



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

**Application by Highways England for an Order
Granting Development Consent for the
M42 Junction 6 Improvement**

Examining Authority's Report
of Findings and Conclusions

and

Recommendation to the
Secretary of State for Transport

Examining Authority

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21 February 2020

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OVERVIEW

File Ref: TR010027

The application, dated 2 January 2019, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on the same date.

The Applicant is Highways England (the Applicant).

The application was accepted for examination on 30 January 2019.

The Examination of the application began on 21 May 2019 and was completed on 21 November 2019.

The development proposed comprises the following key components:

- a new junction on the M42 approximately 1.8km south of the existing Junction 6 (referred to as M42 Junction 5A) arranged as a 'dumbbell' with 2 roundabouts either side of a new bridge across the M42 providing south-facing slip roads only to connect the motorway to a new dual carriageway link road to the A45 Coventry Road;
- a new 2.4km 2-lane dual carriageway link road largely in cutting between the M42 Junction 5A and the Clock Interchange on the A45, with a free flow slip road to the A45 Coventry Road westbound;
- capacity and junction improvements at the Clock Interchange, including the widening of the central roundabout to 3 lanes, incorporating a free-flow link road to Birmingham Airport and realigning, as well as widening, the existing 2-lane dual carriageway immediately to the north of the Clock Interchange (somewhat incongruously known as Bickenhill Lane);
- modifications to Junction 6 entailing new free flow links between the A45 eastbound and the M42 northbound and from the M42 southbound to the A45 eastbound: the closing of the existing free-flow link from the M42 to Airport Way and the widening to 4 lanes of the slip road from the M42 northbound to the A45 westbound: a new slip road from the M42 southbound via a realigned East Way roundabout to provide access to the NEC and the upgrading of the loop connecting East Way to the settlement of Middle Bickenhill to accommodate 2-way traffic;
- the realignment and modification of several local roads including the severance of the connection between Catherine-de-Barnes Lane (B4438) and the Clock Interchange, the insertion of Bickenhill and Barber's Coppice roundabouts and alterations to St Peters Lane west of the M42 together with East Way and the Middle Bickenhill Loop to the east of the motorway;
- modifications to the location and spacing of emergency refuge areas, overhead gantries and message signing along the M42 motorway;
- modifications to the local public rights of way (PRoW) with a new footbridge crossing the A45 to the west of Junction 6 and a footbridge across the new dual carriageway linking Junction 5A and the Clock Interchange; and
- the reconfiguring of the Warwickshire Gaelic Athletic Association (WGAA) sports facility at Páirc na hÉireann.

The Examining Authority recommends that the Secretary of State should make the Order in the form attached.

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1. INTRODUCTION

1.1. INTRODUCTION TO THE EXAMINATION

- 1.1.1. The Application [[APP-003](#)] for M42 Junction 6 Improvement (the Proposed Development) under the file reference TR010027 was submitted by Highways England (the Applicant) to the Planning Inspectorate on 2 January 2019 under section 37 of the Planning Act 2008 (PA2008) and accepted for Examination under section 55 of the PA2008 on 30 January 2019 [[PD-001](#)].
- 1.1.2. The Proposed Development comprises:
- a new junction on the M42 approximately 1.8km south of the existing Junction 6 (referred to as M42 Junction 5A);
 - a new 2.4km long dual carriageway link road between M42 Junction 5A and Clock Interchange, with a free flow slip road to the A45 Coventry Road Westbound;
 - capacity and junction improvements at Clock Interchange; new free flow links between the A45 eastbound and M42 Northbound and from the M42 southbound to the A45 eastbound at Junction 6;
 - the realignment and modification of several local roads including; the B4438 Catherine-de-Barnes Lane (Catherine-de-Barnes Lane), Clock Lane and St Peters Lane west of the M42 motorway, and East Way and the Middle Bickenhill Loop east of M42 Junction 6;
 - modifications to the location and spacing of emergency refuge areas, overhead gantries and message signing along the M42 motorway;
 - modifications and improvements to the local public rights of way (PRoW), footbridges and private accesses; and
 - the reconfiguring of the Warwickshire Gaelic Athletic Association (WGAA) sports facility at Páirc na hÉireann.
- 1.1.3. The location of the Proposed Development is shown on the Location Plan [[APP-005](#)] and Land Plans [[REP9-002](#) and [REP9-003](#)]. The site is predominantly within the administrative boundary of Solihull Metropolitan Borough Council (SMBC) but is also within the administrative boundaries of Warwickshire County Council (WCC) and North Warwickshire Borough Council (NWBC). The site is located wholly in England.
- 1.1.4. Junction 6 on the M42 is one of the busiest throughout the Strategic Road Network [[APP-174](#)]. Not only does the motorway provide a connection for long-distance traffic around the south and east of Birmingham between the M5, the M40, the M6, and, via the A42, to the M1, but also Junction 6 lies at a crossroads where this long-distance traffic intersects with a major regional route (the A45) between Birmingham and Coventry [[APP-048](#) and [APP-049](#)].
- 1.1.5. This section of the M42 operates as a 'smart motorway', currently with 'dynamic hard shoulder' running [[APP-174](#)]. But, Junction 6 also lies amongst substantial commercial concerns where significant growth is planned [[APP-173](#)]. Birmingham International Airport and Birmingham International Railway Station lie just to the west and both expect to

expand their operations in accordance with draft or emerging plans. Significant expansion of substantial employment sites at Birmingham Business Park, Jaguar Land Rover (Solihull) and Blyth Valley Business Park is also planned, while the creation of the Birmingham Interchange Station for High Speed Two (HS2) close to Junction 6 provides the impetus for an extensive mixed-use scheme of housing, commercial, retail and leisure space, known as Arden Cross¹. In addition, the National Exhibition Centre (NEC), Resorts World, the Genting Arena, the National Motorcycle Museum and associated conference centre attract large volumes of visitors through Junction 6; significant expansion is planned at the NEC which has also been chosen to host 7 of the 17 events to be held for the Commonwealth Games in 2022. Much of the growth outlined is supported by SMBC's emerging Local Plan and several projects are included in the Government's Growth Strategy being developed through UK Central and Solihull Urban Growth Company [[APP-048](#) and [APP-049](#)].

1.1.6. Yet, almost a decade ago a report by Mott MacDonald² published in March 2011 for the Highways Agency and SMBC concluded that Junction 6 on the M42 was already congested in 2006. Work initially undertaken by the Highways Agency identified that doing nothing would exacerbate existing problems of safety, congestion and unacceptable service levels, curtailing connectivity and stifling development. The Agency worked with SMBC to identify potential solutions, a scheme being announced in the Autumn Statement of 2014 and included in the Road Investment Strategy (RIS) 2015-2021 [[APP-048](#) and [APP-049](#)]. An initial evaluation of 40 alternative solutions resulted in 3 variants of a scheme with a new junction to the south of Junction 6 (supplemented with various free-flow links at Junction 6 itself) being taken forward for further development and public consultation³. The main objectives remain to:

- Enhance safety – prevent further deterioration and reduce accident rates in and around M42 Junction 6;
- Relieve Congestion – address the current capacity constraints and lack of resilience in the network;
- Cater for growth - significant development is planned around the M42 Junction 6 enhancing the economy and requiring good connectivity and accessibility;
- Restore routes for non-motorised users - replace or re-route existing severed links and provide new routes, including across the A45.

1.1.7. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State (SoS) for the Ministry of Housing, Communities and Local Government in its decision to accept the Application for Examination in accordance with section 55 of PA2008 [[PD-001](#)].

¹ Solihull Metropolitan Borough Council - M42 Economic Gateway Masterplan (2013)

² Solihull Core Strategy - PRISM Modelling, Mott MacDonald, March 2011

³ M42 Junction 6 Improvement Scheme: Technical Appraisal Report (SGAR1), Mouchel, 2016

1.1.8. On this basis, the Planning Inspectorate agreed with the Applicant's view stated in the application form [[APP-003](#)] that the proposed development is an NSIP and so requires development consent in accordance with s31 of PA2008 for the following reasons. It comprises the 'construction' of a highway and whilst including some elements of alteration and improvement of the existing highway network, the new mainline link road would have a speed limit of 70mph. The total area of land within the Order Limits is 255.6ha with 152.7ha of land proposed for the new permanent works [[APP-048](#)]. The Proposed Development is wholly located in England, and Highways England, a strategic highways company, will be the highway authority for the majority of the Scheme being constructed. Solihull Metropolitan Borough Council will be the highway authority for the local road network. The Proposed Development therefore meets the definition of an NSIP set out in s14(1)(h) and 22(1)(a), 22(2)(a), (b) and (c) and 22(4) of PA2008.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

1.2.1. On 15 March 2019, David Cullingford and Richard Jones were appointed as the Examining Authority (ExA) for the application under s61 and s65 of PA2008 [[PD-003](#)].

1.3. THE PERSONS INVOLVED IN THE EXAMINATION

1.3.1. The persons involved in the Examination were:

- Persons who were entitled to be an Interested Party (IP) because they had made a relevant representation (RR) or were a statutory party who requested to become an IP.
- Affected Persons (APs) who were affected by a compulsory acquisition (CA) and / or temporary possession (TP) proposal made as part of the Application and objected to it at any stage in the Examination.

1.4. THE EXAMINATION AND PROCEDURAL DECISIONS

1.4.1. The Examination began on 21 May 2019 and concluded on 21 November 2019.

1.4.2. The principal components of and events around the Examination are summarised below. A fuller description, timescales and dates can be found in Appendix A.

The Preliminary Meeting

1.4.3. On 23 April 2019, the ExA wrote to all IPs, Statutory Parties and Other Persons under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (The Rule 6 Letter) inviting them to the Preliminary Meeting (PM) and other early hearings [[PD-004](#)], outlining:

- the arrangements and agenda for the PM;

- notification of Open Floor Hearing and Issue Specific Hearing into the content of the draft Development Consent Order (dDCO at DCO1) to be held in the early stage of the Examination;
- an Initial Assessment of the Principal Issues (IAPI);
- the draft Examination Timetable;
- availability of RRs and application documents; and
- the ExA's procedural decisions.

1.4.4. The Preliminary Meeting took place on 21 May 2019 at the Ramada Hotel, The Square, Solihull, B91 3RF. An audio recording [[EV-003](#)] and a note of the meeting [[EV-007](#)] were published on the Planning Inspectorate National Infrastructure website⁴.

1.4.5. The ExA's procedural decisions and the Examination Timetable took full account of matters raised at the PM. They were provided in the Rule 8 Letter [[PD-006](#)], dated 31 May 2019.

Key Procedural Decisions

1.4.6. Most of the procedural decisions set out in the Rule 8 Letter related to matters that were confined to the procedure of the Examination and did not bear on the ExA's consideration of the planning merits of the Proposed Development; they were generally complied with by the Applicant and relevant IPs. The decisions can be obtained from the Rule 8 Letter [[PD-006](#)] and so there is no need to reiterate them here. Nevertheless, the Rule 8 letter did contain notifications of Issue Specific Hearings into the dDCO and the need for improvements at Junction 6.

1.4.7. The ExA made a Procedural Decision to amend the Examination Timetable in the Rule 8(3) Letter [[PD-010](#)], dated 13 September 2019, in order to accommodate a change to the application and the consequent consultation. This letter also included a further Procedural Decision that a Report on the Implications for European Sites was not required.

1.4.8. The ExA made subsequent Procedural Decisions to amend the Examination Timetable in the Rule 8(3) Letters [[PD-012](#) and [PD-015](#)], dated 28 October 2019 and 12 November 2019, to consider the results of the consultation on the proposed change to the dDCO and responses to the ISH7 DCO4 held on 23 October 2019.

1.4.9. The Applicant notified the ExA of its intention to request what it considered to be a non-material change on 26 July 2019 and subsequently submitted this request in its letter dated 9 August 2019 [[AS-027](#)]. Following consultation by the Applicant [[REP6-009](#)] and the submission of further environmental appraisals [[REP6-013](#)], the ExA subsequently accepted the changes as non-material changes to the application [[PD-015](#)]. Hence, they now form the basis on which the ExA will make its recommendation to the SoS.

⁴ <https://infrastructure.planninginspectorate.gov.uk/projects/west-midlands/m42-junction-6-improvement/>

Site Inspections

- 1.4.10. Site Inspections are held in PA2008 Examinations to ensure that the ExA has an adequate understanding of the Proposed Development within its site and surroundings and its physical and spatial effects.
- 1.4.11. Where the matters for inspection can be viewed from the public domain and there are no other considerations such as personal safety or the need for the identification of relevant features or processes, and Unaccompanied Site Inspection (USI) is held. Where an inspection must be made on land requiring consent to access, there are safety or other technical considerations and / or there are requests made to accompany an inspection, an Accompanied Site Inspection (ASI) is held.
- 1.4.12. The ExA held the following USIs:
- USI1, 22 May 2019, undertaken to view the proposed application site and locations prospectively within the setting of the proposed development [[EV-028](#)]; and
 - USI2, 2 October 2019, undertaken to revisit locations seen at the ASI and locations which were not previously viewed, both within and outside of the application site "[[EV-035](#)]

A site note providing a procedural record of each USI can be found in the Examination Library under the above references.

- 1.4.13. The ExA held an ASI over two days, 3 and 4 July 2019, to look at the physical features that can be seen on, or from the sites and for participants to point out specific features or sites of interest [[EV-029](#)].
- 1.4.14. The itinerary for the ASI can be found in the Examination Library under the above reference.
- 1.4.15. The ExA has had regard to the information and impressions obtained during its site inspections in all relevant sections of this Report.

Hearing Processes

- 1.4.16. Hearings are held in PA2008 Examinations in two main circumstances:
- To respond to specific requests from persons who have a right to be heard, in summary terms:
 - where persons affected by compulsory acquisition and/or temporary possession proposals (Affected Persons) object and request to be heard at a Compulsory Acquisition Hearing ; and / or
 - where IPs request to be heard at an Open Floor Hearing (OFH).
 - To address matters where the ExA considers that a hearing is necessary to inquire orally into matters under examination, typically because they are complex, there is an element of contention or disagreement, or the application of relevant law or policy is not clear.
- 1.4.17. The ExA held 12 hearings (including the PM) to ensure the thorough examination of the issues raised by the Application.

- 1.4.18. Issue Specific Hearings (ISHs) under s91 of PA2008 were held at the Ramada Hotel in Solihull, which is the closest town to the Proposed Development, with convenient regional access by road, National Rail and bus networks.
- 1.4.19. ISHs were held on the subject matter of the draft DCO on:
- ISH 1 (DCO 1), 22 May 2019 (the agenda can be found at [[EV-002](#)], a schedule of issues and questions at [[PD-005](#)] and audio recordings are available at [[EV-005](#)] and [[EV-006](#)]; and
 - ISH 2 (DCO 2), 2 July 2019 (the agenda can be found at [[EV-008](#)] and audio recordings are available at [[EV-009](#)] and [[EV-010](#)]; and
 - ISH 4 (DCO 3), 21 August 2019 (the Agenda and schedule of issues and questions can be found at [[EV-031](#)] and an audio recording is available at [[EV-019](#)]; and
 - ISH 7 (DCO 4), 23 October 2019 (the Agenda can be found at [[EV-037](#)] and audio recordings are available at [[EV-042](#)]
- 1.4.20. ISHs were held on the following subject matters:
- ISH 3, 2 July 2019 on the need for the proposed road improvements (the Agenda can be found at [[EV-008](#)] and audio recordings are available at [[EV-011](#)] and [[EV-012](#)]; and
 - ISH 5, 1 October 2019, on living conditions (the Agenda can be found at [[EV-023](#)] and an audio recording is available at [[EV-026](#)]; and
 - ISH 6, 2 October 2019, on environmental matters, including ancient woodland and the provision of water to an SSSI including wet grassland (the Agenda can be found at [[EV-024](#)] and an audio recording is available at [[EV-027](#)].
- 1.4.21. Compulsory Acquisition Hearings were held under s92 of PA2008 at The Ramada Hotel Solihull on:
- CAH 1, 20 August 2019 (the Agenda can be found at [[EV-030](#)] and audio recordings are available at [[EV-017](#)] and [[EV-018](#)]; and
 - CAH 2, 22 October 2019 (the Agenda can be found at [[EV-036](#)] and audio recordings are available at [[EV-038](#)].
- 1.4.22. All persons affected by compulsory acquisition or temporary possession proposals (Affected Persons or APs) were provided with an opportunity to be heard. We also used these hearings to examine the Applicants case for CA or TP in the round.
- 1.4.23. Open Floor Hearings (OFH) were held under s93 of PA2008 at The Ramada Hotel Solihull on:
- OFH 1, 21 May 2019 (the Agenda can be found at [[EV-001](#)] and an audio recording is available at [[EV-004](#)]; and
 - OFH 2, 22 August 2019 (the Agenda can be found at [[EV-032](#)] and an audio recording is available at [[EV-020](#)].
- 1.4.24. All IPs were provided with an opportunity to be heard on any important and relevant subject matter that they wished to raise.

Written Processes

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

1.4.26. Key written sources are set out further below.

Relevant Representations

1.4.27. Thirty-five relevant representations (RRs) were received by the Planning Inspectorate [RR-001 to RR-035]. All makers of RRs received the Rule 6 Letter and were provided with an opportunity to become involved in the Examination as IPs. All RRs have been fully considered by the ExA. The issues that they raise are considered primarily in Chapters 4, 5, 8 and 9 of this Report.

1.4.28. The Applicant and IPs were provided with opportunities to:

- make written representations (WRs) (Deadline (D1));
- comment on WRs made by the Applicant and other IPs (at D2, D3, D4, D5, D6, D7 and D8);
- summarise their oral submissions at hearings in writing (D2, D3, D5, D6 and D7);
- make other written submissions requested or accepted by the ExA (at D1, D2, D3, D4, D5, D6, D7, D8, D9 and D10; and
- comment on documents issued for consultation by the ExA including:
- commentary on the draft Development Consent Order [[PD-014](#)] published on 8 November 2012 by D9.

1.4.29. All WRs and other examination documents have been fully considered by the ExA. The issues that they raise are considered mainly in Chapters 4, 5, 8 and 9 of this Report.

Local Impact Reports

1.4.30. A Local Impact Report (LIR) is a report made by a relevant local authority giving details of the likely impact of the Proposed Development on the authority's area (or any part of that area) that has been invited and submitted to the ExA under s60 PA2008.

1.4.31. LIRs have been received by the ExA from the following relevant local authorities:

- Solihull Metropolitan Borough Council [[REP2-033](#)]; and
- Warwickshire County Council in partnership with North Warwickshire Borough Council [[REP2-038](#)].

1.4.32. The LIRs have been taken fully into account by the ExA in all relevant Chapters of this Report.

Statements of Common Ground

1.4.33. A Statement of Common Ground (SoCG) is a statement agreed between the applicant and one or more IPs, recording matters that are agreed between them.

1.4.34. By the end of the Examination, the following bodies had drafted or concluded SoCGs with the Applicant:

- Solihull Metropolitan Council [REP8-005];
- Warwickshire County Council [REP5-010];
- Natural England [REP6-002];
- Warwickshire Wildlife Trust [REP7-003];
- The Woodland Trust [REP4-014];
- National Grid [REP2-014];
- Western Power Distribution (West Midlands) PLC [REP3-007];
- Cadent Gas [REP2-016];
- High Speed Two Limited [REP6-005];
- Birmingham Airport Limited [REP8-004];
- National Exhibition Centre Limited [REP8-003];
- Arden Hotel [REP10-006]; and
- Extra MSA Group [REP5-005]

1.4.35. Where SoCGs have been concluded they have been taken fully in to account in the RR. However, a number were incompleting or unsigned.

1.4.36. The SoCG with the NEC contains a number of issues which are described as 'under discussion'. The Applicant's Deadline 8 covering letter [[REP8-001](#)] explains that these are matters which the parties have agreed will be covered by a separate Legal Agreement, which was under negotiation. But this was not resolved at the close of the examination. The implications of this are considered in Chapters 4, 5, 7, 8 and 10.

1.4.37. The SoCG with NE also contained five issues which are identified as under discussion. The Applicant's Deadline 7 covering letter [[REP7-001](#)] explains that of those, two are considered 'not' agreed'. The Applicant considers the other three issues to be 'agreed'. The ExA consider this and the position of NE in Chapter 5 of this Report. The value and weight afforded to the SoCG is not therefore significantly affected.

1.4.38. The Applicant's same Deadline 7 covering letter explains that all matters described as "under discussion" in the SoCG with HS2 are matters which the parties have agreed will be covered by the Protective Provisions Agreement under negotiation between them. As explained 1.4.46 below, HS2 has withdrawn its representations subject to the inclusion of the protective provisions being included within the Development Consent Order for the Proposed Development. This is discussed in Chapter 9 of this Report.

- 1.4.39. The SoCG with The Woodland Trust is signed but undated. Nevertheless, the ExA has attributed significant weight to it and considered the issues arising in Chapter 5 of this Report.
- 1.4.40. The SoCG with Warwickshire Wildlife Trust [[REP7-003](#)] is unsigned. It is therefore afforded limited weight. The Applicant's Deadline 10 covering letter [[REP10-001](#)] states that the SoCG between the parties should be viewed as final and all matters referred to as 'under discussion' should now be seen as 'not agreed'. The relevant issues arising from this are discussed in Chapter 5 of this Report.
- 1.4.41. SoCGs with Cadent Gas Ltd [[REP2-016](#)] and Western Power Distribution (West Midlands) PLC [[REP3-007](#)], submitted at the earlier stages of the Examination (Deadlines 2 and 3 respectively) are unsigned. They therefore carry no weight.

Written Questions

- 1.4.42. The ExA asked three rounds of written questions.
- The first written questions (ExQ1) and procedural decisions were set out in the Rule 8 letter [[PD-006](#)], dated 31 May 2019, with responses sought by D2 (24 June 2019)
 - The second written questions (ExQ2) [[PD-008](#)] were issued on 5 August 2019, with responses sought by D4 (2 September 2019).
 - The third written questions (ExQ3) [[PD-011](#)] were issued on 23 September 2019, with responses sought by D6 (11 October 2019).
- 1.4.43. The following requests for further information and comments under Rule 17 of the EPR were issued on:
- 13 September 2019 [[PD-010](#)] - it was decided that the applicant should provide further justification for the statement in the change request letter dated 9 August 2019 [[AS-27](#)] that 'the changes would not give rise to any materially new or materially different significant environmental effects to those reported in the Environmental Statement'. It was also decided that additional information should be provided about the environmental appraisals, to which the same letter refers.
 - 12 November 2019 [[PD-015](#)] – as part of the ExA's procedural decision to accept the changes as non-material changes to the application, the Applicant was requested to submit updated versions of the documents affected by the change.
- 1.4.44. All responses to the ExA's written questions have been fully considered and taken into account in all relevant Chapters of this Report.

Requests to Join and Leave the Examination

- 1.4.45. There were no requests to join the Examination by persons who were not already IPs at or after the PM.

1.4.46. During the Examination, as a consequence of discussion at hearings and/or discussions between relevant IPs and the Applicant, the following wrote to the ExA to inform it that their issues were settled and their representations were withdrawn:

- Network Rail Infrastructure Limited, an IP, advised on 20 August 2019 [[AS-029](#)] that it had received from the Applicant an appropriate undertaking and assurance which gives comfort that its railway interest will not be unduly affected by the proposed Order. This email therefore gave formal notice of Network Rail's withdrawal of its representation.
- National Grid Electricity Transmission Plc, an IP, advised on 20 November 2019 that it had reached an agreement with the Applicant in relation to protective provisions and that its relevant representation is withdrawn [[AS-047](#)].
- High Speed Two Limited, an IP, withdrew its representation on 21 November, subject to the inclusion of protective provisions being included within the DCO [[AS-049](#)]. This is considered in Chapter 9 of this report.

1.5. ENVIRONMENTAL IMPACT ASSESSMENT

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

1.5.2. On 20 October 2017, the Applicant submitted a Scoping Report⁵ to the Secretary of State (SoS) under Regulation 8 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations) in order to request an opinion about the scope of the Environmental Statement (ES) to be prepared (a Scoping Opinion). On 1 December 2017 the Planning Inspectorate provided a Scoping Opinion [[APP-166](#)]. Therefore, in accordance with Regulation 6(2)(a) of the EIA Regulations, the Proposed Development was determined to be EIA development, and the application was accompanied by an ES.

1.5.3. On 13 February 2019 the Planning Inspectorate published a notice provided by the Appellant confirming that Section 56 of the PA2008 and Regulation 16 of the EIA Regulations had been complied with [[OD-002](#)].

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

1.6. HABITATS REGULATIONS ASSESSMENT

1.6.1. The Proposed Development is development for which a Habitats Assessment Regulations (HRA) Report has been provided [[APP-169](#)].

⁵ [M42 Junction 6 Improvement Scheme Environmental Impact Assessment Scoping Report](#), Highways England (October 2017)

1.6.2. Consideration is given to the adequacy of the HRA Report, associated information and evidence and the matters arising from it in Chapter 6 of this Report.

1.7. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

1.7.1. In its Deadline 9 submission, the Applicant advised that a separate agreement had been reached with Severn Trent Water (STW) [REP9-026]. However, neither the agreement nor confirmation to this effect was received from STW by close of the Examination.

1.7.2. Cadent Gas Limited (Cadent) confirmed at the close of the Examination that it had reached agreement with the Applicant regarding a side agreement to be entered into [AS-046]. Although Cadent advise that the agreement had been sealed by it, the Applicant was unable to execute its counterpart on that day. Cadent has therefore confirmed that it is not in a position to withdraw its objection to the dDCO. A copy of the sealed agreement by Cadent was not submitted to the Examination.

1.7.3. At CAH2, the Applicant confirmed that it had reached agreement with Royal Mail and that this was in the process of being finalised. However, no further update to this effect or agreement was provided by close of Examination. Royal Mail's dDCO related requests therefore remain outstanding [RR-004].

1.7.4. The Applicant advised that a separate agreement had been reached with Esso Petroleum Company Limited (Esso) [REP9-026]. However, neither the agreement nor confirmation to this effect was received from Esso by close of the Examination. Its concerns therefore remain outstanding [AS-021].

1.7.5. Issues relating to the above are discussed in Chapters 8 and 9 of this Report.

1.7.6. As noted above, the SoCG with the NEC contains a number of issues which are described as 'under discussion'. The Applicant's Deadline 8 covering letter [REP8-001] explains that these are matters which the parties have agreed will be covered by a separate Legal Agreement, which is under negotiation. Prior to the close of the Examination, NEC advised that progress on the separate agreement had stalled and that it was not withdrawing its RR [RR-014]. The effect of the Proposed Development on the NEC is discussed in Chapter 5 of this Report.

1.8. OTHER CONSENTS

1.8.1. The Applicant's Consents and Agreements Position Statement [APP-017] explains that at the point of submission, the majority of consents and all of the powers required, have been included, or addressed, within the DCO as permitted by various provisions of the PA2008.

1.8.2. It also highlights that the following permits, consents and agreements may also need to be sought separately from the DCO:

- Land Drainage Byelaw consent for works in, under or over, any relevant watercourses;
- Trade effluent consent (Water Industry Act 1991);
- Mobile plant licences for crushing operations or site permits if not using a subcontractor with their own mobile licences (Pollution Prevention and Control Act 1999, Environmental Permitting (England and Wales) Regulations 2016);
- Exemptions for operations such as U1 (import of waste for use in construction) and T15 (crushing of aerosols to minimise hazardous waste) (if exemption limits can be met) (Pollution Prevention and Control Act 1999, Environmental Permitting (England and Wales) Regulations 2016);
- Environmental Permit for waste operations (Pollution Prevention and Control Act 1999, Environmental Permitting (England and Wales) Regulations 2016);
- Section 61 consent if requested by the Local Authority (Control of Pollution Act 1974);
- Water abstraction licence (if need to remove more than 20m³/day) (Water Resources Act 1991 (as amended by the Water Act 2003), Environment Act 1995, The Water Resources (Abstraction and Impounding) Regulations 2006);
- Permit(s) from the Environment Agency to discharge surface/ground waters pursuant to the Environmental Permitting (England and Wales) Regulations 2016;
- CL:aire Materials Management Plan;
- Environmental Standard Rules Permit (Flood Risk Activity) to construct an outfall on a Main River (The Environmental Permitting (England and Wales) Regulations 2016);
- Badger Licence (Protection of Badgers Act 1992, s10); and
- Protected Species Licence(s) (Wildlife and Countryside Act 1981, s16).

1.8.3. The Applicant explains that above list is not exhaustive and the final set of permits, consents and agreements are largely dependent on finalisation of the detailed design, the detailed construction site set up and methodologies, and discussions with stakeholders.

1.8.4. A Letter of No Impediment has been issued by NE in respect of the protected species and badgers licences listed above [APP-145 and APP-146]. Without prejudice to the exercise of discretion by future decision-makers, the ExA is not aware of any other impediments to the implementation of the Proposed Development, should the SoS grant the application.

1.9. STRUCTURE OF THIS REPORT

1.9.1. The structure of this report is as follows:

- **Chapter 1** introduces the reader to the Application, the processes used to carry out the Examination and make this Report.
- **Chapter 2** describes the site and its surrounds, the Proposed Development, its planning history and that of related projects.
- **Chapter 3** records the legal and policy context for the SoS' decision.

- **Chapter 4** sets out the planning issues that arose from the Application and during the Examination.
- **Chapter 5** sets out the findings and conclusions in relation to the planning issues.
- **Chapter 6** considers effects on European Sites and Habitats Regulations Assessment (HRA).
- **Chapter 7** sets out the balance of planning considerations arising from Chapters 4 and 5, in the light of the factual, legal and policy information in Chapters 1 to 3.
- **Chapter 8** sets out the ExA's examination of Compulsory Acquisition and Temporary Possession proposals.
- **Chapter 9** considers the implications of the matters arising from the preceding chapters for the Development Consent Order (DCO).
- **Chapter 10** summarises all relevant considerations and sets out the ExA's recommendation to the SoS.

1.9.2. This report is supported by the following Appendices:

- **Appendix A** – the Examination Events.
- **Appendix B** – the Examination Library.
- **Appendix C** – List of Abbreviations.
- **Appendix D** – [the Recommended DCO]

2. THE PROPOSAL AND THE SITE

2.1. THE APPLICATION AS MADE

2.1.1. The Applicant submitted an application under section 37 of the Planning Act 2008 (as amended) (PA2008) for an order granting development consent for what was described as the 'M42 Junction 6 Improvement [[APP-001](#) and [APP-003](#)]. The Applicant is appointed and licensed by the Secretary of State for the Department for Transport as the strategic highways company for England. It is responsible for operating, maintaining and improving the strategic road network in England on behalf of the SoS.

2.1.2. Chapter 3 of the Environmental Statement (ES) [[APP-048](#)] provides a full description of the Proposed Development, which in summary entails:

- a new junction approximately 1.8km south of the existing Junction 6 off the M42 (referred to as M42 Junction 5A);
- a new 2.4km long dual carriageway link road between M42 Junction 5A and Clock Interchange, with a free flow slip road to the A45 Coventry Road;
- capacity and junction improvements at Clock Interchange;
- new free flow links between the A45 and M42 motorway at M42 Junction 6;
- the realignment and modification of the B4438 Catherine-de-Barnes Lane and St Peters Lane, both west of the M42 motorway, and of East Way and its connection from the M42 Junction 6;
- modifications to the location and spacing of emergency refuge areas, overhead gantries and message signing along the M42 motorway;
- modifications and improvements to public rights of way, footbridges and private accesses; and
- the reconfiguring of the Warwickshire Gaelic Athletic Association sports facility at Páirc na hÉireann.

2.1.3. ES Figure 1.1 [[APP-064](#)] shows the location and main components of the Proposed Development, which are described in more detail below.

M42 Junction 5A

2.1.4. The new Junction on the M42 (Junction 5A) is shown some 1.8km south of M42 Junction 6. It is designed in the form of a 'dumb-bell' with 2 roundabouts positioned either side of the M42 connected by a new bridge spanning 45m across the motorway and positioned about 100m to the north of the existing, but realigned, Solihull Road bridge (B4102) over the M42 [[APP-007](#) and [APP-008](#)]. The western roundabout has a diameter of 60m while the eastern one is smaller with a diameter of 40m. Both roundabouts are shown on embankments, that to the west being some 5m above ground level and that to the east reaching roughly 7.5m above the lower ground on the eastern side of the motorway. The connecting bridge is designed with a 2-lane eastbound carriageway (accommodating southbound traffic from the mainline link) but with only one lane and a hard shoulder westbound since (as originally conceived) very little traffic is expected to travel in that direction).

- 2.1.5. Junction 5A is to have south facing slip roads only. Hence, northbound traffic on the M42 may leave the motorway at Junction 5A and join the new 2-lane dual carriageway link road to connect with the A45 at the Clock Interchange, so by-passing Junction 6 on the M42. And, traffic on the A45 may leave the road at the Clock Interchange (rather than at Junction 6) to travel south along the new mainline link to join the M42 at Junction 5A and continue in a southbound direction. The northbound slip road connecting the motorway to the western roundabout is to accommodate 2 lanes separated by ghost island road markings with 1m hard strips on both sides of the slip road; a retaining wall is to be demolished to accommodate the new slip road, which would rise from a cutting beside the motorway to the embankment supporting the western roundabout⁶. The southbound slip road from the eastern roundabout is to consist of a single lane with a nearside hard shoulder and offside hard strip, the whole of the slip road being between verges. It is to fall from the eastern roundabout embankment to a cutting beside the motorway merging with the hard shoulder of the M42; the motorway operates here under a 'dynamic hard shoulder running' regime.
- 2.1.6. To accommodate the 2 new slip roads at Junction 5A, the existing Solihull Road bridge over the motorway must be replaced by a new bridge with a span increased to some 65m and raised sufficiently to accommodate the required headroom above the slip roads. Although the horizontal alignment is to remain largely unchanged, the new bridge is to be positioned about 10m to the north of the existing structure to reduce the impact on the adjacent Aspbury's Copse, an area of replanted deciduous ancient woodland [see [AS-035](#) and [AS-037](#) for some of the mitigation measures]. Solihull Road is to remain as a single 2-lane carriageway between verges, although that beside the westbound carriageway over the realigned bridge is to be wide enough to accommodate a future 3m wide footway to enhance the connectivity between Catherine-de-Barnes and Hampton in Arden along Solihull Road⁷.
- 2.1.7. The construction of the new slip roads and the new Solihull Road bridge are shown to impinge on the ancient woodland of Aspbury's Copse. Efforts to minimise this impact include a departure from the standard visibility requirements⁸ on the northbound slip road and the construction of slopes for the embankments and cuttings required at 1:2.5 or 40%. As a result, it is estimated that 0.36ha of ancient woodland, most of it

⁶ The embankments and earthwork cuttings are to be constructed at 1:2.5, ie with slopes of 40%.

⁷ An expressed aspiration of Solihull Metropolitan Borough Council, see paragraph 3.5.22 of [APP-048](#).

⁸ A Departure from Standard is an agreed reduction below desirable minimum parameters, as specified in the relevant design standard set out in the Design Manual for Roads and Bridges. Departures from Standard require an application to, and acceptance from, Highways England technical specialists.

located to the west of the motorway, could be lost⁹, although mitigations measures are proposed¹⁰.

The mainline link road, local roads and footpaths

- 2.1.8. The new mainline link road is to connect the western roundabout at Junction 5A on the M42 with the Clock Interchange on the A45 along an alignment passing to the west of Bickenhill village and Catherine-de-Barnes Lane and across at least 2 of the pitches at Páirc na hÉireann (the Warwickshire Gaelic Athletic Association sports ground); the demolition of Heath End House at the Junction of Shadowbrook Lane and Catherine-de-Barnes Lane is also shown. The road is designed with dual 2-lane all-purpose carriageways, each with offside and nearside hard strips and at least 2.5m wide verges. Much of the road is to be constructed in a cutting¹¹ up to 10.8m deep to minimise noise, visual intrusion and potential impact on the openness of the Green Belt. The exceptions are as the road rises from ground level on an embankment to reach the western roundabout of Junction 5A (a distance of about 100m) and where the road emerges at the northern end of the cutting and rises on a small embankment to connect with the Clock Interchange after passing beneath the free-flow link to Airport Way (a distance of some 140m).
- 2.1.9. The mainline link road crosses beneath the realigned Catherine-de-Barnes Lane (B4438) at the 'southern overbridge' close to Shadowbrook Lane and at the 'northern overbridge' close to St Peters Lane. Connections with the local road network are to be via a slip road from the new Barber's Coppice roundabout on to the northern carriageway only, allowing local traffic from Bickenhill, or through Catherine-de-Barnes and Hampton-in-Arden, access to the 'strategic road network' via the Clock Interchange. Conversely, access from the Clock Interchange to the local road network is to be provided via a slip road and the aid of a retaining structure from the southbound carriageway of the mainline link road via the new Bickenhill roundabout to the realigned Catherine-de-Barnes Lane. (The details can be followed on [APP-007](#) and [APP-008](#).)
- 2.1.10. Catherine-de-Barnes Lane is to be realigned roughly between the Haven Caravan Park in the north to the new Bickenhill roundabout in the south, retaining connections to the local road network. Further temporary realignments are anticipated to facilitate construction of the new south and north overbridges (the bridges having spans of roughly 82m and 75m respectively). Once the permanent structures are in place, the temporary realignments and temporary bridges are to be demolished and removed.
- 2.1.11. The mainline link road is shown to sever several public rights of way [[APP-008](#), [APP-106](#) and [APP-107](#)]. Towards its southern end the road cuts across footpaths M122 and M123, but connections are maintained

⁹ This estimate assumes that there is no variation from the Works Plans.

¹⁰ See chapter 5, [AS-035](#) and [AS-037](#).

¹¹ The cuttings are to be constructed with slopes of 1:3, ie with slopes of about 33%.

via a 30m span accommodation overbridge providing both agricultural and pedestrian access. For the north-south footpath connecting Solihull Road and Shadowbrook Lane (M123), only a very modest diversion is required. For the east-west route between Catherine-de-Barnes Lane and Hampton-in-Arden (M122), after crossing the accommodation overbridge, it is necessary to traverse the top of the cutting above the slip road from Barber's Coppice roundabout on to the northbound carriageway of the mainline link road, circumnavigate the roundabout itself and cross the realigned carriageway of Catherine-de-Barnes Lane in order to maintain the connection. From there footpath M113A provides a route northward behind Páirc na hÉireann linking to footpath M113 maintaining the links westwards towards Castle Hills and Elmdon.

- 2.1.12. Further north the mainline link road severs the connections of footpaths M109, M112 and M113 from the west to Catherine-de-Barnes Lane [[APP-008](#), [APP-106](#) and [APP-107](#)]. Footpath M113 is to be stopped up and the route diverted southwards along the realigned Catherine-de-Barnes Lane, across the new 'south overbridge' and beside the southern portion of the Lane to reach, eventually, footpath M113A. Footpaths M112 and M109 are to be stopped up and the routes reconnected to the realigned Catherine-de-Barnes Lane via the 'northern overbridge' and the new private means of access to be created above the western side of the cutting containing the mainline link road. Footpath connections eastwards are shown via Church Lane, a modest diversion for footpath M109, but a longer one for footpath M112.

Clock Interchange, approach roads and footpaths

- 2.1.13. The Clock Interchange is to be modified. The central roundabout is to be widened from 2 to 3 lanes, new traffic signals installed, and improvements made to the slip roads; the footway and cycleway on the outer edge of the roundabout are to be displaced [[APP-008](#)].
- 2.1.14. As the mainline link road approaches the Clock Interchange from the south, a northbound diverge lane is to join the Airport Way connector road from the A45 while further north a segregated left turn lane at the Clock Interchange is to provide direct access to the A45 westbound, both traffic streams thereby avoiding the roundabout itself.
- 2.1.15. On the northern side of the Clock Interchange, the dual carriageways of Bickenhill Lane are to be widened from 2 to 3 lanes northbound and from 3 to 4 lanes southbound. The latter entails the removal of a segregated left turn lane, so that all 4 lanes are now to run to the signal stop line of the roundabout. The widening of Bickenhill Lane also entails some modest realignment of the free flow link from the A45 eastbound, which is to be widened from 2 to 3 lanes with appropriate verge widening to accommodate forward visibility requirements.
- 2.1.16. The A45 westbound diverge slip road approach to Clock Interchange is to be widened from 2 to 3 lanes some 45m in advance of the roundabout with associated verge widening to accommodate forward visibility requirements. The A45 westbound merge slip road from Clock Interchange is to be widened to accommodate the free flow lane from the

mainline link road. The merge road from the roundabout is to operate as a 2-lane carriageway reducing to one before it merges with the A45, the additional lane becoming a 2-lane merge slip road separated by ghost island road markings.

- 2.1.17. The free flow link road to Airport Way is to be modified to fit in both with the changes on the A45 and the connection with the northbound diverge slip from the mainline link road. The current 2 lanes of the free flow link road are to merge into one lane before the road crosses the mainline link road. A new bus-stop is proposed on the free flow link road some 75m west of the mainline link road underbridge¹². The northbound diverge slip from the mainline link road merges with the free flow link road as a 'lane gain' approximately 45m south of crossing the A45.
- 2.1.18. Currently part of the Green Man trail connects a footpath (M106) from Church Lane to Catherine-de-Barnes Lane in order to circumnavigate the eastern side of the Clock Interchange roundabout over the A45 and continue north towards Birmingham International Railway Station [[APP-106](#) and [APP-107](#)]. Part of this is to be stopped up to accommodate the widening of the roundabout and its connection to the mainline link road. Three means are proposed to maintain north-south connections across the A45 [[APP-008](#)]. The first utilises Church Lane and St Peter's Lane to follow the alignment of the old Catherine-de-Barnes Lane to the west of the mainline link road. It then reaches the northbound diverge slip road to cross the A45 beside the free flow Airport link arriving at Birmingham International Railway Station via Airport Way and the dual carriageways of Bickenhill Lane to the north of the Clock Interchange. The second runs eastwards and northwards from footpath M106 to turn further east towards a new pedestrian and cycleway bridge over the A45 (located just west of the West Coast Main Line). The route then returns westwards on roadside pavements to the Clock Interchange roundabout to continue northwards beside the dual carriageways of Bickenhill Lane on a widened footway and cycleway. The third utilises the same connection to footpath M106 but then turns westwards beside a widened path within the nearside verge of the slip road to reach the pedestrian footway and cycleway underpass connecting the NMU facilities on the south side of the A45 and west of the Clock Interchange.

A45 Coventry Road – Clock Interchange to M42 Junction 6 roundabout

- 2.1.19. Modifications to the A45 between the Clock Interchange and Junction 6 on the M42 are intended to be limited [[APP-048](#)]. They mainly entail alterations to carriageway features such as road markings, safety barriers and overhead signs. A new pedestrian footway and cycleway overbridge is to be provided across the A45 some 30m west of the West Coast Main Line to retain the north-south connectivity for pedestrians

¹² This appears to be shown on the latest General Arrangement Plans [[REP9-005](#)]

and cyclists and to compensate for the removal of the footway and cycleway at the Clock Interchange¹³. An existing sign gantry is to be relocated further west in front of the new overbridge to ensure visibility and an additional cantilever gantry over the A45 westbound carriageway is to provide legibility at the westbound diverge slip to the M42 Junction 6 roundabout and M42 northbound free flow slip road. The existing directional sign gantry on the westbound carriageway is to be revised to reflect the closure of the free flow link from the M42 northbound slip road. Similarly, the road markings on the A45 westbound are to be altered by replacing the existing ghost island hatched markings with dashed line markings.

M42 Junction 6

- 2.1.20. The roundabout on the M42 Junction 6 is to be retained. The approach and departure carriageways to and from the roundabout are to be modified to facilitate network resilience. The existing traffic signals at the Junction are to be optimised to accommodate forecast traffic flow [[APP-048](#), [APP-007](#) and [APP-008](#)].
- 2.1.21. The current free flow link road from the M42 northbound to the A45 westbound is to be closed, but the northbound diverge slip road is to be widened to 4 lanes on approaching the roundabout with commensurate changes to the directional signs. The A45 eastbound slip road to the roundabout at Junction 6 is to remain unchanged. However, a new free flow link road to the M42 northbound consisting of a single lane carriageway 3.7m wide with a 3.3m hard shoulder and a 2.5m wide nearside verge, is to be provided initially at grade but then in a cutting and through an underpass some 8.5m deep beneath South Way. The link is to continue northwards beneath East Way and beside the northbound slip road from the roundabout at Junction 6 to join the M42 some 1.25km to the north. Construction of this free flow link will entail diversion and protection works to underground and overhead utilities; temporary realignment of the South Way access and egress at the NEC; extension of the drainage culvert for Hollywell Brook; replacement of the earthworks beneath East Way with a retaining structure; removal of a footway and cycleway that currently peters out to the east of Junction 6; and the steepening of some earthwork slopes to 45% using slope strengthening techniques. The northbound slip road from the Junction 6 roundabout would follow the existing profile but is to consist of 2 lanes separated by ghost island road markings.
- 2.1.22. The southbound slip road from the M42 to the Junction 6 roundabout is to consist of 2 lanes (each 3.65m wide with a 1m nearside and offside hard strip) originating some 1.15km north of the Junction. This slip road is also to provide access to a similar slip road connecting to the relocated East Way roundabout and originating roughly 700m north of that roundabout. When that latter slip road is some 170m north of the East Way overbridge, it is to widen from 2 lanes to 3. The nearside lane is to form a free flow link to the A45 eastbound. The remaining 2 lanes are to

¹³ See the previous paragraph.

widen out to provide 3 lanes for the last 100m up to the stop lines at the East Way roundabout. Construction of the M42 southbound slip road will entail extension of the culvert containing Hollywell Brook beneath the new free flow link road; relocation of the East Way roundabout some 115m to the north west of its current location and about 75m to the east of the East Way overbridge; raising the new East Way roundabout on an embankment some 8m high; realignment of each spur on the East Way carriageway, including the private access to adjacent land to the south; closure of both the existing diverge slip to the East Way roundabout and the access to Middle Bickenhill Lane from the A45 eastbound slip road; and, conversion of the existing single lane egress from Middle Bickenhill Lane into a 2 lane access and egress from East Way. Additional signs are to direct traffic to Middle Bickenhill Lane via the A452 Stonebridge Island roundabout. A couple of reed beds and drainage attenuation ponds are shown to the east of the M42 southbound slip road and about 250m north of the East Way overbridge. A 3.5m wide access track to the ponds is shown off the eastern approach to the new East Way roundabout. A pedestrian footway and cycleway beside the A45 westbound diverge slip to the Junction 6 roundabout is to be widened to 3m to meet current standards.

M42 Motorway

- 2.1.23. The M42 motorway currently operates as a Smart Motorway with 'dynamic hard shoulder running' (DHSR) on both carriageways; this is to continue [[APP-174](#)]. However, some modifications are required to accommodate the new Junction 5A and the modified north facing slip roads at Junction 6, including relocating emergency refuge areas (ERAs), gantries and cantilever structures together with the associated infrastructure such as foundation works, retaining structures, safety barriers and modifications to surface water and sub-surface drainage features. In addition, road markings on both carriageways of the M42 are to be modified to include dual 4 lane running within the vicinity of Junction 5A and further modifications around the north facing slip roads at Junction 6.

Catherine-de-Barnes Lane

- 2.1.24. Catherine-de-Barnes Lane is to be realigned between the Birmingham Dogs Home and the Clock Interchange and the connection to the Clock Interchange closed. The realignment is to veer north-eastwards on a 2-way, 7.3m carriageway, to the new Barber's Coppice Roundabout. Traversing the roundabout, the Lane gently falls to continue directly northwards at ground level for some 60m. It then rises some 2.8m to cross the new mainline link road at the southern overbridge about 380m north of Barber's Coppice Roundabout. The intersection with Shadowbrook Lane is to be modified slightly and Catherine-de-Barnes Lane realigned eastwards to provide a safe approach to Bickenhill Roundabout, the existing carriageway, footway and cycleway being removed. Some 475m to the north, the realigned Catherine-de-Barnes Lane is to intersect with a slightly modified St Peters Lane at a new 'T' junction. The carriageway is to be reduced to 6m here between verges and beside a 2m wide footway. Opposite the 'T' junction a 3.5m wide

access to a drainage treatment and attenuation feature is to be provided off St Peters Lane to the north-east. Catherine-de-Barnes Lane is to form the southern and western arms of the 'T' junction, the latter crossing the mainline link road via the northern overbridge and continuing through a tight radius (to avoid the Haven Caravan Park) to connect with the existing alignment some 350m south-east of the Clock Interchange.

- 2.1.25. The pedestrian footway and cycleway originally adjacent to Catherine-de-Barnes Lane is to remain either on its old alignment or immediately to the west of the new mainline link road; it is thus separated from the realigned Catherine-de-Barnes Lane on the eastern side of the mainline link road. The combined footway and cycleway are to be 3m wide and to start shortly before the southern overbridge. Footpath connections (M122 and M123) are to be maintained across the roundabout.

Barber's Coppice roundabout

- 2.1.26. The new Barber's Coppice roundabout is shown just to the east of the Birmingham Dogs Home. It is to provide access to the northbound carriageway of the mainline link road, nearby properties (such as Four Winds and the Birmingham Dogs Home) and the WGAA sports facility. A 2-lane 10m wide carriageway is proposed for the roundabout on a 3.5m high embankment. The eastern exit is to provide a 2-lane access road to Birmingham Dogs Home (and beyond) with a spur to Four Winds. An underground storage tank and treatment system is to be located between the southern approach (Catherine-de-Barnes Lane) and western arm of the roundabout (exit to Four Winds). The eastern arm of the roundabout is to provide a 420m long slip road curving quite tightly and descending from the roundabout embankment to a cutting in order to merge with the northbound carriageway of the mainline link road. The slip road starts as a 2-lane 7.3m wide carriageway, but merges to one 3.65m lane as it joins the mainline link road.

Bickenhill roundabout

- 2.1.27. The new Bickenhill Roundabout is shown to the west of Bickenhill village connecting Catherine-de-Barnes Lane to St Peters Lane and the southbound diverge slip road from the mainline link. The roundabout is designed with a 12m wide, 2-lane, at-grade carriageway. The eastern arm is to provide a connection to a slightly modified St Peters Lane and thence to Bickenhill Village. The northern and southern arms are to connect to the northern and southern sections of the realigned Catherine-de-Barnes Lane. The north western arm is to accommodate the southbound diverge slip road from the mainline link, shown as a 510m long 2-lane slip road 7.3m wide between 1m hard strips. A verge of at least 2.5m is to widen out to 24m to provide appropriate forward visibility on the approach the Bickenhill Roundabout.

Modifications to the WGAA sports facility

- 2.1.28. The alignment of mainline link road is shown to sever the access at the WGAA sports facility from Catherine-de-Barnes Lane as well as crossing 2 of the sports pitches. It is proposed to provide 2 replacement pitches on

adjacent land just to the south of the existing sports ground and to provide a 4m wide private means of access above the western slopes of the cutting containing the mainline link road. This private means of access is to connect with the realigned Catherine-de-Barnes Lane at the north and south overbridges. Five options for the reconfiguration of the WGAA facilities have been developed [[APP-049](#) and [APP-069](#)] and a further scheme subsequently prepared [[REP2-019](#)]. It is the latter that is proposed as a proportionate reconfiguration of the WGAA facilities in the context of this DCO.

2.2. THE SITE AND SURROUNDINGS

2.2.1. The Order Lands, as originally proposed, amount to some 255.59ha of which about 152.72ha are to be acquired permanently, 38.91ha subject to temporary possession and 60.63ha subject to temporary possession together with the acquisition of permanent rights. The remaining 3.33ha lie within the Order Limits but are subject to no powers of acquisition. Some 58.43ha of the land to be acquired lie within the existing highway boundary [[APP-018](#)].

