for the Proposed Development is the same as that adopted for the A47 road schemes that were considered in *Boswell*.

138. These cases support the Secretary of State's overall view that the Applicant's assessments and methodology are reasonable and provide a sufficient basis for reaching a conclusion on the likely significant effects of the Proposed Development when taken together with other existing and/or approved projects on climate. The Secretary of State

considers that the Applicant's approach is in line with relevant policy and legislation (including the 2017 Regulations). The Secretary of State does not consider that this is called into question by other proposed approaches to assessing the Proposed Development's cumulative climate impact, such as that proposed in the expert reports submitted on behalf of Mair Bain, even if such approaches may also comply with relevant policy and legislation. The Secretary of State considers that the Applicant's approach overall, to both the assessments of the Proposed Development's impact on carbon emissions and its cumulative impact, is adequate.

139. With regard to climate change vulnerability, the Applicant in its response of 31 August 2021 supplemented its assessment in ES Chapter 14 (which concluded that there would be no significant cumulative climate vulnerability effects associated with the Proposed Development) with an additional assessment of whether other strategic transport infrastructure beyond the Proposed Development's boundary may, when subject to climate impacts, have consequences that exacerbate likely significant effects. The Applicant concluded that the assessment demonstrated that the Proposed Development will improve the resilience of the Strategic Road Network to the effects of climate change.

140. The Secretary of State notes the ExA's conclusion that, subject to caveats (considered in the following paragraphs), the Proposed Development's resilience 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 and considered by the Applicant in accordance with paragraphs 4.36 to 4.47 of the NPSNN [ER 4.15.125].

Other matters

141. The Secretary of State notes that Friends of Markeaton Park in their response of 25 October 2021 to the statement of matters argued that earthworks and tree clearances would result in an increase in carbon emissions so significant that it could have a material impact on the ability of the Government to meet its carbon reduction targets. No evidence was provided to support this claim, and this was a matter considered by the ExA during the Examination. Similarly, the expert report submitted on behalf of Mair Bain in response to the statement of matters contends that land-use change emissions during construction and future carbon sequestration gains have not been reported. The Secretary of State agrees with the ExA's conclusion that the Applicant's assessment of the loss of carbon sequestration benefits due to tree loss has been carried out appropriately [ER 4.15.122] and so considers that carbon sequestration gains have been assessed and indeed notes that the greenhouse gas emissions from land clearance are included in the assessment of construction emissions, as stated in Chapter 14 of the Applicant's ES. Further, the ExA notes the Applicant's aim to deliver a net gain in trees and is content with the mitigation measures provided in the OEMP [ER 4.15.122]; the Secretary of State agrees with this.

142. The Secretary of State is content with the Applicant's modelling of the cumulative carbon impact of the Proposed Development at the design year of 2039 in ES Chapter 5. The Secretary of State notes there are no carbon budgets covering the design year or any subsequent years (if, for example, a later design year were suggested). The Secretary of State is content with the Applicant's approach to assessing the Proposed Development's carbon impacts in the design year given the information that is available.

143. The Secretary of State notes that the response to the statement of matters submitted on behalf of Mair Bain contends that the Secretary of State should require

monitoring in relation to GHG emissions, to address emissions from the Proposed Development beyond 2039 and to assess the impacts of future policy measures on the Proposed Development's emissions. The Secretary of State notes the Applicant's position that it was not considered practical to monitor GHG emissions from road users during the operational phase as the Applicant would not have direct control over road user emissions [ER 4.15.25]. The Secretary of State recognises that it would be impractical to monitor GHG emissions as the Applicant does not have direct control of each vehicle using the road and could not therefore feasibly monitor the emissions of these vehicles. The Secretary of State therefore does not consider that he has been presented with any compelling reasons why in this particular case further monitoring would be required or to indicate that the Proposed Development would be unacceptable without it.

Conclusion on climate change

144. The Secretary of State is satisfied that both the assessment in the ES and the Applicant's responses to the Secretary of State's consultation questions relating to climate have been drafted by competent experts. The Secretary of State considers that the information provided by the Applicant in response to its consultations is 'any other information' for the purposes of the EIA Regulations as it builds on previously provided information (see further reasoning in paragraph 171). The Secretary of State considers that parties have been given sufficient opportunity to comment on the Applicant's response, including through the 12-week window for responses to the statement of matters. The Secretary of State is content that the Applicant has adequately assessed the likely significant effects of the Proposed Development on climate and its cumulative impacts on climate taking account of both construction and operation as required by the 2017 Regulations and this information has been taken into consideration when assessing whether development consent should be granted.