Landscapes

2.2.2. Three distinct 'landscapes' lie within and adjacent to the Order Limits. They are characterised in the Environmental Statement chapter 8 [[APP-053](#)] as a 'transport interchange' (an area for travel and commerce to the north of the A45 and to the west of M42), as 'Arden Farmland' (a rural expanse of fields and woodland stretching from the edges of Solihull and Birmingham to Catherine-de-Barnes Lane and the M42) and 'Blythe Valley Parkland and Farmland' (an area of parkland and hedged fields mainly to the east of Catherine-de-Barnes Lane and the M42 and stretching further east to the A452). They are shown on ES Figure 8.1 [[APP-085](#)].

2.2.3. The 'transport interchange' is hardly a landscape at all containing, as it does, the business and bustle of Birmingham Airport, the extensive showrooms of the NEC, Birmingham Business Park, Birmingham International Rail Station, the Genting Casino, as well as hotels, restaurants, retail and other commercial concerns. In addition, the dual carriageways of the A45 and the M42 confine its southern and eastern boundaries with the National Motorcycle Museum and the National Conference Centre lying to the east of Junction 6. Yet, amongst the NEC car parks and around Pendigo Lake, landscaping and woodland break up the blocks of large buildings and mask some of the movement and traffic pounding along the busy roads. Bickenhill Plantation envelopes the north and west of the NEC and wooded fields to the north serve as a buffer between some of the commercial units and residential areas.

2.2.4. The 'Arden Farmland' exhibits the remnants of historic parkland amongst modest fields and mature hedgerows, many with some fine hedgerow trees. This pattern gives way to larger fields and sparser hedgerows towards Catherine-de-Barnes Lane, although small stands of woodland are scattered throughout this rolling landscape, the northern edge of which commands views across the airport runway and the carriageways

of the A45. To the south the sluggish waters of the Grand Union Canal slide beneath a narrow bridge and past the village of Catherine-de-Barnes.

- 2.2.5. The 'Blythe Valley Parkland and Farmland' reveals a pattern of small irregular pastoral fields beside the River Blythe and around settlements and larger arable fields often associated with former estates and deer parks. There is an extensive area of 'registered' parkland around Packington Hall to the north east of the M42 Junction 6 and riparian vegetation along the River Blythe amongst trimmed hedges with frequent hedgerow trees. Amongst the modest settlements and scattered farmsteads, the conurbation, roads, railways and airport seem strangely distant in an intimate rural landscape still exhibiting historical patterns, including 'S' shaped boundaries and signs of 'enclosure'.

Settlements and historic buildings

- 2.2.6. The Proposed Development envelopes the village of Bickenhill [[APP-123](#), [APP-167](#), [REP2-020](#), [REP2-034](#), [REP4-004](#)], the mainline link road running to the west of the village while existing major roads run to the north (the A45) and east (the M42). Bickenhill, including Middle Bickenhill, is listed in the Domesday Book as a settlement of 19 households worth (to the lord) about £2 annually¹⁴. It stands on the brow of a gentle rise and the possible remnants of an open medieval field that sweeps down to the A45. The ancient spire of St Peters Church (a grade I Listed Building with medieval origins) commands the centre of the village and heralds its presence to the surrounding roads (including the M42) and across intervening fields and farmland. The core of the village is a Conservation Area and, although only one other building is Listed (the colour-washed rendered Grange Farmhouse), the winding lanes (St Peter's Lane and Church Lane) and vernacular buildings (9 of which are notable though non-designated structures) testify to the historic character of the place; it lies on this gentle rise partially screened from passing traffic and secluded amongst mature hedges and trees.
- 2.2.7. Hampton in Arden lies on Solihull Road (B4102) and about 1km to the east of the M42 and the proposed new Junction 5A. It too is listed in the Domesday Book. It was then a relatively substantial place with a mill and 76 households (2 slaves, 2 female slaves and 1 priest) and worth (to the lord) about £5 annually¹⁵. It stands on a pronounced rise above the surrounding plane its narrow twisting streets, ancient cottages, vernacular buildings and occasional grand manor warranting its designation as a Conservation Area in 1969. The medieval parish church of St Mary and St Bartholomew is a grade I Listed Building. There are 2 grade II* Listed Buildings, one being the Moat House and the other a Clock Tower (designed by W E Nesfield) and added to Hampton Manor (itself a grade II Listed Building) in 1872. Also Listed at the Manor are mid-19th Century garden terraces which command views westwards

¹⁴ Domesday Book online, Anna Powell Smith using data created by Professor J J N Palmer and team from the University of Hull

¹⁵ Op cit

across the remnants of parkland (now within the Conservation Area) to the M42 and the proposed new Junction 5A. There are some 16 other Listed Buildings or groups of buildings within the village and several historic non-designated structures. A moated site at the Moat House is a Scheduled Monument.

- 2.2.8. The village of Catherine-de-Barnes lies about 1km to the west of the M42 and the proposed new Junction 5A and just beyond a narrow humped-backed bridge across the Grand Union Canal. Although a school, an inn and a few cottages have stood close to the Canal throughout much of the 19th Century (when the village was known as Catherine-de-Barnes Heath), the village is essentially a post-War creation, modest estates filling out the intermittent terraces and ribbon development of the 1930s, though a gap remains between the village and the suburban extremities of Solihull. Catherine-de-Barnes Lane now connects directly to the Clock Interchange and the A45 replacing the more meandering rural route via Bickenhill Lane, Bickenhill Village and Clock Lane some 40 years previously¹⁶.

Habitats

- 2.2.9. Internationally important sites for nature conservation lie some distance beyond the Order Lands [[APP-168](#), [REP2-028](#), [REP2-029](#)]. Ensor's Pool SAC is 16km to the north east: Fens Pools SAC is 27km to the north west: Cannock Extension Canal SAC is 27km to the north east: the River Mease SAC is about 28km to the north.
- 2.2.10. However, the Order Lands encompass, or are close to, several nationally important sites for nature conservation. Bickenhill Meadows SSSI and Nature Reserve are 2 management units of unimproved lowland neutral grassland (MG4 and MG5 communities). Both are within the Order Limits, one to the north of Shadowbrook Lane and the other to the west of Catherine-de-Barnes Lane and towards Castle Hills Farm. The River Blythe SSSI is a 39km stretch of lowland river, rich in habitats and species. It crosses the southern extent of the Order Lands and is connected via Hollywell Brook and Shadow Brook (including their tributaries) to works and culverts required for the Proposed Development. The Coleshill and Bannerly Pools SSSI is nearly 38ha of lowland fen and mixed woodland around 2 pools adjacent to the northern edge of the Order Limits.
- 2.2.11. Replanted Ancient Woodland at Aspbury's Copse stands astride the M42 on Solihull Road where Junction 5A is proposed; it is particularly notable for lichen, fungi and invertebrates. Barber's Coppice is also replanted Ancient Woodland; it stands beside the Barber's Coppice roundabout that forms the junction between Catherine-de-Barnes Lane and Solihull Road. Various Local Wildlife Sites are scattered throughout the Order Lands. At Castle Hill Farm Meadows and Clock Lane Meadows there is an extensive priority grassland habitat of 'lowland meadows'. At Hen Wood and Hen Wood Meadow there are species-rich 'damp meadows' beside the River

¹⁶ <https://www.old-maps.co.uk/>

Blythe SSSI towards the southern extent of the Order Limits. At Coleshill Pool Wood 'oak woodland' is at the northern extent of the Order Limits. Beside the Shadowbrook Lane Meadows, Greens Ward Piece is a small field of unimproved pasture. And, Wayside Cottages Meadow is a field of largely unimproved herb-rich grassland just 30m west of the Order Limits.

2.3. THE APPLICATION AS EXAMINED

Changes to the application

2.3.1. Changes to application documents and the proposed DCO were submitted during the Examination. As a consequence, the land within the Order Limits is reduced by almost 7ha to some 248.72ha, of which about 145.85ha will be acquired permanently. All the other figures remain as initially set out namely, 38.91ha will be subject to temporary possession and 60.63ha will be subject to temporary possession with acquisition of permanent rights. A small area (3.34ha) lies within the Order Limits but is not required; some 58.43ha subject to acquisition lies within the existing highway boundary.

2.3.2. The latest versions of the key documents, as amended to take account of all representations, submissions and responses to questions, were generally submitted at Deadline 9 (15 November 2019) with one or two at Deadline 10 (20 November 2019), as follows:

- Land Plans v2 [REP9-002 & [REP9-003](#)]
- Works Plans v2 [[REP9-004](#)];
- General Arrangement Plans v2 [[REP9-005](#)]
- Streets, Rights of Way and Access Plans v2 [[REP9-006](#)]
- Classification of Road Plans v2 [[REP9-009](#)]
- Engineering Drawings and Sections v2 [[REP9-010](#)]
- Crown Land Plans v3 [[REP10-003](#)]
- Development Consent Order v4 – Clean [[REP9-011](#)] and Tracked [[REP9-012](#)]
- Explanatory Memorandum to DCO v2 – Clean [[REP9-013](#)] and Tracked [[REP9-014](#)]
- Statement of Reasons v2 – Clean [[REP9-015](#)] and Tracked [[REP9-016](#)];
- Book of Reference v2 – Clean [[REP9-017](#)] and Tracked [[REP9-018](#)]
- Outline Environmental Management Plan (OEMP) v2 – Clean [[REP9-019](#)] and Tracked [[REP9-020](#)]
- Guide to the Application v9 [[REP10-002](#)]

Non-material change

2.3.3. The Applicant notified the ExA of its intention to request what it considered to be a non-material change to the dDCO on 26 July 2019 and subsequently submitted this request in its letter dated 9 August 2019 [[AS-027](#)]. Following the hearings held on 21 and 22 August 2019 a programme to allow at least 28 days for consultation was arranged and the ExA made a procedural decision [[PD-010](#)] that a report on that consultation by the Applicant [[REP6-009](#)] should be submitted by

Deadline 6 (Friday 11 October 2019) together with further environmental appraisals [[REP6-013](#)] to justify the initial assertion that 'the changes would not give rise to any materially new or materially different significant environmental effects to those reported in the Environmental Statement'.

2.3.4. The proposed changes, and the reasons for them, entail:

- Change 1: Proposed change to the southern extent of the limits of deviation (LoD) for Work No.63 (Severn Trent Aqueduct). The change is to allow greater ease of maintenance for Severn Trent Water once the diverted aqueduct is operational. The southern extent of the LoD for Work No.63 is to be moved further south and consequently closer to the properties in Bickenhill on Church Lane. The work is to be moved from parcel 4/4w into parcel 4/4k within the DCO boundary [[REP9-002](#)]. Both plots are in the same ownership and both are listed in the Book of Reference [[REP9-017](#)] as 'land to be used temporarily and rights to be acquired permanently';
- Change 2: Attenuation Tank Relocation (Work No.34). The change is to accommodate the relocation of a highway drainage attenuation tank (Work No.34) from the north western quadrant of Barber's Coppice Roundabout to the south western quadrant, both locations being wholly within the DCO boundary and within parcels 2/10j and part of 2/71 [[REP9-002](#)]. The relocation is to allow a maintenance vehicle to pull into a 'service' lay-by as traffic slows to enter the roundabout rather than as it accelerates on exit, thereby reducing potential road hazards.
- Change 3: Parcels of land to be removed from the Order Limits. The removal of 5 land parcels from the Order, either not required for the reconfiguration of the pitches at the WGAA or unnecessary for the operation or maintenance of the highway; the plots to the north of the WGAA grounds are 3/1d and 3/45c, while the plots beyond the verge of Solihull Road are 2/32c, 2/36 and 2/32a [[REP9-002](#)].

2.3.5. The ExA reviewed the information provided and assessed the Applicant's request in line with paragraphs 109 to 115 of DCLG Guidance 'Planning Act 2008: Examination of Applications for Development Consent' and the Planning Inspectorate's 'Advice Note 16: How to request a change which may be material'. The Consultation Statement [[REP6-009](#)] and the Supplementary Environmental Appraisal Report [[REP6-013](#)] address the issues raised by proposed changes 1 and 2 above. Documents submitted at Deadline 8 [particularly [REP8-006](#)] provide more information on proposed Change 3. The ExA notes that the identified changes are within the original red line boundary for the scheme and entail either minor modifications to works already proposed or the removal of a few land parcels from the Order Limits.

2.3.6. Change 1 entails Work No.63 being closer to properties on the north side of Church Lane. There are objections to this change from residents at Church Farm and Bickenhill Green Court [[REP6-009](#)] due to the encroaching proximity of the works. However, the centre line of the aqueduct is shown about 100m from the nearest property in Pitt Lane (to

the north of Church Lane), although the LoD is closer. Even with the intended diversion, the aqueduct is further from the properties in Church Lane. Much of the construction is thus likely to be beyond the raised buffers around, and largely within the confines of, the Main Site Compound, as configured in the recommended option pushing the extent of the compound northwards and eastwards [[REP6-015](#), Action 4, 3rd Figure]. And, even if that is not the case, the excavation and pipe-laying required will be set against the activities in the Compound. Once completed, the works will result in an underground aqueduct not materially different in function or effect to that originally proposed. Hence, the Supplementary Environmental Appraisal Report identifies that no new or different significant environmental effect is likely to ensue from Change 1 and no such effect has been identified in the Examination.

- 2.3.7. Change 2 entails the installation of a similar drainage attenuation tank in a similar position but located slightly further from the nearest residential property (Four Winds) and in a slightly safer position. The Supplementary Environmental Appraisal Report identifies that no new or different significant environmental effect is likely to ensue from Change 2 and no such effect has been identified in the Examination.
- 2.3.8. Change 3 removes land proposed to be subject to compulsory acquisition in the original application but which the Applicant considers is now no longer required by the scheme. Land to the north of the WGAA sports ground (plots 3/1d and 3/45c) were included to provide options for the reconfiguration of the facilities following the loss of pitches required to accommodate part of the mainline link road. However, all 5 options initially envisaged [[APP-069](#)] and assessed [[APP-153](#)] as feasible arrangements involved the use of land to the south of the existing sports ground, as did the 'proportionate reconfiguration' finally proposed [[REP2-019](#)]. Although residents at Four Winds object to the reconfiguration proposed [[REP2-059](#)] and the WGAA, in conjunction with the Applicant, are pursuing a different proposal as a planning application rather than as part of this scheme [[REP6-017](#) & [REP6-043](#)], there has never been an option to use plots 3/1d and 3/45c for the reconfiguration of the WGAA sports ground. The use of such land for that purpose is thus highly unlikely. Removal of land that is no longer required is necessary to meet the statutory test for CA in PA2008 s122. The test is that land must be required for the development proposed in the DCO: this land is not so required.
- 2.3.9. There are objections to the return of plots 3/1d and 3/45c from the owners (represented by Barlow Associates Limited [REP4-028](#) & [REP7-017](#)). The concern is (apart from matters to be considered in the context of CA and chapter 8) that returning these parts of larger land-holdings renders both the plots themselves and the remaining land unreasonably difficult or uneconomic to farm. That may be so for the current owners under the current arrangements. But both may be altered, so that neither impediment provides a cogent reason to require the purchase of this land. Land that is no longer required must be removed in order to meet the statutory test for CA in PA2008 s122.

- 2.3.10. Plots 2/32a, 2/32c and 2/36 and are described as areas of 'trees and shrubbery' at Mayfield and Woodside on Solihull Road. They are, in effect, strips of front garden, driveways and verge beside a small access off Solihull Road to the east of the proposed Junction 5A. They are not required for any of the works associated with that junction or for the realignment of Solihull Road. Hence, their acquisition does not satisfy the statutory test for CA in PA2008 s122.
- 2.3.11. Having considered all relevant matters arising from all representations and submissions, the ExA considers, for the reasons outlined above, that Changes 1, 2 and 3 are, essentially, minor modifications to the application that either technically improve maintenance arrangements or remove land that is no longer necessary to acquire, in accordance with the statutory test for CA in PA2008 s122. The changes entail no environmental effect that has not already been carefully assessed in the ES. It follows that the changes are non-material and do not significantly alter the nature, purpose or substance of the Application.

2.4. RELEVANT PLANNING HISTORY

- 2.4.1. A significant planning application submitted within the Order Limits is a proposal for a Motorway Service Area (MSA) at the proposed new Junction 5A, initially lodged in June 2015 with SMBC by Extra MSA Group (PL/2015/51409/PPOL). The application is currently pending determination, partly because further information is required on several technical matters and partly because SMBC have informed both the Extra MSA Group and Applegreen PLC (who are pursuing a proposal for an MSA beside M42 Junction 4 (PL/2016/02754/MAJFOT)) that both schemes are to be considered together. No date has yet been set for the determination of those planning applications [[REP2-037](#)].
- 2.4.2. Both schemes have long and complex planning precedents¹⁷. In 2009 appeals relating to schemes for MSAs at what is now proposed as Junction 5A (APP/Q4625/A/98/1013084) and at Junction 4 (A/06/1199380) were dismissed by the SoS. The former as a result of a re-opened inquiry into the refusal of an application initially made as long ago as 1998: the latter as the result of a conjoined appeal into the refusal of an application made in 2006. The MSA proposed at M42 Junction 4 lies well beyond the Order Limits. But the MSA proposed by the Extra MSA Group at the intended M42 Junction 5A is likely to have a direct impact on the operation of this scheme, if approved.
- 2.4.3. The Extra MSA Group proposal incorporates a junction broadly in the same location as Junction 5A and of a similar design, except that it includes both north and south facing slip roads, as well as a spur to the MSA, rather than just the slip roads facing south [[RR-027](#), [REP2-054](#), [REP2-022](#), [REP4-037](#)]. The provision of north facing slip roads introduces weaving lengths between Junction 5A and Junction 6 that fall below the normal 2km minimum for rural motorways at roughly 1.2km (both north and south-bound). There is approval in principle for such a departure

¹⁷ See the applications on the SMBC website

from standards [[APP-173](#), appendix 4]. If the MSA is granted planning permission prior to the authorisation of this DCO, then the expectation is that the junction would be constructed by the Extra MSA Group, together with the relevant mitigation and compensation measures set out in that application, one of those measures being an up-grade of the M42 to an 'all lane running' smart motorway from the current 'dynamic hard shoulder' regime. Alternatively, if planning permission is not forthcoming before the authorisation of this DCO, then the Applicant would construct the junction with south facing slip roads only. Given the absence of any planning permission and the indeterminate duration of the current abeyance, the MSA cannot reasonably be considered as committed development now. However, the Applicant has engaged with the MSA proposal to ensure that, where practicable, the design of Junction 5A would not preclude delivery of the MSA.

2.4.4. Nevertheless, the proposed M42 Junction 5A would require modification to accommodate the queues and traffic likely to be generated by the MSA [[REP2-022](#)]. Assuming either a 6% or 8% turn-off from the motorway (the latter being a possibility entertained by the Extra MSA Group), long queues would build up on the western roundabout of the 'dumb-bell', which would be operating well above its theoretical capacity. A workable and partially signalised design, demonstrating 6% spare capacity in the morning peak, would require 3 lanes on the north-bound approach and at the stop line of the western roundabout; 3 lanes on the roundabout as far as the mainline link road; 3 lanes at the entrance and start of the mainline link road; and, a segregated left turn lane into the MSA. The widened approach to the western roundabout would impinge on the adjacent Ancient Woodland and require a longer span to take the Solihull Road bridge across the motorway. In addition, the bridge connecting the 2 roundabouts of this 'dumb-bell' design would need to accommodate 2 lanes in each direction rather than only 1 and a hard shoulder for west-bound traffic.

2.4.5. A second planning permission with potential to attract traffic into the Order Lands is a permission to vary the conditions attached to a planning permission for the demolition of a garden centre and a bungalow and the erection of a motel, retaining a tea room and restaurant [[APP-173](#)]. This is a scheme for the redevelopment of Bracey's Nurseries located on Catherine-de-Barnes Lane at its junction with St Peter's Lane. The permission was granted in March 2019 (PL/2019/00355/VAR) following an initial permission for the scheme back in June 2016. Work has now commenced on a short section of the footings¹⁸. The building is shown as an extensive single storey structure beside a landscaped car park. It will stand close to the proposed Bickenhill Roundabout if this DCO is approved.

2.5. OTHER STRATEGIC PROJECTS

2.5.1. Junction 6 lies amongst substantial commercial concerns and the Clock Interchange provides connections between them and both Birmingham

¹⁸ SMBC website

International Airport and Birmingham International Railway Station. Significant growth is planned [[APP-173](#)]. This includes expansion at Birmingham Business Park, Jaguar Land Rover (Solihull) and Blyth Valley Business Park, while the creation of the Birmingham Interchange Station for HS2 provides the impetus for an extensive mixed-use scheme of housing, commercial, retail and leisure space, known as Arden Cross¹⁹. Significant expansion is also planned at the NEC. These operations and the surrounding area support more than 100,000 jobs and significant growth is supported by SMBC's emerging Local Plan Review (policy P1). In addition, several of these projects are included in the Government's Growth Strategy being developed through UK Central and Solihull Urban Growth Company [[APP-048](#) and [APP-049](#)]. The M42 Economic Gateway Masterplan, now superseded by the UK Central Hub - Growth and Infrastructure Plan (2018) and reflected in both the emerging Local Plan Review and the UK Central strategy, envisages some 32,000 new jobs, mainly in this area but also elsewhere in Solihull, by 2040. The Transport Assessment (TA) [[APP-174](#)] identifies the potential for over 28,200 new jobs to materialise from projects, plans and 'possibilities' by 2041. However, significant uncertainty, even conjecture, surround several of those jobs so that the TA assessments accommodate only some 9,675 of those new jobs in Solihull by 2041. Although future traffic growth is modelled from the Policy Responsive Integrated Strategy Mode (PRISM) forecasts and calibrated with the DfT's National Trip End Model (NTEM 6.2), which allows for an increase of 18,066 jobs, the assessments in the TA fail to accommodate around 10,000 jobs envisaged in the emerging Local Plan Review or the UK Central strategy²⁰. The traffic generated by those jobs is to be catered for by future schemes that build on the improvements proposed in this application, albeit that such schemes are currently only in an embryonic state [[REP2-007](#), [REP3-034](#), [REP4-010](#), [REP6-010](#), [REP6-037](#)].

UKC Hub Growth Area

- 2.5.2. This is a key factor in delivering the development potential of the area [[REP2-033](#), [REP2-038](#)]²¹. The preparation of a concept framework plan by the Urban Growth Company will help to ensure a comprehensive and coordinated approach. Although this will be a non-statutory plan, it will be updated from time to time in response to changing circumstances. Such a Concept Framework will show, at a high level, how the key objectives set out in emerging policy P1 will be met. In addition to the 18,000 new jobs, it is assumed that across the whole UKC Hub Growth

¹⁹ Solihull Metropolitan Borough Council - M42 Economic Gateway Masterplan (2013)

²⁰ The plans and strategies cover different periods and areas to the TA and traffic models. The essential comparison is that of the 28,200 potential jobs identified in the TA the traffic models allow for only 18,066, ie the traffic generated by a potential 10,134 jobs is not included in the assessments for 2041. Most of these (9,675) are explicitly excluded as being subject to 'significant uncertainty'.

²¹ See also the Draft Solihull Local Plan Review (November 2016) on the SMBC website for this and other components of the UKC Hub Growth Area.

Area there will be 1,000 dwellings coming forward during the Plan period. The Plan is to be integrated with other strategic plans, including the West Midlands Local Transport Plan (2011-2026), the Solihull Connected: Transport Strategy (2016) and Delivery Plan 2016 – 2036, Movement for Growth: The West Midlands Strategic Transport Plan and the Delivery Plan for Transport 2026; and the HS2 Growth Strategy Connectivity Programme (2015).

Arden Cross

- 2.5.3. The Arden Cross proposals focus on the HS2 interchange station and the triangle of land east of the NEC bounded by the A45, A452 and M42 (some 140ha in area). They present an opportunity to maximise economic and social benefits. The aim is for a Garden City approach (July 2014) exhibiting 'design excellence' and offering investment opportunities. The Arden Cross proposals require land to be taken from the Green Belt, but the aim is to maximise economic growth and job creation so that the Hub area becomes one of national significance. This will meet the aim of the NPPF to proactively promote economic growth. Moreover, the land is bounded by main roads providing strong defensible Green Belt boundaries. Hence, it is claimed that exceptional circumstances exist for releasing the Arden Cross land from the Green Belt. The Arden Cross Proposals rely on the development of HS2 and its interchange station

Birmingham Airport

- 2.5.4. The Airport Master Plan predicts that air passengers will increase substantially from 11.6m in 2016 to 27.2m in 2030 supported by a strong market for new investment. An extension to the main runway and a consequent realignment of the A45 has already been completed in 2014. Further operational, ancillary and complementary development is required and is supported by policy P1 of the emerging Local Plan Review. Additional safety arrangements still need to be implemented. These entail building across the A45 to provide a 'safety' area at the end of the runway, a provision that will be close to the western end of the slip roads and merge lanes of the improved Clock House interchange.

National Exhibition Centre

- 2.5.5. The National Exhibition is now a venue for major exhibitions, events, tourism and leisure and an important driver of the visitor economy. The NEC aspires to maintain its competitive position in the market for hosting major events but also intends to widen its offer to encompass a wide range of major leisure and entertainment uses. Additional exhibition halls and other facilities are to be provided by utilising the extensive surface car parks around the NEC and building a series of multi-storey car parks to compensate for the lost areas of surface car parking; existing halls are to be refurbished. This will require new investment to meet visitor expectations, improved visitor management, upgraded food offers and greater opportunities for relaxation and entertainment.

HS2

2.5.6. A parkway station is included in the HS2 Bill, but an alternative and more ambitious design for the HS2 interchange station is being pursued, accommodating wider, non-rail related, development in line with the vision envisaged by the UK Central strategy. This, and connections to it, are due to be operational by 2026. Some of the land within the Order Limits is also required to accommodate the HS2 project and arrangements are in hand to secure a coordinated approach. An automated 'people mover' is to provide a link between the new interchange station, the NEC and Birmingham International Airport. And, an extension to the West Midlands Metro system is also to connect the HS2 Birmingham interchange station with the NEC and the airport before continuing into central Birmingham and other parts of the conurbation (including Wolverhampton, Dudley, Wednesbury and Edgbaston).

Jaguar Land Rover

2.5.7. Jaguar Land Rover is constrained by its location within the main urban area. Its importance to the region's economy and to job creation warrants the proposals in emerging policy P1 to remove land from the Green Belt to support expansion of the plant; related businesses and inward investment could also be attracted by releasing the land to the south east of Damson Parkway and Old Damson Lane. Exceptional circumstances stem from the importance of Jaguar Land Rover as a major international business and one of the largest employers in the West Midlands; the need to support its continued growth both to sustain the regional economy and to foster the aspirations in the UK Central Masterplan; the plant is severely constrained by residential areas, Elmdon Park and local nature reserves, so that the only realistic option for expansion is eastwards on Green Belt land; provision, close to the Lode Lane plant, will provide opportunities for key supply chain businesses; part of the site already has planning permission for a 'despatch facility' (also warranted by very special circumstances); the land performs only moderately in the Solihull Strategic Green Belt Assessment (2016); and, the creation of a logical and defensible boundary to the Green Belt.

Birmingham Business Park.

2.5.8. Much of the undeveloped land at the Business Park is subject to detailed planning permission. Hence, a 9ha site is allocated to supplement the land available and accelerate the delivery of new employment opportunities. The intention is to provide a green 'buffer zone' between the Business Park and the dwellings along Coleshill Road and Blackfirs Lane. This, together with the existing buffer to the north west, could facilitate public transport connections with North Solihull also linking to the NEC.

Blythe Valley Business Park

2.5.9. This Business Park consists of large buildings for corporate occupiers, though more recently it has also catered for smaller concerns. A commitment to distinctive high-quality design remains. A substantial area of land remains to be developed. The Business Park aspires to

increase vitality and provide a greater sense of place by broadening the business use offer and enabling a range of supporting facilities that will help to make it attractive to investors and occupiers, as well as more sustainable. An allocation for some 600 dwellings is intended to reinvigorate the Park and to accelerate job delivery. It is also intended to foster a sense of place and to support improved public transport facilities, as well as non-motorised links, between nearby villages and the main urban area. A substantial quantity of employment development is also expected. A 'vision document' (endorsed by the Council) has been prepared and submitted (by IM Properties) in 2015. It has now been reflected in a planning application for a comprehensive mixed-use scheme for which permission has been granted, including several for subsequent details and the discharge of conditions.

THE WGAA SPORTS FACILITY

2.5.10. The WGAA consider that the proposed 'proportionate' reconfiguration of their sports facilities (as set out within the updated proposal, [[REP2-019](#)]) does not provide a proportionate and equivalent replacement for Páirc na hÉireann. On the contrary, they believe that what is required must entail 2 replacement pitches laid out in accordance with GAA design criteria; a repositioned clubhouse built to modern standards and in accordance with Sport England design guidance in a central location close to the main pitch; the re-provision of a private means of access and replacement car-parking; and, the relocation of the existing memorial [[REP6-017](#) & [REP6-043](#)].

2.5.11. The Applicant agrees that the need to reconfigure the WGAA facility creates an opportunity for a positive legacy, essentially by improving the WGAA facilities and making them available for wider use ('the Legacy Scheme'). It is this scheme that the Applicant intends to pursue, and it is on this basis that objections from the WGAA were withdrawn. The Legacy Scheme will require the acquisition of land from a neighbouring landowner, and a separate planning permission outwith the DCO which will not be made before the close of the Examination. There is now broad agreement in principle that the Legacy Scheme will entail:

- 2 replacement pitches to the south and the west of the current position, to include one artificial, all-weather pitch;
- a new clubhouse constructed to modern standards positioned centrally to the south of the current clubhouse;
- an equivalent number of car parking spaces to those lost, positioned beside the new clubhouse;
- a Community Use agreement between the Applicant and the WGAA to ensure that the Legacy Scheme is made available for use by the wider community as well as WGAA members, including those playing non-GAA sports, such as football, rugby or hockey;
- the WGAA to assist the Applicant in promoting the community use of the Legacy Scheme;
- the Applicant to seek an allocation of funds from the Highways England Designated Funds Environment Fund for the construction of the Legacy Scheme;

- the WGAA to be responsible for the operation and maintenance of the Legacy Scheme, including all related costs;
- the Applicant to make an application for planning permission, and to pursue an option agreement to acquire the land needed.

2.5.12. It is the intention that the Legacy Scheme should not give rise to any environmental impacts on Four Winds or other neighbouring properties that are materially new or materially different from those set out in the Environmental Statement. Provision will be made for the owner of the fields to the north and south to drive cattle between those fields. And, even though the Legacy Scheme will bring 2 of the pitches, the car parking and the clubhouse, closer to Four Winds, an earth bund will be constructed along the new southern boundary which can be landscaped and planted to provide environmental screening. There is to be no floodlighting and no hurling wall.

2.5.13. At the close of the examination the Legacy scheme had not been finalised and the Applicant's reconfiguration scheme was in the Proposed Development but this still did not contain the relocation of the clubhouse which was WGAA requirement for withdrawing their objection. The elements of the situation are considered further in the following Chapters.

3. LEGAL AND POLICY CONTEXT

3.1. INTRODUCTION

- 3.1.1. This chapter sets out the relevant and legal policy context for the Application which was considered and applied by the ExA in carrying out its examination and in making its findings and recommendations to the SoS.

3.2. THE PLANNING ACT 2008

- 3.2.1. For the reasons explained above, the application falls within the definitions for highway-related NSIP development set out in section(s)22 of the Planning Act 2008 (PA2008).
- 3.2.2. PA2008 provides different decision-making processes for NSIP applications where a relevant National Policy Statement (NPS) has been designated (s104) and where there is no designated NPS (s105).
- 3.2.3. This is an application to which s104 is applicable because it is subject to policy in the designated National Policy Statement for National Networks (NNNPS).
- 3.2.4. S104(3) of PA2008 requires that the Secretary of State must decide an application for development consent in accordance with any relevant NPS, except to the extent that the SoS is satisfied that, in summary doing so:
- would lead to the United Kingdom (UK) being in breach of its international obligations;
 - would lead to the SoS being in breach of any duty imposed on him under any enactment;
 - would be unlawful under any enactment;
 - the adverse impact of the proposed development would outweigh its benefits; or
 - fail to comply with any prescribed condition for deciding the application otherwise than in accordance with the NPS.
- 3.2.5. Section 104(2) of PA2008 sets out the matters to which the SoS must have regard in deciding an application. In summary, the matters set out include:
- any relevant NPSs;
 - any Local Impact Report (LIR);
 - certain prescribed matters; and
 - any other matters the SoS considers are both important and relevant to the decision.
- 3.2.6. The remainder of this chapter addresses the identification and application of a relevant NPS, the LIRs and identifies other legal and policy matters that are capable of being important and relevant considerations.

3.3. NATIONAL POLICY STATEMENT

- 3.3.1. The NNNPS has been designated as the NPS for roads for which the SoS for Transport is the highway authority. It remains in force and provides the primary basis for decisions by the SoS.
- 3.3.2. The M42 forms part of the national road network. Section 2 of the NNNPS sets out the Government's vision and strategic objectives to "*deliver national networks that meet the country's long-term needs; supporting a prosperous and competitive economy and improving overall quality of life, as part of a wider transport system. This means:*
- Networks with the capacity and connectivity and resilience to support national and local economic activity and facilitate growth and create jobs.
 - Networks which support and improve journey quality, reliability and safety.
 - Networks which support the delivery of environmental goals and the move to a low carbon economy.
 - Networks which join up our communities and link effectively to each other."
- 3.3.3. NNNPS paragraph 2.1 highlights that "The national road and rail networks that connect our cities, regions and international gateways play a significant part in supporting economic growth, as well as existing economic activity and productivity and in facilitating passenger, business and leisure journeys across the country. Well-connected and high-performing networks with sufficient capacity are vital to meet the country's long-term needs and support a prosperous economy."
- 3.3.4. A critical need is identified (NNNPS paragraph 2.2) to address road congestion to provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a transport network that is capable of stimulating and supporting economic growth. It is estimated that on the road network around 16% of all travel time in 2010 was spent delayed in traffic (NNNPS para 2.3). In their current state the national networks act as a constraint to sustainable economic growth, quality of life and wider environmental objectives (NNNPS paragraph 2.9).
- 3.3.5. Traffic congestion is identified as a constraint on the economy, and a negative impact on quality of life (NNNPS paragraph 2.16). In 2010 the direct costs of congestion on the SRN in England were estimated at £1.9 billion per year (NNNPS para 2.17). With pressure on the road network forecast to increase, the economic and environmental costs of congestion will increase (NNNPS paragraph 2.18).
- 3.3.6. To address the need to relieve congestion, NNNPS identifies enhancements to the SRN which include junction improvements to address congestion and improve performance and resilience at junctions, which are a major source of congestion (NNNPS paragraph 2.23).

3.3.7. The NNNPS goes on to set out the principles by which proposed development of the SRN should be addressed in Section 4 and identifies the generic impacts to be considered in Section 5, covering a range of relevant topics including:

- Air Quality;
- Carbon Emissions;
- Biodiversity and ecological conservation;
- Waste management;
- Dust, odour, artificial light and related emissions;
- Flood risk;
- Land instability;
- The historic environment;
- Landscape and visual impacts;
- Land use including Green Belt;
- Noise and vibration;
- Impacts on transport networks; and
- Water quality and resources.

3.3.8. This report sets out the ExA's findings, conclusions and recommendations taking these matters fully into account and applying the approach set out in s104 of the PA2008 in making our recommendation to the SoS.

3.4. GOVERNMENT TRANSPORT POLICY

Road investment strategy for the 2015 to 2020 road period (RIS)

3.4.1. The Road Investment Strategy (RIS) was first published in December 2014 and was last updated in November 2016. It:

- outlines the government's strategic vision for the strategic road network to 2040;
- commits to the delivery of 112 major schemes to start by 2020, as well as the development of a further 15 schemes and 6 strategic studies;
- specifies the network and company performance that Highways England - a strategic highways company - is expected to deliver; and
- states the funding available to deliver these goals between 2015 and 2021.

3.4.2. Identified within the RIS is the comprehensive upgrade of the M42 junction 6 near Birmingham Airport, allowing better movement of traffic on and off the A45, supporting access to the airport and preparing capacity for the new HS2 station.

3.4.3. The document advises that the schemes included within it will have access to committed funding, allowing them to enter construction during the first Road Period.

National Infrastructure Delivery Plan 2016 – 2021

- 3.4.4. The publication of the first-ever National Infrastructure Plan (NIP) in October 2010, and subsequent updates, provided an integrated strategy for how the government would plan, prioritise, finance and deliver critical projects and programmes in key economic infrastructure sectors, including transport.
- 3.4.5. The National Infrastructure Delivery Plan (NIDP) updates and replaces the previous NIP, outlining details of investment in over 600 infrastructure projects and programmes in all sectors and spread across the UK, to 2020-21 and beyond.
- 3.4.6. Chapter 3 of the NIDP deals with Roads and sets out how the government is investing £15 billion to support Highways England in transforming the SRN with over 100 major schemes completed or in construction by the end of 2020-21.
- 3.4.7. The M42 Junction 6 is listed in Chapter 5 (Airports and Ports) as a one of the key projects for surface access improvement priorities to 2020-21, supporting access to Birmingham Airport and also HS2.

Highways England's licence

- 3.4.8. HE operates as a Government owned company under a licence²². Part 4 of the licence lays out the aims and obligations that the licence holder must observe to:
- ensure the effective operation of the network;
 - ensure the maintenance, resilience, renewal, and replacement of the network;
 - ensure the improvement, enhancement and long-term development of the network;
 - ensure efficiency and value for money;
 - protect and improve the safety of the network;
 - cooperate with other persons or organisations for the purposes of coordinating day-to-day operations and long-term planning;
 - minimise the environmental impacts of operating, maintaining and improving its network and seek to protect and enhance the quality of the surrounding environment; and
 - conform to the principles of sustainable development.
- 3.4.9. The licence also requires HE to "provide for sufficient flexibility and future-proofing in planning the long-term development and improvement of the network, taking account of long-term trends, uncertainties and risks - including new and emerging technologies and long-term trends in climate and weather conditions".

²² Highways England: Licence
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/431389/strategic-highways-licence.pdf

- 3.4.10. We take account of the duties imposed on HE by the licence in considering the impacts of the Proposed Development and the relevant proposals for mitigation in Chapter 5.

3.5. EUROPEAN LAW AND RELATED UK REGULATIONS

Leaving the European Union

- 3.5.1. The UK left the European Union as a member state on 31 January 2020, after the close of the examination. The European Union (Withdrawal Agreement) Act of January 2020 gives effect to the transition arrangements until the 31 December 2020. This provides for EU law to be retained as UK law and also to bring in to effect obligations which may come in to force during the transition period.
- 3.5.2. This RR has been prepared on the basis of retained law and references in it to European terms such as Habitats have also been retained for consistency with the examination documents. It will be a matter for the SoS to satisfy themselves as to the position on retained law and obligations at the point of the decision.

The Habitats Directive

- 3.5.3. The Habitats Directive (92/43/EEC) forms a cornerstone of Europe's nature conservation policy. It is built around two pillars: a network of protected sites, and a system of species protection.
- 3.5.4. Habitat types designated as Special Areas of Conservation (SACs) are listed in Annex I of the directive. Animal and plant species of interest whose conservation requires the designation of SACs are listed in Annex II. SACs form part of the Natura 2000 ecological network of protected sites. Annex IV lists animal and plants species of interest in need of legal protection. All species listed in these annexes are identified as European Protected Species (EPS).

The Habitats Regulations

- 3.5.5. The Conservation of Habitats and Species Regulations 2017 are the principal means by which the Habitats Directive (and the Birds Directive) are transposed into the law of England and Wales. Assessment processes taking place pursuant to these regulations are referred to as Habitats Regulations Assessment (HRA).
- 3.5.6. The presence of SACs and their relationship to the Proposed Development has been considered in the Applicant's Habitats Regulations Assessment No Significant Effects Report [[APP-169](#)]. The presence of Annex I habitats and Annex II species, and also of any EPS, has also been considered within the assessment. We deal with the HRA in Chapter 6 and the other matters relating to biodiversity and ecology in Chapter 5.

The Water Framework Directive

- 3.5.7. On 23 October 2000, Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy, or in short the EU Water Framework Directive (WFD), was adopted. Representations from the Environment Agency in respect of the Applicant's Preliminary Water Framework Directive Assessment (pWFD) [[APP-156](#)] are considered in Chapter 5 of this report.

Air Quality Directive (Council Directive 2008/50/EC)

- 3.5.8. In general terms, UK Air quality legislation is driven by European and international obligations. Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe entered into force on 11 June 2008. It sets limit values for compliance and establishes control actions where the limit values (LV) are exceeded for ambient air quality with respect to sulphur dioxide (SO₂), nitrogen dioxide (NO₂) and mono-nitrogen oxides (NO_x), particulate matter (PM₁₀ and PM_{2.5}), lead, benzene and carbon monoxide. The Air Quality Standards Regulations 2010 give direct statutory effect to the AQD.
- 3.5.9. The UK Air Quality Strategy establishes the UK framework for air quality improvements with the Clean Air Strategy published in January 2019²³. It establishes a long-term vision for improving air quality in the UK and offers options to reduce the risk to health and the environment from air pollution. Individual plans prepared beneath its framework provide more detailed actions to address LV exceedances for individual pollutants. In turn, these plans set the framework for action in specific local settings where LV exceedances are found, including the designation of Clean Air Zones and more localised Air Quality Management Areas (AQMAs) where Air Quality Management Plans are prepared by local authorities.
- 3.5.10. ES Chapter 6 [[APP-051](#)] identifies one AQMA in the vicinity of the Proposed Development, located approximately 2km to the west of the existing M42 corridor. This has been declared as a city wide AQMA by Birmingham City Council, covering the entirety of their administrative area due to the exceedance of the NO₂ annual mean LV, and the exceedance of the 24-hour mean LV.
- 3.5.11. In July 2017, The Department for Environment, Food and Rural Affairs (DEFRA) published the "UK plan for tackling roadside nitrogen dioxide concentrations"²⁴. This is identified as the most immediate air quality

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/770715/clean-air-strategy-2019.pdf

²⁴ UK plan for tackling roadside nitrogen dioxide concentrations

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/633270/air-quality-plan-detail.pdf

challenge and the only statutory air quality limit that the UK is failing to meet. The focus of this plan is to achieve the statutory limit values for the whole of the UK within the shortest possible time.

3.5.12. In October 2018, DEFRA published its "Supplement to the UK plan for tackling roadside nitrogen dioxide concentrations"²⁵. This identifies Solihull as needing to bring forward compliance on two sections of the A45 with a projected exceedance of the annual mean NO₂ EU limit value.

3.5.13. We have considered these issues in Chapter 5 below.

3.6. OTHER LEGISLATION AND POLICY

Natural Environment and Rural Communities Act 2006 and the United Nations Environment Programme Convention on Biological Diversity 1992

3.6.1. The Natural Environment and Rural Communities Act 2006 (NERCA2006) makes provisions for bodies concerned with the natural environment and rural communities, in connection with wildlife sites and Sites of Special Scientific Interest (SSSIs). It includes a duty that every public body must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions, to the conservation of biodiversity (the biodiversity duty). The Act also requires that, as respects England, the SoS must publish a list of the living organisms and types of habitat which in the SoS's opinion are of principal importance for conserving biodiversity.

3.6.2. In complying with the biodiversity duty, regard must be had to the United Nations Environmental Programme Convention (UNEPC) on Biological Diversity of 1992. The UK Government ratified the Convention in June 1994. Responsibility for the UK contribution to the Convention lies with DEFRA who promote the integration of biodiversity into policies, projects and programmes within Government and beyond.

3.6.3. As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the UNEPC on Biological Diversity 1992 has been taken into account in consideration of the likely impacts of the Proposed Development and of appropriate objectives and mechanisms for mitigation and compensation.

3.6.4. We have had regard to NERCA2006 and the biodiversity duty in all relevant sections of this Report.

The Wildlife and Countryside Act 1981

²⁵ Supplement to the UK plan for tackling roadside nitrogen dioxide concentrations

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746100/air-quality-no2-plan-supplement.pdf

- 3.6.5. The Wildlife and Countryside Act 1981 (WACA1981) is the primary legislation which protects animals, plants, and certain habitats in the UK. It provides for the notification and confirmation of SSSIs. In England, these sites are identified for their flora, fauna, geological or physiographical interest by Natural England. WACA1981 also contains measures for the protection and management of SSSIs.
- 3.6.6. WACA1981 is divided into four parts: Part I relating to the protection of wildlife, Part II relating to designation of SSSIs and other designations, Part III on public rights of way and Part IV containing miscellaneous provisions. If a species protected under Part I is likely to be affected by development, a protected species licence will be required from NE.
- 3.6.7. The WACA1981 has relevance to the consideration of impacts on SSSIs and on protected species and habitats which are discussed in Chapter 5.

The Countryside and Rights of Way Act 2000

- 3.6.8. The Countryside and Rights of Way Act 2000 (CRWA) increases the protection and management of SSSIs, strengthens wildlife enforcement legislation and made provisions in relation to public rights of way.
- 3.6.9. The effects on SSSIs as well as the effects on rights of way and the ease of movement for Non-Motorised Users (NMUs) are considered in Chapter 5 of this report.

Protection of Badgers Act (1992)

- 3.6.10. The Protection of Badgers Act (1992) proscribes offences relating to badgers (taking, injuring or killing badgers; cruelty; interfering with badger setts; selling and possession of live badgers; marking and ringing of badgers), together with exceptions and licences, and enforcement and penalties.
- 3.6.11. The implications of the Proposed Development for badgers are provided in Chapter 9 of the ES [[APP-054](#)]. Appendix 9.4 of the ES includes a Confidential Badger Report [[APP-132](#)] which has been withheld from publication on the Planning Inspectorate's website.

The UK Biodiversity Action Plan

- 3.6.12. Priority habitats and species are listed in the UK Biodiversity Action Plan. The plan is relevant to the Application in view of the biodiversity and ecological considerations discussed in Chapters 4 and 5 of this Report.

Other Natural Environment Legislation

- 3.6.13. The following additional legislation contains relevant provisions that must be met and are considered in this Report:
- The Hedgerows Regulations 1997.

Climate Change

- 3.6.14. PA2008 s10(3)(a) requires the SoS to have regard to the desirability of mitigating, and adapting to, climate change in designating an NPS. This duty has been addressed throughout Chapter 5 of this Report.
- 3.6.15. The Climate Change Act 2008 establishes statutory climate change projections and carbon budgets, and these have been taken into account as relevant in Chapter 5 of this Report.

The Public Sector Equality Duty

- 3.6.16. The Equalities Act 2010 established a duty (the public sector equality duty (PSED)) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The PSED is applicable to the ExA in the conduct of this Examination and reporting and to the SoS in decision-making.

The Historic Built Environment

- 3.6.17. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, we have had regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess. Also as required by Regulation 3, we have had regard to the desirability of preserving or enhancing the character or appearance of conservation areas. These requirements are discussed in Chapter 5 of this Report. The SoS must also have regard to these requirements in making their decision.

Noise Policy Statement for England

- 3.6.18. The Noise Policy Statement for England (NPSE) seeks to clarify the underlying principles and aims in existing policy documents, legislation and guidance that relate to noise. The NPSE applies to all forms of noise, including environmental noise, neighbour noise and neighbourhood noise. The statement sets out the long-term vision of the Government's noise policy, which is to "promote good health and a good quality of life through the effective management of noise within the context of policy on sustainable development".
- 3.6.19. The Explanatory Note within the NPSE provides further guidance on defining 'significant adverse effects' and 'adverse effects', one such concept identifies "Lowest Observable Adverse Effect Level (LOAEL)", which is defined as the level above which adverse effects on health and quality of life can be detected. Other concepts identified are: Significant Observed Adverse Effect Level (SOAEL), which is the level above which significant adverse effects on health and quality of life occur; and No Observed Effect Level (NOEL), which is the level below which no effect can be detected. Below this level no detectable effect on health and quality of life due to noise can be established.
- 3.6.20. We have taken the NPSE into account in Chapter 5 of this report.

3.7. MADE DEVELOPMENT CONSENT ORDERS

- 3.7.1. The Applicant made reference to a number of precedents in made Orders and related approvals (an Order made under other legislation and approval granted by an Act of Parliament). References were included in the final version of the Explanatory Memorandum (EM) [REP9-013] (clean) [REP9-014] (tracked changes) and in the Applicant's written summary of its case put forward at ISH 2 (DCO 2) [REP3-015] and ISH 4 (DCO 3) [REP4-012].
- 3.7.2. Where appropriate, these, and precedents referred to by IPs, are considered in Chapter 9 of this Report.

3.8. TRANSBOUNDARY EFFECTS

- 3.8.1. Under Regulation 32 of the EIA Regulations, the Planning Inspectorate on behalf of the SoS has concluded that the Proposed Development is not likely to have significant effects on the environment in another European Economic Area (EEA) State.
- 3.8.2. The conclusions have been published in the Transboundary Screening matrices produced on behalf of the SoS dated 11 April 2018 and 29 July 2019 [[OD-005](#)]. Transboundary consultation under Regulation 32 of the EIA Regulations is not therefore considered necessary in relation to this application.
- 3.8.3. Nevertheless, the duty under Regulation 32 is an ongoing duty, and on that basis, the ExA has considered whether any facts have emerged to change these screening conclusions, up to the point of closure of the Examination. However, no mechanisms whereby any conceivable transboundary effects could occur emerged.

3.9. THE NATIONAL PLANNING POLICY FRAMEWORK

- 3.9.1. In February 2019, subsequent to the application being made in January 2019, the Secretary of State for Housing, Communities and Local Government published an updated National Planning Policy Framework (NPPF). It, and its accompanying Planning Practice Guidance (PPG), set out the Government's planning policies for England and how these are expected to be applied, for the particular purposes of making Development Plans and deciding applications for planning permission and related determinations under the Town and Country Planning Act 1990 (as amended) (TCPA1990).
- 3.9.2. NPPF paragraph 5 deals with NSIP applications and the text for both the current and previous versions are the same, making clear that it does not contain specific policies for nationally significant infrastructure projects.
- 3.9.3. Beyond paragraph 5, the updated NPPF consultation draft makes only one further reference to NPSs (at paragraph 104(e)), as per the previous version. None of the references to NPSs or NSIPs in the updated NPPF in any manner qualify the detailed content of the NNNPS.

3.9.4. In this regard, paragraphs 1.17 to 1.20 of the NNNPS further describe the relationship between the NPPF and the NNNPS. In summary, these paragraphs provide:

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

3.9.5. The updated NPPF does not change the relationship between the two documents. Consequently, the ExA has concluded that the updated NPPF does not make any material change to the policy context for this application that needs to be taken into account.

3.9.6. Nevertheless, NPPF policies have been considered in respect of all planning issues addressed in Chapter 5. They are drawn out there only where they identify different or additional considerations from those arising from NNNPS.

3.10. LOCAL IMPACT REPORTS

3.10.1. S104 of PA2008 states that in deciding an application the SoS must have regard to any LIR within the meaning of s60(3) of PA2008. A LIR is a report made by a relevant local authority giving details of the likely impact of a proposed development on the authority's area (or any part of that area) that had been invited and submitted to the ExA under s60 of PA2008.

3.10.2. LIRs have been received by the ExA from SMBC [[REP2-033](#)] and WCC, in partnership with NWBC [[REP2-038](#)].

3.10.3. The content of the LIRs is considered in Chapter 5 of this Report.

3.11. THE DEVELOPMENT PLAN

3.11.1. The LIR for SMBC explains that the current Solihull Local Plan was adopted in December 2013 and sets out the following policies the Council consider to be relevant to this application:

- Policy P10 – Natural Environment
- Policy P14 – Amenity
- Policy P15 – Securing Design Quality
- Policy P16 – Conservation of Heritage Assets and Local Distinctiveness
- Policy P17 – Countryside and Green Belt

- 3.11.2. SMBC also wishes to draw the attention of the ExA to a number of other Local Plan policies which the Council consider relevant. Those listed are:
- Policy P1 – Support Economic Success
 - Policy P7 – Accessibility and Ease of Access
 - Policy P8 – Managing Demand for Travel and Reducing Congestion,
 - Policy P9 – Climate Change
 - Policy P11 – Water Management
- 3.11.3. The LIR provides a link to the Solihull Local Plan²⁶ where these policies can be viewed.
- 3.11.4. Annex 2 to the Planning Statement and National Policy Statement Accordance Table [APP-173] sets out what the Applicant considers the key paragraphs and policies from the Solihull District Local Plan 2013 to be, and their relevance to the Proposed Development. These are:
- Paragraphs 4.1.9, 4.2.6, 5.4.1, 5.4.3, 5.4.7, 5.4.8, 7.1.1, 7.1.2, 7.1.3, 9.3.15, 9.3.16, 9.3.20
 - Policy 5.4 Spatial Strategy for Solihull
 - Policy P1 – Support Economic Success
 - Policy P8 – Managing Demand for Travel and Reducing Congestion
 - Policy P10 – Natural Environment
 - Policy P17 – Countryside and Green Belt
 - Policy P20 - Provision for Open Space, Children’s Play, Sport, Recreation and Leisure
- 3.11.5. The Applicant’s Planning Statement and National Policy Statement Accordance Table also references the Draft Solihull Local Plan Review (November 2016) (‘Draft Local Plan’), produced in November 2016. However, SMBC has not made reference to the Draft Local Plan in its LIR, and confirms that the Development Plan currently comprises the aforementioned Solihull Local Plan.

3.12. OTHER RELEVANT POLICY REFERENCES

- 3.12.1. Listed below are the other policies referred to by the Applicant, SMBC and WCC/ NWBC.

Applicant’s Planning Statement and National Policy Statement Accordance Table

- 3.12.2. Under Local Transport and Infrastructure Policy and Strategy:
- West Midlands Local Transport Plan (2011-2026);
 - Solihull Connected: Transport Strategy (2016);
 - Solihull Connected: Transport Strategy Delivery Plan 2016 – 2036;
 - Movement for Growth: The West Midlands Strategic Transport Plan;
 - Movement for Growth: 2026 Delivery Plan for Transport; and

²⁶ Solihull Local Plan
<https://www.solihull.gov.uk/Resident/Planning/appealsenforcement/planmaking/ldf/localplan>

- HS2 Growth Strategy Connectivity Programme (2015).

3.12.3. Under National Transport and Infrastructure Policy and Strategy

- Road Investment Strategy 2015/16 – 2019/20 Road Period
- National Infrastructure Delivery Plan 2016 - 2021
- Investing in Britain’s Future (June 2013)
- Action for Roads: A network for the 21st Century (July 2013)
- DfT single departmental plan (December 2017)
- Highways England Delivery Plan 2017 to 2018
- Transport Investment Strategy: Moving Britain Ahead (2017)

SMBC LIR

- Movement for Growth: The West Midlands Strategic Transport Plan
- Solihull Connected Transport Strategy 2016

WCC, in partnership with NWBC LIR

- West Midlands Combined Authority Strategic Economic Plan
- Coventry and Warwickshire Strategic Economic Plan
- Warwickshire Local Transport Plan (LTP3) 2011 – 2026
- Sub-Regional Green Infrastructure Strategy
- Road Investment Strategy for the 2015/2016 – 2019/2020 Road Period
- Midlands Connect – Long Term Midlands Motorway Hub Study
- Midlands Connect – A46 Strategic Corridor Study Stage 1 – Summary
- Birmingham Airport Surface Access Strategy 2018 – 2023

3.13. THE SECRETARY OF STATE’S POWERS TO MAKE A DCO

3.13.1. The ExA has remained aware throughout the Examination of the need to consider whether changes to the application documents have changed it to a point where it became a different application and whether the SoS would have power therefore under s114 of PA2008 to make a DCO having regard to the development consent applied for.

3.13.2. 'Planning Act 2008: Guidance for the examination of applications for development consent' (March 2015)²⁷ provides guidance at paragraphs 109 to 115 in relation to changing an application post Acceptance. The view expressed by the Government during the passage of the Localism Act was that s114(1) places the responsibility for making a DCO on the decision-maker and does not limit the terms in which it can be made.

3.13.3. Having considered this context throughout the Examination, it is clear that the changes to the application (primarily consisting of non-material [PD-015] and minor changes to the application), have not resulted in any significant change to that which was applied for. The changes taken into

²⁷https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/418015/examinations_guidance_-_final_for_publication.pdf

account in reaching this conclusion are documented in Section 2 of this Report.

- 3.13.4. It follows that the SoS has the power to make the DCO as recommended in Chapter 9 and provided in Appendix D to this report.

4. THE PLANNING ISSUES

4.1. MAIN ISSUES IN THE EXAMINATION

4.1.1. The ExA's Initial Assessment of Principal Issues was published on 23 April 2019 as Annex B to the Rule 6 letter which announced the Preliminary Meeting [[PD-004](#)]. This forms an initial assessment of the issues based on the application documents and submitted Relevant Representations (RRs). The list of issues relates to both the construction and operation phases of the Proposed Development. It addresses the following matters:

- The need for improvements at junction 6 on the M42, current baseline conditions and the compliance of the Scheme with the NNNPS and relevant Local Plans;
- The traffic and other improvements predicted due to the Scheme, the effects of possible variations, the robustness of the traffic modelling and experience in relation to any similar schemes elsewhere;
- The physical and functional relationship of the improvements at junction 6 with other projects, including the growth anticipated through the UK Central Hub, HS2, Birmingham International Airport and the NEC, as well as consideration of construction and operational effects;
- The impact of the Scheme on biodiversity, ecology and the natural environment, including construction and operational impacts on SSSIs, LNRs, Ancient Woodland etc;
- The impact of the Scheme on the landscape, heritage assets, local settlements and the countryside, including baseline perceptions and construction and operational effects;
- The impact of the Scheme on visual amenity and living conditions, including baseline perceptions and construction and operational effects;
- The content, justification and effectiveness of the Development Consent Order, including its adequacy and structure;
- The need and justification for the land proposed to be subject to compulsory acquisition and temporary possession, together with the availability of alternatives.

4.1.2. Much of the Order Lands lie within the Green Belt and the important Meridian Gap between Solihull and Coventry; such considerations must inform the overall planning balance. However, there are no 'specially protected' landscapes within the Order Lands and, apart from the loss of some Ancient Woodland at Asbury's Copse, the Scheme does not directly affect (in the sense of direct destruction) any site protected for nature conservation. In assessing the effects of the Scheme on the natural environment and living conditions the ExA addresses flood risks and air quality, together with noise and vibration. In considering the compliance of the Scheme with the aims of the NNNPS and its effects on living conditions, its impact on footpaths and NMUs is assessed.

4.1.3. The issues identified in the Rule 6 letter have informed the matters considered by the ExA throughout the Examination. Further issues have been raised as the Examination has progressed as a result of submissions

from IPs and APs, and issues raised by local authorities in their LIRs. All the issues raised are considered in this report.

4.2. ISSUES ARISING IN WRITTEN SUBMISSIONS

4.2.1. The representations received during the Examination fall into 3 broad classes. On the whole, those received from local people, the Residents' Associations, the Parish Councils and nature conservation or walking groups opposed the Scheme: those received from the Local Authorities and associated bodies or from commercial and business interests generally supported the proposal, subject to specific details or suitable protective provisions: those received from some statutory undertakers and some regulatory bodies were more neutral and sought mainly to ensure reasonable protection for their interests or adherence to the appropriate regulation.

4.2.2. Typical objections to the Scheme include:

- The inappropriate design of Junction 5A entailing 2 roundabouts and a dumb-bell configuration instead of slip roads with direct access and egress to the motorway;
- Concern about the access arrangements at Junction 6;
- The position, configuration and use of the main works compound on the village of Bickenhill;
- The disruption to existing travel patterns and severance due to the construction works and the design of the Scheme;
- The blighting effects of the Scheme on property and the harmful effects on living conditions;
- Concern that the Order Limits provide insufficient permanent and temporary land for the purposes of undertaking diversions to oil pipelines and the absence of suitable protective provisions;
- Impact on the openness of the Green Belt;
- Fundamental intrusion into the Green Belt and the Meridian Gap encouraging short distance trips on to the SRN, contrary to section 10 of the Highways Act 1980;
- Impact on the natural environment of the Grand Union Canal corridor including the effects of noise, air quality, landscape, visual intrusion and the drainage strategy;
- Impact on Bickenhill Meadows SSSI and loss of Ancient Woodland at Aspbury's Copse together with the inappropriate compensation measures proposed;
- The need to retain and enhance the north-south and east-west footpaths and the poor provision to maintain connectivity;
- Retention of a second access at the Haven Caravan Park;
- The need to maintain an access at Long Acre Farm;
- The need to retain field accesses to allow farming to continue;
- The disruption to the WGAA sports facilities and the unacceptable reconfiguration proposed; and,
- The impact of the reconfiguration of the WGAA sports field on neighbouring property.

4.2.3. In the light of the issues raised the ExA issued its first set of questions on 31 May 2019 [PD-006] seeking to explore several details of the Scheme but also the following main issues:

- The existence of a lighting strategy and the basis for the conclusion that night-time visual effects are not likely to be
- The relationship between the Scheme and the proposed MSA at Junction 5A, the effects of the latter on the former and the sub-standard weaving sections between Junction 5A and Junction 6 should the MSA be implemented
- The efficiency of the design of Junction 5A compared with uni-directional free flow slip roads
- The effects of the Scheme on PRowS
- The effects of the Scheme on archaeological remains and the completion of the archaeological investigations
- The apparent inconsistency in the value attached to heritage assets especially in comparison to the magnitude ascribed to the visual impact of the Scheme from specified viewpoints
- An explanation of apparent inconsistencies in describing the effects of the Scheme in several different viewpoints
- Details of the effects of the Scheme on protected habitats and species, including some apparently omitted, and details of the monitoring regime required to assess them, including the Biodiversity Management Plan, and compensatory measures
- The relationship between the Scheme and the economic growth initially anticipated in the M42 Economic Gateway Masterplan together with the ability of the Scheme to accommodate the growth anticipated
- The robustness of the Scheme to cope with the variability of traffic at Junction 6 and the additional traffic in the 'high growth' scenario

4.2.4. The ExA issued a second set of questions on 2 September 2019 [PD-008] pursuing the following issues in addition or supplementary to some of those outlined above:

- Whether or not the Scheme is an NSIP derived from a proper consideration of alternative proposals
- The impact on Aspbury's Copse of the widening required at Junction 5A to accommodate the traffic generated by the proposed MSA and the source of finance to undertake the consequential up-grade of the M42
- A justification for the 2-level grading of Conservation Areas and the contribution of Listed Buildings within them to that grading
- An apparent discrepancy in the estimated loss of BMV agricultural land
- An apparent contradiction in assessing the sensitivity of nature conservatin areas and Ancient Woodland
- The justification for setting the SOAELs for noise and vibration at the chosen levels and the implications for identifying significant adverse effects
- The justification for using guidance from Sport England on noise from artificial games pitches to assess the noise from the WGAA pitches

- Discrepancies in measuring the additional length of diverted footpaths and the possibility of providing additional footpath links across the M42
- The effect of the Scheme on the connections between the shopping and leisure facilities to the north of the A45 and residents to the south
- An explanation of the interrelationship between the hierarchical traffic models used in the TA
- An explanation of what future schemes might be required to accommodate the growth excluded from the TA in accordance with the WebTag guidance

4.2.5. The ExA issued a third and final set of questions on 23 September 2019 [PD-011] pursuing the following issues in addition or supplementary to some of those outlined above:

- Whether the OEMP is to be updated to include an Outline Management Plan for the Main Site Compound
- An explanation of the effects of introducing street lighting into dark rural areas and the measures to ensure that the latest lighting technology is to be used

4.2.6. Specific objections were also raised to the land and rights affected by CA and TP powers. These are considered specifically in Chapter 8.

4.3. ISSUES ARISING IN LOCAL IMPACT REPORTS

4.3.1. The Order Lands lie wholly within the domain of Solihull Metropolitan Borough Council although a regional perspective is provided by Warwickshire County Council. Both Councils have submitted Local Impact Reports [REP2-033 and REP2-038, respectively]. The Applicant has responded to each [REP3-011 and REP-012, respectively].

SMBC's LIR

4.3.2. The Council make the important point that that they seek to achieve the standards of assessment and mitigation of impact that are consistent with policy and their approach to any development project in their area. They recognise that, if consent is granted, they will be responsible for discharging the Requirements and enforcing some of the controls and elements of the Scheme. The Council has engaged with the Applicant throughout the project.

4.3.3. Junction 6 on the M42 lies beside the M42 Economic Gateway, a major economic growth driver in the Greater Birmingham and Solihull Local Enterprise Partnership (LEP) area and the location of key strategic assets such as Birmingham Airport, the National Exhibition Centre, Jaguar Land Rover, Birmingham and Blythe Valley Business Parks as well as more local concerns. It is one of the key investment locations within the LEP. Expansion of Birmingham Airport, the arrival of HS2 and other planned growth require additions to the existing strategic transport infrastructure of the M42, A45 and West Coast main line. The economic success of the area has put pressure on the M42 motorway junctions, in spite of the

Managed Motorways system, which the current improvements are designed to address.

4.3.4. Nevertheless, concerns remain that the impact of the Scheme is not always accurately assessed and that there are gaps in some of the background data. The main concerns are:

- In relation to biodiversity, that the data collection period for monitoring potential impacts on Bickenhill Meadows SSSI may be insufficient and that the mitigation proposed depends on a heavily engineered solution: that the mitigation for the loss of Ancient Woodland at Aspbury's Copse is unacceptable: that updates to the ES are required in relation to bats, aquatic habitats, great crested newts, fungi and lichen in Aspbury's Copse, risks to White Clawed Crayfish and protection for badgers: that relevant details are absent from the OEMP, Handover Environmental Management Plan (HEMP) and CEMP.
- In relation to the landscape, that the methodology and conclusions on landscape character and visual amenity are agreed, although clarification is required on several matters.
- In relation to archaeology, that insufficient information was then available so that the trial trenching must be completed, and the findings reported before the end of the Examination:
- In relation to cultural heritage, that the methodology is acceptable, although the level of impact is disputed.
- In relation to air quality, that the methodology and the policies referred to in assessing the impact are agreed: that information to allow the Council to comply with the Ministerial Directions on the A45 will be provided.
- In relation to noise and vibration, that the initial methodology and the various policies reviewed in the ES, including the British Standards and Code of Practice for Construction are agreed: that the proposed hours of construction are not agreed, working hours before 8am are not normally permitted.
- In relation to contaminated land, that the methodology and mitigation are agreed and that the overall effect on the neighbouring users is negligible.
- In relation to drainage, that further provision to ensure greater network resilience is sought with an appropriate hydrological design in the vicinity of the SSSI to minimise impact.
- In relation to population and health, that the methodology and assessment is appropriate: that several positive impacts on human health will outweigh the one minimal permanent and negative one.
- In relation to climate change that the methodology and assessment are acceptable: that an updated assessment using UKCP18 rather than UKCP09 is to be undertaken and submitted.

WCC's LIR

4.3.5. The County Council explain that this LIR has been prepared in consultation with North Warwickshire Borough Council.

4.3.6. The Council point out that the M42 Corridor is of strategic importance for the operation of the SRN nationally, regionally and locally; it provides the

connectivity which underpins economic growth nationally, regionally and within the Warwickshire sub-region. In addition, the M42 provides access to a key asset at Birmingham Airport, which is the region's gateway to international markets and trade. Overall, this Scheme is deemed to deliver significant operational benefits to the M42 Corridor building resilience and reliability into the Midlands Motorway Hub and improving access to Birmingham Airport. It is considered by the Authorities that the M42 Junction 6 improvements will have a positive impact on economic growth. The Scheme accords with the Strategic Economic Plans for the West Midlands Combined Authority and the Coventry & Warwickshire Local Enterprise Partnership. As well as meeting the requirements of National Planning Policy, the Airport Accessibility Strategy within the Warwickshire Local Transport Plan, and Birmingham Airport Surface Access Strategy.

4.3.7. Nevertheless, the Council raise matters that, although likely to have a neutral effect in the end, require further consideration:

- Ecological considerations, such as the impact on SSSIs, Ancient Woodland, species and habitats and appropriate mitigation;
- Traffic management during construction, the effects of closures and diversions on the wider road network and the routes to be used by construction vehicles;
- A communications strategy for liaising with public authorities and local people.

4.3.8. WCC is continuing to engage with the Applicant and an SoCG is being prepared to resolve the matters identified [initially at REP2-010 and finally at AS-042]. Both the County and the Borough will continue to work with the Applicant both fully support the proposals which, when completed, will deliver real benefits nationally and regionally.

4.4. CONFORMITY WITH THE NATIONAL POLICY STATEMENT ON NATIONAL NETWORKS

4.4.1. The M42 motorway forms a key part of the SRN. The NNNPS identifies (at paragraph 2.2) that there is *'a critical need to improve the national networks to address road congestion ... to provide safe, expeditious and resilient networks that better support social and economic activity'* and states that *'Improvements may also be required to address the impact of the national networks on quality of life and environmental factors'*. At paragraph 2.6, the NNNPS indicates that *'There is also a need for development on the national networks to support national and local economic growth and regeneration, particularly in the most disadvantaged areas. Improved and new transport links can facilitate economic growth by bringing businesses closer to their workers, their markets and each other. This can help rebalance the economy'. ... 'The government has therefore concluded that at a strategic level there is a compelling need for development of the national networks - both as individual networks and as an integrated system'* (paragraph 2.10 of the NNNPS)

- 4.4.2. The NNNPS considers a range of options for addressing the need for improvement, including maintenance and asset management, demand management and modal shift, but concludes that relying on these options, or a combination of them, is not desirable or viable as a means of managing need. Furthermore, without improving the road network, including its performance, the NNNPS (at paragraph 2.22) insists that *'it will be difficult to support further economic development, employment and housing and this will impede economic growth and people's quality of life. The government has therefore concluded that at a strategic level there is a compelling need for development of the national road network'*. Hence, *'subject to the detailed policies and protections in this NPS, and the legal constraints set out in the Planning Act, there is a presumption in favour of granting planning development consent for national networks NSIPs that fall within the need for infrastructure established in this NPS'* (NNNPS paragraph 4.2).
- 4.4.3. In addressing the congestion and journey reliability issues identified at Junction 6 of the M42 and by improving traffic flows and access to Birmingham, Solihull and Coventry, as well as allowing for the impending growth at Birmingham Airport, the NEC, and HS2, this Scheme chimes with the aims of the NNNPS, as long as it also meets the relevant environmental targets where possible and provides most appropriate mitigation where it can.
- 4.4.4. The ExA considers that the Scheme would satisfy the broad principles and strategic aims of the NPSNN and that there is a compelling need in the public interest to meet the needs for the development of the road network in this location, as outlined in paragraphs 2.10 and 2.22. Compliance with the detailed NPSNN policies and protections will be considered in Chapter 5.

4.5. CONFORMITY WITH THE DEVELOPMENT PLAN

- 4.5.1. The current Solihull Local Plan was adopted in December 2013 and the Council considers the following policies are relevant in relation to assessing the impact of this NSIP:
- Policy P17 - Countryside and Green Belt aims to safeguard the 'best and most versatile' agricultural land unless there is an overriding need for the development and inappropriate development in the Green Belt, is to be prevented unless there are very special circumstances. The Council explain that they consider that 'very special circumstances' are demonstrated in relation to this NSIP.
 - Policy P14 - Amenity seeks to protect and enhance the amenity of existing and potential occupiers of houses, businesses and other uses and permit new development only if it respects such amenity. Mitigation measures are required to minimise any unavoidable adverse effects.
 - Policy P15 - Securing Design Quality aims to secure good quality and sustainable design.

- Policy P9 - Climate Change aims to secure the sustainable long-term use of new development through flexible, robust and future-proofed design.
- Policy P11 - deals with water management;
- Policy P10 - addresses the natural environment and, where adverse effect is identified, restoration or mitigation is required in accordance with the Green Infrastructure Study. Reference is also made to the Local Biodiversity Action Plan, the Local Geological Action Plan, the Green Spaces Strategy and the West Midlands Sustainability Checklist.
- Policy P20 - addresses the provision for open space, children's play, sport, recreation and leisure.
- Policy P16 – addresses the conservation of heritage assets and local distinctiveness. And refers to Listed Buildings, Scheduled Ancient Monuments, Registered Parks and Gardens, Conservation Areas, non-designated assets and archaeological sites.

4.5.2. In addition, other Local Plan policies provide direct support for the Scheme. These include:

- Policy P1 - Support Economic Success, which seeks to foster economic development and growth;
- Policy P7 - Accessibility and Ease of Access,
- Policy P8 - Managing Demand for Travel and Reducing Congestion,
- Policy P9 - Climate Change, and
- Policy P11 - Water Management.

4.5.3. The Council accepts that if there is a conflict between local planning policy and policy within the NNNPS, the latter document will prevail.

4.5.4. Taking account of the Development Plan as a whole, the ExA considers that the Scheme generally conforms with the Development Plan because:

- It is supported by the policies fostering accessibility and economic growth in this growth corridor; and
- It addresses the policies relating to environmental protection, water quality, biodiversity, landscape and archaeology policies and includes mitigation measures where adverse effects are identified;

4.6. APPLICATION OF OTHER POLICIES

4.6.1. Section 3.9 refers to the NPPF. It also refers to paragraphs 1.17 to 1.20 of the NNNPS, which indicate that the NPPF:

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

4.6.2. SMBC refer to other policy documents and guidance, of which the most relevant in relation to the local settlements effects by the Scheme is Manual for Streets. Otherwise they point out that development within the M42 Economic Gateway will be expected to be of the highest quality and follow the national guidance on Design and Access Statements.

4.6.3. Other documents referred to include:

- The Local Policy Transport Plan
- The West Midlands Strategic Transport Plan 'Movement for Growth' published by the West Midlands Combined Authority
- The Solihull Connected Transport Strategy 2016
- The Sustainable Community Strategy for Solihull.

4.6.4. WCC refer to regional strategies to foster economic growth and connectivity, including:

- The West Midlands Combined Authority (WMCA) Strategic Economic Plan setting out the economic objectives and strategy for the West Midlands Conurbation, including Birmingham, Coventry, Dudley, Sandwell, Walsall, and Wolverhampton.
- The Coventry and Warwickshire Local Enterprise Partnership (CWLEP), updated for the Coventry and Warwickshire Sub Region in August 2016. One of the key elements is the promotion of 'UK Central' (previously known as the M42 Economic Gateway) in Solihull as the principal international gateway for the West Midlands, including the enhancement of the A446 corridor to provide the connectivity and to mitigate the local impact of HS2.
- Warwickshire's Local Transport Plan 2011-2016 (LTP). The LTP includes an Airport Accessibility Strategy for the County which addresses Surface Access Strategies and relates to the Network Management Strategy.

4.6.5. The Examination has taken account of these documents and of the ability of the Scheme to accommodate their proposals, principally in the context of addressing the vision originally set out in the M42 Economic Gateway Strategy and now consolidated in the proposals for the UK Central Hub.

4.7. THE NEED FOR DEVELOPMENT

4.7.1. As indicated in section 5.2, the disparity between the aims set out in the NNNPS and the performance of the M42 corridor highlights issues relate to:

- the need to accommodate development planned around the M42 Junction 6;
- the need to address congestion on the M42 at Junction 6;
- the need to reduce the operational limitations imposed by Junction 6 on the M42 as the congestion predicted is likely to result in unacceptable levels of service; and
- the need to prevent further deterioration in road safety.

4.7.2. This DCO Scheme is a key phase in an ambitious programme of further development envisaged by SMBC and supported by Government bodies.

Without the improvements proposed as part of this Scheme several projects included in the Government's Growth Strategy and developed through UK Central and Solihull Urban Growth Company [APP-048 and APP-049] will be in jeopardy through the failure to provide the connectivity required. The M42 Economic Gateway Masterplan, now superseded by the UK Central Hub - Growth and Infrastructure Plan (2018) and reflected in both the emerging Local Plan Review and the UK Central strategy, seek to build on the opportunities offered by HS2 and its juxtaposition with strategic commercial and business concerns.

4.8. ENVIRONMENTAL IMPACT ASSESSMENT

4.8.1. As indicated in Chapter 1, the Scheme is EIA development. The ES is prepared in accordance with the requirements of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. The Submitted ES provided with the application entails:

- Chapter 1 - Introduction [APP-046]
- Chapter 2 - Site and Surroundings [APP-047]
- Chapter 3 - The Project [APP-049]
- Chapter 4 - Scheme History and Alternatives [APP-050]
- Chapter 5 - EIA Methodology and Consultation [APP-051]
- Chapter 6 - Air Quality [APP-052]
- Chapter 7 - Cultural Heritage [APP-053]
- Chapter 8 - Landscape [APP-054]
- Chapter 9 - Biodiversity [APP-055]
- Chapter 10 - Geology and Soils [APP-056]
- Chapter 11 - Material Assets and Waste [APP-057]
- Chapter 12 - Noise and Vibration [APP-058]
- Chapter 13 - Population and Health [APP-059]
- Chapter 14 - Road Drainage and the Water Environment [APP-060]
- Chapter 15 - Climate [APP-061]
- Chapter 16 - Assessment of Cumulative Effects [APP-062]
- Chapter 17 - Summary of Residual Effects [APP-063]
- Non-technical summary [APP-165]

4.8.2. The chapters are supported by several figures [APP-064 to APP-112] and appendices [APP-113 to APP-164]. During the Examination updates and additions were submitted. These include:

- Chapter 15 (a) - Climate [REP3-003]
- Appendix 14.2 (a) Bickenhill Meadows SSSI - Preliminary Hydrological Investigation Technical Note [REP3-004]
- Figure 9.1A (a) Statutory Nature Conservation Designations Within the Study Area [REP2-028]
- Figure 9.1B (a) Non-Statutory Nature Conservation Designations Within the Study Area [REP2-029]
- Aquatic Macroinvertebrate Survey Report [REP3-013]
- Bat Survey Report [REP3-014]
- Lichen Survey Report [REP4-003]
- Archaeological Investigation Report [REP4-004]
- Great Crested Newt Survey [REP-005]
- Position Statement on SSSI Mitigation [REP4-006]

- Soil Survey Report [REP4-007]
- Bat Survey Report [AS-034]
- Ancient Woodland Clarifications and Proposed Additional Measures Technical Note [AS-035]
- Fungi Survey Report [REP6-007], and
- Bat Survey Report, Addendum [REP6-016]

4.8.3. The ES is supported by an Outline Environmental Management Plan (OEMP) which is to be transformed into Construction Environmental Management Plan (CEMP); the latter must include the Construction Management Plan for the Main Site Compound, the scope of which is now widened to include the satellite compounds. The OEMP [REP9-019] underlying outline management plans that sit beneath it are to be certified in accordance with Article 44 and Schedule 13 of the DCO. The Applicant (or its Principal Contractor) must make the CEMP in accordance with OEMP and must include, amongst other things, a Compound Management Plan (R4). Additional environmental commitments are made in the REAC.

4.8.4. The OEMP includes, as appendices:

- Appendix A: Outline Dust, Noise and Nuisance Management Plan;
- Appendix B: Outline Site Waste Management Plan;
- Appendix C: Outline Environmental Control Plan: Invasive Species;
- Appendix D: Outline Environmental Control Plan: General Ecology;
- Appendix E: Outline Soil Management Plan;
- Appendix F: Outline Surface Water Management Plan;
- Appendix G: Outline COSHH (Control of Substances Hazardous to Health) Material, Waste Storage and Refuelling Plan;
- Appendix H: Outline Energy and Resource Use Management Plan;
- Appendix I: Outline Materials Management Plan;
- Appendix J: Outline Contaminated Land Management Plan;
- Appendix K: Outline Archaeological Control Plan;
- Appendix L: Outline Pollution Prevention Plan;
- Appendix M: Outline Bird Strike Management Plan;
- Appendix N: Outline Crane Management Plan;
- Appendix O: Outline Biodiversity Management Plan; and
- Appendix P: Outline Compound Management Plan.

4.8.5. Both SMBC and WCC broadly agree with the adequacy, methodology, coverage and mitigation measures proposed in the ES. Although gaps in the data and the need to further explore some of the results are identified, those shortcomings are addressed in the updates and additions listed above.

4.8.6. Some criticism is made of the consideration of alternatives [REP3-027] and of using typical noise emissions from artificial grass pitches to simulate the noise from the competitive matches played at the WGAA pitches [EV-041]. However, the ExA considers that the former is derived from a misunderstanding²⁸ and the latter is not an unreasonable

²⁸ See section 5.2

approach in the circumstance. The overall adequacy of the ES was not raised as an issue in its own right during the Examination.

- 4.8.7. Hence the ExA considers that the ES, together with the other information submitted by the Applicant during the Examination, provides an adequate assessment of the environmental effects of the Scheme, sufficient to assess the maximum adverse effect associated with it and to secure its delivery within the envelope of that assessment.
- 4.8.8. A full account has been taken of all environmental information in the assessment of the application and in the recommendation to the SoS

4.9. HABITATS REGULATIONS ASSESMENT

- 4.9.1. The application was accompanied by an HRA Report [APP-169] indicating the absence of any significant effect. Figure 9.1A(a) portrays the location of Statutory Nature Conservation Designations Within the Study Area [REP2-028], but none is a European site. Of the 4 European sites within 30km of the Scheme (Ensor's Pool SAC, Fens Pools SAC, Cannock Extension Canal SAC and the River Mease SAC), the nearest is Ensor's Pool, which is some 16km distant. Natural England, in their response to ExQ2 [REP2-032], confirmed their satisfaction with the methodology that was used for the HRA and with the European sites and features that were considered. They also confirmed that they had reviewed the DCO application and the No Significant Effects Report and agreed that there was no potential for likely significant effects on any of the European Sites. The HRA implications of the Scheme are considered in chapter 6. There are no matters germane to HRA that require to be considered here.

4.10. Conclusion

- 4.10.1. The principle of the Scheme is in accordance with the NNNPS and the policies set out in the Development Plan and supporting or strategic documents. Alternatives to the Scheme are addressed. The individual planning issues are considered in Chapter 5.

5. FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING ISSUES

5.1. INTRODUCTION

5.1.1. This chapter sets out the traffic and transportation case for the proposed development and the impact of the scheme on the environmental matters addressed in the Environmental Statement and elsewhere. Each sub-section is presented within a largely common framework:

- policy background;
- Applicant's approach;
- issues arising; and
- summary and conclusions.

5.1.2. Matters relating to the overarching legal and policy context are considered in Chapters 3 and 4 respectively. In this chapter the following sections address:

- Need: roads, tracks and traffic, and
- The impact of the scheme on:
 - Cultural heritage
 - Air quality
 - Ecology
 - Landscape and visual effects
 - The Green Belt
 - Population and health:
 - Geology and soils:
 - Materials and waste
 - Road drainage and the water environment
 - Noise and vibration
 - Climate
- The relationship of the scheme to other projects
- Utilities
- Cumulative and residual effects
- Conclusions

5.2. Need: Roads, Tracks and Traffic

Policy Background

5.2.1. The NNNPS sets out general policies for deciding relevant infrastructure projects.

- Subject to the detailed policies and protections in this NPS, and the legal constraints set out in the Planning Act, 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. The statutory framework for deciding NSIP applications where there is a relevant designated NPS is set out in s104 of the Planning Act

- In considering any proposed development, and in particular when weighing its adverse impacts against its benefits, the Examining Authority and the Secretary of State should take into account:
- Its potential benefits including the facilitation of economic development, including job creation, housing and environmental improvement, and any long-term or wider benefits;
- Its potential adverse impacts, including any longer-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts²⁹.

5.2.2. It is expected that appropriate mitigation measures will be taken to address adverse effects on coastal access, National Trails, other public rights of way and open access land and, where appropriate, to consider what opportunities there may be to improve access. Revisions to an existing right of way should have regard to its use, character, attractiveness and convenience. It is stated that:

- The Secretary of State should consider whether the mitigation measures put forward by an applicant are acceptable and whether requirements in respect of these measures might be attached to any grant of development consent³⁰.

5.2.3. It is asserted that:

- Without improving the road network, including its performance, it will be difficult to support further economic development, employment and housing and this will impede economic growth and reduce people's quality of life. The Government has therefore concluded that at a strategic level there is a compelling need for development of the national road network³¹.

5.2.4. To that end, it is stated that the Government will deliver national networks that meet the country's long-term needs; supporting a prosperous and competitive economy and improving overall quality of life, as part of a wider transport system³². This means creating networks:

- with the capacity and connectivity to support national and local economic activity and facilitate growth and create jobs;
- which support and improve journey quality, reliability and safety;
- which support the delivery of environmental goals and the move to a low carbon economy; and,
- which join up our communities and link effectively to each other

5.2.5. The Scheme is deemed to meet those objectives because:

- It has been designed to address the congestion and journey reliability issues identified at Junction 6 of the M42, thereby enhancing, rather than reducing, economic growth, journey times, reliability and safety.

²⁹ Paragraph 4.2 and 4.3 of the NNNPS

³⁰ Paragraph 5.184 of the NNNPS

³¹ Paragraph 2.22 of the NNNPS

³² Summary of need in the box before paragraph 2.1 in the NPSNN

The junction is expected to exceed its capacity by 2019, so that the scheme will contribute to the efficiency of this part of the strategic road network (SRN).

- It is expected to improve traffic flows at Junction 6, as well as relieving demand on the gyratory, through the provision of segregated lanes and a new mainline link road between the proposed Junction 5A and the Clock Interchange, essentially by-passing Junction 6. This will provide better access for the economic hubs of Birmingham, Solihull and Coventry. It will also improve access for key businesses, including Birmingham Airport, Birmingham International railway station, the NEC, the NMM and NCC, and for the future HS2 Birmingham Interchange railway station.
- It is expected to save journey time on most routes, an effect attributed to the reassignment of traffic on to the new mainline link road.
- It is also expected to save lives, achieving a 1.1% reduction in accidents involving deaths or serious injury on the national road network, enhancing safety and reducing driver stress,
- It is deemed to meet the relevant environmental targets and provide appropriate mitigation.
- It is deemed to maintain or improve connections between people and communities by providing high quality NMU routes, including a new NMU footbridge over the A45.

5.2.6. In addition, the West Midlands Combined Authority (WMCA) has set out an ambitious plan for growth in its Strategic Economic Plan and has established a 20-year vision for the transport system required. The Movement for Growth Strategic Transport Plan (MfG) provides a high-level policy framework for improving the transport system serving the West Midlands. The first joint Delivery Plan indicates what transport initiatives and schemes the WMCA will deliver by 2026 to support the Movement for Growth Strategic Transport Plan. The measures are designed to unlock economic growth opportunities and support wider initiatives to improve the social well-being and lives of residents.

5.2.7. Measures involving Junction 6 on the M42 are included in Table 1 which lists 'Movement for Growth Key Priorities and Committed Schemes and Projects'. A suite of schemes aims to deliver improved motorway junctions on the Motorway Box M6, M5, M42, M40, including major improvements at M42 Junction 6 with development work on upgrades to junctions on the Birmingham Box. A second tranche of projects aims to deliver improved connections to, and within, the UK Central Hub Area, involving improvements to M42 Junction 6, implementation of the HS2 Connectivity Package and related schemes. There are also proposals to enhance the Interchange Hub and the A45 corridor.

Performance against Policy

5.2.8. Junction 6 on the M42 is one of the busiest junctions on the Strategic Road Network [APP-174]. The motorway provides a connection for long-distance traffic around the south and east of Birmingham between the M5, the M40, the M6, and, via the A42, to the M1. But it also partially serves as a 'ring road' around the conurbation for more local traffic

seeking routes to and from local centres or local attractions. Junction 6 lies at a crossroads where this long-distance and orbital traffic intersects with a major regional route (the A45) between Birmingham and Coventry providing access to major regional traffic generators, such as Birmingham International Airport and Railway Station, the NEC and other industrial and commercial operations [APP-048 and APP-049].

- 5.2.9. VISSIM analysis of the junction performance [REP3-019] shows that in the base year (2016) there can be long queues and very low levels of service during peak hours at Junction 6. For example, during the PM peak, queues can extend back from Junction 6 to the Clock Interchange along the western approach of the A45 with long queues also forming on the gyratory itself and levels of service (LoS) providing only 'unstable flows' through a junction 'operating at capacity' (LoS E). Long queues can also build up on the southern approach from the M42 with the level of service on the gyratory 'approaching an unstable flow' (LoS D). Little is predicted to change in the 'do-minimum' scenario by 2041, although the LoS on the gyratory marginally improves to LoS D while that on the southern approach from the M42 (rather than on the gyratory) falls to LoS D.
- 5.2.10. These are long-term problems. In preparing for the growth proposed in an emerging Core Strategy (now part of the adopted Local Plan (2013)), SMBC and the Highways Agency assessed the transport impact of the Strategy on the road network in the area, including the M42 corridor. The Mott MacDonald report³³, published in March 2011 for SMBC and the Highways Agency, concluded that Junction 6 on the M42 was already congested in 2006. The growth proposed was forecast to exacerbate pressure on the M42 corridor between junctions 3a and 7 with journey times increasing by up to 50% (even up to 80% by 2026) and all junctions on the M42 within Solihull showing evidence of congestion in the 2026 forecasts.

The Need and Funding for the Scheme

- 5.2.11. The disparity between the aims set out in the NNNPS and the performance of the M42 corridor highlights issues relating to:
- the need to accommodate development planned around the M42 Junction 6, with the potential to have a marked impact on the economy, connectivity and accessibility;
 - the need to address congestion with the M42 Junction 6 being at near-capacity and the demands of current events contributing to significant congestion on the motorway and the local road network;
 - the need to reduce the operational limitations imposed by Junction 6 on the M42 since, notwithstanding the pressures from future planned development, the level of congestion predicted is likely to result in unacceptable levels of service; and

³³ Solihull Core Strategy - PRISM Modelling, Mott MacDonald, March 2011

- the need to prevent further deterioration in road safety predicted around M42 Junction 6 potentially resulting in increased accident rates.

5.2.12. Work initially undertaken by the Highways Agency identified that doing nothing would exacerbate existing problems of safety, congestion and unacceptable service levels, curtailing connectivity and stifling development. The Agency worked with SMBC to identify potential solutions, a scheme being announced in the Autumn Statement of 2014 and included in the Road Investment Strategy (RIS) 2015-2021 [APP-048 and APP-049]. The RIS outlines how the Government plans to invest in the SRN and now commits Highways England (replacing the Highways Agency) to undertake a comprehensive upgrade of Junction 6. The delivery and funding of the Scheme is through the RIS. During 2015 to 2017, the Applicant carried out a feasibility study to identify the best option to take forward, culminating in a preferred Scheme advanced to the level of a preliminary design.

The Applicant's Approach

5.2.13. The new mainline link road is to have a speed limit of 70mph and the Order Lands extend to almost 256ha [APP-048]. The Scheme is in England and Highways England, a strategic highways company, will be the highway authority for most of the Scheme, SMBC being the highway authority for the local road network. Although elements of alteration and improvement of the existing highway network are also involved, those elements either connect to the SRN or they are required to facilitate the Scheme. It follows that the Proposed Development meets the definition of an NSIP set out in s14(1)(h) and 22(1)(a), 22(2)(a), (b) and (c) and 22(4) of PA2008. The application is made accordingly.

Options

5.2.14. Forty options arranged in 5 general themes were initially identified as capable of meeting the Scheme objectives³⁴. Six options involved junctions north and south of Junction 6: 13 options entailed only a junction to the south of Junction 6: 5 options focussed on an interchange: 3 options involved only a northern junction: and, 13 options involved 'do-minimum' and 'do-something' solutions. A high-level assessment process reduced the 40 options to 18 and a further detailed assessment (using an Early Assessment Sifting Tool) further whittled the options down to a shortlist of 6, albeit still representing all 5 themes. The remaining 6 options were subject to a more detailed assessment entailing their environmental impact, highway geometry, buildability, safety, traffic benefits, cost estimates and responses from stakeholders. The options representing 4 themes were discounted due to their high cost and low value for money, their impact on safety in providing insufficient weaving lengths between junctions, their environmental

³⁴ M42 Junction 6 Improvement Scheme: Technical Appraisal Report (SGAR1), Mouchel, 2016

impact on an SSSI, or their low traffic benefits and major disruption to the network.

- 5.2.15. The schemes taken forward for further development and to public consultation were all variants of the southern junction theme in combination with the provision of the appropriate number of free-flow 'left-turn' links at Junction 6. These options all had sufficient traffic benefits, no major safety and geometric concerns and could largely be built offline; they also provided good value for money and had stakeholder support.
- Option 1 involves a southern junction 2km south of Junction 6 with a link road to the A45 at the Clock Interchange to the west of Bickenhill village.
 - Option 2 also consists of a southern junction 2km south of Junction 6 but with a link road to the A45 at Clock Interchange via an additional roundabout east of Bickenhill village.
 - Option 3 entails a southern junction 1km south of Junction 6 with only south facing slip roads and a link road to the A45 at Clock Interchange via an additional roundabout.
 - Each of those options were assessed in combination with the number of free-flow 'left-turn' links at Junction 6 that proved to be appropriate.

- 5.2.16. The DCO scheme is largely an amalgam of options 1 and 3 with some refinements. There are 2 free-flow 'left-turn' links at Junction 6 and a new southern junction some 1.8km south of Junction 6 with south facing slip roads (Junction 5A) connected to the A45 at the Clock Interchange by a 2.4km link road aligned to the west of Bickenhill village. There are other capacity and junction improvements both at Clock Interchange and Junction 6 entailing the provision of additional lanes and 'free-flow' links.

Locational Constraints on Junction 5A

- 5.2.17. The location of Junction 5A is constrained by the connection of the mainline link road to the Clock Interchange and by the Airport Way free-flow link overbridge, Bickenhill Village, the Haven Caravan Park, properties along the local roads, Bickenhill Meadows SSSI, Aspbury's Copse Ancient Woodland and the WGAA sports ground [REP3-018]. The northern connection to the Clock Interchange is effectively fixed by the overbridge. The alignment to the west of Catherine-de-Barnes Lane is narrowly constrained by existing land uses and the highway geometry requirements of DMRB; this largely defines the position for the Catherine-de-Barnes south overbridge. Variations from the alignment defined in the DCO, either to the east or west, are likely to result in additional environmental impacts on adjacent land uses or the WGAA or both. Radically different alignments for the mainline link road to the east of Catherine-de-Barnes Lane will adversely affect Bickenhill Meadows SSSI and Bickenhill Village Conservation Area. There is a bit more flexibility between the Catherine-de-Barnes south overbridge and the M42. But here the protected habitats of Bickenhill Meadows SSSI and Aspbury's Copse Ancient Woodland serve as constraints, as does the highway geometry required by DMRB.

- 5.2.18. In addition, the location of Junction 5A is constrained by its position between junctions 5 and 6 on the M42. The distance between those junctions is about 5.6km. The minimum weaving length required by DMRB³⁵ for successive merges and diverges is 2km on a rural motorway. Where this requirement cannot be met a departure from standard can be sought. In this case there is some scope to move Junction 5A northwards if it remains with only south facing slip roads. But that arrangement precludes the possibility of an MSA at this location, a preclusion that this Scheme seeks to avoid. The prospective MSA developer at Junction 5A has claimed to have secured approval in principle from the Applicant for a departure from standards to reduce the weaving length from 2km to approximately 1.1km, subject to upgrading the running regime of the motorway. There is thus very little scope for further alterations, either north or south, to the position of Junction 5A.
- 5.2.19. A further constraint is the position of 132kV overhead powerlines across the Order Lands. The 2 overhead powerlines run to the west, and parallel with, the motorway. The clearances are about 15m, although that can vary with localised ground conditions. While that provides about double the 6.7m minimum clearance required between existing overhead powerlines and the road surface, the powerlines and pylons act as a constraint since a diversion is required if they clash with the proposed road infrastructure.
- 5.2.20. To test the practical implications of varying the position of Junction 5A, 4 options were considered. It is stated that none would remove all impact on the Ancient Woodland at Aspbury's Copse, although it is clear from the submitted drawing that the impact reduces as the location moves north. Option 1 involved positioning the junction at the midway point between junctions 5 and 6. This is a little to the south of the Scheme location with the western roundabout of the dumb-bell junction and the mainline link road on land identified in the planning application for the MSA. Option 2 involved positioning the junction about 100m to the north of the location currently proposed in Scheme. This required a tighter curved alignment for the mainline link road and jeopardised the possibility of introducing north facing slip roads. Option 3 involved a location even further north; some 250m north of the DCO Scheme. This required an even tighter curved alignment for the mainline link road, necessitated diversion of the 132kV powerlines, reduced the natural catchment to maintain the Bickenhill Meadows SSSI and practically ruled out the possibility of introducing north facing slip roads. Option 4 involved a location some 300m north of the DCO Scheme. This required an even tighter curved alignment for the mainline link road, necessitated diversion of the 132kV powerlines, reduced the natural catchment to maintain the Bickenhill Meadows SSSI and practically ruled out the possibility of introducing north facing slip roads.
- 5.2.21. In comparison with the options tested, the position of Junction 5A proposed in the DCO Scheme is expected to have:

³⁵ TD22/06 – Layout of Grade Separated Junctions, Section 4.35

- less impact on the natural catchment of the Bickenhill Meadows SSSI SE Unit;
- less impact on the Green Belt with a reduced Scheme footprint;
- not preclude modification of the Junction to allow for the introduction of north facing slip roads to serve a potential MSA or other infrastructure, subject to necessary consents; and,
- not impact on the 132kV powerlines.

Traffic Models and Forecasts

- 5.2.22. A hierarchical approach is followed [APP-174, REP3-006]. The Policy Responsive Integrated Strategy Model (PRISM) for the West Midlands provides a strategic multi-modal model covering the whole of the West Midlands. It is used to assess strategic route choice, modal split, variations by time of day and park and ride, amongst other matters. A more detailed Local Area Model (LAM) retains the strategic highway movements from PRISM but incorporates more detailed movements around junctions closer to the proposed Scheme. An Operational Model (OM) focusses on a cordon from the LAM to investigate details of routes and junction operations entailing queuing, delay and driving behaviour. Finally, the operational capacity of junctions is assessed using programmes such as ARCADY (for the Junction 5A roundabouts, the Barber's Coppice roundabout and East Way roundabout) or LinSig (for the Clock Interchange signalised gyratory). However, it appears that the new Bickenhill roundabout has not been assessed using ARCADY or any other method. Due to its complicated layout, Junction 6 is assessed using VISSIM software. This provides LoS values associated with average delays³⁶ and information on queuing: it does not provide comparable information to programmes such as ARCADY and LinSig on capacity (like the 'degree of saturation' (DoS) or the ratio of flow to capacity (RFC).
- 5.2.23. Traffic flows are modelled in PRISM and LAM for the AM peak (08:00-09:00) and inter-peak (IP) (an average hour between 09:30-15:30) and the PM peak (17:00-18:00). They are validated for the base year (2016) and forecast for a 'Do Minimum' scheme (DM) without the M42 Junction 6 improvement and a 'Do Something' proposal (DS) with the improvement Scheme for the years 2021, 2026 (the assumed opening of HS2), 2031 and 2041. The OM only models 2016 (the base year) and 2041 while the junction models are derived from the 2041 AM and PM peak hour LAM forecasts.
- 5.2.24. The models assess both 'demand' and 'actual' flows. 'Demand' flows represent all traffic travelling from its origin to its destination within the modelled period. However, if queues occur due to capacity constraints not all traffic will arrive at its destination, thereby restricting the 'actual' flow. For design purposes, 'demand' flows are used for all junctions except for the Barber's Coppice roundabout. Here the ARCADY results for

³⁶ LoS A=Free flow (delay<10 secs): LoS B=Reasonably free flow (delay>10 to 20 secs): LoS C=Stable flow (delay>20 to 35 secs): LoS D=Approaching unstable flow (delay>35 to 55 secs): LoS E=Unstable flow, operating at capacity (delay>55 to 80 secs): LoS F=Forced or breakdown flow (delay>80 secs)

'demand' flows and northbound traffic on Catherine-de-Barnes Lane result in an RFC=0.94 on the northern approach, although an RFC=0.81 confirms that with 'actual' flows the junction operates within capacity. Everywhere else 'demand' flows result in an RFC<0.85.

5.2.25. The forecasts for traffic growth up to 2041 include:

- general traffic growth;
- projected increases in air passengers and air freight at Birmingham Airport;
- projected rail passengers and intended links at HS2 Birmingham Interchange station; and
- future transport infrastructure.

5.2.26. The forecasts within PRISM are based on socio-economic data calibrated with the DfT's National Trip End Model (NTEM 6.2). To adjust the distribution of jobs and population to traffic zones, a spatial distribution of the land uses derived from the SMB's M42 Economic Gateway Masterplan (2013)³⁷ provides a central estimate of the potential future density of land use development from which job totals are derived. The PRISM forecast for Solihull results in growth of 18,066 jobs between 2016 and 2041 (an increase of 16%). The aspirations of the emerging Plan are for some 32,000 additional jobs by 2040 and, in reasonable agreement given the different time periods involved, the TA identifies the potential for some 28,000 additional jobs from planned, proposed or mooted developments by 2041. However, significant uncertainty, even conjecture, surround several of those jobs so that, in accordance with DfT's Web-based Transport Analysis Guidance (WebTAG) criteria, the TA assessments accommodate only some 9,675 of those new jobs in Solihull by 2041. Of course, the models accommodate about 18,000 new jobs overall, but the TA assessments are based on roughly 10,000 fewer potential jobs than envisaged in the emerging Local Plan Review or the UK Central strategy³⁸.

5.2.27. The only explicit modelling of individual developments in PRISM is for Birmingham Airport and the planned HS2 Interchange station, for which passenger forecasts are generated through separate 'special generator' models. That for HS2 is derived from the HS2 PLANET Modelling Assumptions. That for Birmingham Airport is derived from DfT UK Aviation Forecasts (2013) (the constrained central forecast) and the CAA Passenger Survey Report (2011). The model allows for 27.9 million passengers per annum (mppa) by 2041. Updated forecasts (2017) are marginally less optimistic, so that traffic modelling for the design year allows for slightly more growth at the Airport than is currently forecast (by roughly 0.5 mppa).

5.2.28. The overall growth in traffic demand between 2016 and 2041 within the LAM amounts to 32% in the AM peak and 33% in the PM peak. The

³⁷ Solihull Metropolitan Borough Council - M42 Economic Gateway Masterplan (2013)

³⁸ See also footnote 20

figures for DM and DS are practically identical, which indicates that the Scheme itself generates a minimal variable demand.

5.2.29. This DCO Scheme is a key phase in an ambitious programme of further development envisaged by SMBC and supported by Government bodies. Several projects are included in the Government's Growth Strategy being developed through UK Central and Solihull Urban Growth Company [APP-048 and APP-049]. The M42 Economic Gateway Masterplan, now superseded by the UK Central Hub - Growth and Infrastructure Plan (2018) and reflected in both the emerging Local Plan Review and the UK Central strategy, seek to build on the opportunities offered by HS2 and its juxtaposition with strategic commercial and business concerns.