145. Overall, the Secretary of State considers that the information provided by the Applicant on the impact of the Proposed Development on carbon emissions (including the cumulative effects of carbon emissions from the Proposed Development with other existing and/or approved projects in relation to construction and operation) is sufficient to understand the impact on carbon emissions, to assess the effect of the Proposed Development on climate matters and represents the information that the Applicant can reasonably be required to compile having regard to current knowledge and in light of the information about the national carbon budgets. The Secretary of State notes that one party considered that there was a lack of transparent data about the traffic models used but the Secretary of State is content that the level of detail in this analysis is sufficient to allow him to come to a conclusion, and that the traffic model used to assess the Proposed Development's cumulative carbon emissions uses an established methodology, as outlined at ER 4.15.20 and in the Applicant's response to the statement of matters. The Secretary of State also considers that the Applicant's provision of information on the Proposed Development's likely significant effects on the climate – in the ES, the examination, and in responses to the Secretary of State's consultation – complies with the EIA Regulations and the Aarhus Convention in respect of public participation.

146. The Secretary of State is aware that all emissions contribute to climate change. Whilst the Proposed Development will result in an increase in carbon emissions, as set out above, the Secretary of State considers that the Proposed Development is consistent with existing and emerging policy requirements to achieve the UK's trajectory towards net zero. The Secretary of State therefore considers the Proposed Development's effect on climate

change would be minor adverse and not significant and that this assessment aligns with the IEMA guidance. The Secretary of State is satisfied that the Proposed Development complies with the NPSNN and will not lead to a breach of any international obligations that result from the Paris Agreement or Government's own policies and legislation relating to net zero.

147. The Secretary of State is content that all the matters highlighted by the ExA as requiring further consideration have been adequately addressed. The Secretary of State is therefore satisfied that:

- The Proposed Development will not lead to a breach of the Paris Agreement;
- There has been adequate consideration of the cumulative effects of carbon emissions; and
- The Proposed Development will not affect the Government's ability to meet the 2050 net zero target.

148. The Secretary of State notes that the ExA consider that subject to him considering compliance with the Paris Agreement 2015, cumulative carbon emissions and meeting the target for Net Zero, the climate change and carbon emission effects do not weigh significantly for or against the Proposed Development [ER 4.15.128]. While as set out above the Secretary of State considers that the Proposed Development will not significantly impact government's ability to meet carbon targets and therefore Net Zero and the Paris Agreement 2015 and that cumulative carbon emissions have been adequately considered, given that the Proposed Development will increase carbon emissions, it is given negative weight in the planning balance. However, due to the likelihood of the Government's legally binding targets decreasing carbon emissions over the lifetime of the Proposed Development, limited weight is attached to this. In relation to climate change vulnerability and adaptation, the Secretary of State agrees with the ExA that this matter does not weigh significantly for or against the Proposed Development.

Other Matters including Combined Effects

149. The Secretary of State notes the ExA's conclusion in relation to the Proposed Development's combined effects that the proposal would result in temporary significant effects on a limited number of specific receptors during the construction and operational phases, in addition to permanent significant combined effects on parts of the RSfD site at Markeaton. These effects would be limited in extent and for the most part limited in duration. The Secretary of State agrees with the ExA's conclusions that these effects weigh significantly against the DCO being made [ER 4.16.112].

150. The Secretary of State agrees with the ExA's conclusion that other matters considered in section 4.16 of the ExA's Report do not weigh significantly for or against the DCO being made, apart from matters discussed at paragraph 19 above.

The Habitats Regulations Assessment

151. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 ("the Habitats Regulations"), the Secretary of State as the competent authority is required to consider whether the Proposed Development (which is a project for

the purposes of the Habitats Regulations) 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.

152. The Proposed Development is not directly connected with or necessary to the management of any European site. Therefore, where likely significant effects cannot be ruled out, the Secretary of State must undertake an appropriate assessment (“AA”) under regulation 63(1) of the Habitats Regulations to assess potential adverse effects on site integrity. Such an assessment must be made before any decision is made on undertaking a plan or project or any decision giving consent, permission or other authorisation to that plan or project. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the plan or project will not, either on its own or in-combination with other plans and projects, adversely affect the integrity of such a site, unless there are no feasible alternatives and imperative reasons of overriding public interest (“IROPI”) apply (regulation 64). Where a plan or project is agreed to in accordance with regulation 64, notwithstanding a negative assessment of the implications for a European site, regulation 68 also requires that the appropriate authority must secure that any necessary compensatory measures are taken to ensure the overall coherence of the national site network is protected.