- Phase 1: 2016 – complete highway works to widen the A45 'south bridge' over the West Coast Main Line.
- Phase 2: 2019 - improvements by the Applicant to M42 Junction 6 set out in this DCO Scheme.
- Phase 3: 2019-2026 - are works by HS2 and UGC to modify junctions on the A45, A452 and A446.
- Phase 4: 2026-2041 - further improvements to address growth in the Hub area after 2026 and up to 2041 outlined in the UK Central Hub - Growth and Infrastructure Plan (2018). The latter states that: *it is likely that further road capacity will be needed, and one potential solution would be to build link roads between the new M42 Southern Junction [Junction 5A] and the existing Junction 6 on both sides of the motorway to provide direct access to the UK Central Hub [and the] HS2 Station [REP4-010].*

Scheme performance

5.2.30. The forecasts demonstrate an increase in traffic demand within the study area during peak hours of about 33% by 2041. However, the Scheme is shown to relieve traffic demand on the Junction 6 signalised gyratory by some 18% and 26% in the AM and PM peak respectively, when compared to the DM forecasts. That is largely due to the 2 segregated left-turn lanes at the Junction and the diversion of traffic from the M42 to the new mainline link road between Junction 5A and the Clock Interchange. Screenshots of Junction 6 show that it generally operates within capacity in 2041 with acceptable levels of service and stable flows throughout the gyratory during peak hours. Hence, although queues are predicted to form, they are expected to continue to move through the gyratory. The output from the OM VISSIM analysis shows that no LoS is below LoS=C at any intersection and most are LoS=B or above. Although almost 400 vehicles might be queuing on the A45 eastern approach to the gyratory in the AM peak, this is expected to be a 'momentary' maximum queue and part of a stable flow through the junction; it is expected to dissipate without causing congestion elsewhere. In any case, the A45 eastern approach is designed with storage capacity and all other queues involve less than half the number of queuing cars. It follows that the improved Junction 6 on the M42 should generally operate within capacity without causing undue delay or congestion on this section of SRN.

- 5.2.31. A consequence of the Scheme in reducing traffic through Junction 6 is an increase in traffic through the Clock Interchange. This is largely due to the traffic re-routing from the M42 along the mainline link road at the new Junction 5A. Increases of 57% and 30% in the AM and PM peaks respectively are forecast by 2041, in comparison to the DM forecasts. LinSig modelling shows that, with the improvements and alterations to the Clock Interchange, the signalised junction will operate within capacity. However, the 'practical reserve capacity' is just 1% (AM peak) and 6% (PM peak); the junction is expected to operate with no reserve capacity post 2041. The DoS at the opposing gyratory to the A45 western approach is 89% in the AM peak and that at the A45 eastern approach is 80% during the morning and 85% in the evening; the DoS on the mainline link road approach is 81% during the AM peak. Elsewhere the DoS is below 80%, often considerably so. Hence, the improvements to the Clock Interchange are expected to allow the junction to operate within capacity and to accommodate the substantial increase in traffic predicted without causing undue delay or congestion, at least until 2041.
- 5.2.32. The results of ARCADY modelling of the roundabouts in the scheme generally show that they will all operate within capacity in 2041. All intersections on the western roundabout at Junction 5A operate with an $RFC \leq 0.75$ and in free-flow conditions (LoS=A). Since there is no opposing flow on the eastern roundabout it has not been modelled.
- 5.2.33. For southbound traffic on Catherine-de-Barnes Lane, the Barber's Coppice roundabout operates within capacity in 2041. All intersections operate with an $RFC \leq 0.80$ and all but 1 do so in free-flow conditions (LoS=A); the exception operates in almost free flow condition (LoS=B). For traffic travelling north on Catherine-de-Barnes Lane the 'demand' flows result in an $RFC=0.94$ on the northern approach, indicating that the junction is operating above the normally accepted capacity ($RFC=0.85$). However, with 'actual' flows the junction operates within capacity and with the highest $RFC=0.81$. Free flow conditions pertain at every intersection (LoS=A), confirming that with 'actual' flows the junction operates within capacity.
- 5.2.34. The new Bickenhill roundabout is not modelled in ARCADY. The traffic flows through this roundabout are likely to be dominated by the southbound traffic using the slip road off the mainline link to connect to the local road network. Since priority is with traffic entering the roundabout from Catherine-de-Barnes Lane it is likely that sufficient gaps in that dominant flow are created to allow traffic from Bickenhill to enter the roundabout. However, to be on the safe side it might be worth subjecting that the performance of the roundabout to an ARCADY assessment. The SoS may wish to explore this possibility with the Applicant.
- 5.2.35. The modified East Way roundabout also operates within capacity. All intersections operate with an $RFC \leq 0.71$ and all but 1 much less. In addition, free-flow conditions pertain throughout the junction (LoS=A).

Footpaths and cycleways

- 5.2.36. The mainline link road is shown to sever several public rights of way [APP-008, APP-106 and APP-107]. Towards its southern end the road cuts across footpaths M122 and M123³⁹. Connections are maintained with a diversion (170m) for the north-south footpath (M123) via the southern overbridge. The east-west route (M122) crosses the overbridge and is diverted (about 400m) along the top of the cutting of the slip road to the mainline link, around the Barber's Coppice roundabout, across the realigned Catherine-de-Barnes Lane and behind Four Winds to reconnect with footpath M113A behind Páirc na hÉireann.
- 5.2.37. Further north the mainline link road severs the connections of footpaths M109, M112 and M113 from the west to Catherine-de-Barnes Lane [APP-008, APP-106 and APP-107]. Footpath M113 is to be stopped up and diverted (180m) [APP-058] along the realigned Catherine-de-Barnes Lane to cross the south overbridge and connect with footpath M113A. Footpaths M112 and M109 are to be stopped up and the routes diverted to the realigned Catherine-de-Barnes Lane via the northern overbridge. Footpath connections eastwards are via Church Lane involving diversions for footpaths M109 (150m) [APP-058] and M112 (290m) [REP4-010].
- 5.2.38. The Clock Interchange roundabout is to be widened from 2 to 3 lanes displacing the footway and cycleway on the eastern side of the roundabout [APP-008]. This is to be diverted eastwards along A45 towards a new NMU bridge across the A45 close to the West Coast Mainline. The diversion is estimated to increase the journey length by some 300m to 700m⁴⁰. However, a slight reduction in the length of the Green Man trail is estimated [APP-058] for the diverted route along Church Lane, St Peter's Lane and the alignment of the old Catherine-de-Barnes Lane to cross the A45 beside the free flow Airport link.

Issues Arising

- 5.2.39. The key concerns raised in relation to roads, tracks and traffic during the Examination are:
- whether the Scheme is an NSIP
 - the need to consider alternatives
 - the design of Junction 5A
 - the jobs gap, growth and variability
 - the traffic on Catherine-de-Barnes Lane
 - the impact on public rights of way
 - the junction of the realigned Catherine-de-Barnes Lane and St Peter's Lane

³⁹ These footpaths may be numbered the wrong way around in APP-058

⁴⁰ The estimate in APP-058 seems inaccurate. Roughly an additional 500m is required to cross the A45 and almost an additional 1km is walked to reach the northern side of the Clock Interchange gyratory.

Is the scheme an NSIP?

- 5.2.40. The claim is that the scheme should be authorised under the Highways Act 1980 (the 1980 Act) and not as an NSIP under the PA2008, so that SMBC should be the highway authority rather than the Applicant. This is because the mainline link road connects to a 'local road' rather than a trunk road (the A45 having been de-trunked some 3 decades ago) and is, therefore, not part of the SRN and the 'national system of routes for through traffic in England' [RR-008, REP3-027, REP4-031]: because, although the supporting papers have not been divulged, the improvements to Junction 6, including the new Junction 5A, were initiated by SMBC in the early 2000s and not by the then Highways Agency [RR-008, REP4-032]: and, because one role of the mainline link road is to replace Catherine-de-Barnes Lane (B4438), thus functioning as a local rather than strategic road [REP4-031].
- 5.2.41. These claims appear to be largely fuelled by a misunderstanding or misinterpretation of the PA2008 and of its relationship with the 1980 Act. The scheme meets the requirements of the PA2008 [PD-008, REP3A-005]. The mainline link road will (when constructed) be wholly in England, as required by s22.2.a. Highways England is a strategic highway company appointed by the Secretary of State under Part 1 of the Infrastructure Act 2015 and they will be the highway authority (by virtue of article 15(3)) in respect of the link road, so meeting the requirements of s22.2.b. And, the area to be developed for the link road is some 20ha, while the Order Limits extend to some 255.6ha with 152.7ha of land proposed for the new permanent works [APP-048]. As the land for the mainline link road (notwithstanding the land occupied by the new permanent works) exceeds the limit of 12.5ha set out in section 22(4) of the 2008 Act for the construction of a highway (other than a motorway) with speed limits of 50mph or more, the scheme satisfies the requirements of s22.2.c. The Proposed Development is thus, by definition, an NSIP as identified in in s14(1)(h) and 22(1)(a), 22(2)(a), (b) and (c) and 22(4) of PA2008.
- 5.2.42. Paragraph 19 of Schedule 5 to the PA2008 provides that a DCO may designate a highway as a trunk road. In this case, Article 15(3) of the DCO and Part 2 of Schedule 3 identify the mainline link road as a trunk road. In those circumstances, the SoS is prevented by ss33(4)(a) and (b) from making or confirming orders under ss10 and 14 of the 1980 Act. The scheme thus requires to be authorised by a DCO and the powers under the 1980 Act to keep the 'national system of routes for through traffic under review' and to designate trunk roads accordingly are explicitly subject to the PA2008 [REP3A-005].
- 5.2.43. It follows that the scheme is an NSIP and that it requires to be authorised by a DCO.

The need to consider alternatives

- 5.2.44. There are 2 slightly different issues here. First, it is claimed that the legal duty under s14(6) of the 1980 Act to provide a 'reasonably convenient' alternative route before a highway can be 'stopped up' remains; it is

suggested that use of the new mainline link road to reach the A45 to and from Bickenhill does not provide a 'reasonably convenient' alternative route [RR-008, RR-017, RR-033, REP3-025, REP3-027, REP3-029, REP4-031, REP6-035]. Second, it is claimed that, as under the 1980 Act, the Examination ought to consider alternative schemes both because guidance indicates that '*Other parties can highlight those areas where they think a proposal should be changed during their discussion with the applicant in the preapplication period and also in their written representations*'⁴¹ [REP4-031] and because a less disruptive scheme without Junction 5A or the mainline link road and involving only the free-flow links at Junction 6 should be re-examined⁴² [REP6-042]. The latter assertion encouraged further requests to consider that proposal [for example, REP6-034, REP6-036].

- 5.2.45. The first claim is erroneous; the legal duty under s14(6) of the 1980 Act does not apply to a stopping up order under a DCO. On the contrary, it is explicitly excluded by s33(4)b of the PA2008 which prevents the use of orders under s14 of the 1980 Act from operating in the context of works authorised under a DCO [REP3A-005]. And, although s136 requires that a DCO may only extinguish a public right of way if the SoS is satisfied that an alternative will be provided, or that one is not required, there is no statutory test or legal requirement for an alternative right of way to be 'reasonably convenient' [PD-008].
- 5.2.46. Nevertheless, using the new mainline link road to reach the A45 to and from Bickenhill by car must entail a diversion travelling south to the new Barber's Coppice roundabout to return northwards along the new mainline link road, a distance of roughly 2 miles and about double the existing journey distance. The Applicants suggest that currently the journey from St Peters Church in Bickenhill to the airport terminal takes 6-8 minutes and that the same journey over the new road network would require an additional 2 minutes, an increase of about 25-33% [REP2-007]. It is hard to argue that an additional 2 minutes would constitute a serious inconvenience, even in relation to a relatively short journey such as this. On the other hand, the additional distance would cost more, particularly if travelling by taxi, and the inconvenience would be exacerbated by the need to travel south in order to go north. The ExA is satisfied that the maintenance of the link between Bickenhill and the airport terminal as proposed by the Scheme would comply with s136 PA2008.
- 5.2.47. The second claim discounts the careful assessment of the 40 alternative schemes from which the DCO proposal emerged [APP-049, REP3-016] and it entails only a partial quote of the relevant Guidance. The quoted sentence is preceded by an important provision. The full quote advises

⁴¹ Paragraph 111 of Planning Act 2008: Guidance for the examination of applications for development consent, March 2015

⁴² M42 Junction 6 Improvement Scheme: Technical Appraisal Report (SGAR1), Mouchel, 2016

that *'It is important for all parties to remember that it is for the applicant to decide whether or not to propose a change to a proposal during the examination. Other parties can highlight those areas where they think a proposal should be changed during their discussion with the applicant in the pre-application period and also in their written representations.'*⁴³

5.2.48. In any case, the Guidance in the NNNPS, paragraph 4.27 indicates that: 'Where projects have been subject to full options appraisal in achieving their status within Road or Rail Investment Strategies ... option testing need not be considered by the ExA or the decision maker. For national road and rail schemes, proportionate option consideration of alternatives will have been undertaken as part of the investment decision making process. It is not necessary for the Examining Authority and the decision maker to reconsider this process.' That is the case here. The Scheme is included in the RIS 2015-2021 [APP-048 and APP-049], which outlines how the Government plans to invest in the SRN and commits the Applicant to undertake a comprehensive upgrade of Junction 6. The proposal has emerged from an assessment of 40 alternative schemes. The ExA is satisfied that a proportionate consideration of alternatives has been undertaken and it is not necessary to revisit that process.

5.2.49. The suggestion that a less disruptive scheme exists that warrants consideration ignores the conclusion set out in the Mouchel report⁴⁴. The whole purpose of the report was to assess which options were worth taking forward for public consultation. The conclusion states:

- o The schemes taken forward for further development to Public Consultation were therefore all variants of the southern junction theme with an additional option of one or all free-flow links [at Junction 6]:
 - Option 1 – Southern Junction 2km south of Junction 6 with a link road to A45 Clock Interchange west of Bickenhill village.
 - Option 2 – Southern Junction 2km south of Junction 6 with a link road to A45 at Clock Interchange via an additional roundabout east of Bickenhill village.
 - Option 3 – Southern Junction 1km south of Junction 6 with northbound exit and southbound entry only and link road to A45 at Clock Interchange via an additional roundabout.
 - These options had sufficient traffic benefits, no major safety and geometric concerns, could largely be built offline, provided good value for money and had stakeholder support.

5.2.50. It is thus evident that a scheme without Junction 5A or the mainline link road and involving only the free-flow links at Junction 6 was never proposed as a serious solution on its own; it was envisaged in various forms always in combination with a new southern junction and the

⁴³ Op cit

⁴⁴ The version here is taken from the Executive Summary of the M42 Junction 6 Improvement Scheme: Technical Appraisal Report (SGAR1), Mouchel, 2016

mainline link road. That is not surprising for, although the free-flow links at Junction 6 were found to reduce the traffic on the roundabout itself by some 42%⁴⁵, they cannot alleviate congestion on the motorway itself or on links to it from the A45.

- 5.2.51. The DCO proposal is thus the result of considering a wide range of alternative schemes. There is no need and no statutory or policy requirement to assess further alternatives at this stage of the process.

The design of Junction 5A

- 5.2.52. Junction 5A is positioned about 1.8km south of M42 Junction 6 and it is designed in the form of a 'dumb-bell' with 2 roundabouts positioned either side of the M42 connected by a new bridge about 100m to the north of the existing Solihull Road bridge [APP-007 and APP-008]. It is to have south facing slip roads only. If built exactly as indicated on the Works Plans, the junction would result in the loss of 0.36ha of the Ancient Woodland at Aspbury's Copse. If moved 10m to the north within the LoD, the junction would result in the loss of the 0.21ha of Ancient Woodland [see AS-035 and AS-037]. The locational constraints affecting the position and design of the junction are set out elsewhere⁴⁶. The ARCADY modelling demonstrates that the western roundabout will operate within capacity ($RFC \leq 0.75$) and in free-flow conditions ($LoS=A$).
- 5.2.53. The concern is that the dumb-bell design with its 2 roundabouts is an unnecessary impediment to the free flow of traffic if there are only to be south facing slip roads [AS-018, RR-001, RR-007, RR-008, REP4-025, REP5-011, REP6-027]. Such a design is very unusual on the motorway network [REP4-010, REP4-025, REP5-011, REP6-027]. Although the introduction of north facing slip roads might enhance the resilience of the motorway, should problems materialise elsewhere [RR-014, REP2-007, REP3-010], the junction could not accommodate the introduction of the mooted MSA at this location without substantial reconfiguration entailing further damage to the adjacent Ancient Woodland and departures from standards on the motorway [REP2-022].
- 5.2.54. The redesign of Junction 5A to include north facing slip roads without the mooted MSA is likely to enhance the resilience of the motorway, particularly in offering alternative routes to or from the Airport or the NEC in the event of problems on the gyratory at Junction 6 and perhaps elsewhere [RR-001]. However, the inclusion of north facing slip roads requires departures from standards on the motorway [REP2-022]; the weaving lengths between Junction 5A and Junction 6 would fall well below the normal 2km minimum for rural motorways at roughly 1.2km and the approval in principle for such a departure in relation to the mooted MSA also envisages an upgrade to an 'all lane running' smart motorway [APP-173, appendix 4]. There are thus some advantages in

⁴⁵ M42 Junction 6 Improvement Scheme: Technical Appraisal Report (SGAR1), Mouchel, 2016

⁴⁶ See paragraphs **Error! Reference source not found.** to **Error! Reference source not found.** above

terms of safety and costs in avoiding the introduction of north facing slip roads.

5.2.55. The Applicants claim that the proposed layout for Junction 5A largely follows similar layouts for junctions across the motorway network and reflects a standard arrangement shown in the DMRB TD 22/06, figure 5/2 [REP3-010, REP4-010]. It does not. It is intended to offer only south facing slip roads rather than slip roads in both directions (as illustrated in figure 5.2) and, of the 9 junctions identified with uni-directional slip roads on motorways and dual carriageway A-roads, only 1 (on an A-road rather than on a motorway) exhibits a similar layout connecting to a 'local' road on only one side [REP4-010, REP4-025, REP5-011, REP6-027]; in this case the connection is to the mainline link road, there is no connection to any 'local' road on the eastern side of the motorway. The Applicant suggests that the Scheme layout provides the required traffic capacity to cater for future forecast growth and is the most efficient and optimal arrangement for delivering the Scheme objectives with or without the mooted MSA at Junction 5A [REP4-010]. But that too is not quite right. Although the Scheme does cater for growth, the current configuration of the Junction could not accommodate the likely traffic generated by an MSA here. On the contrary, substantial works would be required to reconfigure and, as assessed, partially signalise the junction in order to provide the necessary capacity [APP-173, appendix 4]. Such works would inflict further damage on the adjacent Ancient Woodland and require up-grades to the motorway running regime.

5.2.56. It is recognised that a free-flow junction arrangement provides additional traffic capacity to the road network, although it is suggested that such additional capacity is not required by the Scheme [REP2-007]. Instead, the Applicants claim that, in comparison to a free-flow design, the proposed layout for Junction 5A has several advantages.

- The overall footprint and associated land-take is smaller;
- There is less impact on sensitive environmental features such as Ancient Woodland;
- The requirement for the diversion of statutory undertakers' apparatus is less;
- There are safer conditions for maintenance workers; and
- There is inherent flexibility to allow improved access to the road network for future local and regional growth.

5.2.57. Most of those claimed advantages are ephemeral or dubious [REP4-025, REP5-011, REP6-027]. The footprint and associated land take comparisons rather depend upon how the concepts are defined and on the detailed design of the free-flow link, not much more than a sketch in this context. The impact on Statutory Undertakers similarly must depend on the detailed design and the location of the free-flow junction. The safer conditions for maintenance workers are something of a chimera since this must largely depend upon the imposition of appropriate speed limits and safety markings (cones, lanes or other signs) and the straightforward arrangements of a free-flow junction might have advantages over the need to negotiate roundabouts. As for the claim that

the dumb-bell arrangement for Junction 5A might have less impact on the adjacent Ancient Woodland, there is little justification. One of the potential advantages of a free-flow arrangement is that the Junction might be moved further north (being unencumbered by the constraints imposed by north facing slip roads) with the possibility of avoiding any impact on the Ancient Woodland.

- 5.2.58. Nevertheless, the one sound advantage of the intended dumb-bell design is that it embodies inherent flexibility allowing access to the strategic road network to accommodate future local and regional growth. The local and regional growth envisaged is to be delivered through the UK Central and Solihull Urban Growth Company [APP-048 and APP-049] and the UK Central Hub - Growth and Infrastructure Plan (2018); it is reflected in both the emerging Local Plan Review and the UK Central strategy and it seeks to build on the opportunities offered by HS2 and its juxtaposition with strategic commercial and business concerns nearby. This DCO Scheme is seen as phase 2 in a programme to deliver the infrastructure necessary to accommodate that growth. The final phase is not yet defined. However, it is recognised that further road capacity will be needed, and that *one potential solution would be to build link roads between the new M42 Southern Junction [Junction 5A] and the existing Junction 6 on both sides of the motorway to provide direct access to the UK Central Hub [and the] HS2 Station [REP4-010]*. The dumb-bell design for Junction 5A can accommodate the links envisaged, even though some reconfiguration might be required. The free-flow design cannot. The ExA concludes that the dumb-bell design is thus warranted here.

The jobs gap, growth and variability

- 5.2.59. An aim of the NNNPS is to create 'Networks with the capacity and connectivity and resilience to support national and local economic activity and facilitate growth and create jobs'. That aim is reflected in the explicit objectives for this Scheme. It is to cater for growth and accommodate development planned around the M42 Junction 6 with the potential to have a marked impact on the economy, connectivity and accessibility. Indeed, the need for the Scheme identified in the Planning Statement includes facilitating the regional growth outlined in the UK Central Hub proposal [APP-173, paragraph 3.3.5]. And, one of the 4 objectives [paragraph 3.5.2] is to encourage continued investment in the regional economy and support new corporate, commercial and residential opportunities, including the proposals by UK Central. Also, a 'strategic objective' set out in the Statement of Reasons is to support new corporate, commercial and residential opportunities including proposals for UK Central [APP-018, paragraph 1.9.14, updated REP9-015].
- 5.2.60. However, the traffic assessments undertaken for 2041 do not accommodate all the potential jobs envisaged in the various planning documents. For example, the UK Central Hub - Growth and Infrastructure Plan (2018), reflected in both the emerging Local Plan Review and the UK Central strategy, envisages some 32,000 new jobs, mainly in this area but also elsewhere in Solihull, by 2040. The Transport Assessment (TA) [APP-174] identifies the potential for over 28,200 new jobs to materialise

from projects, plans and 'possibilities' by 2041. However, significant uncertainty, even conjecture, surround several of those jobs so that, in accordance with DfT's Web-based Transport Analysis Guidance (WebTAG) criteria, the TA assessments accommodate only some 9,675 of those new jobs in Solihull by 2041. The future traffic growth modelled in PRISM is calibrated with the DfT's NTEM 6.2, which allows for an increase of 18,066 jobs in the study area, which is roughly 10,000 jobs less than the number envisaged in the emerging Local Plan Review or the UK Central strategy⁴⁷.

- 5.2.61. This might not matter if the TA demonstrated that junctions and road links might operate with sufficient spare capacity. But it does not. A consequence of the Scheme is that the Clock Interchange must accommodate increases in traffic. The LinSig modelling shows that, with the improvements and alterations to the Clock Interchange, the signalised junction will operate within capacity in 2041, but only just. The 'practical reserve capacity' is just 1% (AM peak) and 6% (PM peak). There must thus be a risk that, should a proportion of the 10,000 jobs excluded from the modelled assessments materialise before 2041, the junction might operate without any 'practical reserve capacity' or that its capacity might be exceeded. Although it is expected that the junction will operate with no reserve capacity after 2041, the consequences of that scenario have not been fully explored. Nevertheless, it is accepted that additional flows may lead to queueing in the AM peak hour though, given that the LAM and the OM are both very sensitive to junction delays, that may lead to traffic re-routing [REP2-007].
- 5.2.62. However, there may be no need to explore the consequences of omitting the effects of some 10,000 potential additional jobs. This is because this DCO Scheme is envisaged as only one of several phases in a programme of further infrastructure development to accommodate the potential growth being developed through UK Central and Solihull Urban Growth Company [APP-048 and APP-049]. The focus is to build on the opportunities offered by HS2 and its juxtaposition with strategic commercial and business concerns. This DCO Scheme is phase 2 in a 4-phase programme. Phase 3 (2019-2026) includes works undertaken by HS2 and the UGC to modify junctions on the A45, A452 and A446: phase 4 (2026-2041) includes improvements to address the growth outlined in the UK Central Hub - Growth and Infrastructure Plan. The latter states that: *it is likely that further road capacity will be needed, and one potential solution would be to build link roads between the new M42 Southern Junction [Junction 5A] and the existing Junction 6 on both sides of the motorway to provide direct access to the UK Central Hub [and the] HS2 Station* [REP4-010]⁴⁸.
- 5.2.63. The sensitivity testing undertaken also demonstrates the likely need for additional infrastructure to accommodate additional traffic. A comparison between a 'high growth' and the 'core' scenario indicates that the former leads to 2% and 4% more traffic through both the Clock Interchange and

⁴⁷ See footnote 20 for more detail.

⁴⁸ See also paragraph **Error! Reference source not found.** above

Junctions 6 during the AM and PM peaks, respectively. The consequence is that parts of both junctions and several link roads in the vicinity operate above capacity ($V/C \geq 100\%$) in the 'high growth' scenario. In the absence of additional infrastructure that must restrict any increase in user benefits when compared with the core scenario. The need for the additional infrastructure envisaged in phases 3 and 4 (as outlined above) is demonstrated [REP2-007].

- 5.2.64. A feature of the traffic at Junction 6 on the M42 is its variability, both at peak times and over the year in response to exhibitions, events and holidays etc. To test the robustness of the Scheme in coping with such variability, particularly in the vicinity of the NEC, the traffic flow on South Way for 2017 is compared to the modelled flows [APP-174, Figures 6.4-6.6]. The LAM uses AM (inbound) and PM (outbound) peak hour flows at the upper end of the range 600-800vph, which is exceeded on around 34% and 27% of weekdays. However, the OM (calibrated and validated against turning flows at Junction 6 and at junctions in the vicinity) uses higher flows amounting to 930vph (AM) and 1,170vph (PM). Both flows exceed the relevant 85th percentile flow observed on South Way and, given the results from the VISSIM screenshots, thereby demonstrating that the Scheme can cope robustly with almost all the annual variability likely to be encountered [REP2-007].
- 5.2.65. Of course, all the modelling relates only to weekdays, in accordance with DfTs WebTAG guidance. During weekdays, the proportion of NEC to total traffic is currently between 17% and 19%, although forecasts range from 16% to 31%. It follows that, although noticeable, NEC traffic makes a relatively modest contribution to the total volume of traffic using Junction 6. There is likely to be more NEC traffic at weekends and such traffic is likely to constitute a higher proportion of the traffic then negotiating Junction 6. However, it is very unlikely to exceed the reduction in non-NEC traffic using the Junction. The Scheme is thus likely to cope with the variation in traffic experienced at weekends [REP2-007].

The traffic on Catherine-de-Barnes Lane

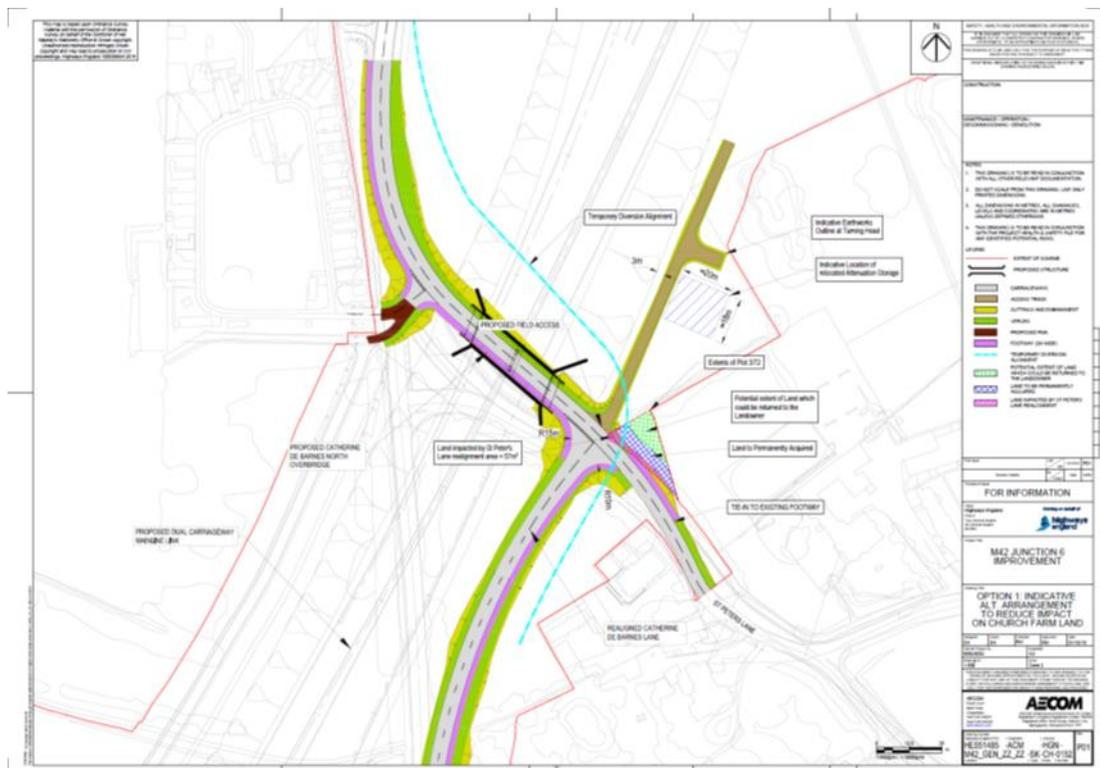
- 5.2.66. There is concern that the TAs should be reviewed [RR-007] and, in particular, that they provide a flawed indication of the traffic conditions on Catherine-de-Barnes Lane by failing to account for the queues that currently occur and unrealistically modelling the distribution of traffic generated by the Scheme [REP10-013, REP8-015].
- 5.2.67. Queues certainly occur on the southbound carriageway of Catherine-de-Barnes Lane [REP6-040, REP7-006]. Residents consider that they are not an uncommon weekly occurrence associated with congestion (for a variety of reasons) on the M42. However, the Applicants suggest that they are more likely to be due to congestion on the local road network and are, consequently, a matter for SMBC [REP7-011]. They point out that if an incident occurs near Junction 6, drivers travelling south may be using their local knowledge to reach Junction 5 via Catherine-de-Barnes Lane, Hampton Lane and the A41 Solihull Bypass. As the Scheme will provide an alternative route via Junction 5A and the mainline link road, it

should reduce (at least potentially) the frequency of such queues on Catherine-de-Barnes Lane.

- 5.2.68. The ARCADY results for 'demand' flows relating to northbound traffic on the northern approach to the Barber's Coppice Roundabout during the PM peak result in an RFC=0.94, a queue of 13 vehicles and a LOS=D [APP-174]. However, with 'actual' flows the roundabout performs with an RFC=0.81, a queue of only 4 vehicles and a LOS=A, demonstrating that, in practice, the junction will operate within capacity. The difference between 'demand' flows and 'actual' flows is that the latter are restricted by capacity constraints elsewhere on the network, thereby providing some support for the contention that queues here might be due to capacity constraints elsewhere on the local road network. Nevertheless, there is no definitive evidence available to the Examination either on the causes of the queues on Catherine-de-Barnes Lane or on the frequency of incidents when the M42 is at a standstill or when very serious congestion occurs on the motorway.
- 5.2.69. The traffic flows presented in Figures 7.1 to 7.6 of the TA [APP-174] provide a summary of the forecast flows produced by the LAM. Hence, the Figures do not include traffic flows for every road modelled and the flows from one link to another may not add up to expected totals because traffic is diverting to roads not shown on the Figures [REP9-025]. Seen in that light the distributions are entirely plausible. For example, on completion of the Scheme (2041), southbound traffic during the PM peak hour (Figure 7.2) entails a flow of 1,607 vehicles using the off-slip road from the mainline link to the Bickenhill Roundabout and a flow of 1,418 vehicles on the 'subsequent' link to the Barber's Coppice Roundabout. The apparent 'loss' of 189 vehicles is the result of the balance of evening flows to and from Bickenhill Village, Clock Lane, Hampton-in-Arden via Shadowbrook Lane, the Birmingham Dog's Home and Páirc na hÉireann. Similarly, the apparent 'loss' of 253 southbound vehicles travelling from the north to the south of the Barber's Coppice Roundabout is the result of the balance of evening flows to and from the Solihull Music School (and adjacent businesses) and the traffic using Bickenhill Hill Lane to reach Catherine-de-Barnes Village. The distribution of traffic represented by the models thus appears realistic and plausible. Further comfort is offered by the extensive consultation and engagement with stakeholders in calibrating the models, including with SMBC, Birmingham Airport, Network Rail, the NEC, HS2 and others [APP-174].
- 5.2.70. The Figures [APP-174, Figures 7.3 and 7.4] show that the volume of southbound traffic approaching Catherine-de-Barnes Roundabout in 2041 will be largely unchanged by the Scheme, the AADT being 8,532 DM and 8,348 DS [REP7-011]. The flows are different approaching the new Barber's Coppice Roundabout. Here the volume of southbound traffic will increase by 2041 as a result of the Scheme, the AADT being 9,077 DM and 12,156 DS. This is hardly surprising. The new roundabout provides access to the new mainline link road which, under the DS scenario, provides the only link to the Clock Interchange and the SRN. Again, the ExA concludes that the results of the modelling are realistic and plausible.

The junction of the realigned Catherine-de-Barnes Lane and St Peter's Lane

5.2.71. Initially the realigned Catherine-de-Barnes Lane links to the Clock Interchange and crosses the cuttings of the mainline link road on a temporary northern overbridge and on a temporary alignment. It will carry all the traffic currently using the road (8-9,000 vehicles AADT [APP-174]). And, it will form the major road at a simple 'T' junction with St Peter's Lane on its way to the Bickenhill Roundabout [REP9-004 (updated Work Plans)]. Once the mainline link road is operational, the connection to the Clock Interchange will be closed and the realigned Catherine-de-Barnes Lane will carry only local traffic, mainly to and from Clock Lane and Bickenhill Village. The north overbridge will now follow its permanent alignment and, in order to meet geometric standards, the priority at the 'T' junction between St Peter's Lane and the realigned Catherine-de-Barnes Lane is altered so that it will lie with St Peter's Lane. This is shown in the reproduced drawing below [REP7-013].



5.2.72.

5.2.73. Figure 1: 'T' junction the realigned Catherine-de-Barnes Lane and St Peter's Lane as proposed in the DCO

5.2.74. The ExA suggested that to avoid the possibility of encouraging 'through traffic' from proceeding from the northern overbridge down St Peter's Lane and into Bickenhill Village, the priority might be altered by making the realigned Catherine-de-Barnes Lane rather than St Peter's Lane the 'major' road [EV-043]. That arrangement is shown in the drawing below and is favoured by local residents [REP7-019, REP8-013, REP9-028, REP9-029, REP9-033].

The impact on public rights of way

- 5.2.79. The NNNPS requires appropriate mitigation to address the adverse effects on trails, tracks and public rights of way. Where appropriate, opportunities for improvement are to be considered, bearing in mind the use, character, attractiveness and convenience of an existing right of way. The SoS should consider whether such mitigation is acceptable⁴⁹ and there is a very strong expectation that impacts on accessibility for non-motorised users should be mitigated⁵⁰. Not only is the Government committed to providing people with options to choose sustainable, convenient and attractive modes of travel, but also the Government is committed to bringing about a step change in cycling and walking across the country by investing in high quality cycling and pedestrian routes. To that end, the Government expects Schemes to entail investment where the national road network severs communities and acts as a barrier to cycling and walking⁵¹.
- 5.2.80. The Applicants assert that this Scheme is deemed to maintain or improve connections between people and communities by providing high quality NMU routes, including a new NMU footbridge over the A45. The Scheme entails improvements to existing footways and cycleways to the south of the Clock Interchange and connectivity will be maintained elsewhere. This is deemed to result in a positive effect on access to open space [APP-048] and to satisfy the expectations of the NNNPS. The public right of way strategy has been prepared in consultation with SMBC and local user groups to mitigate the severance caused [REP7-011].
- 5.2.81. The reality is quite different⁵². In spite of the consultation undertaken, the mainline link road is shown to sever several public rights of way; M122 and M123 towards the south and M109, M112 and M113 towards the north. Although links are maintained, they are, without exception, longer, less convenient and often less pleasant. At the Clock Interchange M106 (currently part of the Green Man trail) is to be displaced by the increase in lanes around the eastern side of the roundabout. North-south links are to be maintained either by a long diversion to the east and back via the new NMU bridge across the A45 or by a diversion from Church Lane via a footpath and cycleway on the alignment of the old Catherine-de-Barnes Lane to cross the A45 beside the free flow Airport link and thence via several roundabouts to continue beside the dual carriageways of Airport Way. The marginal reduction in the length of the Green Man trail appears illusory depending, perhaps, on how the route is measured.
- 5.2.82. Although the upgrading of a section of footpath to a 3m wide footway and cycleway to the south of the A45 is welcomed, the Open Spaces Society point out that, in general, the Scheme entails inadequate

⁴⁹ Paragraph 5.184 of the NNNPS

⁵⁰ NNNPS paragraph 5.216

⁵¹ NNNPS paragraphs 3.15-3.17

⁵² More details are given in paragraphs **Error! Reference source not found.** to **Error! Reference source not found.** and descriptions at 2.1.12, 2.1.13, 2.1.18 and 2.1.25.

consideration of the use, character, attractiveness and convenience of the rights of way it effects and fails to address the opportunities for improvement presented [RR-030, AS-012, EV-025, REP1-020, REP4-036, REP5-015, REP9-031]. Hence, it does not accord with the relevant requirements of the NNNPS. Although it is realised that a requested link to M107 is outside the Order Limits and a diversion sought for M113A is now proposed in the context of a non-material change to the DCO [AS-027, REP6-009, REP6-013], insufficient consideration has been given to the main concerns. In particular:

- Retention and enhancement of M106, aided by a flexible approach to using the 5.8m of non-carriageway in the underpass beneath Airport Way to reconfigure the layout to accommodate pedestrians.
- Modifications to a balustrade or the reconfiguration of the road layout to make more use of space inside the circulatory system at the Clock Interchange to accommodate retention of the Green Man trail around the eastern side of the Clock Interchange together with the retention of M106.
- Alterations to the Scheme to accommodate a pedestrian bridge across the mainline link for the continuation of M112.

5.2.83. However, it is not just the lack of space to accommodate a surfaced footpath beneath Airport Way, but also the obstructions likely to be caused by ancillary highway features in the verge and the weaving lanes beneath the Airport Way Connector Road. Relaxing standards to install a narrow pavement is thus not appropriate or safe for pedestrians. Similarly, a footway around the eastern side of the Clock Interchange in a verge of 0.7m is significantly below minimum standards. The possibility of a relaxation to provide narrow lanes and a wider verge is inappropriate due to the volume of traffic and the frequency of HGVs. And, the provision of a footbridge for M112 is constrained by the Airport Safeguarding Zone, the length of the span, the rise in the diverge slip road and forward visibility through the bridge. Either a material amendment to the DCO or a reduction in safety may be required.

5.2.84. The ExA agree that the constraints outlined prohibit the relaxations required to accommodate the footways sought by the Open Spaces Society. However, they concur with the Society's view that the Scheme does not accord with the relevant requirements of the NNNPS. To redress that severe defect, they asked the Applicants to look at the possibility of providing a more direct route from the proposed NMU bridge across the A45 to the International Railway Station and the plethora of public transport facilities there. The intention is to provide a legible and simple connection from a public transport hub serving the conurbation to the network of footpaths into the countryside and villages to the south of the A45. The assessment undertaken indicated that the suggested route (route A on the drawing below) would require acquisition of either Network Rail operational land or commercial land used for 27 car parking spaces and the relocation of a refuse store [REP3-017]. A subsequent unaccompanied site inspection [EV-35] confirmed that the railway embankments provided little scope to accommodate a footpath or cycleway, although land to provide for more than the 27 car parking

spaces might be available nearby in the form of an unfinished and unused car park.

5.2.85.



5.2.86. Figure 3: Routes to Birmingham International Railway Station from the NMU bridge across the A45

5.2.87. It is agreed that route A could not be implemented within the DCO and that to do so would require extending the Order Limits, undertaking a further EIA and consulting with landowners; this is likely to constitute a material change to the Order. To implement Route A outside the DCO, would require agreements with adjoining landowners and have to be pursued as part of a wider public right of way strategy with SMBC [REP4-010]. The Open Spaces Society consider that such a route would have to run between tall fences or railings for security reasons. However, both SMBC and the Applicant are willing to further explore whether route A could reasonably be delivered and the mechanisms that would be needed to secure the route. This will be subject to ongoing discussions between both parties [REP6-010]. The ExA consider that to be a worthwhile task and that it ought to be pursued in an effort to comply with the requirements of the NNNPS.

5.2.88. A further suggestion [REP3-032] is to compensate for the loss of the footway along the northern side of the A45 to South Way with a short footpath northward from the pavement just to the east of the new NMU

bridge. The path is shown traversing roadside vegetation (see drawing below) and running beside a car park at the NEC to connect via existing pavements to the commercial and leisure facilities at Resorts World. This could provide a convenient and reasonably pleasant route to foster sustainable connections between the facilities on offer to the north of the A45 and the rural areas to the south. Most of the land required is outside the Order Limits and it is stated that previous enquiries from SMBC have elicited resistance from landowners. Nevertheless, the ExA consider that this proposal should be explored in an effort to comply with the requirements of the NNNPS.



5.2.89.

5.2.90. Figure 4: Routes to Resorts World from the NMU bridge across the A45

5.2.91. The ExA consider that the approach to the provision of footpaths and NMU links fails to accord with the requirements of the NNNPS. Several public rights of way are severed, and the remaining links are usually longer, less convenient and less pleasant. In order to redress the balance and to comply with the NNNPS, the ExA suggest the provision of 2 routes both utilising the NMU bridge across the A45; one is to the International Railway Station and the other is to Resorts World. They welcome the willingness of both SMBC and the Applicant to explore the possibility of delivering the former and they encourage similar cooperation in relation to the latter. The ExA will recommend accordingly.

Conclusion

5.2.92. It is Government policy to deliver national networks that meet the country's long-term needs, supporting a prosperous and competitive economy and improving overall quality of life, as part of a wider transport system. But Junction 6 on the M42 is one of the busiest

junctions on the SRN where there can be long queues and very low levels of service during peak hours. Hence, the Scheme aims to accommodate planned development, address congestion, improve levels of service and enhance road safety. Analysis demonstrates that doing nothing would exacerbate problems of safety and congestion leading to unacceptable service levels sufficient to curtail connectivity and stifle development. Hence, the ExA considers that the Scheme accords with Government policy to meet the country's long-term needs, supporting a prosperous and competitive economy and, as an improvement at Junction 6 on the M42, it does so as paragraphs 2.23-2.27 of the NNNPS prescribes.

- 5.2.93. The Scheme is an NSIP, honed through the assessment of 40 different options, to be delivered and funded through the RIS. The new mainline link road operates with a 70mph speed limit and the Order Lands extend to almost 256ha. Design, environmental and land use constraints limit the location of Junction 5A.
- 5.2.94. The traffic analysis is based on a hierarchy of models (PRISM, LAM and OM), is calibrated against DfT's NTEM 6.2 and is carried out in accordance with their WebTAG guidance. The forecasts for traffic growth up to 2041 include general traffic growth, increases in air passengers and freight at Birmingham Airport, projected rail passengers and intended links at HS2 Birmingham Interchange station and other planned transport infrastructure. A summary of traffic flows is presented in Figures 7.1 to 7.6 of the TA and, on that basis, they are realistic and plausible. The analysis demonstrates that Junction 6 generally operates within capacity in 2041 with acceptable levels of service and stable flows throughout the gyratory during peak hours: that with the improvements and alterations to the Clock Interchange, the signalised junction will operate within capacity, though only just: and, that the roundabouts in the Scheme generally operate within capacity and under free flow conditions, in practice, at every intersection. The new Bickenhill roundabout is not modelled, but there is no reason to believe that it would not operate satisfactorily even though it has not been modelled.
- 5.2.95. The design of Junction 5A is not a standard arrangement. It entails some disadvantages in comparison to a free-flow design and it is incapable of accommodating the potential traffic from the mooted MSA at this location without substantial reconfiguration resulting in further damage to the adjacent Ancient Woodland and departures from standards on the motorway. Nevertheless, its one sound advantage is that it embodies inherent flexibility capable of allowing access to the strategic road network for the future local and regional growth envisaged in emerging plans around the HS2 Interchange Station and Arden Cross.
- 5.2.96. However, the traffic assessments undertaken for 2041 do not accommodate all the potential jobs envisaged in the various planning documents; in accordance with WebTag guidance relatively uncertain development are omitted. As the assessments indicate a network close to capacity without those potential jobs, the DCO Scheme is warranted partly as a crucial element (phase 2) in a 4-phase programme of necessary infrastructure. Subsequent phases entail modifications to

junctions on the A45, A452 and A446 and potential links to Junction 5A to accommodate the growth outlined in the UK Central Hub - Growth and Infrastructure Plan. Sensitivity testing demonstrates that Junction 6, the Clock Interchange and several link roads operate above capacity ($V/C \geq 100\%$) in the 'high growth' scenario, confirming the need for the additional infrastructure envisaged in phases 3 and 4 to accommodate additional growth. Even so, the Scheme is likely to cope robustly with almost all the annual variability encountered, including that at weekends.

- 5.2.97. Queues currently occur on the southbound carriageway of Catherine-de-Barnes Lane, though it is not certain whether the cause is congestion on the local road network (for which there is some evidence) or problems on the M42 (as local people suggest). If the latter, then the Scheme, in providing an alternative route, should reduce the queues experienced.
- 5.2.98. The ExA consider that there are advantages in the priority at the junction of St Peter's Lane and the realigned Catherine-de-Barnes Lane being in favour of the latter. A new Requirement (R15) entailing the preparation of a suitable scheme is proposed.
- 5.2.99. The ExA consider that the approach to the provision of footpaths and NMU links fails to accord with the requirements of the NNNPS. The ExA suggest the provision of 2 routes to redress the balance and welcome the willingness of both SMBC and the Applicant to explore the possibility of delivering them. The ExA will recommend accordingly.
- 5.2.100. Having regard to the above, the ExA concludes that:
- The Scheme accords with Government policy to deliver national networks that meet the country's long-term needs, supporting a prosperous and competitive economy and, as an improvement at Junction 6 on the M42, it does so as paragraphs 2.23-2.27 of the NNNPS prescribes.
 - The TA forecasts are calibrated against DfT's NTEM 6.2 and is carried out in accordance with WebTAG guidance. It demonstrates that the Scheme will accommodate the forecast traffic generally in free-flow conditions and with spare capacity at all junctions.
 - However, should all the jobs envisaged in local plans and programmes materialise, additional road infrastructure will be required. The Scheme provides the foundation for that additional infrastructure being stage 2 in a 4-stage programme and providing Junction 5A as an essential link to the development anticipated.
 - The ExA considers that the approach to the provision of footpaths and NMU links fails to accord with the requirements set out in the NNNPS paragraphs 3.15-3.17 and 5.216. of the NNNPS
 - The improvements to the road network likely to be achieved by the Scheme is thus a strongly positive consideration.
 - The failure of the Proposed Development to promote sustainable transport in the form of attractive NMU routes is a negative consideration.

5.3. CULTURAL HERITAGE

Legal and Policy Background

- 5.3.1. Regulation 3 of The Infrastructure Planning (Decisions) Regulations 2010 (IPDR) deals with listed buildings, conservation areas and scheduled ancient monuments in the context of applications for National Infrastructure development.
- 5.3.2. This regulation states at 3(1) that in deciding an application which affects a listed building or its setting, the decision maker must have regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses. For conservation areas, 3(2) states that the decision maker must have regard to the desirability of preserving or enhancing the character or appearance of that area. When deciding an application for development consent which affects or is likely to affect a scheduled monument or its setting, the decision maker must have regard to the desirability of preserving the scheduled monument or its setting (3(3)).
- 5.3.3. The NNNPS at paragraph 5.120 recognises the potential for the construction and operation of national networks infrastructure to have adverse impacts on the historic environment.
- 5.3.4. NNNPS paragraphs 5.128 to 5.138 identify the historic environment decision-making considerations to be taken into account by the SoS. Paragraph 5.131 notes that when considering the impact of a Proposed Development on the significance of a designated heritage asset, the SoS should give great weight to the asset's conservation.
- 5.3.5. Paragraph 5.142 states that:
- "Where there is a high probability that a development site may include as yet undiscovered heritage assets with archaeological interest, the Secretary of State should consider requirements to ensure that appropriate procedures are in place for the identification and treatment of such assets discovered during construction".*
- 5.3.6. Policy P16 of the Solihull Local Plan expects, amongst other things, development to preserve or enhance heritage assets as appropriate to their significance.

The Applicant's Approach

- 5.3.7. The Applicant's assessment of impacts during both the construction and operational phases of the Proposed Development is set out in Chapter 7: Cultural Heritage of the ES [APP-052], supported by:
- Figure 7.1 - location of designated heritage assets [APP-083]
 - Figure 7.2 - location of non-designated heritage assets [APP-084]
 - Appendix 7.1 – Written Scheme of Investigation for Archaeological Evaluation Trenching [APP-123]

- Appendix 7.2 – Ground Investigation Archaeological Monitoring Report [APP-124]
 - Appendix 7.3 – Archaeological Geophysical Survey [APP-125]
 - Appendix 7.4 – Archaeological Gazetteer Table [APP-126]
- 5.3.8. Further to the intention set out in Chapter 7 paragraph 7.4.16, Archaeological Investigation Reports were also submitted at Deadline 2 (Interim) [REP-020] and at Deadline 4 [REP4-004].
- 5.3.9. ES Chapter 7 [APP-052] sets out that the value of a building, monument, area, site, place or landscape reflects its significance as a historic asset, and therefore its sensitivity to change. It is explained that professional judgement has been used to identify the value and significance of assets, guided by legislation⁵³, NNNPS, NPPF, standards, official designations and the criteria contained within the Design Manual for Roads and Bridges⁵⁴ (DMRB guidance).
- 5.3.10. Impacts have been identified by reviewing the identified sites, features and areas within 500m and 1km study areas, against the form and extent of the Proposed Development, in order to establish which assets would be affected by its construction and operation. The study area and the designated and non-designated heritage assets are identified in ES Chapter 7 [APP-052] and Figures 7.1 and 7.2 [APP-083 and APP-084].
- 5.3.11. Impacts identified in the assessment relate to the predicted changes to key elements of an asset and/or its setting. The identification of impacts takes account of all embedded and standard mitigation measures described below.
- 5.3.12. The magnitude of impact on archaeological assets, built heritage and historic landscapes (and their settings) has also been established using criteria contained within DMRB guidance. The identification of the likely significant effects on cultural heritage assets has been undertaken using professional judgement and has involved combining the value of an asset with the predicted magnitude of impact. It is explained that the process has been guided by the matrix from the DMRB guidance, which has been reproduced in Table 7.3 of the ES [APP-052].
- 5.3.13. Within the 1km study area, the ES identifies:
- three scheduled monuments, recorded on the National Heritage List, comprising two moated sites and a cross in the churchyard of St Mary and St Bartholomew;
 - two Grade I listed buildings, seven Grade II* and 24 Grade II; and
 - two conservation areas.

⁵³ Ancient Monuments and Archaeological Areas Act 1979; Planning (Listed Buildings and Conservation Areas) Act 1990

⁵⁴ Design Manual for Roads and Bridges (DMRB) Volume 11, Section 3, Part 2: Cultural Heritage. Highways Agency (2007)
<http://www.standardsforhighways.co.uk/ha/standards/dmr/vol11/index.htm>

- 5.3.14. Within the 500m study area, 132 archaeological assets (non-designated) have been recorded from the Historic England records and Warwickshire County Council Historic Environment Record.
- 5.3.15. ES Chapter 7 [APP-052] (paragraph 7.8.1) states the Proposed Development has been designed, as far as possible, to avoid and minimise impacts and effects on cultural heritage through the process of design development, and by embedding measures into the design, along with a number of standard measures set out in the Outline Environmental Management Plan (OEMP) [REP9-019], which would be implemented by the contractor to reduce the construction impacts and effects.
- 5.3.16. The following embedded mitigation measures are highlighted in paragraphs 7.8.4 – 7.8.6:

"The alignment and permanent land take requirements of the mainline link road have been developed to minimise the extent of truncation of the Bickenhill Conservation Area.

The mainline link road has been designed to position the majority of its length within an earthwork cutting, the objective being to visually contain much the new carriageway and traffic movements from existing views available from within the western fringes of Bickenhill Conservation Area, and to contain traffic-sourced noise which can also influence the setting of the area.

Lighting of new and improved sections of road within the Scheme has been confined to locations where road safety is a priority, in order to reduce the potential for light spill to intrude into the setting of heritage assets."

Issues Arising

Asset Value

- 5.3.17. SMBC confirm in its LIR [REP2-033] that it considers the methodology used in determining the impact of the Proposed Development on heritage assets to be acceptable. The ExA does not disagree. However, like SMBC, the ExA does disagree with the asset values attributed to both Bickenhill and Hampton in Arden Conservation Areas, as well as the level of impact.
- 5.3.18. This issue formed the basis of the ExA's first written question (WQ1) 1.5.6, accompanying our Rule 8 letter [PD-006], and our second written question (WQ2) 2.2.2 [PD-008]. The Applicant's response [REP2-007] to the former is that:
- 5.3.19. "In accordance with DMRB methodology (Volume 11, section 3, part 2), conservation areas have been assigned two levels of value. This is intended to recognise those conservation areas which are designated due to their association with a high number of highly graded listed buildings which have a group value. While both Hampton in Arden and Bickenhill Conservation Areas do contain Grade I and Grade II* listed buildings,

these are not considered to define the special interest of the designated areas; therefore, they do not raise the value of the conservation area.”

- 5.3.20. This position is amplified in the Applicant’s response to WQ2 2.2.2 [REP4-010], which explains that in assessing heritage value the assessment makes use of Table 6.1 of the DMRB as well as professional judgement as per the guidance provided within the same document. The Applicant’s interpretation of Table 6.1 is that rather than simply containing highly-designated assets, those assets should define the character of the conservation area as a whole in order to raise the value of the conservation area to ‘high’ value. Whilst acknowledging the high designated buildings within both Hampton-in-Arden and Bickenhill Conservation Areas, the Applicant’s view is that that they do not characterise the conservation areas as a whole or contribute to all aspects of their special interest. In the case of Bickenhill, the Applicant does not consider that the presence of one highly-designated building is sufficient in itself to raise to the value of the conservation area as a whole to the ‘high’ threshold. As such the Applicant believes that the stated level of heritage value as ‘medium’, is appropriate for the conservation areas as a whole.
- 5.3.21. However, the ExA largely share the views expressed by SMBC in its LIR [REP2-033], and its responses [REP2-034 and REP4-018] to the aforementioned questions, that both Bickenhill and Hampton in Arden Conservation Areas should be rated as having a high heritage value rather than medium.
- 5.3.22. Whilst it is agreed that the tables referred to above are not intended for simplistic application and require professional judgement, it is nonetheless relevant that the high value criteria of both tables contain both conservation areas with very important buildings and Grade I and Grade II* listed buildings. This reflects that Grade I listed buildings are of exceptional interest whilst Grade II* listed buildings are particularly important buildings of more than special interest. Moreover, according to Historic England⁵⁵, only 2.5% of listed buildings are Grade I and 5.8% are Grade II*. The fact that Hampton in Arden Conservation Area contains one Grade I listed building and two Grade II* listed buildings, whilst Bickenhill Conservation Area contains one Grade I listed building, is a significant indication that the value of those conservation areas should reflect the relative scarcity and importance of those buildings within them.
- 5.3.23. Within Bickenhill Conservation Area, the parish Church of St Peter is the pre-eminent building, dating from the 12th Century with later phases in the 14th, 15th and 17th Centuries. Whilst this is the only Grade I listed building in the conservation area, the spire remains as prominent as originally intended and is the focal point of the village and a point of reference in the surrounding area. The church is positioned on locally high ground at the heart of a group of historic and other buildings typifying an English midlands village. Not only is the building of

⁵⁵ <https://historicengland.org.uk/listing/what-is-designation/listed-buildings/>

exceptional interest in its own right, it largely defines the character of the conservation area as whole and is of pivotal importance to its special interest.

- 5.3.24. Moreover, as highlighted in SMBC's response [REP4-018], the proposed high value for Bickenhill Conservation Area is further supported by the contribution of the Grade II listed Grange Farm and a number of buildings on the Local List of Heritage Assets, which are served by narrow sinuous lanes with enclosing banks and hedgerows, beyond which are many surviving fields and paddocks.
- 5.3.25. Similarly, the main focal point in Hampton in Arden Conservation Area is the Grade I ancient Parish Church of St Mary and St Bartholomew, established in the 12th Century with successive phases dated to the 13th to 16th Centuries. The church is positioned within a churchyard (which also contains the Grade II listed Churchyard Cross) on an area of higher ground within a setting of mature trees.
- 5.3.26. The church is encircled by significant village buildings ranging from the Moat House (a large Grade II* listed timber framed house dated to the 16th Century) and the Manor House (Grade II) with its ornate clock tower (Grade II*) within the setting of its pleasure gardens and parkland. The 2015 Character Appraisal for the conservation area, referred to by SMBC [REP4-018], highlights other key positive characteristics including a nationally important cluster of early Arts and Crafts buildings designed by W. E. Nesfield for Sir Frederick Peel, as well as a historic connection with Sir Robert Peel (Prime Minister 1834 – 35 and 1841 – 46).
- 5.3.27. Whilst the ExA recognises that 'high value' conservation areas may be associated with a high number of highly graded listed buildings, which also have a group value, those are not requirements necessitated by the DMRB guidance. Nevertheless, Hampton in Arden Conservation Area contains two Scheduled Ancient Monuments and over 30 listed buildings as well as many non-designated assets which make a positive contribution to its character and appearance.
- 5.3.28. Therefore, for the reasons explained, the ExA attributes a high heritage value to both Hampton in Arden and Bickenhill Conservation Areas.

Unaffected heritage assets

- 5.3.29. Due to the separation and intervening features, there would likely be little or no intervisibility between the Proposed Development and the Grade I Parish Church of St Mary and St Bartholomew, the Grade II listed Churchyard Cross or the Grade II* Moat House. Moreover, the ExA has not identified any other harmful (or beneficial) effects to their settings which contribute to their significance and how they are appreciated. The same applies to the numerous other Grade II listed buildings within the Hampton in Arden Conservation Area which are located along Solihull Road, the High Street and Fentham Road. These include: Church Farmhouse; the White Lion Public House; Yew Tree Cottage; Beech House; George Fentham School; Fentham Library; The Fentham Club;

The Lodge; Manor Cottage; and Nos 22-30, 32-42, 69-75, and 77 to 79 High Street.

- 5.3.30. Again, due to the separation, topography and intervening features these conclusions similarly apply to the heritage assets beyond the conservation areas, including:
- the Grade II* listed Park Farmhouse; Eastcote Hall; Walford Hall Farmhouse; Bogay Hall; and Ravenshaw Hall;
 - the Grade II listed Castle Hills Farmhouse; Pasture Farmhouse; the dovecote at Eastcote Hall; Eastcote House; Eastcote Manor; Wharley Hall; the barn at Wharley Hall; the barn at Ravenshaw Hall; Henwood Hall Farmhouse; Grove Farmhouse; Grange Cottage; and Henwood Mill; and
 - the non-designated Warwick and Birmingham Canal.
- 5.3.31. For these reasons explained, the ExA does not consider that the Proposed Development would be experienced in combination with the setting of these heritage assets and their significance would thus be preserved.
- 5.3.32. Packington Hall, a Grade II* registered park and garden, is located to the north-east of the Proposed Development but given the separation (approximately 1.5km) and intervening features, the significance of this designated heritage asset would be unaffected.

Archaeology

Construction

- 5.3.33. ES Chapter 7 [APP-052] highlights that permanent construction impacts that would last beyond the construction phase are likely to include physical impacts on known archaeological assets arising from activities such as earthworks excavation, the formation of construction compounds and the installation of drainage infrastructure, and the disturbance, compaction or removal of undiscovered sub-surface archaeological deposits through construction activities.
- 5.3.34. The assessment, which is based on information gathered from desk studies and non-intrusive geophysical surveys, identifies construction impacts on 10 known archaeological assets. These are discussed below whilst their locations are identified at Figure 7.2 of the ES [APP-084].
- 5.3.35. The post-medieval farmhouse and rabbit warren, located on the eastern side of the M42 and visible as earthworks (5668), have archaeological and historical significance because of the information they contain about the agricultural development and land management of the area. The site is assessed to be of no more than low value. It is also assessed that the Proposed Development would physically affect the western side of this asset, affecting less than a fifth of the feature, resulting in a minor adverse magnitude of impact and slight significance of effect.
- 5.3.36. Gorse Lane (10827) is a post-medieval to modern dated old road preserved by field boundaries and a farm track, but with no visible remains. Its archaeological and historic significance lies in its ability to

provide information on the connections between places in the landscape. Any buried remains relating to this asset, particularly along the western third of the trackway, would be physically impacted by the Proposed Development, although the survival of any remains below the existing surface is uncertain. The archaeological asset is assessed to be of no more than negligible value. Although totally contained within the Order Limits, the Proposed Development would not result in its total loss. A moderate adverse magnitude of impact is predicted with a slight adverse significance of effect.

- 5.3.37. A post-medieval to modern industrial pit lies adjacent to the M42 motorway (5758). It is identified as having some limited historic significance relating to the information it provides regarding local industrial processes. It is acknowledged that the Proposed Development would run very close to or over this asset, with construction resulting in a physical impact on any buried remains. The Applicant has assessed the industrial pit to be of no more than negligible value and that a magnitude of impact of moderate adverse would result with a slight adverse significance of effect.
- 5.3.38. An undated enclosure (5797) has been identified from analysis of aerial photographs, the archaeological and historical significance of which is derived from the information it can provide regarding the medieval agricultural process and land management of the area. However, its heritage value is assessed to be no more than negligible. The Proposed Development would have a physical effect on this asset, and a magnitude of impact of moderate adverse and a significance of effect of slight adverse is predicted.
- 5.3.39. A linear ditch speculated to date between the Neolithic and post-medieval periods runs parallel to the motorway, along with an undated enclosure in the northern corner of the field (10833). The archaeological and historic value of this asset lies in its ability to inform movement through the landscape and land use over time. The route of the Proposed Development would clip the eastern side of this asset, which is assessed to have negligible heritage value, resulting in a magnitude of impact of minor and a slight adverse significance of effect.
- 5.3.40. A trackway with origins in the Iron Age and use during the medieval period run east-west across the Proposed Development (1376). Solihull Road follows the alignment of this asset. It holds archaeological and historic significance in its ability to inform on movement across the landscape over time. It is assessed to be of low value. The Proposed Development would intersect the line of this trackway in two places. A magnitude of impact of moderate adverse and a slight adverse significance of effect is predicted.
- 5.3.41. Four areas of medieval ridge and furrow (5797; 5804; 10926; 10975) have been identified, the significance of which being the information they can provide regarding the medieval agricultural process and land management of the area. Their value is assessed to be no more than negligible. The Proposed Development would have a physical effect on

these areas and a magnitude of impact of minor adverse and a slight adverse significance of effect is predicted.

- 5.3.42. SMBC's LIR [REP2-033] does not raise issue with these conclusions and based on the evidence provided, the ExA finds no reason to take a contrary position on the assessment findings.
- 5.3.43. Nevertheless, the ExA queried in WQ1 1.5.2 [PD-006] why the medieval parish of Bickenhill (10499) was not included within those identified as having the potential to be affected by the Proposed Development, given that proposed Works Nos. 7, 16 and 73 appear to encroach into its western extent.
- 5.3.44. The Applicant's response [REP2-007] is that as the special extent of the medieval parish of Bickenhill (10499) is not known it was not possible to determine if the Proposed Development would physically impact upon it. However, the heritage asset defined in the ES as Bickenhill Medieval Manor (6198) is considered by the Applicant as likely to cover the same extent as the medieval parish of Bickenhill (10499). The extent of this asset, as detailed on Figure 7.2 of the ES [APP-084], extends into the area of Work Nos. 7, 16 and 73. An assessment of the potential effect on Bickenhill Medieval Manor (6198), which was not undertaken as part of the environmental impact assessment, is provided as part of the Applicant's response to WQ1 1.5.2.
- 5.3.45. It is stated that the manor is an extension to the settlement of Bickenhill and holds archaeological significance from the information it may provide in relation to the development of the medieval settlement and associated farming practices. It is explained that the limit of the asset, as defined by the Warwickshire County Council Historic Environment Record (HER) entry, is inconsistent with the historic mapping and does not match with the road layout or field boundaries recorded from historic mapping. The full extent of the asset and its boundaries is not understood and the asset is assessed to have a low heritage value.
- 5.3.46. The Proposed Development would physically affect only the north-western corner of this asset and the Applicant's position is that it would result in very minor changes to it and its significance would be maintained. On this basis, the potential impact on the significance of Bickenhill Medieval Manor (6198) is assessed to be minor resulting in a significance of effect of slight adverse.
- 5.3.47. Again, the ExA find no reason to disagree and note that SMBC has not sought to comment on the Applicant's response to WQ1 1.5.2.
- 5.3.48. As noted above, the ES Chapter 7 assessment is based on information gathered from desk studies and non-intrusive geophysical surveys. Given the number of archaeological assets recorded within the study area, ES Chapter 7 acknowledges that the potential exists for previously unrecorded buried archaeology to be present and that the construction of the Proposed Development has the potential to result in the permanent removal or truncation of such remains. It is explained that the potential

for previously unrecorded archaeological deposits to be present within the Order Limits would be identified and evaluated through the programme of archaeological evaluation trenching, as presented in the Written Scheme of Investigation [APP-123], to be submitted during the Examination. In the absence of the findings of the planned archaeological evaluation trenching, the assessment has assumed that unrecorded archaeological deposits would have a heritage value of no greater than medium. As total asset removal could occur, a magnitude of impact of major adverse applies, resulting in a large adverse significance of effect.

- 5.3.49. As explained in its LIR, SMBC considers this assumption to be premature and that potential exists for archaeological features or deposits of greater than medium significance to survive across the site.
- 5.3.50. Nevertheless, Archaeological Investigation Reports were submitted at Deadline 2 (Interim) [REP-020] and at Deadline 4 [REP4-004], reflecting that excavation was completed in two stages. The results of the evaluation identified ridge and furrow cultivation in the fields to the north-east of Catherine-de-Barnes, and to the north and west of Bickenhill. This being indicative of the medieval–early post-medieval agrarian economy in the area. The archaeological evaluation trenching works also identified seven field boundary ditches and four undated pits which were found to relate to post-medieval agricultural practices or were natural in origin.
- 5.3.51. Having reviewed this information, the ExA subsequently sought comments through WQ3 3.3.1 [PD-011] from the Applicant and SMBC on the implications of the findings of the Archaeological Investigation Report [REP4-004] on the conclusions of Chapter 7 of the ES [APP-052]. The Applicant’s response [REP6-010] is that the findings would alter the assessment of archaeological potential presented in ES Chapter 7 insofar as the potential for discovering previously unrecorded prehistoric and Roman deposits can now be reduced to low, from the previously reported medium potential. The Applicant’s view is that the potential for discovering remains of early medieval, medieval and post-medieval date remains low, as per the assessment presented in ES Chapter 7. Consequently, the Applicant’s response is that these findings do not require any modification or update to the assessment as there is no change to the reported likely significant effects on archaeology.
- 5.3.52. SMBC confirmed that it had no further comments in response to WQ3 3.3.1 [REP6-037]. SMBC also confirm in its SoCG with the Applicant [REP8-005] that sufficient archaeological evaluation has been undertaken to inform the assessment. Although it is highlighted that the assessment did not examine the full area to be disturbed by this scheme, SMBC expect that the DCO will secure appropriate archaeological work to mitigate any remaining potential archaeological impacts.
- 5.3.53. The ExA similarly take the view that the OEMP [REP9-019], including Outline Archaeological Control Plan, along with Requirement 9, would secure appropriate mitigation commensurate with the archaeological resource. This is consistent with NNNPS paragraph 5.142.

Operation

- 5.3.54. As archaeological assets directly impacted by the construction of the Proposed Development would have been removed during that phase of work, the Applicant's ES Chapter 7 assessment has concluded that there would be no physical impacts arising from its operation, and therefore no effects.
- 5.3.55. Similarly, no impacts or effects are predicted in respect of changes to the setting of such assets associated with the presence and operation of lighting, traffic movements or road noise.
- 5.3.56. The ExA find no reason to take a contrary position on these matters.

Historic buildings

- 5.3.57. The Applicant's assessment has identified that during construction and operation, the Proposed Development would have adverse impacts on the following historic building assets:
- Four listed buildings - St Peter's Church, Bickenhill (Grade I); Grange Farmhouse, Bickenhill (Grade II); Hampton Manor (Grade II); and the garden terrace and steps at Hampton Manor (Grade II).
 - Two Conservation Areas - Hampton in Arden and Bickenhill; and
 - Ten non-designated buildings - Glebe Farmhouse, The Croft, Yew Tree Farmhouse, Church Farmhouse, Barn at Church Farm, Rose Bank, Hazel Cottage and The Old School House, the Vicarage, Harpsford, and Hampton Lane Farmhouse.

Bickenhill Conservation Area

- 5.3.58. The village of Bickenhill is of early-medieval origins, and the manor is known to have been held by Alward during the reign of Edward the Confessor. As noted above, the Grade I listed Parish Church of St Peter is the pre-eminent building of the conservation area and is of principal importance to its special interest.
- 5.3.59. The fields in and around the village also positively contribute to its historic agricultural character along with a good survival of historic English midlands village vernacular buildings, located on an irregular arrangement of winding lanes.
- 5.3.60. The historic agricultural setting of the village remains tangible along the south and north western approaches of St Peter's Lane, creating a noticeably more intimate and tranquil rural character than Catherine-de-Barnes Lane. Indeed, the buffer provided by the fields adjacent to the northern approach of St Peter's Lane contributes to the significance of the conservation area by maintaining a rural village landscape setting when seen from Catherine-de-Barnes Lane.
- 5.3.61. Whilst noting the relative proximity of significant transport and leisure infrastructure to the north of Bickenhill Conservation Area, the ExA agree with SMBC that their effects on its special interest and setting are not as extensive as suggested by the Applicant. Save for the communication

tower, Birmingham Airport is largely screened from the northern edge of the village by the bank of vegetation along the southern side of the A45. During our summertime site inspections this bank of vegetation also largely screened Clock Interchange as well as the A45 itself. Moreover, the M42 is also largely out of view and although audible, the noise effects are not significant detractors.

- 5.3.62. The main existing detractor is the sight and sound of aircraft taking off and landing at Birmingham Airport. However, this is intermittent and the existing buffer towards the north western end of St Peter's Lane, noticeably reduces noise levels from the aircraft within the heart of the village, as well as significantly reducing the noise and visual effects associated with traffic using Catherine-de-Barnes Lane. Indeed, the existing field buffer makes a notable contribution to the significance of the conservation area by maintaining the foreground of a rural village landscape from Catherine-de-Barnes Lane. Similarly, the fields to the north of the village provide a buffer to the A45 and the major travel and leisure infrastructure beyond, as well as an agricultural setting. The rural character of the village therefore largely prevails.
- 5.3.63. The Proposed Development would run through the western edge of Bickenhill Conservation Area and in doing so would result in both direct and indirect impacts up on this designated heritage asset.

Construction impacts

- 5.3.64. The construction of the main line link road (in cutting), drainage attenuation and the realignment of Catherine-de-Barnes Lane and overbridge in and around the western extent of the conservation area, would significantly compromise the rural approach to the village along St Peter's Lane. The physical encroachment would result in the loss of much of the existing natural buffer, thereby truncating the conservation area and further severing the village from its rural setting and exposing it to greater noise impacts.
- 5.3.65. The rural setting to the north of the village would also be significantly compromised by the position of the main site compound (Work No. 69) situated in a large agricultural field between the A45 and the northern edge of the village, with associated facilities including lighting, office and welfare facilities, stores, stockpiling areas, hoardings, vehicular access, internal roads and parking areas. Along the south western approach to the village, the setting would be compromised by the use of land for stockpiling materials.
- 5.3.66. The Applicant's Chapter 7 assessment predicts a moderate adverse construction effects on Bickenhill Conservation Area. However, WQ1 1.5.7 [PD-006], asked whether there is a discrepancy between this assessment and the large adverse construction effects predicted for Landscape Character Area 2 (LCA2) and Viewpoint J set out in ES Chapter 8 (paragraph 8.9.10 and Table 8.5) [APP-053].
- 5.3.67. The ExA note the Applicant's responses [REP2-007 and REP3-010] that there is no discrepancy as the assessments take account of different

factors. Nevertheless, ES Appendix 8.1 [APP-127] explains that Viewpoint J takes in St Peters Lane through Bickenhill, which is highly vegetated and a typical view through this conservation area. The value of view is assessed to be high. The temporary construction effects are stated as including the visibility of the construction compound and areas of vegetation would be removed resulting in large-scale machinery and construction activity dominating the view. The magnitude of impact is assessed as likely to be major, resulting in a large adverse effect.

- 5.3.68. Whilst it is accepted that Bickenhill forms a small part of LCA2, paragraph 8.9.4 of ES Chapter 8 states that within the LCA2, "there would be a loss of established trees and hedgerows as a consequence of site clearance works, the removal of which would change the balance of character-forming features and would open new views towards construction compounds (both main and satellite), construction working areas and their associated activity." Paragraph 8.9.6 also states that "The main site compound located immediately south east of Clock Interchange would appear as a new feature in the landscape, leading to a change in the balance of elements within LCA 2." Paragraph 8.9.8 goes on to state that "The character of agricultural landscape is such that new activity and larger construction infrastructure elements would combine to adversely impact on local landscape character, particularly from locations around the fringes of Bickenhill."
- 5.3.69. Moreover, for Viewpoint I, looking from the PRoW and residential properties in the north of Bickenhill, Appendix 8.1 explains that the construction compound would be visible and areas of vegetation removed and that large scale machinery and construction activity would dominate the view, altering its characteristics. The magnitude of impact is assessed to be major, resulting in a large adverse effect.
- 5.3.70. The ExA accept that not all of the Bickenhill Conservation Area would be affected by the construction of the Proposed Development. Nevertheless, Viewpoints I and J and LCA2 form part of its setting and make an important contribution to the ability to understand the historic development of the settlement and its significance. The ability to appreciate that significance would be greatly compromised during construction works.
- 5.3.71. Paragraph 7.6.79 of ES Chapter 7 identifies a number of non-designated heritage assets which reveal the historical development of the village from the 16th Century and comprise agricultural and domestic buildings in the vernacular style. SMBC confirm that these buildings are included in its Local List of Heritage Assets. They include Glebe Farmhouse on St Peter's Lane which originates in the 16th or 17th Century and comprises a timber framed farmhouse encased in 19th Century brick. Also dating to the 17th Century is The Croft on St Peters Lane, which is a timber framed farmhouse extensively refaced in red brick. Yew Tree Farmhouse, Church Farmhouse and the Barn at Church Farm are 19th Century farm buildings of red brick construction on Church Lane. Rose Bank, on St Peter's Lane, dates from the late 18th or early 19th Century. Hazel Cottage and The Old School House, also on St Peters Lane, is of 19th

Century date and is atypical of the vernacular character of the buildings within the conservation area. Constructed of brick and stuccoed, the cottage is in a Tudor revival style with chamfered reveal window architraves and ornate stacks. In addition to these buildings, ES Paragraph 7.6.79 also highlights Harpsford, a 19th Century dwelling converted from a former stable, and the vicarage, also dated to the 19th Century, as non-designated heritage assets.

- 5.3.72. For each of these buildings, ES Table 7.7 predicts a minor adverse magnitude of impact and a neutral significance of effect.
- 5.3.73. Given the separation and intervening features, the ExA agree with these findings insofar as they apply to The Croft, Yew Tree Farmhouse, Rose Bank, The Vicarage, Hazel Cottage and The Old School House. However, given that the construction of the main line link road and realigned Catherine-de-Barnes Lane would truncate the field adjacent to the Glebe Farmhouse, which forms part of its historical setting and significance, the ExA consider the magnitude of impact to be understated and would likely be moderate/ major, resulting in a slight/ moderate significance of effect. Because of the close proximity of the construction works, the effects on Church Farmhouse and Barn and Harpsford would also likely moderate, resulting in a slight adverse effect
- 5.3.74. The Applicant acknowledges at ES paragraph 7.9.20 that the construction works would affect the ability to understand the significance of the conservation area. Taking into account the existing influence exerted by the M42 motorway, the A45 and passing aircraft, the magnitude of impact is assessed by the Applicant to moderate adverse.
- 5.3.75. However, for the reasons explained, the ExA consider the existing negative influences are overstated and the heritage value of the conservation area is high. The ExA also consider that the magnitude of impact would moderate/ major and the significance of effect would be moderate/ large adverse. This is similar to the position of SMBC set out in its Deadline 4 submission [REP4-018] which supports a high heritage value to the conservation area and a significance of effects tending towards large adverse.

Operational impacts

- 5.3.76. During operation, ES Chapter 7 (paragraph 7.9.37) states that because the mainline link road would be positioned within an earthwork cutting and would be landscaped, the Proposed Development would not alter the ability to understand the significance of the conservation area. On this basis a magnitude of impact rating of no change is predicted with a neutral significance of effect.
- 5.3.77. SMBC does not agree pointing out that the Proposed Development (mainline link road) cuts into Bickenhill Conservation Area and rises from cutting through grade to low embankment. It is also pointed out that its operation would produce increased traffic, noise and lighting overspill. SMBC consider the impact must be moderate/ slight or moderate/ large [REP2-034].

- 5.3.78. The ExA similarly find a neutral significance of effect difficult to reconcile. Even though largely in cutting, the mainline link road and the realignment of Catherine-de-Barnes Lane, as well as the overbridge in and around the western extent of the conservation area, would significantly compromise the rural approach and wider setting to the village. Indeed, the conservation area would be directly truncated and enclosed by the significant urbanising infrastructure, thereby partly severing the village from its rural setting. In doing so the Proposed Development would harm those aspects which positively contribute to its significance.
- 5.3.79. As per the similarly posed question for the construction phase, WQ1 1.5.8 [PD-006] asked whether there is an inconsistency between the prediction of a neutral significance operational effect on Bickenhill Conservation Area as set out in ES Table 7.8 with the large adverse effects on visual amenity predicted for Viewpoint J in Table 8.6, both in year one and year 15.
- 5.3.80. Again, the ExA note the Applicant's responses that there is no discrepancy as the assessments take account of different factors [REP2-007 and REP3-010]. Nevertheless, as previously highlighted, ES Appendix 8.1 [APP-127], explains that the view takes in St Peters Lane through Bickenhill, which is highly vegetated and a typical view through this conservation area. The value of view is assessed to be high.
- 5.3.81. For the winter year of opening, Appendix 8.1 states that "The mainline link road would be visible in the foreground view, positioned in a deep and broad cutting. The Scheme would remove existing vegetation that encloses the lane and open the view up to the west and north-west. Traffic movement along the mainline link road would be partially visible, although set low in the view. Catherine-de-Barnes and St Peters Lanes would be realigned and bridged across the cutting. This would significantly alter the nature of this quiet enclosed village lane, opening views of the wider area while introducing more frequent and new structures along with highway traffic to the view leading to a more urban context." The magnitude of impact is assessed as likely to be major, resulting in a large adverse effect. These conclusions do not materially change for the summer of year 15, when mitigation planting is envisaged to fulfil its intended screening and integration functions.
- 5.3.82. Given that this viewpoint forms part of the conservation area and its setting, these changes would considerably affect the ability to understand its significance.
- 5.3.83. As per the construction phase, ES Table 7.7 predicts a minor adverse magnitude of impact and a neutral significance of effect for the non-designated heritage assets identified above, once operational. Again, given the separation and intervening features, the ExA agree with these findings insofar as they apply to The Croft, Yew Tree Farmhouse, Rose Bank, The Vicarage, Hazel Cottage and The Old School House.

- 5.3.84. However, given that the construction of the main line link road and realigned Catherine-de-Barnes Lane would truncate the field adjacent to the Glebe Farmhouse, which forms part of its historical setting and significance, the ExA consider the magnitude of impact to be understated and would likely be moderate/ major, resulting in a slight/ moderate adverse significance of effect. Similarly, due to the proximity of the Proposed Development, the effects on Church Farmhouse and Barn and Harpsford would also likely moderate, resulting in a slight adverse effect
- 5.3.85. Taking all the above factors into consideration, the ExA consider that through the operational phase of the Proposed Development, Bickenhill Conservation Area would experience a magnitude of impact of moderate/ major and a significance of effect of moderate/ large adverse.

St Peter's Church

Construction impacts

- 5.3.86. The setting of the Grade I listed Church of St Peter comprises the village of Bickenhill and the wider surrounding countryside. In ES paragraph 7.9.21, it is acknowledged that its setting would be impacted by the construction of the Proposed Development by isolating the village from the wider rural area whilst the construction of the mainline link road in fields to the north-west of the Church of St Peter would result in an increased visual intrusion into views towards the church from the north.
- 5.3.87. As these views are made from modern roads, including Catherine-de-Barnes Lane and the A45, the Applicant does not consider they represent key historic views. However, in these views, as well as those from the public rights of way (PRoW) network, the church spire remains the principal landmark building of the village, as intended, and the intervening agricultural fields clearly reveal its rural setting, thereby strongly contributing to its significance. Experiencing these views from modern roads does not fundamentally affect the ability to appreciate the significance of this heritage asset.
- 5.3.88. These attributes would be significantly compromised during construction through the encroachment of works and the positioning of the main site compound in the rural setting of the church with the associated noise and visual intrusion. As result, the ability to appreciate and understand the significance of the wider rural setting would also be compromised.
- 5.3.89. Accordingly, the ExA consider that the Applicant's assessment of a minor adverse magnitude of impact has been understated and should be moderate adverse. Given the high value of the asset, the significance of effect would be moderate/ large.
- 5.3.90. These conclusions reinforce those for Bickenhill Conservation Area, having regard to the principal importance of the church to the same.

Operational impacts

- 5.3.91. ES Chapter 7 acknowledges that the Proposed Development would result in increased visual intrusion from road lighting into views towards the

Church of St Peter from the north. However, it is again stated that these views, which are made from modern roads, are not key historic views. A magnitude of impact of minor adverse is therefore predicted in relation to the ability to understand the significance of this asset.

- 5.3.92. SMBC suggests [REP2-034] that the impact would be greater and that whilst views from roads are reported as non-historic views, several routes are on historic alignments so views represent continuity in the setting and appreciation of designated heritage assets. SMBC consider views from the church would be adversely affected, by light overspill from the road and new roundabout and possibly by views of infrastructure and vehicles.
- 5.3.93. As per the construction phase, the ExA consider that the operation of the Proposed Development would compromise the ability to appreciate and understand the significance of the wider rural setting of the Church and that the noise and visual intrusion would also encroach into its historic village setting.
- 5.3.94. Accordingly, the ExA consider that the Applicant's assessment of a minor adverse magnitude of impact has been understated and should be close to moderate adverse. Given the high value of the asset, the significance of effect would be at least moderate. Again, these conclusions reinforce those for Bickenhill Conservation Area, having regard to the principal importance of the Church to the same.

Grange Farmhouse

- 5.3.95. The Grade II listed Grange Farmhouse is set back on the western side of St Peters Lane and largely dates from the 19th Century with a potentially earlier structure contained within the fabric of the colour washed render. It is a large, two storey farmhouse with a tiled roof incorporating three gables expressed to the lane.

Construction impacts

- 5.3.96. The Applicant's assessment is that Grange Farmhouse would experience increased noise and light from traffic associated with the construction of the Proposed Development and a minor adverse impact on the ability to understand the significance of the asset would result. Given the separation to the Order limits and the intervening features and the mitigation measures contained within the OEMP, the ExA agree.

Operational impacts

- 5.3.97. Chapter 7 of the ES predicts that the Grade II Grange Farmhouse would experience an erosion of its rural setting due to increased light and noise from traffic from the mainline link road, resulting in a further loss of its sense of place and a minor adverse magnitude of impact. Given the separation to the Order limits and the intervening features, the ExA agree.

Hampton in Arden Conservation Area

- 5.3.98. The special interest of Hampton in Arden Conservation Area is largely derived from a well-defined medieval village core, prominent ancient church and historic high street, as well as its manor house and associated designed landscape pleasure gardens and park. The conservation area remains rural in character and its historically isolated rural setting is tangible.
- 5.3.99. As explained above, the main focal point in the conservation area is the Grade I ancient Parish Church of St Mary and St Bartholomew, encircled by significant village buildings ranging from the Moat House (listed Grade II*) and the Manor House (Grade II) with its ornate clock tower (Grade II*) within the setting of its pleasure gardens and parkland. The extensive parkland and wooded grounds of Hampton Manor extend to the west from the Manor House towards the M42. The interest which is derived from the relationship between the manor and its parkland positively contributes to the significance of the conservation area, reflecting the idealised rural setting of the village and the influence of the manor on the village.

Construction impacts

- 5.3.100. As acknowledged in the ES Chapter 7 assessment (paragraphs 7.9.17 – 18), "Construction of M42 Junction 5A would result in increased visual intrusion to views from the west of Hampton in Arden Conservation Area, attributed to the junction being elevated above the existing level of the M42 motorway and forming a new feature in existing views. This would adversely impact the relationship between the former parkland of Hampton Manor and its rural setting by increasing the visual impact on the parkland, decreasing the ability to understand the significance of the asset and resulting in a magnitude of impact of minor adverse"
- 5.3.101. As explained above, the ExA agree with SMBC that the value of the conservation area is high, rather than medium assessed by the Applicant. SMBC also assess the magnitude of impact of construction to be moderate adverse and the significance of effect tending towards moderate, rather than large.
- 5.3.102. Although the western extent of the conservation area would be relatively close to the new Junction 5a, taking into account the separation to the Manor and clock tower, topography and the existing influences of the M42, the ExA consider the magnitude of impact on the conservation area as a whole to be closer to minor rather than moderate and the significance of effect to be moderate/slight adverse.

Operational impacts

- 5.3.103. ES Chapter 7 recognises that the operation of M42 Junction 5A would result in impacts associated with lighting visible in the setting of the conservation area during night-time periods, specifically affecting the former parklands of Hampton Manor, which are reflected in the boundary

of the conservation area. The magnitude of impact is assessed to be minor adverse and the significance of effect slight adverse.

- 5.3.104. The ExA appreciate that setting of this part of the Hampton in Arden Conservation Area is already adversely affected by the visibility of vehicles and carriageway lights on the M42. However, operation of the Proposed Development would result in combined additional impacts from moving vehicles, vehicular noise, as well as the landscape and visual impacts associated with the raised eastern roundabout which would be located within an unlit agricultural field. On this basis the ExA consider that the magnitude of impact would tend towards the upper end of minor adverse, towards moderate adverse, and a significance of effect similarly positioned at the upper end of slight, towards moderate adverse. This is again largely consistent with the views of SMBC.

Hampton Manor

- 5.3.105. The Grade II Hampton Manor was built in 1855 in the Tudor revival style, of ashlar construction with crenelated parapets. Its mid-19th Century garden terraces, walls and steps are listed separately as Grade II. Attached to Hampton Manor is the richly decorated Grade II* listed Clock Tower, built in 1872 by W. E. Nesfield of ashlar construction with an octagonal roof and lantern in a Tudor revival style. The associated extensive parkland forms the essential historic architectural setting to both the Manor, Clock Tower, garden terraces, walls and steps, thereby strongly contributing to their significance as a group.

Construction impacts

- 5.3.106. ES Chapter 7 acknowledges that the Manor and its garden terraces, walls and steps would be affected by the increased visual intrusion into their historic setting, resulting in a magnitude of impact of minor adverse.
- 5.3.107. The Applicant's assessment has concluded that the Clock Tower would not be affected by the Proposed Development, as its significance is derived from its relationship with the Manor and not views towards the M42 motorway.
- 5.3.108. This is disputed by SMBC in its LIR [REP2-033] and written question responses [REP2-034 and REP4-018] which, in the ExA's opinion, rightly highlight that the Clock Tower deliberately gives views over the picturesque parkland and such views are still an important part of its significance. Moreover, if it is accepted that the visual intrusion into the setting of Hampton Manor would affect its significance, and that of its listed garden terrace, walls and steps, it logically follows that the setting of the Clock Tower must also be affected by the construction of the Proposed Development as it would take place just beyond the area of former parkland within views to and from the Manor and its Clock Tower.
- 5.3.109. Having regard to the importance of the relationship between the former parkland of Hampton Manor and its rural setting and the diminished ability to understand the significance of the assets by the increased visual intrusion, the ExA consider that the magnitude of impact would be

minor/ moderate adverse for the three listed assets. The resulting significance of effects would therefore be moderate/ slight for the Grade II assets and moderate for the Grade II* asset.

Operational impacts

- 5.3.110. ES Chapter 7 recognises that the operation of M42 Junction 5A would result in lighting impacts affecting the former parklands of Hampton Manor. This in turn would result in an impact upon the Manor itself and its garden terrace, walls and steps, given that the parkland comprises an intrinsic part of their historic setting. The Applicant has assessed magnitude of impact to be minor adverse for both assets resulting in a slight adverse significance of effect.
- 5.3.111. SMBC considers that the impact upon the setting of the Grade II* Clock Tower should also be reported as minor but with a significance of effect of moderate. However, having regard to the important contribution the parkland makes to the significance of all three listed assets, the ExA consider that the magnitude of impact would again be minor/ moderate adverse. The resulting significance of effects would therefore be moderate/ slight for the Grade II assets and moderate for the Grade II* asset.

Non-designated heritage assets outside of the conservation areas

- 5.3.112. The rural setting of Hampton Lane Farmhouse, located on the northern side of Solihull Road, contributes to the ability to understand the significance of this 18th Century brickwork building. Whilst this is somewhat compromised by Solihull Road and the M42 motorway to the east, the construction of the raised Junction 5A and associated construction compounds within this setting would result in a significant adverse effect on this non-designated heritage asset. The Applicant's moderate assessment for the magnitude of impact and slight adverse significance of effect is therefore considered reasonable, having regard to its low heritage value.
- 5.3.113. During operation, Hampton Lane Farmhouse would be affected by increased light and noise from traffic and from lighting at new junctions as well as the physical presence of the raised Junction 5A roundabout and its approach. This Applicant predicts that this would result in a degree of perceived severance from the asset's historically rural setting, and a magnitude of impact of moderate adverse. Again, this conclusion is considered reasonable.

Historic landscape

- 5.3.114. As described in ES Chapter 7 (paragraphs 7.6.95 – 7.6.97), the area has remained rural in character, despite the encroachment of Birmingham Airport to the north and the M42 motorway running to the east. It is explained that there are 189 entries in the record of Historic Land Use Characterisation within the 500m study area. The majority of these relate to the over-riding rural nature of the study area, describing fields, many of which have medieval origins, with irregular or 'S' shaped boundaries

and of varying size from 'small' to 'very large'. It is also explained that some of the fields bear the hallmarks of enclosure. Two areas of replanted ancient woodland are recorded: Barber's Coppice and Aspbury's Copse.

Construction

- 5.3.115. The historic landscape is assessed to have historic interest and low heritage value on the basis that it is a robust fieldscape which, whilst originating in the medieval period, has been subjected to further field sub-division in the 19th Century and from the construction of the M42 motorway, the A45, Birmingham Airport and the NEC.
- 5.3.116. ES paragraph 7.7.2 highlights that permanent construction impacts that would last beyond the construction phase are likely to include physical impacts on historic landscapes associated with the loss of key landscape components as a consequence of construction, such as those resulting from site clearance activities. Paragraphs 7.9.27 to 7.9.30 also acknowledge that the historic landscape would be physically impacted during construction of the Proposed Development, particularly from the mainline link road, which would require the removal of several historic field boundaries, some of which potentially have medieval origins. It is also highlighted that construction would result in the partial loss of this medieval and post-medieval enclosed landscape.
- 5.3.117. However, it is stated that areas of the wider surrounding landscape to the east and west of the mainline link road would be preserved and this landscape has capacity to absorb change. On this basis, and as the landscape only retains limited elements of historic legibility in the form of field boundaries, the magnitude of impact on the historic landscape is assessed to be no more than minor adverse. Due to the extent of physical alteration that would occur, the Applicant has concluded that the construction of the proposed development would result in a slight adverse effect on the historic landscape.
- 5.3.118. On the basis that the Proposed Development would result in the loss of several historic field boundaries of medieval origins, and the partial loss of medieval and post-medieval landscape as well as ancient woodland, the Applicant was asked to further justify this conclusion in WQ1 1.5.9 [PD-006].
- 5.3.119. The Applicant's responses [REP2-007 and REP3-010] refer to the wider landscape already being dominated by linear features, including the M42; A45; Catherine-De-Barnes Lane; the London and Birmingham Railway Line and; Birmingham Airport. When assessed against the extant historic landscape it is assessed that the Proposed Development would result in the partial loss of limited, individual elements of this wider landscape such as field boundaries and woodland. Due to the nature and extent of the wider landscape, and the design of the Proposed Development being in scale with other elements of the landscape, it is concluded the change will be absorbed.

- 5.3.120. SMBC's response [REP2-034] to the same question refers to ES Chapter 8 (landscape) paragraph 8.6.17, which states that: "This LCA [LCA1] is a settled rural landscape surrounded and dissected by major development and transport corridors. Despite pressures, it remains functional and intact with relatively few areas where components break down or transition towards more diverse and conflicting land uses typical of urban fringes. SMBC also refer to paragraph 8.6.18 which finds that: "Overall this LCA comprises a good quality rural landscape which resists, but remains vulnerable to, the pressures of urban fringe development. Accordingly, this LCA is considered to be Moderate value with a Moderate susceptibility. Sensitivity towards change is assessed as being Moderate."
- 5.3.121. SMBC express concern that the low value attributed to the historical landscape appears to be at odds with Chapter 8 and take the view that the historic landscape is actually of medium value and that construction would create a moderate adverse impact giving a significance of effect of moderate adverse.
- 5.3.122. The Applicant's response [REP3-010] is that the nature of the two assessments varies, with the heritage assessment focusing on impacts to the understanding and appreciation of the historic development of the landscape and how this is revealed within the historic elements.
- 5.3.123. Nevertheless, the ExA is of the view that in spite of the linear features referred to by the Applicant, the landscape around Bickenhill is surprisingly 'intimate' and exhibits evident remnants of an historical pattern. The ExA therefore sought to probe this issue further in WQ2 2.2.3 [PD-008], asking, as the Proposed Development would be in scale with those large linear features, why it would not encroach further into the remaining intimate landscape instead of being absorbed?
- 5.3.124. The Applicant's response [REP4-010] was to reiterate that this is a robust fieldscape which, although has its origins in the medieval period, has been subjected to further field sub-division in the 19th century. It is stated that the Proposed Development would result in the loss of minor elements of this fieldscape, such as field boundaries and would not be out of scale with the other linear features in the area.
- 5.3.125. SMBC's response to WQ2 2.2.3 [REP4-018] provides further justification for its stated position. It states, amongst other things, that "*The site includes fields of arable or grazing land that are often still enclosed and divided by evident remnants of hedgerow, and some of these hedgerows with trees are heritage assets. Some appear to result from mediaeval land division, and some are of later planned enclosure. Looking into and across the site from local roads and footpaths, in many instances the enclosure by hedgerows and by trees either singly, in rows or in blocks creates the 'intimate' landscape referred to.*"
- 5.3.126. Having regard to the submissions of both the Applicant and SMBC, as well as its observations made at the accompanied and unaccompanied site inspections, the ExA consider that the heritage value of the landscape sits between the low to medium value criteria of Table 7.1.

5.3.127. Moreover, the ExA's view is that the existing large-scale linear features in the wider area do not dominate the historical landscape to the extent suggested by the Applicant and that the landscape around Bickenhill remains relatively 'intimate' and exhibits evident remnants of an historical pattern. The capacity of the historic landscape to absorb the Proposed Development, which also includes elevated roundabouts either side of the mainline link road, is not therefore as high as suggested. Given the scale and extent of the Proposed Development and the resultant loss of key landscape components, including trees, historic field boundaries, the partial loss of medieval and post-medieval enclosed landscape and the encroachment into Aspbury's Copse ancient woodland, the ExA consider that the magnitude of impact would be moderate to minor and significance of effect would moderate to slight adverse.

Operational effects

5.3.128. The ExA considers that the ES Chapter 7 assessment has correctly identified that impacts on the historic landscape would principally derive from the construction of the Proposed Development. Nevertheless, many of the construction impacts would be permanent in nature and ongoing through the operation phase, in addition to the physical presence of the Proposed Development and the associated road noise, lighting and traffic movements, which would influence the character and perception of the historic landscape.

5.3.129. The magnitude of impact would therefore be greater than the negligible adverse predicted by the Applicant and would be moderate to minor resulting in a moderate to slight adverse significance of effect, rather than neutral.

Compensation and enhancement measures

5.3.130. ES Chapter 7 [APP-052] (paragraph 7.8.3) states that no compensation or enhancement measures have been identified as being required.

5.3.131. Given that paragraph 5.137 of NNNPS states that applicants should look for opportunities for new development within conservation areas and the setting of heritage assets to enhance or better reveal their significance, the ExA sought further comment on this position through WQ1 1.5.1 [PD-006].

5.3.132. The Applicant's response [REP2-007] was that no assets had been identified that would benefit from compensation or enhancement measures, but should any features be identified during the construction programme, proposals would be put forward in accordance with the Archaeological Control Plan (Requirement 4) and the Written Scheme of Investigation (Requirement 9).

5.3.133. That opportunities to enhance or better reveal the significance of heritage assets remain to be explored is also raised by SMBC in its LIR [REP2-033]. SMBC refer to opportunities to plant trees of Arden species in strategic locations agreed with Birmingham Airport. SMBC consider that this could reduce visual impacts of the Proposed Development and

as added value, also filter some current views of roads and airport lighting from Bickenhill Conservation Area and the M42 from Hampton in Arden Conservation Area. Opportunities are further highlighted for tree, shrub and hedgerow planting in the response from SMBC [REP2-034] to WQ1 1.5.1.

- 5.3.134. The Applicant's position [REP3-10] is that the landscaping proposals incorporated into the design of the Proposed Development form an integral component of the Environmental Masterplan illustrated on Figure 8.8 of the ES [APP-095]. It is explained that these proposals have been developed within the constraints imposed by the aerodrome safeguarding zone, which have limited the location, types and extents of planting proposed to visually screen and integrate the Proposed Development into the receiving environment.
- 5.3.135. Going forward, Landscaping Requirement 5 requires consultation with SMBC and Birmingham Airport, thus providing further opportunity to influence planting provision. Moreover, as explained by the Applicant, during the construction programme, proposals could be put forward in accordance with the Archaeological Control Plan (Requirement 4) and the Written Scheme of Investigation (Requirement 9).
- 5.3.136. Nevertheless, the outcome is that no specific enhancement measures have been agreed during the course of the Examination. This may or may not be addressed in the future but the ExA is unable to conclude at this time that the expectations of NNNPS paragraph 5.137 would be met.

Summary and conclusions

- 5.3.137. The ExA has taken into account all relevant documents and policies, as well as the concerns expressed by a number of IPs on cultural heritage matters, for example [RR-008, REP1-010 and REP1-011]. The ExA has also had regard to the submission of Historic England [AS-007] which states that there are no issues in this application upon which there are sufficient concerns to necessitate substantive representations on its behalf.
- 5.3.138. The ExA concludes as follows:
- The methodology used in determining the impact of the Proposed Development on heritage assets is acceptable. However, the ExA does not agree with the asset values attributed to a number of heritage assets or the significance of effect.
 - Impacts on the archaeological resource have been appropriately assessed and are capable of being managed as part of the dDCO requirements, consistent with NNNPS paragraph 5.142.
- 5.3.139. As required by IPDR Regulation 3(1) the ExA has had regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess. In accordance with paragraph 5.130 of the NNNPS, the ExA has taken into account the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets, the contribution of their settings and

the positive contribution that their conservation can make to sustainable communities – including their economic vitality.

- 5.3.140. In this regard, the Proposed Development would not directly affect any listed building. However, in terms of the setting of listed buildings, the ExA find that:
- During construction, the magnitude of impact on the Grade I St Peter’s Church, Bickenhill would be moderate adverse and the significance of effect would be moderate/ large. In operation the magnitude of impact would be close to moderate adverse and the significance of effect would be at least moderate.
 - During construction and operation the Grade II listed Hampton Manor and garden terraces, walls and steps, and the Grade II* listed Clock Tower, would experience a magnitude of impact of minor/ moderate adverse. The resulting significance of effects would be moderate/ slight for the Grade II assets and moderate for the Grade II* asset.
 - The Grade II listed Grange farmhouse would experience a slight adverse significance of effect during construction and operation.
- 5.3.141. Consequently, the Proposed Development would fail to preserve the setting of five listed buildings, the desirability of which is identified by IPDR Regulation 3(1), paragraph 5.130 of NNNPS and Policy P16 of the Solihull Local Plan. As most of the significance of these listed buildings is derived from their fabric and history, which an impact on setting leave unaffected, the magnitude of harm identified in respect of the listed buildings would be less than substantial in the context of paragraphs 5.133 and 5.134 of NNNPS.
- 5.3.142. As required by Regulation 3(2), the ExA has had regard to the desirability of preserving or enhancing the character or appearance of two identified conservation areas and taken into account the aforementioned considerations of paragraph 5.130 of the NNNPS. The ExA find that:
- The Proposed Development would result in direct impacts on the western extent of the Bickenhill Conservation Area. The setting of the conservation area would also be affected. During construction and operation the magnitude of impact on Bickenhill Conservation Area would moderate/ major and the significance of effect would be moderate/ large adverse.
 - During construction, the magnitude of impact on the setting of Hampton in Arden Conservation Area would be minor and the significance of effect would be moderate/ slight adverse. During operation the magnitude of impact would tend towards the upper end of minor adverse, and the significance of effect similarly positioned at the upper end of slight, towards moderate adverse.
- 5.3.143. The Proposed Development would therefore neither preserve or enhance the character or appearance of Bickenhill and Hampton in Arden Conservation Areas.
- 5.3.144. On the basis that only part of the setting of Hampton in Arden Conservation Area would be affected, the harm arising would be less

than substantial in the context of paragraphs 5.133 and 5.134 of the NNNPS. For Bickenhill Conservation Area, this distinction is much less clear cut. On balance, the harm to the conservation area, taken as a whole, would fall towards the upper end of less than substantial.

- 5.3.145. For non-designated heritage assets outside of the conservation areas, the Applicant has concluded that the rural setting of Hampton Lane Farmhouse would experience a slight adverse significance of effect during both construction and operation. The ExA agrees with this finding.
- 5.3.146. Paragraph 5.137 of NNNPS states that applicants should look for opportunities for new development within conservation areas and the setting of heritage assets to enhance or better reveal their significance. However, ES Chapter 7 [APP-052] (paragraph 7.8.3) states that no compensation or enhancement measures have been identified as being required, although the Applicant has explained [REP2-007] that should any features be identified during the construction programme, proposals would be put forward in accordance with the Archaeological Control Plan (Requirement 4) and the Written Scheme of Investigation (Requirement 9). Further opportunities may also be provided through Landscaping Requirement 5.
- 5.3.147. Nevertheless, the outcome of the Examination is that no enhancement measures have been identified, in accordance with NNNPS, with which the ExA is able weigh against the above referenced harm.
- 5.3.148. In respect of the historic landscape, the ExA considers that the magnitude of impact would be moderate to minor and significance of effect would be moderate to slight adverse during construction and operation.
- 5.3.149. Pulling the above together, the ExA finds that:
- Notwithstanding differing views on asset value, the Applicant has assessed the impacts on heritage assets in accordance with paragraphs 5.126 and 5.127 of the NNNPS.
 - Impacts on the archaeological resource are capable of being managed as part of the dDCO requirements, consistent with NNNPS paragraph 5.142. The effect on archaeology is therefore a neutral consideration.
 - Impacts on the historic landscape would be moderate to slight adverse and weigh negatively against the Order being made.
 - The Proposed Development would result in significant but less than substantial harm to the above identified listed buildings and conservation areas. The harm to designated heritage assets weighs negatively against the Order being made.
- 5.3.150. When considering the impact of a Proposed Development on the significance of a designated heritage asset, NNNPS paragraph 5.131 requires the Secretary of State to give great weight to the asset's conservation. The more important the asset, the greater the weight should be. As required by the NNNPS paragraph 5.134, this harm is weighed against the public benefits of the Proposed Development in

Chapter 7 of this report. No enhancement measures have been identified, as per the expectations of paragraph 5.137 of the NNNPS, to weigh against the harm found.