153. 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

154. The Secretary of State notes that in reaching its conclusions on the case for the Proposed Development, the ExA has had regard to the NPSNN, 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].

155. 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 to weigh significantly in favour of 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].

156. 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] but as set out above, also gives limited weight to the temporary deterioration in air quality for some receptors during construction and limited weight to the increase in carbon emissions. Overall, the Secretary of State agrees with the ExA that the adverse effects would be relatively limited in magnitude, duration and/or the number of receptors affected [ER 6.5.12] and that 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 the ExA that the case for making the DCO for the Proposed Development has been made [ER 6.5.18].

Compulsory Acquisition and Related Matters

157. 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 PA2008, 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

158. 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 a 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, and is therefore content for the related plots of land to be included in the DCO.

Special Category Land

159. 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 PA2008, 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 compulsorily acquired, with the same rights, trusts and incidents [ER 7.10.10].

160. 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]. 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 ExA concluded overall 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 PA2008, and that paragraphs 5.166 and 5.174 of the NPSNN and the provisions in the Department for Communities and Local Government (now Department for Levelling Up, Housing and Communities) CA Guidance are satisfied [ER 7.10.28].

Statutory Undertakers

Network Rail

161. 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 letters dated 3 November 2020 and 7 January 2022. In its response of 4 February 2022 to the Secretary of State, the Applicant clarified that the framework agreement had been agreed by both parties and was expected to be executed in March 2022. 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.

162. 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].

Cadent Gas Limited

163. The Secretary of State notes disagreement between the Applicant and Cadent Gas Limited ("Cadent") over whether the powers sought would cause serious detriment to Cadent [ER 7.10.38-39]) but agrees with the ExA that Cadent has not demonstrated that the recommended version of the protective provisions would lead to a serious detriment to the carrying out of its undertaking [ER 7.10.41].

Seven Trent Water

164. 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 by the Applicant, 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 Proposed Development or the content of the draft DCO.

Western Power Distribution

165. 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

166. 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 (for the CA powers sought), 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 and that any interference would be proportionate and would strike a fair balance between the rights of the individual and the public interest [ER 7.12.12].

167. 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 and 7.12.10 including that:

- the land subject to CA would be required for the purposes of section 122(2)(a), (b) and (c) of the PA2008 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 PA2008;
- in relation to sections 131 and 132 of the PA2008, suitable replacement land would be provided in exchange for open space subject to CA powers and Special Parliamentary Procedure would not be required;
- the requirements of the Human Rights Act 1998 in relation to the interference of individual rights are satisfied.

168. 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 PA2008, and should be granted [ER 9.2.4].

Late Representations (outside formal consultation)

169. 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 164.
- Applicant dated 17 September 2020 regarding protective provisions and side agreement with WPD. This is addressed above at paragraph 165.
- STW dated 11 September 2020 regarding a side agreement. This is addressed in paragraph 164.
- WPD dated 8 October 2020 regarding protective provisions and a side agreement with the Applicant. This is addressed above at paragraph 165.

170. 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, raises a new issue not considered by the ExA or in this letter or needs to be referred to interested parties before he proceeds to a decision.

General Considerations

171. The Secretary of State refers to the response made on behalf of Mair Bain in response to the statement of matters. In that response it is submitted that information the Applicant provided in its response to the statement of matters and its further responses to the Secretary of State's consultation questions constitutes "further information" for the purposes of the 2017 Regulations. The Secretary of State does not consider that the information in question constitutes "further information" because he considers that it is not information which is necessary to include in an environmental statement or updated environmental statement, in addition to the information already contained in the Applicant's environmental statement. The Secretary of State has therefore treated the information in question as "any other information", being substantive information provided by the Applicant in relation to the environmental statement. The Secretary of State sought the views of interested parties on that information and has taken into account his examination of that information (among the other matters which he must take into account) in reaching a reasoned conclusion on the significant effects of the Proposed Development on the environment, in accordance with regulation 21 of the 2017 Regulations.

Equality Act 2010

172. 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

173. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006 has to consider what action he can properly take, consistently with the proper exercise of his functions, to further the general biodiversity objective and, in accordance with regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, have regard to conserving biodiversity and in particular to the United Nations Environmental Programme on Biological Diversity of 1992. He has had regard to both of these when deciding on whether to grant development consent.

Modifications to the DCO by the Secretary of State

174. The following modifications have been made to the DCO:

- 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 sub-paragraphs (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 DCO;
- 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

175. 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 PA2008 for her to make the DCO as now proposed.

Challenge to decision

176. 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

177. The Secretary of State's decision on this application is being publicised as required by section 116 of the PA2008 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 2023 (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).