5.4. AIR QUALITY

Policy Background

5.4.1. The NNNPS explains that the overall impact on air quality from the investment envisaged in the SRN is small. Although PM10 and NOx might be expected to increase slightly in the short term, reductions are projected over time due to schemes to remove congestion, improvements in technology and the introduction of electric vehicles. Current UK legislation sets out health-based ambient air quality objectives, as does the EU Ambient Air Quality Directive (2008/50/EU).

Table 1: UK Air Quality Standards

Nitrogen dioxide NO ₂	40µgm ⁻³ annual average 200µgm ⁻³ hourly average Annual exceedance ≤ 18 times	11 June 2010
Particulate matter PM ₁₀	40µgm ⁻³ annual average 50µgm ⁻³ 24-hour average Annual exceedance ≤ 35 times	11 June 2010
Particulate matter PM _{2.5}	25µgm ⁻³ annual average	N/A
Nitrogen oxides NOx In relation to ecosystems	30µgm ⁻³ annual average	31 December 2000

5.4.2. The SoS should consider air quality impacts over the wider area and must take account of relevant statutory air quality thresholds set out in domestic and European legislation. Where a breach is likely, the applicant should work with the relevant authorities to secure appropriate mitigation so that, as far as possible, such a breach is avoided. The SoS must give air quality considerations substantial weight where, after taking into account mitigation, a significant air quality impact would occur. Consent should be refused where a compliant zone or area may become non-compliant or where a non-compliant area may be hindered in achieving

compliance. The SoS should consider whether the mitigation measures proposed are acceptable. Such measures should ensure that a project does not delay compliance timescales and may include changes to the route or the proximity of local receptors, physical barriers and speed control.

- 5.4.3. Local policies reflect those requirements. Policy P14 of SMBC's adopted Local Plan aims to '*Encourage better air quality*' by, amongst other things, only allowing '*development that would contribute to air pollution, either directly or indirectly, ... if it would not hinder or significantly harm the achievement of air quality objectives or any relevant Air Quality Management Plan, and it incorporates appropriate attenuation, mitigation or compensatory measures*'. And, policy LP31 of North Warwickshire Borough Council's emerging Local Plan insists that '*sustainable development*' '*should avoid and address unacceptable impacts upon neighbouring amenities through overlooking, overshadowing, noise, light, air quality or other pollution*'. The current Local Plan requires (policy ENV9) that '*The air quality of the Borough will be safeguarded and enhanced by: (i). not permitting new potentially polluting forms of development within and bordering the Borough's Air Quality Management Areas (AQMA) to minimise potential risks to health. The existing AQMA is shown on the Proposals Map*'.
- 5.4.4. There is one AQMA in the vicinity of the Scheme, located about 2km to the west of the existing M42 corridor. This has been declared as a City-wide AQMA by Birmingham City Council; it covers the whole of their administrative area due to the exceedance of the NO₂ annual mean limit value (ie levels above 40µgm⁻³) and the exceedance of the 24-hour mean limit value (ie average hourly levels of 200µgm⁻³) more than 18 times a year). In October 2018, DEFRA published its 'Supplement to the UK plan for tackling roadside nitrogen dioxide concentrations'⁵⁶. This identifies Solihull as needing to bring forward compliance on 2 sections of the A45 with a projected exceedance of the annual mean NO₂ UK limit value⁵⁷.

The Applicant's Approach

Method

- 5.4.5. The approach follows DMRB methodology, updated with relevant Interim Advice Notes (IANs) and addresses impacts on public exposure and designated habitats, including emissions from construction, from road traffic during construction, from road traffic once the Scheme is operational and compliance with air quality standards [APP-051]. An important IAN (185/15)⁵⁸ provides a method for determine emission

⁵⁶ Supplement to the UK plan for tackling roadside nitrogen dioxide concentrations

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746100/air-quality-NO2-plan-supplement.pdf

⁵⁷ This is the same as the EU limit value, see Table 1: UK Air Quality Standards

⁵⁸ Updated traffic, air quality and noise advice on the assessment of link speeds and generation of vehicle data into 'speed-bands' for users of DMRB Volume 11, Section 3, Part 1 Air Quality and Volume 11, Section 3 Part A Air Quality

rates for predicted traffic flows on road links for the air dispersion models used. Mitigation of dust emissions essentially uses 'good practice measures' to minimise impacts on receptors. The OEMP (and the subsequent CEMP) will specify a range of mitigation measures that can be implemented to reduce, as far as practicable, significant dust effects [APP-172, REP9-019]. DEFRA background maps are used together with NO_x to NO₂ calculation spreadsheets to process model outputs as NO_x for comparison to the national limit value.

- 5.4.6. To assess the effects of construction, the locations of sensitive receptors and ecological sites within 200m of a construction site are identified and mitigation measures to reduce dust outlined [APP-079, APP-080]. Emissions from plant and equipment are assessed qualitatively. The emissions from construction traffic are assessed only where construction activity is expected to last for more than 6 months and where AADT flows are likely to change by more than 1,000 vehicles or where heavy-duty vehicle flows (HDV>3.5 tonnes) will change by more than 200 AADT. Otherwise, significant air quality effects are deemed to be absent. Where there is insufficient data to undertake a detailed assessment, a qualitative approach is used [APP-051].
- 5.4.7. The operational effects focus on emissions of NO₂ and PM₁₀, in accordance with the guidance. All affected roads have been assessed using dispersion modelling to estimate pollutant concentrations, taking account of other factors, such as meteorological conditions and daily traffic variations. Predictions have been made for the baseline (2016) and the opening year (2023) with (DS) and without (DM) for the Scheme. The assessment of PM_{2.5} is deemed unnecessary as background concentrations are well below the UK standard (25µgm⁻³) and, even assuming all PM₁₀ emissions to be PM_{2.5}, that position remains. The expectation that air quality will improve over time (due to cleaner or electric vehicles etc) adopts the methodology outlined in IAN 170/12 v3⁵⁹ entailing DEFRA's advice on long term trends and roadside NO₂ concentrations [APP-051].
- 5.4.8. Baseline air quality conditions are quantified through dispersion modelling. Existing air quality data from local authorities for the roads likely to be significantly affected by the Scheme is supplemented by diffusion tube surveys (for NO₂) [APP-121]. This data is used to calibrate the model's quantifying baseline conditions at selected sensitive receptors. In the absence of suitable background data, information from DEFRA is used. Receptors are chosen near to the Scheme and at locations representative of the wider study area [APP-051].

Results

- 5.4.9. Baseline conditions (2016) are generally well below the critical threshold for concentrations of NO₂ throughout the study area except at Coventry Road, Coleshill (M42-002, almost 55µgm⁻³), beside the M42 Junction 6

⁵⁹ Updated air quality advice on the assessment of future NO_x and NO₂ projections for users of DMRB Volume 11, Section 3, Part 1 'Air Quality'

roundabout (M42-003, almost $64\mu\text{g}\text{m}^{-3}$) and a bit further south on Old Station Road (M42-004, just over $43\mu\text{g}\text{m}^{-3}$) [APP-120, APP-121].

- 5.4.10. The effects of construction are likely to be particularly noticeable for receptors on St Peters Lane, on the north side of Church Lane and on Catherine-de-Barnes Lane. However, it is expected that with the implementation of standard mitigation measures, as set out in the OEMP, dust emissions and the likely effects on air quality will not be significant. Moreover, despite the 1,066 LDV 2-way movements anticipated at the construction compound, no road is predicted to exceed 1,000 AADT or accommodate more than 200 HDV (AADT) because traffic will be dispersed across the network⁶⁰. Hence, in accordance with the guidance, the additional vehicle movements are not expected to significantly reduce air quality in the vicinity of the Scheme. The traffic management required to accommodate the works (lane closures, diversions, speed restrictions and the like) will be included in the OEMP and take account of air quality. Hence, the Scheme should not give rise to significant air quality construction effects and no additional mitigation should be required [APP-051, REP9-019].
- 5.4.11. The operational effects of the Scheme in comparison to the 'do-minimum' scenario (DS-DM) are negligible on the areas to the north (Marston Green, Coleshill and Little Packington, R1–R13, R18, R50, R55 and R57–R59). Receptors experience a change in neither NO_2 or PM_{10} concentrations greater than $0.1\mu\text{g}\text{m}^{-3}$. All concentrations of NO_2 are less than $30\mu\text{g}\text{m}^{-3}$ and concentrations of PM_{10} are less than half the standard limit. The same applies to the south and east of the Scheme (Hampton in Arden, Copt Heath and Barston, R26–R32, R54, R63 and R64) [APP-051, APP-120, APP-122].
- 5.4.12. The operational effects are sometimes larger and more varied on the areas beside or close to the Scheme. In comparison to the 'do-nothing' scenario, 3 receptors to the north (excluding Junction 6, but including Bickenhill and Elmdon, R15–R17, R19, R36, R40, R43–R46, R51, R52 and R60), are expected to experience changes in concentrations of NO_2 above $0.4\mu\text{g}\text{m}^{-3}$. At the Arden Hotel (R16) there is an 'improvement' entailing a decrease of $0.7\mu\text{g}\text{m}^{-3}$ from $31.3\mu\text{g}\text{m}^{-3}$: on St Peter's Lane (R46, Bickenhill) there is a 'deterioration' (an increase) of $0.6\mu\text{g}\text{m}^{-3}$ from $20.2\mu\text{g}\text{m}^{-3}$: and, on Shadowbrook Lane (R40) there is an increase of $0.4\mu\text{g}\text{m}^{-3}$ from $20.1\mu\text{g}\text{m}^{-3}$. In the same locations concentrations of PM_{10} are expected to decrease by $0.2\mu\text{g}\text{m}^{-3}$ from $17.5\mu\text{g}\text{m}^{-3}$ (R16) and increase by $0.6\mu\text{g}\text{m}^{-3}$ from $14.4\mu\text{g}\text{m}^{-3}$ (R46) and by $0.1\mu\text{g}\text{m}^{-3}$ from $13.0\mu\text{g}\text{m}^{-3}$ (R40). Elsewhere changes in NO_2 or PM_{10} concentrations are no greater than $0.1\mu\text{g}\text{m}^{-3}$, save for a 'deterioration' of $0.2\mu\text{g}\text{m}^{-3}$ at the WGAA sports ground (R44) in NO_2 concentrations and 'improvements' of $0.3\mu\text{g}\text{m}^{-3}$ at the Haven Caravan Park (51) and of $0.2\mu\text{g}\text{m}^{-3}$ at Bickenhill playing field (R60). All concentrations of NO_2 are less than $30\mu\text{g}\text{m}^{-3}$ and concentrations of PM_{10} are less than half the standard limit.

⁶⁰ Although the 2-way movements anticipated on the A45 between Clock Interchange and Junction 6 is 958, of which 158 are HDVs.

- 5.4.13. The operational effects at Junction 6 and on the areas to the east of the Scheme (Middle Bickenhill Lane, Old Station Road, the National Motorcycle Museum, Picklington Estate House, Stonebridge Golf Course Somers Fishing Lake and Meriden Road, R14 and R20–R25) are generally benign. Most are negligible (less than $0.1\mu\text{g}\text{m}^{-3}$). But, at Old Station Road (R20) there is an 'improvement' in the concentration of NO_2 entailing a decrease of $2.2\mu\text{g}\text{m}^{-3}$ from $44.7\mu\text{g}\text{m}^{-3}$, a movement towards, though not yet within, the standard limit. There is also an 'improvement' in the concentrations of PM_{10} constituting a reduction of $0.4\mu\text{g}\text{m}^{-3}$ from $19.5\mu\text{g}\text{m}^{-3}$. At the National Motorcycle Museum (R21) there is a reduction in the concentration of NO_2 of $0.3\mu\text{g}\text{m}^{-3}$ from $35.4\mu\text{g}\text{m}^{-3}$.
- 5.4.14. The operational effects of the Scheme in comparison to the 'do-minimum' scenario (DS-DM) are mostly negligible on the areas to the south (Catherine-de-Barnes, Elmdon Heath and the southern section of Catherine-de-Barnes Lane, R33–R35, R37–R39, R41, R42, R47–R49, R53, R56, R61 and R62). Changes in NO_2 or PM_{10} concentrations generally do not exceed $0.1\mu\text{g}\text{m}^{-3}$. The exception is Four Winds (R42). Here, a reduction in the concentration of NO_2 amounting to $0.3\mu\text{g}\text{m}^{-3}$ is expected from a 'do-minimum' concentration of $20.5\mu\text{g}\text{m}^{-3}$. Again, all concentrations of NO_2 are less than $30\mu\text{g}\text{m}^{-3}$ and concentrations of PM_{10} are less than half the standard limit.
- 5.4.15. In general, the effects of the Scheme on ecological sites is to increase concentrations of NO_x , albeit marginally. Even so, the majority of sites will meet, or fall well within, the standard limit of $30\mu\text{g}\text{m}^{-3}$. This includes Bickenhill Meadows SSSI (E1 and E2). But it does not include the other SSSIs in the study area. At the River Blythe SSSI concentrations of $57.1\mu\text{g}\text{m}^{-3}$ occur either side of the M42 (E3 and E4), although the increase due to the Scheme is only $0.4\mu\text{g}\text{m}^{-3}$. At the Coleshill and Bannerly Pools SSSI (E5) concentrations of between $32.8\mu\text{g}\text{m}^{-3}$ and $55.6\mu\text{g}\text{m}^{-3}$ occur, although the largest increase due to the Scheme is only $0.2\mu\text{g}\text{m}^{-3}$ at a location beside the M42 [APP-051].
- 5.4.16. The other ecological sites where concentrations of NO_x fail to meet the standard limit of $30\mu\text{g}\text{m}^{-3}$ include Hollywell Brook LWS (E10, E11, E26 and E27), Disused Railway and Sidings LWS (E12 and E13), Aspbury's Copse LWS (E19, E20, E23 and E28), Trinity Park Grasslands LWS (E21 and E22), Road Side Hedge LWS (E24) and Wayside Cottage Meadow LWS (E25). The maximum decrease in NO_x concentrations is $7.9\mu\text{g}\text{m}^{-3}$ at Hollywell Brook beside the motorway at Junction 6 (E27). The maximum increase is $4.1\mu\text{g}\text{m}^{-3}$ at Trinity Park Grasslands, apparently beside the dual carriageways of Bickenhill Lane (E22). Even so, there are no new exceedances of the $30\mu\text{g}\text{m}^{-3}$ standard for NO_x concentrations. The maximum increase in nitrogen deposition rate is very modest.
- 5.4.17. It is suggested that, as those changes only affect a minor part of the designated sites, the Scheme is not considered to have a significant effect on the SSSIs or other ecological receptors [APP-051]. Moreover, as significant adverse air quality effects are not anticipated during either the construction phase or operational phase, it is suggested that no monitoring is required.

Issues Arising

5.4.18. The key concerns raised in relation to air quality during the Examination are:

- securing the mitigation required
- providing information for SMBC to respond to Ministerial Directives
- responding to the external effects of traffic management
- explaining the effects on:
 - Bickenhill
 - Catherine-de-Barnes Lane and elsewhere

5.4.19. The effects of air quality on ecological receptors are addressed in Section 5 below.

Securing the mitigation required

5.4.20. The ES concludes that the effect of the Scheme on air quality during construction is likely to be neutral. Yet, that appears to depend on the application of 'best practice' mitigation measures which, although listed in other documents, may not be secured by the DCO. The ExA noted that, although the REAC [APP-114] states that the CEMP must include an Air Quality Management Plan (AQMP) (replicated in the OEMP [APP-172]), and cross-references to R4 in the DCO, no further details are provided and the list of management plans in the DCO does not include an AQMP.

5.4.21. However, the title 'Air Quality Management Plan' should have read 'Dust, Noise and Nuisance Management Plan'. This is included in the OEMP and secured through R4 of the DCO [APP-015 and REP9-019]. Although the ES suggests that, once operational, the Scheme is unlikely to require mitigation as no significant adverse effects on air quality are likely, it does identify potential effects during the construction phase. The OEMP sets out the measures which the contractor must follow. R4 makes it mandatory for the contractor to produce a CEMP, substantially in line with the OEMP, which must include a Dust, Noise and Nuisance Management Plan (R4(3)); the Requirement confirms that *'the construction of the authorised development must be carried out in accordance with the approved CEMP'* [REP2-007].

5.4.22. The ExA is satisfied that appropriate mitigation measures are secured.

Providing information for SMBC to respond to Ministerial Directives

5.4.23. Although SMBC are satisfied with the initial methodology and the policies on air quality cited, they point out that the A45 from the Clock Interchange to M42 Junction 6 is subject to 2 Ministerial Directions relating to air quality. It is thus important that the Scheme should not adversely affect the ability of the Council to meet the obligations imposed by the Ministerial Directions [REP1-015]. A targeted feasibility study identified a package of measures to address air quality concerns, subsequently the subject of the first Ministerial Direction. Further work by DEFRA indicated that compliance was unlikely until 2024, engendering

a 2nd Ministerial Direction to deliver a local plan and identify how the compliance can be achieved in the shortest time possible time [REP2-033]. There is concern that insufficient information may be available within the DCO [REP8-005].

- 5.4.24. The Applicant confirms that the Scheme will neither give rise to new significant air quality effects, nor substantially worsen air quality in the AQMA [APP-051]. HE agrees in the SoCG with SMBC to provide links to baseline data to facilitate the necessary monitoring by SMBC. In addition, but as a matter distinct and separate to the DCO, the Applicant is to provide baseline traffic data and assumptions relating to construction traffic around Junction 6 to feed into SMBCs own traffic model for this stretch of the A45 to enable it to discharge its own requirements for managing air quality effects in accordance with the Ministerial Direction. This will be an ongoing activity from now until the commencement of construction [REP6-021 and REP8-005].
- 5.4.25. The ExA is satisfied that appropriate provision is made outside of the DCO to enable SMBC to respond effectively to the Ministerial Directives.

Responding to the external effects of traffic management

- 5.4.26. WCC maintains and manages the section of the A446 corridor, which includes sections of the A46, the A435 and the A4023, encompasses Kenilworth and Studley (amongst other communities) and their AQMAs. As the corridor functions as a primary diversion route when there are closures or operational restrictions on the M5, M42 and A46, WCC are concerned that the Scheme could lead to large volumes of traffic being diverted, resulting in a deterioration of air quality in these locations [REP2-038, REP2-040 and REP3-023].
- 5.4.27. The Applicant indicates that substantial parts of the Scheme can be constructed off-line, thereby reducing the need for large-scale diversions from the M42 [APP-174]. As indicated above, the traffic management required to accommodate the works (lane closures, diversions, speed restrictions and the like) will be included in the OEMP and take account of air quality. At G3 in the REAC Table [REP9-019] it is stated *that 'no part of the authorised development is to commence until a traffic management plan for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function'*. The Scheme must be constructed in accordance with the traffic management plan, which includes provisions to avoid specific construction works or night time traffic management closures in relation to identified key events. In addition, R10 of the DCO imposes restrictions on routes for construction traffic to avoid weight restrictions and unsuitable roads, such as those through Catherine-de-Barnes and Hampton in Arden. During events, such as the Commonwealth Games and some events at the NEC, the contractor is to minimise road user disruption, as far as practicable. And, the draft traffic management plan is to be shared with the parish councils and SMBC.

- 5.4.28. The ExA is satisfied that appropriate measures are in place to minimise the need to divert large volumes of traffic from the main roads affected by the Scheme. Even if such diversion were to occur, it is likely that they would be short-lived. The Scheme is unlikely to engender a deterioration of air quality in AQMAs at Kenilworth and Studley.

The effects on Bickenhill

- 5.4.29. Some residents in Bickenhill are concerned that the increased traffic and proximity of the mainline link road will increase pollution close to their homes [eg RR-019].
- 5.4.30. The assessment undertaken [APP-051], together with a combination of monitoring and computer modelling, establishes pollutant levels and predicts changes arising from the Scheme. In Bickenhill [APP-080] receptors at positions R46, R52 and R60 all experience good air quality now and the predicted increases in NO₂ and PM₁₀ concentrations remain well below the national limit values in 2023 [APP-051, 6.9.9-6.9.12]. On St Peter's Lane close to the realigned Catherine-de-Barnes Lane (R46) there is a 'deterioration' (an increase) in NO₂ of 0.6µgm⁻³ compared to the DM scenario of 20.2µgm⁻³, thereby remaining well within the standard limit. Concentrations of PM₁₀ are expected to increase negligibly by 0.1µgm⁻³ from 14.4µgm⁻³. On St Peter's Lane roughly opposite Grange Farm (R52) there is a negligible increase in NO₂ concentrations of 0.1µgm⁻³ from 20.0µgm⁻³, while concentrations of PM₁₀ are expected to change imperceptibly (<0.1µgm⁻³ from 9.3µgm⁻³). On Church Lane roughly behind St Peter's Church (R60) there is a negligible increase in NO₂ concentrations of 0.2µgm⁻³ from 20.1µgm⁻³, while concentrations of PM₁₀ are expected to change imperceptibly (<0.1µgm⁻³) from 14.4µgm⁻³ [APP-122].
- 5.4.31. The ExA agrees that the Scheme is likely to have no significant effects on the air quality at these locations.

The effects on Catherine-de-Barnes Lane and elsewhere.

- 5.4.32. There is concern that the new roundabout adjacent to the Birmingham Dogs Home on Catherine de Barnes Lane (Barber's Coppice Roundabout) will increase pollution at Four Winds, due to traffic braking, queuing and accelerating away, particularly at night [RR-025]. There is also concern that the additional traffic will create harmful environmental effects, such as the worsening of air quality [RR-008]
- 5.4.33. The assessment undertaken [APP-051, APP-080], together with a combination of monitoring and computer modelling, establishes pollutant levels and predicts changes arising from the Scheme. At Four Winds (R42) air quality is currently good (NO₂ concentrations being 25.9µgm⁻³ and PM₁₀ concentrations being 13.6µgm⁻³ in 2016). Both are predicted to improve marginally with or without the Scheme. For the DM scenario NO₂ concentrations are predicted to be 20.5µgm⁻³ while PM₁₀ concentrations are 13.1µgm⁻³ in 2023. In the DS scenario further, albeit negligible, improvements are forecast; reductions in annual mean concentrations of NO₂ amounting to 0.3µgm⁻³ and in PM₁₀ of 0.1µgm⁻³ [APP-122].

- 5.4.34. The Scheme will not result in a general worsening of air quality. Most changes in comparison to the DM scenario experienced by residential receptors are negligible, whether for better or worse. None are significant. The largest changes are improvements and occur where air quality falls below the current standards.
- 5.4.35. The ExA thus agree that the effect of the Scheme on air quality is not likely to be significant at Four Winds or elsewhere.

Conclusion

- 5.4.36. The approach to the assessment of air quality follows DMRB methodology, updated by IANs. Mitigation of dust emissions adopts tried and tested 'good practice measures' to be secured through the OEMP (and subsequent CEMP).
- 5.4.37. Baseline air quality conditions are assessed by dispersion modelling and data from local authorities supplemented by diffusion tube surveys. Apart from locations close to the M42, concentrations of NO₂ are generally well below critical thresholds.
- 5.4.38. The operational effects of the Scheme (DS-DM) are negligible in the areas to the north, south and east of the Scheme. In Bickenhill and Elmdon only 3 receptors experience changes in concentrations of NO₂ above 0.4µgm⁻³: in Catherine-de-Barnes, Elmdon Heath and Catherine-de-Barnes Lane the effects are negligible: at Junction 6, Middle Bickenhill Lane, Old Station Road, the National Motorcycle Museum, Picklington Estate House, Stonebridge Golf Course, Somers Fishing Lake and Meriden Road the effects are generally benign. And, even though the effects of the Scheme on ecological sites is to increase concentrations of NO_x, albeit marginally, the majority of sites will meet, or fall well within, the standard limit of 30µgm⁻³. No new exceedances will occur. The ExA is satisfied that appropriate mitigation measures will be secured, and appropriate provisions made outside of the DCO to enable SMBC to respond effectively to the Ministerial Directives. The need to divert large volumes of traffic towards the AQMAs at Kenilworth and Studley should be avoided. The Scheme is likely to have no significant effect on air quality.
- 5.4.39. Having regard to the above, the ExA concludes that:
- The Applicant's assessment of the effects on air quality set out in ES Chapter 6 has been carried out broadly in accordance with NNNPS paragraphs 5.6 to 5.9.
 - The Proposed Development is likely to have no significant effect on air quality and in overall terms, the tests in NNNPS paragraphs 5.10 to 5.15 are met.
 - The effect on air quality is therefore a neutral consideration.

5.5. BIODIVERSITY, ECOLOGY AND THE NATURAL ENVIRONMENT

Introduction

5.5.1. This section considers the effect of the Proposed Development on biodiversity, ecology and the natural environment. Within scope are the following relevant considerations:

- internationally protected sites (Special Areas of Conservation (SACs)), nationally protected sites (Sites of Special Scientific Interest (SSSIs)) and locally protected habitats (including designated Local Wildlife Sites (LWSs) and potential LWSs (pLWSs));
- ancient woodland; and
- protected species.

Policy background

5.5.2. Paragraph 5.23 of the NNNPS requires the Applicant to demonstrate how the Proposed Development has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests. Paragraphs 5.24 to 5.35 identify the biodiversity considerations to which the SoS must have regard.

5.5.3. Paragraphs 5.27 to 5.31 explain how the Proposed Development should take account of protected sites, including internationally, nationally, regionally and locally designated sites. Paragraph 5.31 makes clear that regionally and locally protected sites (including LWSs) should receive due consideration but, given the need for new national networks infrastructure, should not in themselves provide a basis for refusing an application for development consent.

5.5.4. Paragraph 5.32 states that development consent should not be granted for any development that would result in the loss or deterioration of irreplaceable habitats, including ancient woodland, unless the national need for and benefits of the development, in that location, clearly outweigh the loss.

5.5.5. Paragraphs 5.34 and 5.35 sets out that wildlife species and habitats should be protected from the adverse effects of development, and that requirements and planning obligations should be used to achieve this. Paragraphs 5.36 to 5.38 identify that appropriate mitigation, taking account of any measures agreed with NE, should be provided and secured.

5.5.6. Chapter 15 of the NPPF contains policies for conserving and enhancing the natural environment, which align with the considerations in the NNNPS which must be taken into account.

5.5.7. Various local planning policies are also relevant to the Proposed Development. These include Policy P10 of the Solihull Local Plan, which identifies the need to conserve, enhance and restore biodiversity and points to relevant objectives contained within other local documents,

including the Warwickshire, Coventry and Solihull Biodiversity Action Plans (BAPs) and Solihull's Green Infrastructure Study. The policy outlines measures for the protection of designated sites, ancient woodland and priority habitat and species and enhancement of the natural environment.

Applicant's approach

- 5.5.8. ES Chapter 9: Biodiversity [APP-054] provides the Applicant's assessment of potential effects of the Proposed Development on ecological features. It is supported by Appendices 9.1 to 9.19 [APP-129 to APP-146]. These include Appendix 9.1: Protected and Notable Sites and Species [APP-129]; Appendix 9.2: Phase 1 and Phase 2 Habitat Survey Report [APP-130]; and a number of species surveys reports [Appendices APP-131 to APP-142].
- 5.5.9. The Applicant's assessment was based on and informed by the following guidance:
- Highways England (HE) Design Manual for Roads and Bridges (DMRB): Volume 11 (2008);
 - HE DMRB Interim Advice Note (IAN) 125/15: Environmental Assessment Update (2015);
 - HE DMRB IAN 130/10: Ecology and Nature Conservation – Criteria for Impact Assessment (2010); and
 - CIEEM Guidelines for Ecological Impact Assessment in the UK and Ireland (2018).
- 5.5.10. Section 9.3 of Chapter 9 notes that, following receipt of the Inspectorate's scoping opinion, the final scope of the ecology assessment was shaped by the outcomes of consultation with statutory bodies, non-statutory organisations and other relevant stakeholders. The Applicant engaged with Natural England (NE) and the Environment Agency (EA) to inform the scope of relevant surveys and the development of mitigation measures.
- 5.5.11. Full details of the consultation process in relation to ecology, which include the consultee comments and where they are considered within the ES, are provided in ES Appendix 9.17 [APP-144]. Consultation was undertaken with NE, the EA, SMBC and Warwickshire Wildlife Trust (WWT). Annex A of the Appendix contains copies of the consultees' comments.
- 5.5.12. A description of the baseline relevant to biodiversity is provided in Chapter 9, Section 9.6. Key environmental features are described in the chapter and its associated appendices. The study areas used for the assessment are described in Section 9.5 and differ according to the zones of influence, for particular ecological receptors, established as being relevant to the Proposed Development. The zones of influence were established using a combination of professional judgement and reference to the CIEEM Guidelines.

- 5.5.13. The Applicant's ES explained that the baseline environment was established using a combination of techniques including; desk study, consultation with relevant stakeholders, and field studies, which were undertaken from 2017 to October 2018. Full details of the desk study are provided in ES Appendix 9.1: Protected and Notable Sites and Species [APP-129]. Several field surveys were undertaken, including: an extended phase 1 habitat survey; phase 2 habitat surveys; a tree survey; and a number of species surveys, including for badgers, bats, birds, dormouse, great crested newts, reptiles and water vole. The findings of the surveys are presented in ES Appendices 8.2 (trees) [APP-128] and 9.2 – 9.14 [APP-130 to APP-142]. Further survey reports were submitted during the Examination relating to bats [REP3-014], aquatic macroinvertebrates [REP3-013], lichen [REP4-003], great crested newts [REP4-005], soil [REP4-007] and fungi [REP6-007].
- 5.5.14. ES Table 9.2 sets out the study areas used for the various desk studies. A 30km study area was defined for internationally designated sites and a 2km study area for nationally designated sites. In response to ExQ 1.7.1 [REP2-007] the Applicant confirmed that the study area established for locally/non-statutorily designated sites was 1km from the application site and provided a revised ES Appendix 9.1 Annex C Fig 9.1B (Non-statutory designations within 1km) [APP-129]. The study area for species varied depending on the receptor. ES Table 9.3 sets out the study areas for all of the habitats and species surveyed and cross-refers to the relevant ES appendices (9.2 – 9.14), which contain more detailed survey information and include figures depicting the study areas.

Habitats

Statutorily designated sites

- 5.5.15. ES Table 9.4 identifies four internationally designated sites within 30km of the Proposed Development site:
- Ensor's Pool SAC
 - Fens Pools SAC
 - Cannock Extension Canal SAC
 - River Mease SAC
- 5.5.16. The closest of these is Ensor's Pool, located 16km to the north east of the application site. It is explained that these sites were identified due to their potential to be hydrologically connected to the Proposed Development (either because they are sensitive wetland sites or because they are located downstream of watercourses that will be crossed by it). An assessment of effects of the Proposed Development on these sites is provided in the Habitats Regulations Assessment No Significant Effects Report (HRA NSER) [APP-169], which is specifically addressed in Chapter 6 of this Report.
- 5.5.17. Table 9.5 identifies three nationally designated sites within 2km, the locations of which are shown on ES Appendix 9.1 Figure 9.1A (Statutory nature conservation designations) [APP-129]:

- Bickenhill Meadows Site of Special Scientific Interest (SSSI) (within the Order Limits) - unimproved lowland neutral grassland;
- River Blythe SSSI (crossed by the Order Limits) - lowland river on clay substrate; and
- Coleshill & Bannerly Pools SSSI (adjacent to the northern extent of the Order Limits) – lowland fen, marsh and swamp, and lowland broadleaved, mixed and yew woodland.

Locally/non-statutorily designated sites

- 5.5.18. ES Table 9.6 identifies 28 non-statutory designated sites within the study area. These include LWSs; pLWSs, including Aspbury’s Copse; and ecosites.

Ancient Woodland

- 5.5.19. The study area contains blocks of ancient woodland, including within Aspbury’s Copse pLWS. Ancient woodland is a habitat of principal importance under s41 of the Natural Environment and Rural Communities Act 2006. It is assigned ‘national’ importance in the assessment according to the importance criteria for ecological features presented in ES Table 9.1, which were developed from criteria contained within DMRB IAN 130/10 and from the 2018 CIEEM Guidelines for Ecological Impact Assessment in the UK and Ireland.

- 5.5.20. Phase 2 habitat surveys of the ancient woodland within Aspbury’s Copse pLWS were undertaken in 2017 and 2018, which reaffirmed the 2017 survey results. Fuller details of the habitat surveys are contained in ES Appendix 9.2. 0.46ha of ancient woodland would be permanently lost as a result of construction and operation of the Proposed Development, as illustrated on Figure 1, Annex F, Appendix 9.2.

Other habitats

- 5.5.21. Summary details of the habitats present within the study area that are beyond the boundary of the designated sites are provided in Table 9.7. Full details are presented in ES Appendices 9.2 and 9.3 [APP-130 and APP-131], and their locations are illustrated on Figures 9.2B (Phase 1 Habitat Survey) and 9.3 (Hedgerows Survey) within each Appendix, respectively.
- 5.5.22. A number of habitats were scoped out of the assessment on the basis that either they were of negligible ecological importance or were absent from the study areas (according to the desk studies and field surveys), including arable habitat; improved grassland; amenity grassland; scattered trees; and marshy grassland.

Species

- 5.5.23. Field surveys were carried out for the following species within the study areas: badgers, bats, breeding birds, barn owls, wintering birds, dormouse, great crested newts, reptiles, terrestrial invertebrates, white-clawed crayfish and water vole.

5.5.24. ES Section 9.3 lists the species that were scoped out of the assessment on the basis that either they were of negligible importance due to their population size or were absent from the study areas (according to the desk studies and field surveys), ie polecat, reptiles, dormouse, water vole and white-clawed crayfish.

Applicant's assessment and proposed mitigation

5.5.25. A summary of the potential impacts on ecological receptors from the Proposed Development during construction and operation is provided in ES Section 9.7. These include species mortality, habitat degradation and disturbance during both construction and operation; and additionally, during construction habitat loss or gain and fragmentation of populations or habitats.

5.5.26. An assessment of the effects of the Proposed Development is provided in ES Section 9.9, except in respect of the four European sites identified above, which are considered in the HRA NSER, addressed in Chapter 6 of this report. The assessment of operational effects cross-refers to the details contained in the ES air quality chapter [APP-051] in relation to oxides of nitrogen and nitrogen deposition on designated sites.

5.5.27. The likely effects on the designated sites, habitats and species are assessed for the construction and operational phases; decommissioning has not been assessed on the basis that the Proposed Development would become a permanent part of the transport infrastructure. The assessment considers the effects following the implementation of the proposed embedded and standard mitigation measures and compensation measures.

5.5.28. Mitigation is addressed in ES Section 9.8. Only embedded/design and standard construction mitigation measures are proposed; no additional mitigation is put forward. The Proposed Development includes measures that the Applicant describes as 'compensation', designed to offset effects on ecological features that cannot otherwise be avoided or addressed through mitigation. A number of ecological enhancement measures are also proposed. The location of the proposed mitigation, compensation and enhancement measures are illustrated on the Environmental Masterplan contained in ES Figure 8.8 [APP-095].

5.5.29. The enhancement measures are described and summarised as principally focussing on the creation of new grassland and scrub habitats within the Order Limits, that will be managed in perpetuity by the Applicant. R4 of the dDCO [REP9-011] provides for the production of a Handover Environmental Management Plan (HEMP), in accordance with which the authorised development must be operated and maintained, which includes long-term commitments to aftercare, monitoring and maintenance activities.

5.5.30. The proposed standard construction mitigation measures are contained in the OEMP [REP9-019], which would be developed post-consent into a CEMP. They are summarised in ES Section 9.8 and described as providing protection for retained vegetation, designated sites and other areas of

biodiversity value, and protected species from disturbance, damage and accidental pollution. They include implementation of the protective measures contained within BS5837:2012 for existing vegetation; designing and positioning construction lighting to minimise light spill onto adjacent habitats; avoiding disturbance to breeding birds by not undertaking vegetation clearance and demolition work during the bird breeding season; the maintenance of wildlife dispersal corridors during construction; and the production of a detailed Biodiversity Management Plan (BMP). An outline BMP was submitted at Deadline 7 [REP7-005]. It was incorporated into the OEMP at Appendix O and listed in dDCO R4 as a plan that must be included in the CEMP (which is required to be in accordance with the OEMP).

- 5.5.31. In addition to the BMP a number of other management plans relevant to biodiversity matters are appended to the OEMP. These include an Outline Environmental Control Plan: Invasive Species (Appendix C); an Outline Environmental Control Plan: General Ecology (Appendix D); an Outline Soil Management Plan (Appendix E); an Outline Surface Water Management Plan (Appendix F); and an Outline Bird Strike Management Plan (Appendix M). The final version of the Outline Bird Strike Management Plan [REP7-016] was submitted for Deadline 7 and subsequently incorporated into the OEMP.
- 5.5.32. Embedded mitigation measures are described in relation to habitat impact avoidance (retention of existing habitat), creation and replacement; habitat translocation; protected species; drainage; and Bickenhill Meadows SSSI (SE unit).
- 5.5.33. In relation to habitat avoidance, creation and replacement, the proposed mitigation includes planting of hedgerows, trees, scrub, woodland and grassland. It is explained that the development of planting measures as part of the landscape assessment was informed by the outcomes of the biodiversity assessment, and that a key objective was to identify measures that, wherever possible, could provide a combined function of landscape integration and/or screening, and habitat creation and replacement as ecological mitigation.
- 5.5.34. In respect of habitat translocation, the proposed mitigation is in the form of grassland translocation to a receptor site which would form part of a larger area of grassland creation adjacent to the grassland of Bickenhill Meadows SSSI; and hedgerow translocation into retained habitats within the Order Limits. It is stated that these strategies have been agreed through consultation with NE. This is reflected in ES Appendix 9.17: [APP-144], which summarises the consultation process in relation to biodiversity, comments from consultees, and the Applicant's response to those comments and where they are addressed in the application documents. Annex A of the Appendix contains consultation responses, including one from NE dated 2.10.18, which reflects their agreement with the Applicant's approach.
- 5.5.35. In relation to protected species the proposed measures comprise: mammal tunnels; bat boxes; two receptor sites for translocating great

crested newts (GCN); habitat creation and replacement measures comprising hedgerows, woodland, scrub and grassland for breeding and wintering habitat for birds as some existing habitat would be lost as a result of the Proposed Development; and the establishment of new woodland and the retention of deadwood habitat for terrestrial invertebrates as a result of the loss of woodland. It is set out in Appendix 9.17 that NE and the Applicant agreed that protected species licences would be required for badgers, bats and GCN, and NE confirmed that the Applicant was seeking from them a 'letter of no impediment' (LONI) from NE, which they would be able to issue. Draft badger, bat and GCN licences are contained in ES Appendices 9.4, 9.18 and 9.19 [APP-132, APP-145 and APP-146], respectively.

- 5.5.36. In respect of drainage, it is explained that the drainage strategy has avoided introducing large bodies of open water close to Birmingham Airport to minimise the potential for bird strike. Cross-reference is made to the Drainage Strategy Report contained in ES Appendix 14.5 [APP-160]. The proposed embedded mitigation incorporates reed beds and swales that match habitats found in the local area, such as Bickenhill Meadows SSSI and Castle Hill Farm Meadows LWS. It is stated that the design of these features has been developed with the aim of supporting a range of aquatic and inundation communities in addition to their primary function of holding and treating road runoff.
- 5.5.37. In respect of Bickenhill Meadows SSSI, the proposed mitigation incorporated a pumped solution consisting of a collection drain on the western slope of the new mainline link road cutting to intercept surface water flows that would otherwise have drained towards the SSSI. The collection drain would discharge to a sealed collection sump, from where water would be pumped to an appropriate reed bed/ditch feature near the Shadowbrook Meadows SE unit of the SSSI. This would act as a recharge trench, from which water would drain through to the upper layers of the substrata within the SSSI. This was to be developed and agreed in principle with NE and continued to be refined using data from ongoing dipwell monitoring and further analysis of the local topography and existing water sources. Information on the pumped solution is contained in the Bickenhill Meadows SSSI Preliminary Hydrological Investigation Technical Note (V7) contained in ES Appendix 14.2 [APP-157].
- 5.5.38. It is stated that the assessment of effects on the ecological processes that support the two units of the Bickenhill Meadows SSSI was based upon a conceptual model to illustrate how the hydrology of each unit functions and how the grassland communities are maintained. Further details of the model and monitoring are contained in ES Appendix 14.2 [APP-157]. Dipwell monitoring which informed the development of the model was undertaken within the SSSI in August and September 2018. The Applicant considered that the information within the ES was valid and sufficient to identify potential impacts on the SSSI. Notwithstanding that position, the monitoring is ongoing, described as for a period of two years post-submission of the DCO application, and the Applicant intended to submit results during the Examination.

- 5.5.39. The Applicant concluded that the only significant residual effect, following the implementation of the embedded/design and standard construction mitigation measures, would be a moderate adverse on ancient woodland at Aspbury's Copse pLWS, due to the loss of 0.46ha of ancient woodland resulting from the construction of Junction 5A and the associated slip roads. It was considered that there were no additional mitigation measures above the embedded and standard mitigation that could practicably be implemented on the basis that ancient woodland is irreplaceable.
- 5.5.40. In the absence of any additional mitigation compensatory measures were proposed. The compensatory measures comprise receptor areas for the translocation of ancient woodland soils and features and new woodland planting in and around those areas at a ratio of 3:1. It was predicted that these measures would reduce the anticipated significant effect to a slight adverse effect, which is not significant, in the design year (15 years after the opening of the Proposed Development).
- 5.5.41. Details of proposed monitoring arrangements for the proposed mitigation measures are provided in ES Section 9.8; and summarised in ES Section 9.10 in relation to Aspbury's Copse pLWS and Bickenhill Meadows SSSI. The monitoring programme would be incorporated into the BMP (contained in the OEMP [REP9-019]).

Issues arising

- 5.5.42. In their RR [RR-021] NE highlighted their concerns in respect of potential impacts on Bickenhill Meadows SSSI and the proposed pumped solution; and the part destruction of Aspbury's Copse ancient woodland, the proposed compensation for which they considered to be insufficient and not proportionate. The WWT [RR-035] raised the same concerns. The Woodland Trust (WT) also raised concerns in their RR [RR-032] about the potential impacts resulting from the loss of the ancient woodland in Aspbury's Copse.
- 5.5.43. At D3 the Applicant submitted an updated version of the Bickenhill Meadows SSSI Preliminary Hydrological Investigation Technical Note contained in ES Appendix 14.2 (V9.1) [REP3-004]. Following continued modelling and analysis, it presented a passive mitigation solution which does not rely on pumping of water. The Applicant considered that it would achieve the required levels of water replenishment to the SSSI. The content was discussed with NE and WWT in March 2019, when it is understood general consensus was given to a passive solution. At D4, in response to a request from the ExA, the Applicant submitted a Bickenhill Meadows SSSI Position Statement (PS) [REP4-006] which was agreed with NE, WWT and SMBC. It contained commitments to produce a hydrological Monitoring and Management Plan (MMP) and included a Requirement in the updated dDCO to secure the passive solution.
- 5.5.44. SMBC, in their D4 response to ExQ 2.3.1 [REP4-018], stated that they considered that the Bickenhill Meadows SSSI PS was an accurate reflection of what had been agreed but that outstanding issues remained

in relation to the proposed mitigation solution. These included the timescale for agreement of the monitoring triggers; any contingency plan for too much/too little water reaching the SSSI; and the design and location of Shadowbrook Lane swale & any other infrastructure relating to the mitigation that SMBC would be responsible for maintaining in the long term. NE, in their D4 submission [REP4-017], requested further technical detail on the definition of appropriate triggers, monitoring and measures to secure the conservation of the SSSI.

- 5.5.45. The Applicant stated in their D5 submission that they had reached agreement with NE on the mitigation solution. NE did not submit any comments for that deadline. In NE's response to ExQ3 [REP6-023] NE stated that they had not yet received a formal response to their comments on the Bickenhill Meadows SSSI PS, and that they understood that the MMP would be issued to them for comment shortly, which they hoped would address those points. The finalised SoCG with NE was submitted at D6 [REP6-002], in which all matters relating to the Bickenhill Meadows SSSI mitigation solution were shown as agreed. No further comments were received from NE about this matter during the Examination.
- 5.5.46. The draft SoCGs with WWT submitted at D5 [REP5-004] and D6 [REP7-003] and the draft SoCG with SMBC submitted at D6 [REP6-021] indicated that both parties had agreed some matters in respect of the mitigation solution for Bickenhill Meadows SSSI but were still in discussion with the Applicant. SMBC had agreed the passive solution.
- 5.5.47. The Applicant submitted a Bickenhill Meadows SSSI Outline Monitoring and Management Plan (OMMP) [REP7-015] at D7 to address points raised by IPs, including in relation to trigger points, required actions and monitoring, which they had shared with IPs for comment prior to its submission. It provided that HE would maintain the mitigation solution for 5 years of operation of the Proposed Development, after which SMBC would take over. The Applicant intended to continue to review and update it to ensure that all the required monitoring requirements were identified and presented for handover to relevant organisations when necessary. The final version would be issued to all stakeholders following the DCO decision, if appropriate.
- 5.5.48. It is indicated in the draft SoCG with WWT submitted at D7 [REP7-003] that WWT were broadly happy with the content of the OMMP but requested technical support from NE on hydrological trigger levels; and would provide comment on the OMMP at a later date. The Applicant noted in REP7-001 that there had been a change in personnel at the WWT, and that if no further response was received from them prior to D9 all matters indicated in the previous SoCG to be under discussion would be considered as not agreed. No further comments were received from WWT and no updated SoCG was submitted during the Examination.
- 5.5.49. In the finalised SoCG with SMBC submitted at D8 [REP8-005] all matters relating to the Bickenhill Meadows SSSI are shown as agreed; it is also indicated that discussions would be ongoing between both parties,

including in relation to the OMMP, which the Applicant considered addressed all the issues raised by SMBC.

- 5.5.50. R13 of the final version of the Applicant's draft DCO provides that no part of the authorised development that affects Bickenhill Meadows SSSI can commence until a detailed MMP has been submitted to and approved by the Secretary of State, following consultation with the relevant planning authority and NE. It must include details of trigger points and action measures which must be taken in the event that the trigger points are met or exceeded. It also requires that the monitoring must be carried out in accordance with the MMP. Moreover, as discussed in Chapter 9 of this Report, the ExA is recommending that R13 be amended to ensure that Work No. 76 (proposed pumped solution) shall only be carried out if it has been determined, in accordance with the requirements of the detailed MMP, that the passive solution to mitigate the loss of surface water catchment area has failed.
- 5.5.51. In response to ExQ 1.7.21 [REP1-002] about the compensation ratio for the ancient woodland that would be lost as a result of the Proposed Development, the Applicant stated that they were progressing NE's, WWT's and WT's points in the SoCGs. NE, in their D1 responses [REP1-018 & 019], considered that no further progression had been made on the compensation package; it was unacceptable as it provided a low compensation ratio; there was a lack of compensatory planting for the western half of Aspbury's Copse; and there was poor connectivity of the compensatory area to the wider ecological network. They also stated that more detail was required on the long-term management and monitoring.
- 5.5.52. The Applicant, in its D2 response [REP2-007], set out the factors that it had considered in selecting the 3:1 ratio and confirmed their view that it was appropriate. NE, in their D2 response [REP2-032], referred back to the comments made in their WR and stated that although irreplaceable habitats are not covered by it, Defra's emerging Biodiversity Metric 2018 suggested compensatory ratios for the most technically difficult 'replaceable' habitats should be around 24:1. The dSoCG with SMBC submitted at D2 [REP2-009] indicated that SMBC agreed with NE that the proposed compensation ratio was not enough to reflect the loss of ancient woodland and that SMBC had discussed compensation ratios with the WT, which considered that the ratio should be 30:1.
- 5.5.53. In the Applicant's Response to SMBC's LIR [REP3-011] the Applicant expressed the view that there was no national precedent of what is an acceptable compensation ratio for the loss of ancient woodland to developments; the 30:1 ratio recommended by the WT was not a national standard; and the form, location and ratio of the proposed compensation planting represented a proportionate response to the predicted effects of the Proposed Development on the ancient woodland in Aspbury's Copse.
- 5.5.54. A finalised SoCG with the WT was submitted at D4 [REP4-014]. It indicated that the WT agreed soil translocation as a form of compensation in relation to ancient woodland loss, albeit as a 'last

resort', and acknowledged that the methodology for the siting of the compensation planting area and the soil translocation had been previously agreed with NE, as the statutory environmental body for such matters. The SoCG reflected that the WT objected to the Proposed Development on the basis of impacts to irreplaceable ancient woodland and requested a 30:1 ratio of compensation planting.

- 5.5.55. The Applicant submitted an Ancient Woodland Clarifications and Proposed Additional Measures Technical Note (TN) as a late submission for D5 [AS-035]. It covered the detailed design of the proposed measures, the compensation ratio, the seeking of additional land for compensation woodland planting and a woodland management regime. It stated that the worst case (minimum) compensation ratio would be 4:1 if the works were on the edge of the limits of deviation (LoD) of the Order Limits so the habitat loss would be 0.46ha; and that the maximum ratio would be 5:3:1 if the works were exactly on the centre line of the Order Limits (as shown on the Works Plans and General Arrangement plans) in which case the habitat loss would be 0.36ha.
- 5.5.56. NE submitted comments [AS-037] on the Ancient Woodland Clarifications and Proposed Additional Measures TN as a late submission at D5. They welcomed that a commitment was to be included in the REAC to undertake 'reasonable endeavours' to ensure suitable management of extant ancient woodland and sought further clarification of what these would comprise. They stressed the importance of securing suitable management of Aspbury's Copse and recommended that suitable management of Barber's Copse was also secured as part of the compensatory package. They also welcomed pursuit of further compensatory woodland habitat and recommended that adding land on the western side of the M42, preferably contiguous with Aspbury's Copse, should be sought as the highest priority. They noted the Applicant's commitment in the TN to providing minimum compensatory woodland habitat of 7:1 but recommended that compensatory woodland habitat is maximised. The finalised SoCG with NE [REP6-002] submitted for D6 indicated that the majority of issues relating to the ancient woodland had been agreed but that the points above remained under discussion.
- 5.5.57. In the Applicant's covering letter submitted for D7 [REP7-001], they considered that two of the issues relating to the ancient woodland shown as 'under discussion' in the final NE SoCG submitted for D6 had been agreed. These were further woodland creation north of Aspbury's Copse and further enhancements of the Copse. Two issues were considered as still not agreed: what constituted an appropriate compensation replanting ratio; and the rationale for the 'tapering' of the ancient replanting. The final SoCG with WWT [REP7-003] was unsigned and indicated that the matters relating to the ancient woodland were still under discussion, so not agreed.
- 5.5.58. A final version of the SoCG with SMBC was submitted at D8 [REP8-005]. It indicated that SMBC agreed with NE that the proposed compensation planting ratio was not enough to reflect the ancient woodland loss, and that they were in ongoing discussion with NE about the matter. HE

remained of the view that a 3:1 ratio was proportionate and appropriate and stated that, as set out in the REAC contained within the OEMP, any diseased or dying trees would be replaced as part of the 5-year management plan. Both the Applicant and SMBC agreed that this was a matter to be resolved between the Applicant and NE in light of the publication of the Ancient Woodland Clarifications and Proposed Additional Measures TN [AS-035].

Summary and conclusions

- 5.5.59. In accordance with paragraph 5.22 of the NNNPS, the assessment contained in Chapter 9 of the ES sets out any likely significant effects on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity.
- 5.5.60. The ExA's assessment of the effects of the Proposed Development on internationally designated sites is provided in Chapter 6 of this Report. This concludes that the ExA considers 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 features, and that appropriate assessment is not required.
- 5.5.61. In accordance with paragraph 5.29 of the NNNPS, the ExA is satisfied that the provisions of R13, as set out in the recommended DCO in Annex D of this Report, would ensure that any adverse effect on Bickenhill Meadows SSSI would be acceptably mitigated and in doing so would ensure the conservation of the site's biodiversity interest.
- 5.5.62. Moreover, in accordance with paragraph 5.35 of the NNNPS the ExA is satisfied that the Applicant has taken measures to ensure protected species are protected from the adverse effects of the Proposed Development.
- 5.5.63. The Proposed Development would result in the loss of up to a maximum of 0.46ha of ancient woodland (worst-case). NNNPS paragraph 5.32 states that the SoS should not grant development consent for any development that would result in the loss or deterioration of irreplaceable habitats including ancient woodland, unless the national need for and benefits of the development, in that location, clearly outweigh the loss.
- 5.5.64. The Applicant's Ancient Woodland TN explains that the Proposed Development would achieve a minimum compensation planting ratio of 4:1. It also sets out the Applicant's commitment to use reasonable endeavours to secure agreement with landowners to bring forward additional land for compensation woodland planting to that already identified, where this would be necessary to achieve a replanting ratio of no less than 7:1. The commitment to this effect is included in the updated OEMP (G28c) and secured through R4.
- 5.5.65. However, the ExA cannot be certain at this time that the additional compensation planting and the other measures contained within the TN

would be secured. The ExA therefore has to make its recommendation based on that established by the end of the Examination, which is a minimum replanting ratio of 4:1.

- 5.5.66. NE in its SoCG with the Applicant confirms that it does not have a general position on compensation ratios for ancient woodland as such habitat is 'irreplaceable' and, therefore, should not be removed and hence require compensation. Nevertheless, NE confirm that the 3:1 replanting ratio reported in the ES is too low for irreplaceable habitat. SMBC and the WT agree.
- 5.5.67. The ExA note the Applicant's position that its proposals represent a proportionate compensation ratio for the impact to Aspbury's Copse taking into consideration the loss, current ecological quality and historic disturbance amongst other factors. The ExA also recognise that the clarification provided by the TN would improve that ratio from 3:1 reported in the ES to 4:1. However, this increase is not substantially above what NE consider to be too low. As NE is a statutory advisor to Government on nature conservation in England, the ExA attach significant weight to its views on this matter.
- 5.5.68. In any case, regardless of the replanting ratio, the loss of ancient woodland clearly weighs against the Order being made, because it is irreplaceable habitat. The proposed replanting ratio does not significantly lessen the weight against the Order being made in this regard. Whether the national need for and benefits of the development, in that location, clearly outweigh the loss is considered in Chapter 7 of this report, in accordance with NNNPS paragraph 5.32.
- 5.5.69. Pulling the above together, the ExA's findings are that:
- The Applicant's assessment of effects on biodiversity set out in ES Chapter 9 has been carried out in accordance with NNNPS paragraph 5.22.
 - The Proposed Development would have no adverse effect, either alone or in-combination with other plans or projects, on any European site or its features, and that appropriate assessment is not required. The effect on European sites is therefore a neutral consideration.
 - Effects on Bickenhill Meadows SSSI have been appropriately assessed and are capable of being acceptably mitigated by R13 in accordance with paragraph 5.29 of the NNNPS. The effect on this designated site is therefore a neutral consideration.
 - In accordance with paragraph 5.35 of the NNNPS the ExA is satisfied that the Applicant has taken measures to ensure protected species are protected from the adverse effects of the Proposed Development, such that this represents a neutral consideration.
 - The Proposed Development would result in the loss of up to 0.46ha of ancient woodland contrary to NNNPS paragraph 5.32. This weighs significantly and negatively against the Order being made.
 - The proposed replanting ratio does not significantly lessen the weight against the Order being made.

5.6. LANDSCAPE AND VISUAL IMPACT

Policy Background

- 5.6.1. Paragraphs 5.143 to 5.161 of the NNNPS address landscape and visual impacts. Paragraph 5.149 notes that landscape effects depend on the nature of the existing landscape and the nature of the effect likely to occur. Both factors need to be considered in judging the impact of a project. It further requires projects to be carefully designed and, having regard to siting, operational and other relevant constraints, the aim should be to avoid or minimise harm to the landscape, providing reasonable mitigation where possible and appropriate.
- 5.6.2. Outside nationally designated areas, NNNPS states at paragraph 5.157 that “the Secretary of State should consider whether the project has been designed carefully, taking account of environmental effects on the landscape and siting, operational and other relevant constraints, to avoid adverse effects on landscape or to minimise harm to the landscape, including by reasonable mitigation.”
- 5.6.3. The SoS should judge whether the visual effects on sensitive receptors, such as local residents, outweigh the benefits of the development (paragraph 5.158).
- 5.6.4. Paragraphs 5.159 to 5.161 set out mitigation considerations, with paragraph 5.160 noting that adverse landscape and visual effects may be minimised through appropriate siting of infrastructure, design and landscaping schemes. This paragraph also states that materials and design for infrastructure should always be given careful consideration.
- 5.6.5. Paragraphs 4.28 to 4.35 set out the criteria for good design for national network infrastructure, explaining that applicants should include design as an integral consideration from the outset of a proposal.
- 5.6.6. Solihull Local Plan Policy P10 seeks, amongst other matters, to “protect, enhance and restore the diverse landscape features of the Borough and to create new woodlands and other characteristic habitats, so as to halt and where possible reverse the degrading of the Arden landscape and promote local distinctiveness. Development should take full account of national and local guidance on protecting and restoring the landscape and the areas in need of enhancement, including guidance relating to the countryside. Developers will be expected to incorporate measures to protect, enhance and restore the landscape, unless it is demonstrated that it is not feasible, disproportionate or unnecessary.”
- 5.6.7. Policy P14 seeks *“to protect and enhance the amenity of existing and potential occupiers of houses, businesses and other uses in considering proposals for new development, and will: [...]*

iv. Safeguard important trees, hedgerows and woodlands, encourage new and replacement tree and hedgerow planting and identify areas that may be suitable for the creation of new woodlands. Priority will be given to locations that enhance or restore the green infrastructure network and to

the planting of species characteristic of the Arden Warwickshire landscape; [...]

ix. Protect those parts of the countryside in the Borough that retain a dark sky from the impacts of light pollution. Development involving external lighting outside established settlements will be permitted only where significant lighting already exists, or the benefits of the development clearly outweigh the impact of the lighting on the countryside. Any lighting scheme should be the minimum required for the purposes of the development and should avoid light spillage [...]"

Applicant's Approach

5.6.8. The Applicant's landscape and visual impact assessment of the Proposed Development, both during construction and operation, is set out in ES Chapter 8: Landscape [APP-053]. This is supported by:

- Figure 8.1 – Viewpoint Plan and Landscape Character Areas [APP-085]
- Figure 8.2 – Viewpoint Location Plan A, B, C and D [APP-086, APP-087, APP-088 and APP-089]
- Figure 8.3 – Proposed Landscape Planting [APP-090]
- Figure 8.4 – Tree Location Plan [APP-091]
- Figures 8.5 and 8.6 – Zone of Theoretical Visibility (1.5m and 4.5m) [APP-092 and APP-093]
- Figure 8.7 – Landscape Visualisations sheets [APP-094]
- Figure 8.8 – Environmental Masterplan [APP-095]
- Appendix 8.1 – Visual Baseline and Impact Schedules [APP-127]
- Appendix 8.2 – Arboricultural Survey [APP-128]

5.6.9. Due to a presentational error in respect of Viewpoint D, a corrected Figure 8.2 [REP2-003] was provided at Deadline 2. The Applicant also submitted a Lighting Technical Note [REP2-021] at Deadline 2 in response to WQ1 1.0.1 [PD-006].

5.6.10. The Applicant provided the following information (at Deadline 6) relating to the felling or lopping of trees and removal of hedgerows:

- Volume 8.78: A table which identifies the trees that are located within the boundary of a Conservation Area [REP6-019]; and
- Volume 8.79: Important Hedgerow Criteria [REP6-020].

5.6.11. The Applicant's assessment methodology is set out in Section 8.3, and includes a description of its scope, guidance, establishment of baseline conditions and the criteria applied to determine receptor sensitivity, magnitude of impact and significance of effect.

5.6.12. Paragraph 8.3.6 explains that "Following a review of the type and location of road lighting incorporated into the design of the Scheme, it was determined that night time visual effects would not be significant on visual receptors due to the distance between receptors and the components of the Scheme that would be lit. Furthermore, it was identified that the M42 motorway corridor and development such as the

National Exhibition Centre and Birmingham Airport are already lit, and are the principal source of light spillage in existing night time views within the landscape. Accordingly, night time visual effects associated with road lighting were scoped out of the assessment.”

- 5.6.13. The assessment follows the guidance set out in: Design Manual for Roads and Bridges: Interim Advice Note 135/10 Landscape and Visual Effects Assessment⁶¹; Guidelines for Landscape and Visual Impact Assessment (Third Edition)⁶²; An Approach to Landscape Character Assessment⁶³; Photography and photomontage in landscape and visual impact assessment: Landscape Institute Advice Note 01/11⁶⁴; and Design Manual for Roads and Bridges: Volume 10, Section 0, Part 3 – Landscape elements⁶⁵.
- 5.6.14. Establishment of the baseline environment has involved referencing existing data sources, consultation with statutory bodies and other organisations, and fieldwork surveys.
- 5.6.15. A preliminary Zone of Theoretical Visibility (ZTV) was developed to inform the scoping of potential landscape and visual effects, the purpose of which was to:
- assist the identification of an assessment study area;
 - identify the maximum theoretical extents of visibility; and
 - identify a number of locations (viewpoints) to be assessed that are representative of the experience afforded to different types of visual receptor.
- 5.6.16. The preliminary ZTV was updated through design development. The final ZTVs are illustrated in Figures 8.5 and 8.6 [APP-092 and APP-093]. The former assumes the viewer can view a vehicle at 1.5m in height whilst the latter assumes the viewer can view a vehicle at 4.5m in height.
- 5.6.17. Following discussion with SMBC, five additional viewpoints were added to the 23 already identified as representative of locations likely to experience visual change. An additional viewpoint surveyed at the

⁶¹ Highways Agency (2010)

<http://www.standardsforhighways.co.uk/ha/standards/ians/pdfs/ian135.pdf>

Landscape Institute and the Institute of Environmental Management & Assessment (2013)

⁶² Landscape Institute and the Institute of Environmental Management & Assessment (2013)

<https://www.routledge.com/Guidelines-for-Landscape-and-Visual-Impact-Assessment-3rd-Edition/Landscape-Institute-IEMA/p/book/9780415680042>

⁶³ Natural England (2014)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691184/landscape-character-assessment.pdf

⁶⁴ The Landscape Institute (2011)

<https://www.landscapeinstitute.org/PDF/Contribute/LIPhotographyAdviceNote01-11.pdf>

⁶⁵ Highways Agency (2001)

<http://www.standardsforhighways.co.uk/ha/standards/dmr/vol10/section0/ha8801.pdf>

request of The Canal and River Trust (Viewpoint DD) was scoped out of the assessment on the basis that no views would be available to users of the Grand Union Canal. Viewpoints O and P from a PRoW were subsequently removed from the assessment, due to their distance and orientation away from the Proposed Development. Around the same time, two further viewpoints (Viewpoints X and Z) were identified and brought into the assessment scope due to design changes.

5.6.18. The final list of viewpoints evaluated in the visual assessment is presented in Appendix 8.1 [APP-127]. This includes viewpoints that represent grouped effects associated with multiple individual receptors, such as those located within areas of settlement who have comparable views. Nine of the assessed viewpoints (viewpoints BB, C, I, R, T, Z, GG, HH and II) were developed into detailed visualisations (photomontages) [APP-094].

5.6.19. It is explained (paragraph 8.3.50) that landscape and visual effects have been identified for the following scenarios, which represent the key stages of the Proposed Development:

- “construction (2020 – 2023) – to represent the changes that would be apparent when construction activity is at its peak i.e. when construction works, vehicles, equipment and machinery are in maximum use;
- winter in the year of opening (2023) – to represent the changes that would be apparent on a winter’s day in the year that the Scheme would be open to traffic i.e. prior to the establishment of landscaping; and
- summer in year 15 (2038) – to represent the changes that would be apparent on summer’s day fifteen years after opening of the Scheme i.e. once all landscape planting has reached a level of maturity where it is fulfilling its intended screening and integration functions.”

5.6.20. The assessment has taken into account the lateral and/or vertical limits of deviation defined on the Works Plans [APP-007] in order to establish a worst-case assessment scenario.

Study area

5.6.21. The study area extends to 500m around the Order Limits, on the basis that the Proposed Development would not give rise to significant environmental effects beyond this distance. This is illustrated in Figure 8.1 [APP-085].

Overview of landscape and visual environment

5.6.22. There are no statutory or non-statutory landscape designations within the study area although the Order Limits fall within an area of Green Belt designation referred to as the Meriden Gap. The implications of this are considered below in the Green Belt section of this chapter of the Report. The settlements of Bickenhill and Hampton in Arden both contain conservation areas, the associated issues of which are considered above in the Cultural Heritage section of this chapter.

Landscape character

- 5.6.23. At the national scale, the landscape of the study area falls within Natural England's National Character Area (NCA) 97: Arden⁶⁶, the key characteristics of which are recorded as including:
- well-wooded farmland landscape with rolling landform;
 - mature oaks, mostly found within hedgerows, together with ancient woodlands, and plantation woodlands that often date from the time of enclosure;
 - diverse field patterns;
 - complex and contrasting settlement patterns including those which remain distinct and relatively well dispersed; and
 - transport infrastructure including the M42.
- 5.6.24. The following landscape character assessments undertaken by WCC, SMBC and NWBC have also been referenced in the assessment to inform the analysis of the existing landscape within the study area and the development of three Local Character Areas (LCAs) as identified in Figure 8.1 [APP-085]:
- Warwickshire Landscapes Guidelines: Arden⁶⁷;
 - Solihull's Countryside – Countryside Strategy: First Review 2010-2020⁶⁸; and
 - North Warwickshire Landscape Character Assessment⁶⁹.
- 5.6.25. LCA 1 Arden Farmland is described in ES paragraphs 8.6.12 to 8.6.18. It is formed of the rural landscape extending from the edges of the Solihull and the Birmingham urban areas in the west, towards the broader Arden landscape and Coventry in the east. It is also formed of former historic parkland which the assessment states has largely been replaced by agricultural production, with field patterns reflecting this transition.
- 5.6.26. The M42 motorway corridor, local highways, the West Coast Mainline and local rail lines are identified as influencing the area as they cut through the landscape and create barriers within it, whilst overhead power lines interrupt the broader skyline. The major developments around Birmingham Airport and the NEC are identified as prominent visual indicators of the nearby conurbation of Birmingham.
- 5.6.27. Vegetation cover includes the ancient woodlands of Aspbury's Copse, Hampton Coppice and Barber's Coppice in the south and west, as well as numerous smaller stands of woodland scattered within the study area.

⁶⁶ <http://publications.naturalengland.org.uk/file/5139427638640640>

⁶⁷ <https://apps.warwickshire.gov.uk/api/documents/WCCC-688-141>

⁶⁸

<http://www.solihull.gov.uk/Portals/0/Planning/LDF/countsidestrategyfirststrev1.pdf>

⁶⁹ https://www.northwarks.gov.uk/downloads/download/1668/landscape_character_assessment_downloads

- 5.6.28. The mature trees concentrated within and around the small villages and lining the wider local road network provide structure in the landscape. The topography of the LCA falls gently from the west to east but a series of local rises contribute to the perception of a rolling landscape. The Grand Union Canal is located within the south of the LCA and passes through Catherine-de-Barnes.
- 5.6.29. The LCA is described as having a settled rural landscape surrounded and dissected by major development and transport corridors. Despite these pressures, it remains functional and intact with relatively few areas where its components break down or transition towards more diverse and conflicting land uses typical of urban fringe landscapes.
- 5.6.30. Overall LCA 1 is assessed as comprising a good quality rural landscape which continues to resist, but remains vulnerable to, the pressures of urban fringe development. It is assessed to be of moderate value with a moderate susceptibility and a moderate sensitivity towards change.
- 5.6.31. LCA 2 Blythe Valley Parkland Farmland is described in ES paragraphs 8.6.19 – 8.6.23. Here it is explained that field patterns include the small irregular pastoral fields close to the river, semi-regular arable fields associated with former estates and deer parks, and larger fields on the more steeply sloping valley sides to the south. Land cover includes extensive areas of parkland associated with Packington Hall. Woods that contributed to the former deer parks, treed parklands and golf courses provide a strong vegetation framework within the LCA. Combined with the riparian vegetation along the River Blythe and the infilling farmland defined by low trimmed hedges and frequent hedgerow trees, a diverse but cohesive rural character results.
- 5.6.32. It is generally a sparsely settled landscape for which there is little influence from the nearby urban expanses and transport corridors, with the exception of the southern and western extents near to the M42 and A45 corridors where extensive road layouts, lighting and overhead electricity transmission infrastructure disrupt the rural character. The assessment acknowledges that despite its proximity to a major city and its associated infrastructure, this LCA is an intimate rural landscape with strong links to the historic land uses and settlement patterns, evidenced through the estate and parkland landscapes.
- 5.6.33. Overall LCA 2 is assessed as comprising good quality remnant parkland landscape with relatively limited influences from modern day development. Accordingly, this LCA is assessed to be of high value and moderate susceptibility, with a high sensitivity towards change.
- 5.6.34. As described in paragraphs 8.6.24 to 8.6.27, LCA 3 Transport Interchange, NEC and Business Park is formed around the urban fringe transport and business areas, bounded by the A45, M42 motorway and residential areas at Sheldon, Marston Green and Chelmsley Wood. The large scale urban features of Birmingham Airport, the NEC and Birmingham Business Park largely dominate the area. Accordingly, this

LCA is assessed to be of low value and low susceptibility with a low sensitivity towards change.

Visual amenity

- 5.6.35. The visual environment is described in ES paragraphs 8.6.28 to 8.6.31. Here it is explained that “the study area is largely defined by the settled rural character of the landscape. The combination of the gentle topography, broad network of lanes and strong vegetation framework introduces a sense of enclosure to views from within lower lying areas, with views from the local road network frequently lined and contained by roadside vegetation.
- 5.6.36. Users of PRoW that traverse open fields and higher ground within the study area are afforded a wider aspect due to degraded field boundaries. From these locations, the presence of Birmingham Airport and the NEC are particularly evident in views, as are other elements of the Birmingham conurbation.
- 5.6.37. Views from settlements within the study area are available from locations on the edges of the Birmingham conurbation to the north and west, and from the villages of Bickenhill, Hampton in Arden and Catherine-de-Barnes. Further views are available from the smaller hamlets and more isolated properties scattered throughout the rural farmland.
- 5.6.38. Intermittent visual awareness of the landscapes of the study area is afforded to those travelling on the M42 motorway, the A46, the A452 and the local road network. Similar transient views of the landscape are available to rail users travelling on the West Coast Mainline.”
- 5.6.39. Figure 8.1 [APP-085] shows the location of each representative viewpoint in relation to the Proposed Development and the study area. Summer and winter photographs of the viewpoints are presented in Figure 8.2 [APP-086, APP-087, APP-088 and APP-089]. Appendix 8.1 [APP-127] describes the locations of each viewpoint and their relationship to the Proposed Development, the value of their existing view, their susceptibility, and their overall sensitivity towards change.

Design, mitigation and enhancement measures

- 5.6.40. Paragraph 8.8.1 explains that the Proposed Development has been designed, as far as possible, to avoid and minimise impacts and effects on landscape character and visual receptors through the process of design-development and by embedding measures into the design.
- 5.6.41. The prediction of impacts and the assessment of effects has taken account of the embedded and standard mitigation measures, and the compensation measures, identified.

Embedded mitigation measures

- 5.6.42. Paragraphs 8.8.5 to 8.8.17 set out the embedded mitigation measures. These include:

- The new mainline link road being designed to position the majority of its length within an earthwork cutting, the objective being to visually contain much the new carriageway and associated infrastructure and traffic movements from existing views available from residential properties and some PRow in proximity to the corridor. The objective is also to reduce the visual awareness of the road in more distant views available from a range of locations within the surrounding landscape.
- Grading cutting slopes to soften their appearance.
- Confining lighting to locations where road safety is a priority, in order to minimise the potential for light spill in night time views across the landscape.
- Minimising visual clutter from signage.
- Minimising encroachment into Aspbury's Copse ancient woodland.
- Developing and incorporating a planting strategy into the design [APP-090], taking into account restrictions on introducing woodland and tree planting within Birmingham Airport's safeguarding zone. The objectives of the planting strategy have been to:
 - filter, screen and contain more prominent components in existing views from visual receptors;
 - provide planting for trees, hedgerows, shrubs, woodland and grassland lost as a result of permanent land take, and to reinstate planting removed as a consequence of site clearance activities;
 - reinforce the existing vegetation pattern by planting species found locally, and those specified as being suitable for application under flight paths;
 - assist the integration of drainage features into the surrounding landscape; and
 - provide visual interest to people travelling on new and modified sections of road.

5.6.43. It is explained that the planting strategy has sought to offer biodiversity benefits as well as essential landscape mitigation (screening and integration). The Environmental Masterplan for the Proposed Development, which places the planting strategy within the wider framework of other environmental mitigation measures for biodiversity and drainage, is contained within Figure 8.8 [APP-095].

Standard mitigation measures

5.6.44. The OEMP [REP9-019] details the measures that would be undertaken during construction to mitigate temporary effects on landscape character and visual receptors. Paragraph 8.8.19 explains that these measures focus on:

- "maintaining well-managed and tidy construction working areas and site compounds to minimise their visual impact and appearance in the landscape;
- ensuring that materials are delivered on an "as and when" basis, to minimise the potential for stockpiling and associated visual impact;
- so far as practicable, minimise the height of soils and other stockpiled materials in order to reduce their visual impact;

- the protection and retention of trees in proximity to construction working areas, to avoid damage to existing vegetation;
- finishing site offices and facilities within the main site compound in a recessive colour to blend into the local landscape and immediate surroundings; and
- keeping construction lighting to the minimum luminosity necessary within site compounds and working areas, and directing and positioning this sympathetically, and where possible, fitting it with motion sensors to minimise potential light spill in night time views.”

Compensation measures

- 5.6.45. The planting strategy includes an area of compensatory planting south of Aspbury’s Copse, adjacent to the eastern boundary of the M42 motorway, which is intended to offset the loss of ancient woodland arising.

Assessment of significant effects

Construction

- 5.6.46. Construction of the Proposed Development would result in the following vegetation loss:
- 4.56km of hedgerow;
 - 4.5ha of woodland and woodland edge planting;
 - 0.46ha of ancient woodland within Aspbury’s Copse;
 - 5.66ha of scrub planting; and
 - 72 individual trees.
- 5.6.47. The extent of vegetation loss within the Order Limits and trees to be retained, is illustrated in Figure 8.4 [APP-091], with further details provided within Appendix 8.2 Arboricultural Survey [APP-128].
- 5.6.48. The Applicant acknowledges (paragraph 8.9.3) that the existing character and perception of LCA 1 and LCA 2 would be directly impacted by construction of the Proposed Development, principally by the introduction of construction activity into the existing landscape pattern.
- 5.6.49. The Applicant also acknowledges (paragraph 8.9.4) that “Within these LCAs, there would be a loss of established trees and hedgerows as a consequence of site clearance works, the removal of which would change the balance of character-forming features and would open new views towards construction compounds (both main and satellite), construction working areas and their associated activity.”
- 5.6.50. It is explained that earthworks operations and materials stockpiles would introduce temporary new features in the landscape and that these would be set against the profile of existing landform and character-forming features.
- 5.6.51. It is recognised at paragraphs 8.9.7 and 8.9.8 that the main site compound proposed to the south east of Clock Interchange *“would appear as a new feature in the landscape, leading to a change in the*

balance of elements within LCA 2. Similar but more localised changes to LCA 2 would also occur at the locations of satellite compounds formed to serve the works at M42 Junction 5A.

The character of agricultural landscape is such that new activity and larger construction infrastructure elements would combine to adversely impact on local landscape character, particularly from locations around the fringes of Bickenhill.”

- 5.6.52. It is envisaged that any visual connections of construction activity and infrastructure within the southern margins of LCA 3 would be limited to an extent by woodland and built form.
- 5.6.53. Due to the loss of distinctive features and the introduction of uncharacteristic and conspicuous features, as well as the duration of the works, the Applicant’s assessment (paragraph 8.9.10) has concluded the following impacts and effects on landscape character:
- “LCA 1 would be subjected to a temporary large adverse effect, as the character area is moderately sensitive to change and would experience a major adverse magnitude of impact;
 - LCA 2 would be subjected to a temporary large adverse effect, as the character area is highly sensitive to change and would experience a major adverse magnitude of impact; and
 - LCA 3 would be subjected to a temporary slight adverse effect, as the character area is of low sensitivity to change and would experience a minor adverse magnitude of impact.”
- 5.6.54. In terms of visual amenity, paragraphs 8.9.14 summarises that of the 28 viewpoints assessed:
- nine viewpoints would experience temporary large adverse effects, of which four are residential, four recreational and one local road users;
 - seven viewpoints would experience temporary moderate adverse effects, of which two are residential, two are recreational and three are local road users;
 - ten viewpoints would experience temporary slight adverse effects, of which seven are recreational and three are local road users; and
 - two viewpoints would experience neutral effects, of which one is recreational and the other is local road users.

Operation

- 5.6.55. In addition to that identified for ecological mitigation, the Applicant envisages that the following planting would mitigate and compensate for vegetation lost during construction, and would also function to integrate the Proposed Development into the local landscape framework and provide visual screening once operational:
- approximately 12km of new hedgerow planting;
 - 3.89ha of woodland and woodland edge planting;
 - 1.9ha of new woodland planting contiguous to Aspbury’s Copse (to compensate for the loss of ancient woodland at this location);
 - 4.08ha of scrub planting;

- 0.4ha of shrub planting;
- 2.11ha of shrub with intermittent tree planting; and
- 28.52ha of grassland.

Landscape character

LCA 1

- 5.6.56. The assessment conclusions in respect of LCA 1 are set out in ES paragraphs 8.9.19 to 8.9.26. As a result of the introduction of new traffic movements and associated highways infrastructure into the rural landscape as part of the new mainline link road, particularly around the village of Bickenhill, it is acknowledged that the Proposed Development would alter the perception and physical character of LCA 1 in both winter year 1 and summer year 15.
- 5.6.57. It is envisaged that the positioning of the new mainline link road within a deep cutting would contain its appearance in the landscape, thereby reducing the extent to which the road severs the landscape and alters the existing character of LCA 1.
- 5.6.58. The assessment notes that the Proposed Development would reduce the tranquillity of the landscape, principally associated with the introduction of additional movement and noise from vehicles travelling on the new mainline link road to the south of Clock Interchange, on the eastern fringes of LCA 1.
- 5.6.59. The mainline link road would also result a direct loss and alteration of existing features and components comprising hedgerows, grassland and field boundaries. On this basis it is predicted that LCA 1 would experience a moderate adverse magnitude of impact in winter year 1.
- 5.6.60. It is explained that by year 15, boundary hedgerows and scrub planting along the cutting slopes of the new mainline link road would have established to provide a degree of landscape integration and containment. However, the assessment acknowledges that the Proposed Development would not be fully screened or integrated into the local landscape because of restrictions on planting taller tree and plant species within Birmingham Airport's safeguarding zone. Accordingly, it would continue to exert a moderate adverse magnitude of impact at year 15.
- 5.6.61. The assessment has concluded that the moderately sensitive LCA 1 would experience a moderate adverse effect in winter year 1, which would remain as moderate adverse in summer year 15.

LCA 2

- 5.6.62. Paragraphs 8.9.27 to 8.9.34 explain that the new M42 Junction 5A and its associated slip roads, Barber's Coppice Roundabout, the southern section of the new mainline link road and the majority of works proposed on the M42 motorway would be positioned in the southern extents of LCA 2. It is predicted that the introduction of this highway infrastructure would serve to increase the relatively limited influence of modern-day development on the character of this area, in a comparable way to the

impacts reported for LCA 1. The physical alterations to the landscape within LCA 2 would also combine with those within LCA 1 to alter the perception local character, primarily as a result of the introduction of the new road infrastructure and associated traffic movements within this rural landscape.

- 5.6.63. The effects would also serve to reduce the tranquillity of the landscape, resulting in the fragmentation of its pattern and framework and increasing the sense of urbanisation. Additionally, the works associated with Junction 5A and Solihull Road overbridge would result in the partial loss of the ancient woodland resource within Aspbury's Copse.
- 5.6.64. It is predicted that LCA 2 would experience a moderate adverse magnitude of impact in winter year 1, reducing to minor adverse in summer year 15 as a result of planting providing a framework for visual screening and integration. Consequently, the assessment concludes that the highly sensitive LCA 2 would experience a large adverse effect in winter year 1, which would reduce to moderate adverse by summer year 15.

LCA 3

- 5.6.65. It is envisaged that the Proposed Development would result in limited physical change within LCA 3 due to the relative peripheral position of the works set against an existing context of major road infrastructure and built form. Consequently, the assessment states that there would not be any substantive changes to the way in which the area is perceived. A minor adverse magnitude of impact in winter year 1 is therefore predicted.
- 5.6.66. By summer year 15, it is envisaged that landscaping would have established to soften the appearance of the improvements proposed within LCA 3, such that the magnitude of impact would reduce to negligible adverse. With the low sensitivity attributed to the area, the assessment concludes that LCA 3 would experience a slight adverse effect in winter year 1, reducing to a neutral effect in summer year 15.

Visual amenity

- 5.6.67. For winter year one, the assessment concludes at paragraph 8.9.44 that;
- "nine viewpoints would experience large adverse effects, of which three are residential, five are recreational and one comprises local road users;
 - five viewpoints would experience moderate adverse effects, of which one is residential, two are recreational and two are local road users;
 - nine viewpoints would experience slight adverse effects, of which one is residential, four are recreational and four are local road users; and
 - five viewpoints would experience neutral effects, of which four are recreational and one comprises local road users."
- 5.6.68. By summer year 15, the assessment concludes (paragraph 8.9.45) that landscape mitigation measures would have established and be fulfilling

their intended function of visually screening and filtering a proportion of these views, resulting in the following effects:

- “six viewpoints would experience large adverse effects, of which three are residential, two are recreational and one comprises local road users;
- five viewpoints would experience moderate adverse effects. of which one comprises residential, and four are recreational;
- eight viewpoints would experience slight adverse effects, of which four are recreational and four are local road users; and
- nine viewpoints would experience neutral effects, of which one are residential, four are recreational and four are local road users.”

Issues Arising

- 5.6.69. Landscape and visual impacts gave rise to concerns in RRs and WRs and through various deadline submissions during the Examination, both for the construction and operational phases. Examples include RR-008 and REP1-029. The ExA has had full regard to the concerns expressed.
- 5.6.70. SMBC has confirmed in its LIR [REP2-003] that it agrees with the methodology used and the ExA find no reason to take a contrary position.
- 5.6.71. Nevertheless, SMBC queried whether the technical guidance on Residential Visual Amenity Assessment (RVAA) produced by the Landscape Institute had been used to supplement the advice and best practice currently presented within the assessment. This subsequently formed part of WQ3 3.4.4 [PD-011], to which the Applicant’s response [REP6-010] explains that this technical guidance note was not published until after the submission of the application. The response also sets out why the Applicant is of the opinion that there is no requirement to undertake a RVAA of the Proposed Development as it is only generally justified when the effect on residential visual amenity could reach the Residential Visual Amenity Threshold. The contributing factors of which are stated to include whether a development is ‘overwhelming in views in all directions’, ‘inescapably dominant’ or ‘unpleasantly encroaching’, as set out within the Technical Guidance Note.
- 5.6.72. Regardless of whether an RVAA is required in this case, the ExA is satisfied that it is able to reach an informed view on the effects of the Proposed Development on visual amenity on the basis of the information submitted to the Examination.
- 5.6.73. For landscape, SMBC’s LIR also queried whether the following sources of data were reviewed as part of the assessment:
- Solihull Borough’s Landscape Character Assessment (Waterman, December 2016); and
 - Solihull’s Local Character Guide (Waterman, November 2016).
- 5.6.74. WQ3 3.4.4 therefore also queried why these apparent omissions may, or may not, affect the findings of the LVIA. The Applicant’s response [REP6-

010] provides a review of these documents which contends that no update of the ES Chapter 8 assessment is required. The ExA find no reason to take a contrary position.

5.6.75. The ExA did however note a number of contradictions between the impacts stated for Viewpoints F, K and L in ES Table 8.6 and those stated in Appendix 8.1. Consequently, clarification was sought from the Applicant through WQ1 1.6.3, 1.6.7 and 1.6.8. In respect of Table 8.6, the Applicant's responses [REP2-007] confirmed that the operation impacts and effects for:

- Viewpoint F should be slight adverse, rather than neutral in summer year 15.
- Viewpoint K should be moderate adverse, rather than large in winter year 1.
- Viewpoint L winter year 1 magnitude of impact should major rather than moderate. (By applying the matrix in ES Table 8.4, this would raise the significance of effect from large adverse, to large/ very large.)

5.6.76. Consequently, this changes the summary of effects stated in ES paragraphs 8.9.44 and 8.9.45, referred to above. For winter year one, one viewpoint would experience large/ very large adverse effects (rather than none), seven viewpoints would experience large adverse effects (rather than nine), and six viewpoints would experience moderate adverse effects (rather than 5). For summer year 15, nine viewpoints would experience slight adverse effects, rather than eight, and eight viewpoints would experience neutral effects, rather than nine.

5.6.77. SMBC confirm in its LIR that it agrees with the Applicant's conclusions made in terms of the impact of the Proposed Development on landscape character and the visual amenity of the area. In terms of landscape character, the ExA find no reason to disagree. However, in terms of visual amenity, the ExA sought further justification/ explanation as to the findings for a number of viewpoints as part of its first written questions [PD-006].

5.6.78. Dealing firstly with Viewpoint I (Bickenhill North), the ExA note the Applicant's response to WQ1 1.6.4 [REP2-007], nevertheless, Appendix 8.1 to ES Chapter 8 acknowledges there to be a high value to the view. Whilst in winter months screening towards Birmingham Airport and the NEC would be less effective, the detractors in the view are not significant. Moreover, the receptors are users of the PRoW and the residents of properties in the northern part of Bickenhill Conservation Area. Therefore, having regard to the criteria in ES Table 8.1, the ExA consider that the sensitivity of the view should be high rather than moderate. Consequently, the significance of effect has been understated and should be large/ very large adverse during construction, rather than moderate. In operation, the effects would be moderate/ large rather than moderate in winter year 1 and summer year 15.

5.6.79. Whether Viewpoint J (St Peter's Lane) would experience a large (as assessed) or very large adverse effect, was the subject of WQ1 1.6.5.

Again, the ExA note the Applicant's response [REP2-007]. However, Appendix 8.1 acknowledges that *"The mainline link road would be visible in the foreground view, positioned in a deep and broad cutting. The Scheme would remove existing vegetation that encloses the lane and open the view up to the west and north-west. Traffic movement along the mainline link road would be partially visible, although set low in the view. Catherine-de-Barnes and St Peters Lanes would be realigned and bridged across the cutting. This would significantly alter the nature of this quiet enclosed village lane, opening views of the wider area while introducing more frequent and new structures along with highway traffic to the view leading to a more urban context."*

- 5.6.80. The ExA therefore consider that the Proposed Development would constitute a dominant feature which would fundamentally change this view, resulting in a major magnitude of impact, as assessed. Using the Applicant's significance of effect matrix in Table 8.4 there would be a large/ very large adverse significance of effect both in winter year 1 and in summer year 15 for this highly sensitive receptor.
- 5.6.81. As noted above, the Applicant determined that night time visual effects would not be significant on visual receptors and thus was scoped out of the Chapter 8 assessment. The ExA therefore sought views on this through WQ1 1.0.2. CPRE Warwickshire's view [REP2-056] is that the scoping out of night-time visual effects of road lighting is not justified, stating that the area south of the A45 and west of the M42 is rural Green Belt with little or no street lighting and village settlements with little street lighting. CPRE also state that while the effect of lighting of the Airport and the area around it is visible in the sky, the actual area where the new link road would be is generally unlit.
- 5.6.82. The ExA agree that the Proposed Development would introduce street lighting into locations which currently have little or limited lighting, including:
- The area of the main line link road approach to Junction 5A as it emerges from cutting and rises to the elevated dumbbell roundabouts and overbridge; and
 - Barber's Coppice roundabout and approaches.
- 5.6.83. Based on the preliminary design contained within the Applicant's Lighting Technical Note [REP2-021], these areas would be lit with columns between 12m and 15m in height. On this basis the ExA queried whether there is potential for the night time views to have a significant effect on Viewpoints S, T and EE, given the quantum and height of luminaries relative to existing ground levels and proposed planting (WQ3 3.4.1 [PD-011]). The potential was also raised for residential receptors at Viewpoint EE to experience effects from parts of the lighting for Junction 5A and Barber's Coppice Roundabout in combination.
- 5.6.84. Dealing firstly with Viewpoint S, the ExA have considered the Applicant's response to WQ3 3.4.1 [REP6-1010] as well as WQ1 1.6.9 [REP2-007] which sought further justification for the assessment of a slight adverse effect in summer year 15. In doing so, account has been taken of the

landscaping measures shown on Sheet 3 of Figure 8.8 (Environmental Masterplan) [APP-095] and the height of the columns and the combination of intervening distance, landform, trees, vegetation and existing lighting spill from the M42 motorway. Nevertheless, the ExA is unconvinced that the significance of effect for Viewpoint S would be reduced from moderate adverse in winter year one to slight adverse effect in summer year 15. It is considered that the two elevated and lit roundabouts, overbridge and emerging section of mainline link road would still be noticeable features in the landscape, and a moderate adverse effect in summer year 15 is more likely. The road lighting would remain a contributing element to this effect. Moreover, the ExA consider that the moderate adverse effect predicted for summer year 15 in Viewpoint T further supports this position as mitigation similarly relies on the same landscaping proposals.

- 5.6.85. Having regard to the Applicant's responses to WQ1 1.6.10, 1.6.11, 1.6.12 and 1.6.15 [REP2-007], the ExA consider that the sensitivity of the receptors in respect of Viewpoints T, AA and FF have at least been slightly understated. Nevertheless, in overall terms the Applicant's conclusions are considered reasonable.
- 5.6.86. The ExA similarly consider that the sensitivity of the residential receptor of Viewpoint EE has been understated. The RR [RR-025] and various responses from the occupants of Four Winds (for example REP2-058 and REP7-024) point out that Catherine-de-Barnes Lane is presently unlit and assert that existing views across fields towards the M42 do not have 'a general light spill in the night sky from nearby transportation, aviation and commercial infrastructure', as stated by the Applicant.
- 5.6.87. Nevertheless, the assessment does acknowledge that the proposed mainline link road and the reconfiguration of the local roads would be a major feature in this view. As the former includes a new roundabout with associated street lighting, in close proximity to Four Winds, a significant adverse visual impact would occur. Whilst noting the Applicant's reference to the separation and existing light spill in its response to WQ3 3.4.1 [REP6-010], the ExA consider it likely that this receptor would experience in-combination effects of road lighting associated with Barber's Coppice Roundabout and Junction 5A. Whilst the street lighting taken in isolation is unlikely to result in significant harm, as it is capable of design mitigation, it would be a contributing element to a large/ very large adverse effect in winter year one and summer year 15, rather than large adverse as assessed.
- 5.6.88. As noted above, Viewpoint DD, which was requested by The Canal and River Trust, was scoped out of the assessment on the basis that field surveys established that no views would be available to users of the Grand Union Canal. The ExA subsequently queried whether the Trust was satisfied with this action through WQ1 1.6.1 [PD-008]. In its response [REP2-051] and WR [REP1-009] the Trust point out that although Viewpoint DD is where the canal is in cutting, there are sections of the canal to the south of Hampton Lane which are not and where views would be available across fields sloping from the canal towards the Order

Limits. On this basis, the Trust requested that at least one further viewpoint should be selected and assessed.

- 5.6.89. The ExA therefore walked along the canal towpath to a section where such views would be available on the second day of the ASI on 4 July 2019 [AS-023]. However, having regard to the separation to the new infrastructure works and the composition of the existing view, the ExA consider that visual impacts on users of the canal and towpath would be negligible and would not justify additional screening for outward views. This is largely consistent with the Applicant's response [REP3-009] to the submissions made by the Trust, which referenced further surveys undertaken in June 2019 to record potential visibility from different locations along this section of the canal towards the existing M42 corridor. This concluded that there would be negligible change in the existing outlook afforded to users of the canal south of Hampton Lane during the construction and operational phases of the Proposed Development.
- 5.6.90. Returning to the issue of street lighting, paragraph 3.5.137 of ES Chapter 3 [APP-048] states that consideration has been given in the lighting design to minimise the potential for it to intrude into existing night time views. This prompted questions from the ExA of how it is intended that the final lighting scheme would be controlled to ensure that the latest lighting technology with the most appropriate lantern and colour temperature would be installed to minimise light-spill and reduce night time visual effects (WQ1 1.0.1 [PD-006] and WQ3 3.4.3 [PD-011]).
- 5.6.91. The Applicant's responses [REP2-007 and REP6-10] refer, amongst other things, to Obligations G6 and G35 in the Register of Actions and Commitments (REAC) which forms part of the OEMP [REP9-019]. Obligation G6 requires lighting to be "*confined to locations where road safety is a priority so as to limit spill at night*". Obligation G35 requires the contractor "*to utilise low carbon design specifications such as energy-efficient lighting*". As Requirement 4 of the recommended dDCO stipulates that the Construction Environmental Management Plan (CEMP) must reflect the mitigation measures set out in the REAC, the ExA accept that safeguards would be in place to reasonably restrict lighting locations and to ensure energy-efficient lighting.
- 5.6.92. However, whilst the Applicant refers to the measures to mitigate light pollution as set out in paragraph 7.1.3 of the Lighting Technical Note [REP2-021] (submitted at Deadline 2 in response to WQ1 1.0.1), these do not form part of the OEMP/ REAC and as such are not controlled by Requirement 4.
- 5.6.93. The responses from SMBC confirms that the lighting design should cater for the local environment by providing low mast columns which will only direct light onto the carriageway, utilising shields, if necessary, along with the most appropriate colour temperature in order to reduce any night time visual effect [REP2-37 and REP6-037]. NE has also confirmed that it supports appropriate measures for the amelioration of light

pollution effects upon landscape character and visual amenity, as well as indirect biodiversity impacts [REP2-032].

- 5.6.94. The ExA therefore consider that street lighting should be controlled to minimise harm to landscape character and to minimise visual impact, on the occupiers of properties likely to be most affected, such as Four Winds on Catherine-de-Barnes Lane. This could be achieved by updating the OEMP/ REAC to include the measures set out in paragraph 7.1.3 of the Lighting Technical Note.
- 5.6.95. In respect of the additional issues raised in SMBC's LIR, the ExA is satisfied that tree protection in accordance with the appropriate British Standard is addressed in the OEMP [REP9-019]. The OEMP would be delivered through the CEMP, which itself would also be secured through Requirement 4 in the recommended dDCO. Construction of the Proposed Development would be subject to measures and procedures defined within the CEMP. Requirement 5 also stipulates that the relevant planning authority would be consulted on the proposed landscaping scheme. SMBC would therefore have opportunity to comment on the appropriateness or otherwise of any planting proposals. Moreover, the Applicant has confirmed that an Arboricultural Survey was undertaken to inform the mitigation strategy for the Proposed Development, the findings of which are presented within Appendix 8.2 [APP-128].

Summary and Conclusions

- 5.6.96. SMBC confirm in its LIR that it is broadly satisfied that the Proposed Development has been designed, as far as possible, to avoid and minimise impacts and effects on landscape character and visual receptors through the process of design-development and by embedding measures into the design of the proposal. The ExA also broadly agree.
- 5.6.97. The OEMP/ REAC and related Requirement 4 and landscaping Requirement 5 in the recommended dDCO would ensure essential mitigation comprising a detailed landscaping scheme would be prepared and approved prior to construction of the Proposed Development. The detailed landscaping scheme would be required to reflect the planting strategy illustrated on Figure 8.3 and would include information on cultivation, plant species, planting densities, retained planting and protection measures. Requirement 5 also stipulates that the relevant planning authority would be consulted on the proposed landscaping scheme. SMBC would therefore have opportunity to comment on the appropriateness or otherwise of any planting proposals. Moreover, the REAC includes measures to ensure the detailed landscaping scheme would be sent to the Parish Councils at the same time, as requested during the examination.
- 5.6.98. The OEMP also details the measures that would be undertaken during construction to mitigate temporary effects on landscape character and visual receptors.

- 5.6.99. In terms of street lighting, the ExA consider that measures should be put in place to ensure that the latest lighting technology with the most appropriate lantern and colour temperature would be installed to minimise light-spill and reduce night time landscape and visual impacts. The ExA therefore recommend that the SoS requests the Applicant to update the OEMP/ REAC at Decision Stage to include the measures set out in paragraph 7.1.3 of the Lighting Technical Note. This in turn would also require Schedule 13 (certification of plans and documents) of the recommended DCO in Annex D to be updated accordingly, should Development Consent be granted.
- 5.6.100. The OEMP would subsequently be delivered through the CEMP, which itself would be secured through Requirement 4, in the recommended dDCO. Construction of the Proposed Development would be subject to measures and procedures defined within the CEMP.
- 5.6.101. The ExA is therefore satisfied that the Proposed Development adheres to NNNPS paragraphs 5.149, 5.157 and 5.160 insofar as it has been designed to avoid or minimise harm to the landscape, providing reasonable mitigation where possible and appropriate.
- 5.6.102. Nevertheless, despite the design development applied and proposed mitigation, the Proposed Development would result in significant adverse effects on landscape character and visual amenity both in construction and in operation.
- 5.6.103. During construction, the Proposed Development would result in major adverse effects on landscape character in LCA 1 and LCA 2. For LCA 3, the effect would be slight adverse (not significant). In terms of visual amenity, of the representative viewpoints assessed:
- one viewpoint would experience large/ very large adverse effects;
 - nine viewpoints would experience large adverse effects;
 - six viewpoints would experience moderate adverse effects (significant);
 - ten viewpoints would experience slight adverse effects (not significant); and
 - two viewpoints would experience neutral effects.
- 5.6.104. In operation, it is concluded that LCA 1 would experience a moderate adverse effect (significant) both in winter year 1 and in summer year 15. For LCA 2, the effect on landscape character in winter year one would be large adverse, reducing to moderate adverse (significant) in summer year 15, as a result of the proposed planting strategy. LCA 3 would be experience a slight adverse effect (not significant) in winter year 1, reducing to a neutral effect in summer year 15.
- 5.6.105. Returning to visual amenity, the ExA find that during winter year one:
- three viewpoints would experience large/ very large adverse effects;
 - five viewpoints would experience large adverse effects;
 - one viewpoint would experience moderate/ large adverse effects;

- five viewpoints would experience moderate adverse effects (significant);
- nine viewpoints would experience slight adverse effects (not significant); and five would experience neutral effects.

5.6.106. In summer year 15, the ExA find that:

- two viewpoints would experience large/ very large adverse effects;
- four viewpoints would experience large adverse effects;
- one viewpoint would experience moderate/ large adverse effects;
- five viewpoints would experience moderate adverse effects (significant);
- eight viewpoints would experience slight adverse effects (not significant); and
- eight would experience neutral effects.

5.6.107. In accordance with paragraph 5.158 of the NNNPS, the ExA consider in Chapter 7 of this Report whether the visual effects on sensitive receptors, such as local residents, outweigh the benefits of the Proposed Development.

5.6.108. At the local level, having regard to the above conclusions, it follows that the Proposed Development would in overall terms result in conflict with Solihull Local Plan Policy P10 which seeks, amongst other matters, to protect, enhance and restore the diverse landscape features of the Borough.

5.6.109. Pulling the above together, the ExA's findings are that:

- Notwithstanding differing findings, the ExA is satisfied that the Applicant has assessed the likely landscape and visual impacts of the Proposed Development, in accordance with paragraphs 5.144 and 5.146 of the NNNPS.
- The Proposed Development adheres to NNNPS paragraphs 5.149, 5.157 and 5.160 insofar as it has been designed to avoid or minimise harm to the landscape.
- Nevertheless, the Proposed Development would still result in significant adverse effects on landscape character and visual amenity both in construction and in operation. These impacts weigh negatively against the Order being made.

5.7. GREEN BELT

Policy Background

5.7.1. NNNPS Paragraph 5.164 highlights that:

"The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence."

5.7.2. For the purposes of Green Belt, NNNPS refers to the NPPF. This states, at paragraph 134 that Green Belt serves five purposes:

- to check the unrestricted sprawl of large built-up areas;
- to prevent neighbouring towns merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns; and
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

5.7.3. NNNPS paragraph 5.170 explains that there is a general presumption against inappropriate development within Green Belts and that such development should not be approved except in very special circumstances. Accordingly, it is stated that Applicants should determine *"whether their proposal, or any part of it, is within an established Green Belt and, if so, whether their proposal may be considered inappropriate development within the meaning of Green Belt policy."*

The Applicant's Approach and Issues Arising

5.7.4. The Applicant's acknowledges in its Planning Statement and National Policy Statement Accordance Table [APP-173] (Appendix 2) that whilst the northern portion of the Order Limits is located adjacent to several site allocations, the remainder of the Order Limits is contained entirely within Green Belt land, as identified by the Solihull Local Plan. Referred to as the Meriden Gap, this is a mostly rural area to the south and east of M42 Junction 6, separating Coventry from the West Midlands conurbation.

5.7.5. When located within Green Belt, the NNNPS recognises that national networks infrastructure projects may comprise inappropriate development (paragraph 5.178). Inappropriate development in the Green Belt for the purposes of NNNPS takes the same meaning as it does in the NPPF. This states, subject to certain exceptions, that:

"145. A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt [...]"

146. Certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are: [...]"

b) engineering operations;

c) local transport infrastructure which can demonstrate a requirement for a Green Belt location; [...]"

5.7.6. As the M42 motorway forms part of England's strategic road network, providing links to the M6, M6 Toll and M5 motorways in the West Midlands, the ExA consider that the Proposed Development lies outside the scope of what could be construed as "local transport infrastructure". However, the ExA accept that a proposal to improve Junction 6 of the M42 would be able to demonstrate a requirement for a Green Belt location, which forms a part of the test under NPPF paragraph 146.

- 5.7.7. Given the nature of the works, the ExA consider that the Proposed Development would constitute a major engineering operation, which NPPF paragraph 146 states would not be inappropriate, provided that it would preserve the openness of the Green Belt and would not conflict with the purposes of including land within it.
- 5.7.8. In consideration of this, the route of the M42 along this section already lies within the Green Belt. However, the Proposed Development would significantly extend beyond the existing confines of the current layout and would include the creation of:
- a new Junction 5A (including two roundabouts either side of a new bridge and slip roads);
 - a new 2.4km two-lane dual carriageway link road largely in cutting;
 - modifications to Junction 6 entailing new free flow links;
 - the realignment and modification of several local roads with associated bridges and roundabouts; and
 - a new footway crossing.
- 5.7.9. Whilst these would clearly constitute major engineering works, their scale and land-take would not preserve the openness of the Green Belt.
- 5.7.10. Moreover, the associated above ground permanent development, such as bridges (pedestrian and vehicular), roundabouts, free flow links and overhead gantries would in the view of the ExA constitute new building works in their own right. These works do not fall within any of the exceptions listed in paragraph 145 of the NPPF as not inappropriate in the Green Belt. Given the extent and prominent physical presence of much of the works, well beyond the confines of the existing road layout in a largely countryside setting, the Proposed Development would fail to preserve the openness of the Green Belt.
- 5.7.11. For these reasons the ExA find that the operation of the Proposed Development would amount to inappropriate development in the Green Belt.
- 5.7.12. During construction, Green Belt land would also be required to accommodate proposals for a main site compound between the A45/Clock Interchange and Bickenhill. This would include office, welfare and security units, secure boundary fencing, mitigation fencing, construction stores, areas for the laydown of materials and temporary works equipment, storage of topsoil and subsoil and bunded areas for the storage of fuels. There would also be around 11 satellite compounds positioned throughout the Order area which would be smaller scale and located in close proximity to key civil engineering works, such as bridge structures. These compounds would typically include smaller scale welfare and office facilities specific to the works being carried out and would also be used for localised storage and laydown for construction materials and fabrication.
- 5.7.13. If these works are to be treated as building works, they would not fall within any form of development which the NPPF defines as not inappropriate in paragraph 145. If the construction compounds are to be

considered as engineering works, the creation of bunding, stockpiling and parking areas, would diminish the openness of the Green Belt for the duration of their existence. Consequently, the ExA find that the proposals for the construction compounds would also constitute inappropriate development in the Green Belt.

5.7.14. The Applicant's Planning Statement and National Policy Statement Accordance Table (paragraph 5.3.61) accepts that the Proposed Development would amount to inappropriate development. This is also the view of SMBC set out in paragraph 5.17 of its LIR [REP2-033].

5.7.15. Concern over the adverse effect of the Proposed Development on the Green Belt was also raised by IPs, for example RR-008, RR-019, REP1-011, REP1-029 and REP1-010.

Summary and conclusions

5.7.16. The ExA find that the Proposed Development both during construction and operation would amount to inappropriate development within the Green Belt. It would harm a fundamental aim of the Green Belt policy to maintain openness and would undermine the purposes of safeguarding the countryside from encroachment.

5.7.17. That the Proposed Development would be inappropriate development is acknowledged by the Applicant and is also the view of SMBC. In such circumstances, NNNPS paragraph 5.178 explains that:

"Inappropriate development is by definition harmful to the Green Belt and there is a presumption against it except in very special circumstances. The Secretary of State will need to assess whether there are very special circumstances to justify inappropriate development. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations."

5.7.18. Solihull Local Plan Policy P17 (Countryside and Green Belt) is largely consistent with this approach, insofar as it states that "The Council will not permit inappropriate development in the Green Belt, except in very special circumstances."

5.7.19. The Applicant's view is that very special circumstances do exist to outweigh the harm to the Green Belt (paragraph 5.3.61 [APP-173]). The ExA consider this in Chapter 7 of this Report.

5.8. POPULATION AND HEALTH

Policy background

5.8.1. The NNNPS states at paragraph 2.2 that there is a critical need to improve the national networks to address road congestion 'to provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a transport network that is capable of stimulating and supporting economic growth'. It states that

'Improvements may also be required to address the impacts of the national networks on quality of life and environmental factors'.

- 5.8.2. Paragraph 2.16 identifies the adverse effects of traffic congestion on the strategic road network as follows:
- constraining existing economic activity as well as economic growth, by increasing costs to businesses, damaging their competitiveness and making it harder for them to access export markets. Businesses regularly consider access to good roads and other transport connections as key criteria in making decisions about where to locate;
 - leading to a marked deterioration in the experience of road users. For some, particularly those with time-pressured journeys, congestion can cause frustration and stress, as well as inconvenience, reducing quality of life; and
 - constraining job opportunities as workers have more difficulty accessing labour markets.
 - causing more environmental problems, with more emissions per vehicle and greater problems of blight and intrusion for people nearby. This is especially true where traffic is routed through small communities or sensitive environmental areas.
- 5.8.3. The impacts on health are specifically addressed in the NNNPS at paragraphs 4.79 to 4.82. In particular, paragraph 4.79 states that national road networks have the potential to affect the health, wellbeing and quality of life of the population. The direct impacts listed include traffic, noise, vibration, air quality and emissions, light pollution, community severance, dust, odour, polluting water, hazardous waste and pests. Where relevant these direct impacts are considered in detail in other sections of this chapter. An ES should identify and assess any likely significant adverse health impacts and the Applicant should identify measures to avoid, reduce or compensate for adverse (and cumulative) health impacts, as appropriate.
- 5.8.4. Section 5 of the NNNPS contains information about generic impacts and focuses on a range of environmental impacts and issues. It does not contain specific guidance on assessing socio-economic impacts as part of the application process. However, at paragraph 4.3, the NNNPS states that any proposed development should *'take into account its potential benefits, including the facilitation of economic development, including job creation, housing and environmental improvement, and any long term or wider developments'*.
- 5.8.5. In establishing the need case for improvements to the strategic roads network, NNNPS (paragraph 2.13) refers specifically to the way in which the network *'provides critical links between cities, joins up communities, connects our major ports, airports and rail terminals. It provides a vital role in people's journeys, and drives prosperity by supporting new and existing development, encouraging trade and attracting investment. A well-functioning Strategic Road Network is critical in enabling safe and reliable journeys and the movement of goods in support of the national and regional economies'*.

- 5.8.6. NNNPS paragraph 5.168 identifies that *'Applicants should take into account the economic and other benefits of the best and most versatile agricultural land (defined as land in grades 1, 2 and 3a of the Agricultural Land Classification). Where significant development of agricultural land is demonstrated to be necessary, applicants should seek to use areas of poorer quality land in preference to that of a higher quality'*.
- 5.8.7. The NNNPS at paragraph 5.176 further states that *'The decision-maker should take into account the economic and other benefits of the best and most versatile agricultural land. The decisionmaker should give little weight to the loss of agricultural land in grades 3b, 4 and 5, except in areas (such as uplands) where particular agricultural practices may themselves contribute to the quality and character of the environment or the local economy'*.
- 5.8.8. Policy P1 of the Solihull Local Plan highlights that Solihull's key economic assets and growth drivers are located near the M42 in the area between junctions 4 to 6 that forms the M42 Economic Gateway. The policy notes that this area supports more than 100,000 jobs and has strong potential for further sustainable growth that can create employment and contribute to regeneration. The key economic assets listed include Birmingham Airport, the NEC, Birmingham Business Park and Jaguar Land Rover. The Council considers that these represent an important opportunity to improve access to employment but state that it is also important that economic growth does not harm the quality of the environment.
- 5.8.9. Policy P14 seeks *'to protect and enhance the amenity of existing and potential occupiers of houses, businesses and other uses in considering proposals for new development, and will:*
- i. Permit development only if it respects the amenity of existing and proposed occupiers and would be a good neighbour; ...
 - vii. Seek to minimise the adverse impact of noise. Development likely to create significant noise will be permitted only if it is located away from noise sensitive uses or it incorporates measures to ensure adequate protection against noise. Noise sensitive development will be permitted only if it is located away from existing sources of significant noise, or if no suitable alternatives exist, the development incorporates measures to reduce noise intrusion to an acceptable level; ...
 - viii. Protect the amenity of residential and shopping areas, community facilities and open space from bad neighbour uses. Development that would be significantly harmful because of smell, noise or atmospheric pollution will not be permitted, whilst development that would be potentially harmful to such areas will be expected to incorporate appropriate attenuation, mitigation or compensatory measures ...'
- 5.8.10. Policy P18 explains that the potential for achieving positive health outcomes will be taken into account when considering all development proposals and that where any adverse health impacts are identified, the development will be expected to demonstrate how these will be addressed or mitigated. It is also an expectation that new development

proposals to promote, support and enhance physical and mental health and well-being. Support will be given to proposals which amongst other things contribute to the development of a high quality, safe and convenient walking and cycling network.

- 5.8.11. The West Midlands Combined Authority (WMCA) Strategic Economic Plan sets out the economic objectives and strategy for the West Midlands Conurbation formed of Birmingham, Coventry, Dudley, Sandwell, Walsall, and Wolverhampton.
- 5.8.12. The Coventry and Warwickshire Local Enterprise Partnership (CWLEP) updates its Strategic Economic Plan for the Coventry and Warwickshire Sub Region in August 2016. The Strategic Economic Plan sets out how the CWLEP with its partners in the public, private and third sectors will support and grow the economy within the region.

The Applicant's approach

- 5.8.13. ES Chapter 13 [APP-058] presents the results of an assessment of the likely significant effects of the Proposed Development on population and health, which comprises:
- occupiers of agricultural, community and development land;
 - owners and users of private and commercial property;
 - users of community facilities;
 - people making journeys by vehicle on the strategic and local road networks;
 - non-motorised users (NMUs) travelling on local roads and public rights of way (PRoW), including journeys made between communities and facilities; and,
 - local residents' health and wellbeing.
- 5.8.14. This is supported by:
- Figure 13.1 – Overview of pedestrian only and shared use pedestrian or cyclist facilities [APP-106]
 - Figure 13.2 - Overview of cyclist only and shared use pedestrian or cyclist facilities [APP-107]
 - Appendix 13.1 Driver Stress Calculation [APP-154]
 - Appendix 13.2 Agricultural Data Sheets [APP-155]
- 5.8.15. The Applicant's assessment methodology is set out in section 13.3, and includes a description of its scope, guidance and establishment of baseline conditions. It also sets out the criteria applied to determine the sensitivity towards change for agricultural land (Table 13.1), NMU facilities (Table 13.2) and community and private assets (Table 13.3). Impact magnitude criteria for agricultural land is set out Table 13.4 and the significance criteria in Table 13.5. Impact magnitude criteria for agricultural holdings is provided at Table 13.6 and the significance criteria in Table 13.7. Tables 13.8, 13.9 and 13.10 set out the criteria for the assessment of driver stress. Table 13.11 provides the significance of effect matrix for private assets (properties, businesses and community

facilities). The potential health impacts have been presented using the categories defined in Table 13.12.

- 5.8.16. The study area varies depending on the effect or type of resource being assessed. For agricultural land it is the Order Limits. The study area adopted in the assessment of effects on farm holdings and private assets (including residential properties, businesses and community facilities) covers the Order Limits and 250m outwards. For motorised users and NMUs the types of resources considered include roads, PRowS and footpaths located within 500m of the Order Limits. The study area for human health comprises five wards (Bickenhill, Knowle, Chelmsley Wood, Coleshill South and Fillongley).

Baseline conditions

- 5.8.17. An overview of the baseline conditions is set out in paragraphs 13.6.1 to 13.6.6. Here it is stated that:

- 'Land use is marked by a contrast of urban development immediately north-west of M42 Junction 6 set against the more open agricultural landscapes and settlements found to the south, east and north east of the junction.
- Small settlements are scattered around the area, the main settlements being Bickenhill and Catherine-de-Barnes, located south-west of the Scheme, and Hampton in Arden located south east of the junction.
- Local businesses and smaller commercial enterprises throughout the area include plant nurseries and garden centres, liveries, fitness clubs, fleet hire, taxi services, breweries and public houses. Bed and breakfast accommodation also form part of the local trade within the settlements of Bickenhill and Hampton in Arden.
- The agricultural landscapes south of M42 Junction 6 are interspersed by small blocks and pockets of mature woodland, with particularly prominent examples located around the western fringes of Hampton in Arden, at Barber's Coppice on the eastern fringes of Catherine-de-Barnes, and at Aspbury's Copse adjacent to the B4102 Solihull Road overbridge across the M42 motorway.
- A recreational sports facility (WGAA) is located opposite the junction of Shadowbrook Lane and Catherine-de-Barnes Lane. Equestrian activities also form a key part of the recreational offer of the local area, with opportunities for recreational walking and cycling also provided through the extensive network of roads and public rights of way.
- Community facilities include small areas of public open space, village halls and churches within the settlements of Bickenhill, Hampton in Arden and Catherine-de-Barnes.'

Agricultural land

- 5.8.18. Of the 125.1ha of agricultural land identified within the Order Limits, a total of 103.4ha have been surveyed where access was granted through prior negotiation. Of the surveyed area (Table 13.13), a total of 21.4ha have been identified as Grade 3a, which is classified as BMV agricultural

land. The remaining 82ha of surveyed land is in Subgrade 3b. The classification of the land not surveyed (21.7ha) is not known.

Agricultural holdings

- 5.8.19. There are 4 agricultural holdings affected by the Scheme; a holding of 240ha at the Hampton Estate, one of 70ha at Woodhouse Farm and 2 areas of land denoted as agricultural holdings owned by Messrs Ali and Choudhry or by William Freeman and Son. Both lie to the west of Catherine-de-Barnes Lane, the first consisting of 7.2ha of grazing land beside the NW Unit of the Bickenhill Meadows SSSI and the second being some 10.5ha of (currently) fallow land immediately to the south of the first [APP-058, REP9-018].

Non-motorised transport

- 5.8.20. The network of footpaths and public rights of way are described in chapter 2 and the effects of the Scheme on those facilities set out in chapter 5.2. Essentially, M106, M110, M111, M113, M113a and M123, are north-south routes and M107, M109, M112, M113 and M122 provide east-west connections. The Green Man Trail is a 34km trail that passes through Bickenhill and Hampton in Arden on M106, M110 and M111. There are some quieter roads in the study area deemed suitable for use by pedestrians within the study area.
- 5.8.21. Facilities shared by walkers and cyclists are shown in Figure 13.1 and 13.2 [APP-107, APP-107]. They include a 2m wide 'pavement' along the west side of Catherine-de-Barnes Lane towards the A45: a similar facility on the outer side of Clock Interchange carriageway: connections to the A45 eastbound and westbound carriageways and onwards to Junction 6 on both sides of the road; and along the free flow link between the A45 and Birmingham Airport. The only crossing point for pedestrians and cyclists on this section of the A45 is at the Clock Interchange. There is a short length of cycle lane to the east of Junction 6 to encourage cyclists off the A45 and onto East Way. There are some advisory on-road cycle routes in the study area.
- 5.8.22. There are no bridleways within the study area, but there are 3 equestrian facilities in Bickenhill, including private paddocks, a ménage and livery stables.

Motorised travellers

- 5.8.23. The road network is described in chapters 1 and 2 and some of the operating conditions are indicated in chapter 5.2. The network here can suffer long delays due to frequent congestion causing slow moving and stop-start driving conditions contributing to high levels of driver stress. Similar conditions can occur on the A45 and Catherine-de-Barnes Lane during peak periods. Table 13.15 [APP-058] shows driver stress in the DM scenario; with few exceptions it is generally assessed as high.
- 5.8.24. Driver views from the M42, A452 and A45 are generally confined by established tree and shrub planting and sometimes by bridges, embankments and cuttings. Views are similarly confined at the Clock

Interchange, along local lanes and roads and along much of Catherine-de-Barnes Lane, save for where views towards St Peter's Church command the skyline as the 'lane' traverses an embankment towards the A45.

- 5.8.25. Catherine-de-Barnes Lane connects Bickenhill with the community facilities in Solihull, Catherine-de-Barnes and, via Shadowbrook Lane or Solihull Road, Hampton in Arden. A brief description of the villages is given in chapter 2. Apart from St Peter's Church, the church hall and a private 'sports field', together with services provided by some local farms or businesses, residents of Bickenhill must travel further afield to reach shops, pubs, restaurants, surgeries and the like. There is all manner of facilities in Solihull, some in Catherine-de-Barnes (including a cricket and canoe club) and rather more in Hampton in Arden.

Private assets

- 5.8.26. Dwellings most likely to be affected by the Scheme are in Catherine-de-Barnes and Bickenhill, both of which are briefly described in chapter 2. . There are isolated dwellings on Solihull Road and Shadowbrook Lane and scattered properties in Middle Bickenhill and on Catherine-de-Barnes Lane. In addition to the agricultural holdings, there are several commercial concerns; large scale operations generally lie to the north of the A45 while smaller or more local enterprises lie to the south. Those within or near to Bickenhill include Sovereign Cars, Church Farm Bed and Breakfast and stables, Bracey's Nursery and Garden Centre, the Haven Caravan Park, Hazel Farm Riding School and, perhaps, Birmingham Dogs Home.
- 5.8.27. No parks, public spaces, allotments, town or village greens or common land are affected by the Scheme. At Páirc na hÉireann the WGAA has a Gaelic games sports ground with 3 playing fields, a clubhouse, a pavilion, a car park and a memorial. It is the principal facility for Gaelic games in the West Midlands.

Designated and development land

- 5.8.28. The study area is contained within the Green Belt, the implications of which are considered in chapter 5.7.
- 5.8.29. Paragraph 13.6.52 [APP-058] identifies that there are 2 sites allocated for employment in the Solihull Local Plan within the Order Limits:
- land allocated for employment provision located to the north of Clock Interchange on the A45; and
 - land allocated for the High Speed Two interchange, located to the north east of M42 Junction 6.
- 5.8.30. There is a safeguarded site for gypsies and travellers located on Catherine-de-Barnes Lane to the north of the Bickenhill at the Haven Caravan Park.

Human health

- 5.8.31. The baseline conditions for human health are set out in paragraphs 13.6.55 to 13.6.62 [APP-058]. It provides a human health profile of the study area, focusing on key indicators identified by Public Health England at ward level including a comparison of these to national averages. Indicators deemed relevant to likely health impacts of the Proposed Development for each area have been identified, with data relating to these and the national (England) average figure set out in detail in Table 13.17.

Design, mitigation and enhancement measures

- 5.8.32. Section 13.8 [APP-058] explains that the Proposed Development has been designed, as far as possible, to avoid and minimise impacts and effects relating to population and health through the process of design-development, and by embedding standard mitigation measures into the design. Paragraphs 13.8.4 to 13.8.8 identify mitigation measures intended to avoid or mitigate impacts and effects on agricultural land interests, non-motorised users, motorised travellers and private assets. The OEMP [REP9-019] sets out the measures to avoid or reduce environmental impacts during construction for agricultural interests and motorised travellers. No compensation or enhancement measures have been identified as necessary.

Assessment of likely significant effects

Agricultural land

- 5.8.33. ES paragraph 13.9.2 and 13.9.3 [APP-058] state that although a maximum area of 21.4ha of Grade 3a (BMV) agricultural land would be lost as a result of constructing the Scheme, the surrounding area has a high proportion of good quality (Grade 3) agricultural land. The assessment finds a moderate to substantial adverse effect (significant) on agricultural land on the basis of a medium sensitivity being applied to Grade 3a agricultural land and a high magnitude of impact owing to a greater than 20ha of BMV land being lost. There are no further effects on agricultural land during the operation of the Scheme.

Agricultural holdings

- 5.8.34. The temporary effects of the Scheme on 2 agricultural holdings during the construction are summarised in Table 13.18 [APP-058]. The Hampton Estate is deemed to endure a minor adverse effect (which nevertheless constitutes the temporary loss of over 65ha amounting to 27% of the holding), assessed as not significant. Woodhouse Farm is deemed to suffer a moderate adverse effect, assessed as significant (which constitutes the temporary loss of over 29ha amounting to 42% of the holding). In the absence of further explanation, those assessments do not appear to tally with the criteria set out in Table 13.6.
- 5.8.35. All 4 'holdings' are affected permanently by the Scheme after agricultural land has been restored following its temporary use, where possible (Table 13.19 [APP-058]). Only 3 are deemed to suffer moderate adverse

effects which are taken to be significant; at Woodhouse Farm there is a loss of nearly 18ha amounting to 34% of the remaining farm⁷⁰ and at the 'plots' close to the NW Unit of Bickenhill Meadows SSSI the whole of the plot is required. At the Hampton Estate a minor adverse effect is anticipated, which is deemed to be insignificant, although it is a loss of over 28ha amounting to almost 12% of the estate. Again, those assessments do not appear to tally with the criteria set out in Table 13.6.

Non-motorised transport

- 5.8.36. Increases in journey times, severance and disruption of local travel patterns arise from the temporary closure and diversion of PRowS during construction and the provision of less convenient or realigned NMU routes on completion of the Scheme. A diversion of 300-700m in M106 is deemed to be a minor adverse effect and not significant. The diversion entailed by the closure of the footpath to accommodate the south to east free flow link at Junction 6 is similarly deemed to constitute a minor adverse and 'not significant' effect. Similar conclusions are reached for the 150m diversion of M109 (adding 7.5% to its total length): the 180m diversion of M113 (adding 4% to its overall length): the 170m diversion to M122 (adding 5% to its total length): and, the 400m diversion to M123 (adding 1% to its total length). The small reduction (50m) claimed in the length of the Green Man Trail (34km) is assessed to be negligible and not significant while the similarly claimed reduction in the length of M112 is an error [REP4-010] and is actually an addition of about 290m, an increase of over 10%.
- 5.8.37. Two sections of footpath beside the A45 and the north bound free flow link to the M42 are to be upgraded to provide a 2m and a 3m wide shared footway and cycleway, respectively. The realigned Catherine-de-Barnes Lane is to accommodate a 2m wide footway and a new shared cycleway and footway and the old alignment is to serve as a segregated route for cyclists and pedestrians. A pedestrian underpass beneath the free flow link to Airport Way is to provide a segregated route westward, including for M109 and M112.

Motorised travellers

- 5.8.38. Although traffic is likely to be disrupted during construction, traffic management requirements set out in the OEMP [REP9-019] are intended to manage diversions and provide signage to address driver stress, which is thus assessed to constitute a minor adverse and not significant effect.
- 5.8.39. A summary of driver stress levels during operation of the Scheme is set out in Table 13.20 [APP-058]. The Scheme is likely to generally reduce the stress of driving along Catherine-de-Barnes Lane and use of the new mainline link road is expected to be largely stress-free. Elsewhere stress levels remain the same as in the DM scenario although the expected reduction in traffic on the M42 should marginally reduce stress there. The

⁷⁰ This allows for the restoration of 11.7ha of the 29.4ha lost to the construction of the Scheme, see Table 13.18 in APP-058.

overall effect of the Scheme is assessed to be slightly beneficial but not significantly so.

5.8.40. The effect of the Scheme on driver views is likely to be negligible and not significant. The views from most routes remain confined and the new mainline link road is largely in cutting. However, the latter requires the clearance of some mature trees along Catherine-Barnes Lane, so opening up some wider views. This is likely to be a slightly beneficial effect, but not significant.

5.8.41. During construction drivers on Catherine-de-Barnes Lane are to be provided with temporary roads and, although journey times may increase, road links are to remain. Impacts are assessed to be negligible and not significant. Once operational, journeys from Bickenhill to Solihull, Catherine-de-Barnes and Hampton in Arden change little. Tables 13.21 and 13.22 [APP-058] show that the AADT on Catherine-de-Barnes Lane is likely to be slightly higher southwards in the DS scenario but lower northwards. On that basis the degree of severance due to the Scheme is assessed to constitute a minor beneficial effect that is not significant.

Private assets

5.8.42. Construction of the new mainline link road between the M42 Junction 5A and Clock Interchange would result in the demolition of a property east of the existing Catherine-de-Barnes Lane (Heath End House) and the potential for the temporary loss of boundary fencing at Cedar Cottage on Clock Lane. As less than five residential properties would be impacted by the Scheme, the impact on residential properties has not been assessed. The operation of the Scheme would require small parcels of permanent land-take from a single residential property and commercial properties located within the study area. Based on professional judgement the potential impacts on private assets during operation are not considered significant.

Community facilities

5.8.43. ES paragraphs 13.9.49 and 13.9.50 [APP-058] explain that the Applicant has committed (as a minimum), to a like-for-like reconfiguration of the affected WGAA playing fields. On the basis of continued engagement with WGAA to minimise disruption as far as practicable, it is assessed that the sports facility would not be subject to significant adverse effects. Since the 'proportionate' DCO proposal is similar to at least one of the options assessed, the same applies to that proposal. This issue was raised by the ExA in ExQ2 2.7.3 [PD-008]. In response, the Applicant confirms that the conclusions remain applicable [REP4-058]. The 'legacy' proposal is not yet assessed, and it is being pursued outside the DCO. It is the intention that the 'legacy' proposal should not give rise to any environmental impacts on Four Winds or other neighbouring properties that are materially new or materially different from those set out in the Environmental Statement [REP6-017].

Development land

- 5.8.44. The Applicant acknowledges at paragraph 13.9.52 [APP-058] that construction of the proposed pedestrian footbridge across the A45 would require the permanent loss of about 1.2ha of the 9.4ha site designated as a 'General Business Site' in the Solihull Local Plan (the preferred use being Class B1) on the north side of the road. The Applicant's position is that it is unlikely that the location of the pedestrian footbridge would restrict development of employment land in the site, and therefore the potential effect has been assessed to be slight adverse and not significant.
- 5.8.45. In addition, construction of the free flow link connecting the M42 southbound and the A45 eastbound requires about 15ha of the 150ha land parcel allocated for the development of the HS2 interchange station in the Solihull Local Plan. It is explained that the extent of the land required for HS2, set to open in 2026, is not known. The existing East Way and Middle Bickenhill Lane are within this allocation and the Proposed Development is expected to have no impact on the construction or operation of the station. The Applicant asserts (paragraph 13.9.54) that there are no planning applications or permissions affected by the land required and thus no effects have been assessed [APP-058].

Human health

- 5.8.46. During construction, traffic is restricted at Clock Interchange, the A45 and Catherine-de-Barnes Lane, but diversions and temporary alignments are designed to ensure that local facilities remain accessible. Hence, the potential severance of local community assets is assessed to be a neutral effect. Similarly, although temporary working and storage areas, compounds, stockpiles and haul roads all materialise, access to open and natural spaces is to be retained with any potential impact being mitigated by temporary diversions to PRowS, or replacement of open space, and the like. The effect on human health is thus assessed to be neutral.
- 5.8.47. Significant adverse effects of noise and vibration are anticipated during construction for those close to Solihull Road, Catherine-de-Barnes Lane, St Peter's Lane, Clock Lane, Church Lane and Wyckhams Close, though some relief is available via the OEMP and the adoption of BPM. Elsewhere, it is assessed that the majority of effects are not significant. Specific mitigation measures against dust and other emissions are intended for the sensitive receptors along St Peters Lane and Catherine-de-Barnes Lane. The adoption of BPM, temporary noise barriers and the measures set out in the OEMP [REP9-019] are deemed to ensure that the Scheme will have a neutral effect on human health during construction due to air quality, noise and neighbourhood amenity.
- 5.8.48. The provision of diversions and alternative routes is deemed to minimise the disruption to accessibility caused by the Scheme, so that its impact on active travel as a determinant of human health during construction is assessed to be neutral. Similarly, the same provisions are expected to mitigate the community severance, so that the effect of the Scheme on social cohesion as a determinant of human health is assessed to be

neutral. As the construction phase is likely to provide additional employment, the effect of the Scheme on access to work and training as a determinant of human health is deemed to be positive.

- 5.8.49. As assessed in ES Chapter 15 Climate [APP-060], climate resilience impacts and effects of the Proposed Development during the construction phase are not expected to be significant. Hence, the effect of climate change as a determinant of human health during construction is assessed to be neutral. Similarly, during operations none of the potential impacts are found to be significant, so that the effect of the Proposed Development on climate change as a determinant of human health is deemed to be neutral.

Issues Arising

Agricultural land

- 5.8.50. As explained in section 5.9 dealing with Geology and Soils, the Agricultural Land Classification (ALC) system provides a method for assessing the quality of farmland. It classifies land into five grades, with 1 being the best and 5 being the worst and Grade 3 subdivided into Subgrades 3a and 3b. The NNNPS makes no distinction between agricultural land in Grades 1, 2 and 3a; all are classified as best and most versatile (BMV).
- 5.8.51. For the Geology and Soils assessment, the Applicant was therefore asked to explain, in ExQ2 2.4.1 [PD-008], the basis for attributing a medium importance or sensitivity to the agricultural soils in Grades 2 and 3a, rather than high, as for Grade 1. The Applicant's response [REP4-010] acknowledges that Grades 1, 2 and 3a are all classified as BMV, and as such, agreed that all may be considered as having a high importance and sensitivity.
- 5.8.52. Similarly, for the Chapter 13 Population and Health assessment, the Applicant was also asked to explain the basis for attributing a medium sensitivity to Grade 3a agricultural land, as opposed to a high sensitivity for Grades 1 and 2 (Table 13.1, APP-058). The Applicant's response refers the ExA to the answer to EXQ2 2.4.1. It follows that a high sensitivity should be applied to Grade 3a agricultural land, so that the significance of the effect is increased from moderate-substantial to substantial.
- 5.8.53. Moreover, the ExA consider that the Applicant is unable to conclude that a maximum area of 21.4ha of Grade 3a (BMV) agricultural land is lost, as the classification of the unsurveyed 21.7ha is not known. In this regard, the Applicant's Chapter 10 approach is to assume that the 21.7ha is Grade 3a. In response to ExQ2 2.7.6, the Applicant confirms (with reference to its response to ExQ2 2.4.3) that the 21.7ha should have been added to the 21.4ha to give 43.1ha of Grade 3a agricultural land lost to the Scheme. Although the nominal significance of the effect does not alter for the purposes of Chapter 13, since the acknowledged loss already exceeds 20ha of BMV land, the magnitude of the loss doubles,

thereby confirming the substantial impact of the Proposed Development and the significant adverse effect of the Scheme on agricultural land.

Agricultural holdings

- 5.8.54. As indicated above, in the absence of further explanation, the effects of the Scheme on the agricultural holdings assessed do not appear to tally with the criteria set out in Table 13.6 [APP-058]. The quantity of land taken is above the relevant threshold in each case and, although other matters must be considered (severance, disruption and infrastructure), it is not clear how they serve to compensate for the scale of land lost to the construction or operation of the Scheme. Hence, the ExA sought clarification at ExQ2 2.7.9 [PD-008] as to why the loss of all the land (100%) at 2 of the holdings is assessed to be only a moderate adverse effect while the loss of 34.1% at Woodhouse Farm (for example) is rated similarly?
- 5.8.55. The Applicant asserts that this is not a discrepancy. The 2 agricultural holdings in question are both assigned as having a medium sensitivity to change (Table 13.14)⁷¹ and, (along with Woodhouse Farm) as enduring a high magnitude of impact due to the Scheme (Table 13.19). In the significance matrix set out in Table 13.7, the combination of a medium sensitivity to change and a high magnitude of impact is a moderate adverse effect.
- 5.8.56. The ExA observes that the significance matrix delivers just such a result. However, it flies in the face of common sense to describe the substantial loss of an agricultural holding as constituting only a moderate adverse effect; disruption is complete, the enterprise must cease, and the land use is transformed. Moreover, the effect is intended to relate to the holding itself, rather than holdings in general. The ExA notes that the significance matrix denotes only one cell as a major adverse effect where both the sensitivity to change and the magnitude of impact are high. That is unusual and, in this case, inappropriate. The effect of the Scheme on the holdings close to the NW Unit of Bickenhill Meadows SSSI must be major adverse. Moreover, even though a small part of the holding owned by William Freeman and Son is no longer required (plot 3/45c), due to the non-material change to the DCO, the ExA considers that a major adverse effect will remain there. The mitigation possible through financial compensation cannot apply since there is no, or very little, holding that might benefit.
- 5.8.57. Similarly, the ExA considers that the moderate adverse effect indicated at Woodhouse Farm might, more realistically, be raised to a major adverse effect. The loss of nearly 18ha of the remaining land amounts to some 34% of the farm, substantially above the 20% threshold indicated as the level at which the potential for a major effect might occur. There is no explanation as to why other considerations might assuage that impact. At the Hampton Estate, the permanent loss of agricultural land is over 28ha

⁷¹ All 4 agricultural holdings are assessed as having a medium sensitivity to change.

amounting to almost 12% of the estate. Although that is only just above the 10% ceiling for a minor effect, the extent of the land is quite substantial and above the threshold for significant effects relating to BMV land. In those circumstances, the ExA consider that although the impact on the Hampton Estate may still be a minor adverse effect, it should be regarded as significant, along with the adverse effects on the other holdings.

Non-motorised transport

- 5.8.58. Details and concerns relating to NMU links are set out elsewhere⁷². The ExA considers that the severance and the imposition of generally longer and less pleasant diversions fails to accord with the requirements of the NNNPS, notwithstanding the improvements to sections of some footpaths, the use of the old alignment of Catherine-de-Barnes Lane as an NMU route and the provision of the NMU bridge across the A45. Hence, the ExA asked questions to address those concerns (ExQ2 2.7.10 and 2.7.11 [PD-008] and ExQ3 3.8.1 [PD-011]). The responses indicate that a measured diversion is incorrect and that the creation of a footpath between the NMU bridge and Birmingham International Railway Station is likely to require a material change to the DCO; however, both SMBC and the Applicant are willing to further explore such possibilities. The ExA welcomes that commitment. Nevertheless, the ExA does not accept that effects of the Scheme on NMU routes are insignificant. On the contrary, for the reasons stated, the ExA considers that the disruption and inconvenience of the diversions imposed by the Scheme constitute a significant adverse effect.

Motorised travellers

- 5.8.59. The Applicant claims that the Scheme delivers slight but insignificant beneficial effects in terms of driver stress, views and severance, but minor or negligible adverse effects in relation to disruption and severance during construction. However, the ExA is concerned that while the effect of severance encompasses journeys from Bickenhill to Solihull, Catherine-de-Barnes and Hampton in Arden, it may omit journeys to the Airport, the International Train Station and the retail and leisure outlets around the NEC, which all involve a detour south to the Barber's Coppice roundabout in order to go north on the mainline link road. This is the subject of ExQ2 2.7.12 [PD-008], which also sought clarification of the effects on the Church Farm B&B [REP3-025, REP6-035] which are considered to relate to other business interests in Bickenhill [RR-017, RR-033].
- 5.8.60. The Applicant responds [REP4-010] that the assessment includes the potential severance of journeys to the leisure and retail offerings north of the A45. The conclusion is that while journey times may increase during construction temporary roads will maintain connections: and, while some journeys may change for residents in Bickenhill once the Scheme is operational, access to community facilities and key services are

⁷² See paragraphs 5.2.76 to 5.2.82

maintained so that no significant severance effects occur (as reported in paragraphs 13.9.42 to 13.9.45 of APP-058). As a precursor to those considerations and as an indication of the severance experienced for journeys to the north of the A45, the ExA asked what increase in travel time might be due to the Scheme for a journey from St Peter's Church in Bickenhill to the Birmingham Airport terminal (ExQ1 1.11.24 [PD-006]). The response [REP2-007] indicates that, currently, the journey might take about 6-8 minutes in the morning and evening peak hours, but that once the Scheme is operational it might take some 2 minutes longer.

- 5.8.61. The ExA considers that, although an increase of 2 minutes may be unnoticeable in itself (albeit that it amounts to a 25-33% increase in journey time), the act of having to turn south to go north and the additional distance entailed, will foster a sense of severance. Although the additional distance is only about 2 miles, that is a tripling in the length of a journey that can currently be little more than 1 mile. And, when measured as an increase in taxi fares to the airport or as miles for haulage or commercial vehicles, that sense of severance is likely to be accentuated. The ExA considers this to be a moderate adverse and significant effect.

Private assets

- 5.8.62. The ExA sought clarification (at ExQ2 2.7.2 [PD-008]) as to why dwellings and their gardens are assessed differently in terms of their sensitivity as private assets, the former being high and latter only medium in Table 13.3 [APP-058]. The Applicant responds [REP4-010] that this is a matter of professional judgement and best practice derived from suitable precedents. Unlike a dwelling, the permanent loss of a garden need not compromise a resident remaining in the property.
- 5.8.63. In the same vein, the ExA expressed concern that the demolition of dwellings had not been properly assessed (ExQ2. 2.7.13 [PD-008]). Indeed, at ES paragraph 13.9.47 [APP-058] it is stated that because less than 5 dwellings are 'impacted' by the mainline link road, no individual assessment has been undertaken.
- 5.8.64. The Applicant explains [REP4-010] that DMRB guidance does not provide specific criteria for assessing the significance of demolition or land-take in relation to dwellings forming part of a local community. Hence, a combination of professional judgement and the best practice from suitable precedents is used (HS2 and the A303 at Amesbury to Berwick Down, being particular precedents cited). The approach adopted here is to group dwellings into communities and apply a threshold of more than 5 dwellings to signal a significant effect. In response to ExQ2 2.7.14, the Applicant points out that although more than 5 properties will be affected, they are scattered and isolated across different parts of the Scheme and so will not constitute a sizable proportion of a particular community. Hence the effect on communities is deemed to be insignificant and the further assessment of individual effects unwarranted. Nevertheless, the environmental effects on private assets, such as air quality and noise, are considered in the relevant chapters of the ES, as is the impact of the main site compound (Work No.69).

Community facilities

- 5.8.65. Páirc na hÉireann is recognised as a regionally important community facility with a membership of over 2000 and the principal location for Gaelic games in the West Midlands. It hosts numerous Warwickshire Gaelic football and hurling matches as well as the provincial knockout championships and the British University Gaelic football Championships. It is acknowledged that there is a local and regional need for the facility and that all reasonable efforts should be made to mitigate the impact of the Scheme on the club [APP-173].
- 5.8.66. The original intention (back in 2017) had been to relocate the facility in its entirety on a site to the south-west of Páirc na hÉireann [REP1-027]. That remained the case in the consultation brochure and during the statutory consultation process in spring 2018, as well as in the Preliminary Environmental Information Report. In the event, the Applicant believed that the compulsory acquisition of land to provide for the relocation could not be justified and instead pursued various options for the reconfiguration of the pitches at Páirc na hÉireann [APP-069], culminating in the currently proposed 'Proportionate Reconfiguration' within the DCO [REP2-019].
- 5.8.67. The 'Proportionate Reconfiguration' proposed is unacceptable to both the WGAA [AS-039, REP5-014, REP6-043] and Sport England RR-029]. Both point out that Rule 5 of Section 5 of the Land Compensation Act 1961 applies the principle of 'equivalent reinstatement', which '*does not mean the provision of premises alike in all details of construction, embellishment, condition or otherwise*'⁷³. Indeed, case law indicates that 'equivalent reinstatement' extends to delivering replacement premises that comply with modern standards. The implication is that an acceptable reconfiguration of Páirc na hÉireann⁷⁴ should be in accordance with modern standards, including Sport England's design guidance [AS-039, REP5-014]. The 'Proportionate Reconfiguration' proposed fails to meet those requirements because one of the pitches is above or close to a live ESSO fuel pipeline benefitting from easements and rights of access for a third party: because the Clubhouse is distant from the main pitches and does not meet current guidance offered by Sport England or the governing national body: because it is unclear whether the replacement car park will be sufficient: and, because the pitches are not laid out in accordance with current best practices.
- 5.8.68. The ExA explored those concerns in CAH1 and CAH2. If the interpretation of 'equivalent reinstatement' outlined above is correct, then it follows that the commitment set out in the ES at paragraphs 13.9.49 and 13.9.50 [APP-058] to a like-for-like reconfiguration as a minimum is insufficient. The ExA has no reason to disagree with that view. Hence the Applicant was asked at CAH1 '*to continue discussions with a view to reaching an agreement on the reconfiguration of the WGAA facility and to update the Examination on progress made by Deadline 6*'. The result is,

⁷³ Valuation Office Agency's Land Compensation Manual

⁷⁴ The components of an 'acceptable' reconfiguration are outlined in 2.5.10

as reported in REP6-017, that the Applicant and the WGAA are pursuing the opportunity to create a positive legacy in the context of acceptably 'reinstating' the WGAA facilities and by making them available for wider use ('the legacy scheme'⁷⁵). During the Examination both parties worked towards an agreement on the Legacy scheme, though no SoCG is submitted. It is agreed that the 'legacy' scheme will require the acquisition of land from a neighbouring landowner, although the initial sketch plan acceptable to the WGAA [AS-039] implies that the land required is all within the Order Limits. It is also agreed that the 'legacy' scheme is to be pursued in the context of a separate planning permission, which will not be made before the close of the Examination [REP6-017, REP6-043]. It is the intention that the 'legacy' proposal should not give rise to any environmental impacts on Four Winds or other neighbouring properties that are materially new or materially different from those set out in the Environmental Statement [REP6-017].

5.8.69. In those circumstances, the ExA considers that the shortcomings of the 'Proportionate Reconfiguration' proposed within the DCO means that it should only be implemented if insurmountable impediments to the 'legacy' scheme are demonstrated. Although the imperative of achieving the improvements entailed in the Scheme must mean that the 'Proportionate Reconfiguration' cannot be ruled out completely, the ExA considers that further improvements would need to be explored if it is to constitute a reasonable reinstatement for the disruption caused by the Scheme to the WGAA facilities. The WGAA suggest that an essential addition should be the re-siting and rebuilding of the clubhouse [AS-039], which is a feature of the 'legacy' scheme. The ExA agrees.

5.8.70. Unfortunately, there is no agreed layout that shows how a re-sited and re-built clubhouse could be inserted into the 'Proportionate Reconfiguration' proposed within the DCO. And, in the absence of such detail the ExA considers that it cannot alter the description of the items set out in Work No.68 to include the provision of a new clubhouse; the consequences of doing so have not been explored nor, due to the pursuit of the 'legacy' scheme out with the DCO, have they been properly examined. Instead the ExA can only recommend that, if the 'legacy' scheme fails to materialise, then the SoS should seek to secure an agreement between the parties capable of delivering a re-sited and re-built clubhouse within the confines of the 'Proportionate Reconfiguration' proposed within the DCO. In that way, the failure of the 'Proportionate Reconfiguration' to comply with the principle of 'equivalent reinstatement', can be mitigated. And, although the ExA considers that a failure to comply with the principle of 'equivalent reinstatement' might not breach the 'public sector equality duty' set out in section 149(1) of the Equality Act 2010, it does consider that the mitigation suggested accords with the aims and spirit of that legislation.

5.8.71. In those circumstances, because the 'legacy' scheme is not secured by the DCO, the ExA is unable to place reliance upon it being achieved in reaching its recommendation on the DCO application. Instead, as the

⁷⁵ The components of the Legacy scheme are those outlined in 2.5.10

'Proportionate Reconfiguration' is the only proposal promoted through the DCO, the ExA is confined to considering its merits or defects in making a recommendation on the DCO. The shortcomings of the 'Proportionate Reconfiguration', as proposed at the close of the Examination, represents a residual and harmful impact on Páirc na hÉireann. This is a negative impact on this community facility for the ExA to consider in making its recommendation on the DCO.

Development land

- 5.8.72. In response to ExQ2 2.7.15 [REP4-018], SMBC confirms that it agrees with the Applicant's assessment that the proposal will have a slight adverse effect on land designated as a 'General Business Site' in the Solihull Local Plan. The ExA finds no reason to take a contrary position.
- 5.8.73. The ES at paragraph 13.6.54 [APP-058] refers to a safeguarded site for gypsies and travellers located on Catherine-de-Barnes Lane to the north of Bickenhill. The ExA sought clarification as to whether the safeguarded site is the Haven Caravan Park or an additional site (ExQ 2 2.7.5 [PD-008]). The Applicant confirms [REP4-018] that the sites are one and the same. Access to the Haven Caravan Park is to be maintained from the realigned Catherine-de-Barnes Lane.
- 5.8.74. Land is allocated for a parkway station for HS2 to the east of Junction 6, as included in the HS2 Bill. But an alternative and more ambitious design is being pursued, in line with the vision envisaged by the UK Central strategy. Some of the land within the Order Limits is also required to accommodate the HS2 project and arrangements are in hand to secure a coordinated approach. It is explained that all matters described as 'under discussion' in the SoCG with HS2 are matters which the parties have agreed will be covered by the Protective Provisions Agreement under negotiation between them [REP6-005]. On that basis HS2 Limited has withdrawn its representations subject to the inclusion of the protective provisions being within the DCO [AS-049].

Human health

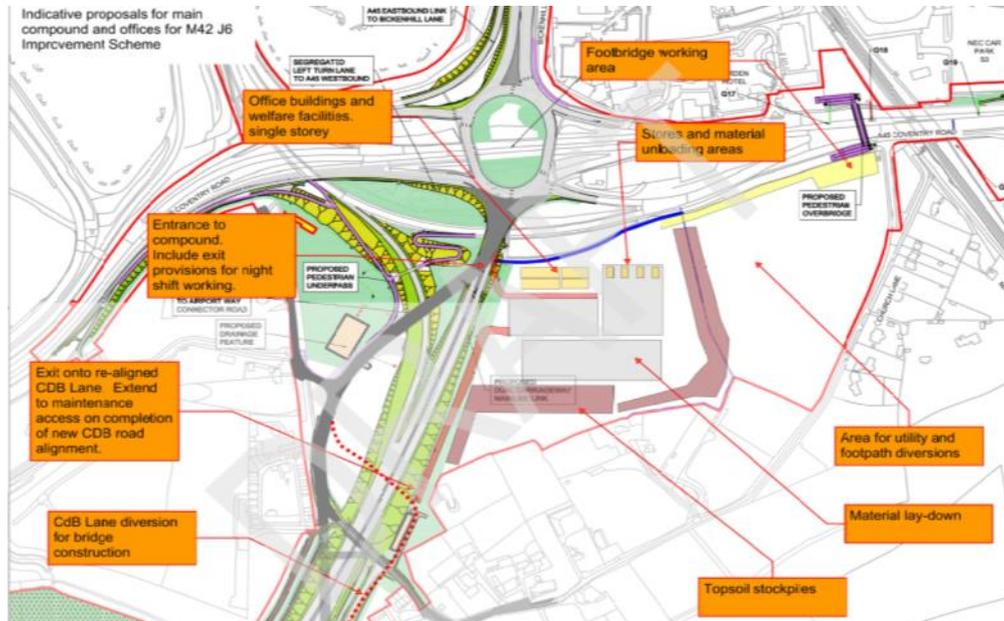
- 5.8.75. The effects of the Scheme on local accessibility, severance, PRowS and the WGAA, as assessed by the ExA in relation to human health, are set out above. The impact of noise and vibration is addressed in section 5.12 and the effect on air quality considered in section 5.4. The concerns addressed below arose largely during the 2 OFHs, the ISH5 on 'living conditions' and the CAHs; they were expressed throughout the Examination (for example, though not exclusively, REP3-025, REP3-029, REP3-030, REP4-015, REP4-030, REP5-012, REP6-035 and REP7-019).

Living conditions – the main works compound

- 5.8.76. The initial indicative layout for the compound is shown in Figure 5. It occupies the land immediately behind the dwellings in Church Lane, Bickenhill and is intended to operate with a one-way traffic system entering from Catherine-de-Barnes Lane to the north and leaving via the realigned Catherine-de-Barnes Lane on to St Peter's Lane from an exit

road behind the dwellings on Church Lane. Residents are concerned that the noise, dust, activity and construction traffic so close to their homes will significantly affect amenity, prejudice privacy and form an unpleasantly intrusive presence on their doorstep (see representations above).

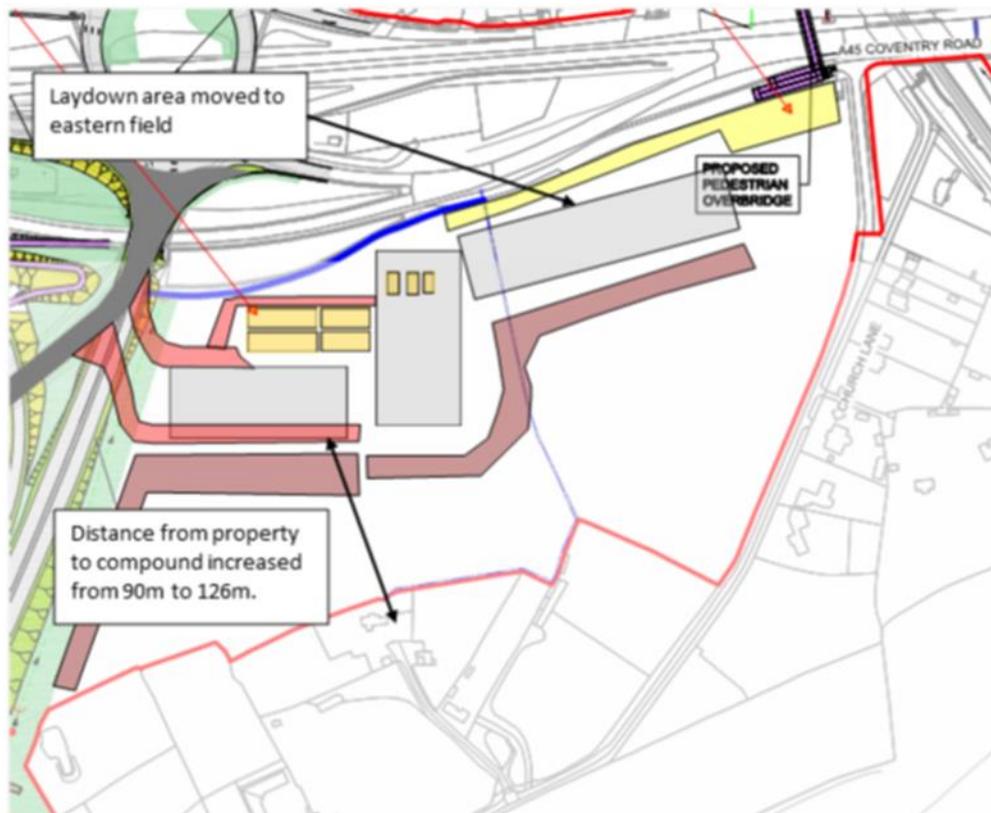
Figure 5 – Indicative initial layout for main compound [AS-024]



- 5.8.77. At ISH5 on 'living conditions', Mark Sutton of Skanska explained that the main site compound will take about 8 weeks to prepare and that it is to be positioned behind 2m high and 10m wide seeded bunding formed from the top soil and sub soil from the field to provide some mitigation against the noise and visual impact of the activities within, namely storage, stock piling and administration, site offices, staff facilities, car parking, portable toilets and the like. High value materials are to be stored securely in 'lay-down' areas, to be accessed by HGVs to collect and to store materials. Operations are to be limited by the terms of the CEMP. Consideration is also to be given to moving activities within the main compound further north and east, with the means of egress being positioned towards the Clock Interchange, in order to alleviate the impact on local residents.
- 5.8.78. One of the actions arising from the CAH on Compulsory Acquisition on 20 August 2019 [EV-021] is a request from the ExA to review the positioning of the activities within the compound with a view to providing a potential buffer of about 100m (or otherwise maximising the potential buffer available) between those activities and the rear of the residential properties in Bickenhill. The response offers an alternative layout of the main site compound [action point 4c REP6-015] with access and egress towards the Clock Interchange on Catherine-de-Barnes Lane (see Figure 6, below). This is not without difficulty. A 'no right turn' might need to be instigated at the exit: multiple construction phases might be required to integrate construction of the mainline link road and the exit: traffic lights

might be required at peak times. Nevertheless, this is the layout adopted at Appendix 1 of the Compound Management Plan, contained within the updated OEMP [REP9-019]. This also makes provision to address the concerns of residents and Bickenhill and Marston Green Parish Council relating to visual and acoustic screening and the use of single storey structures for welfare and office facilities to reduce intrusions on privacy. The REAC, at G4b commits the Applicant to reduce potential impacts on residents and to lay out the main site compound to be compatible with the layout shown in Appendix 1 to the Compound Management Plan. In addition, commitment G3 of the REAC indicates that the need for a signalised system at the exit will be reviewed with the local highway authority.

Figure 6 - Alternative layout for main site compound [as suggested in REP6-015 and adopted as Appendix 1 in the Compound Management Plan within the OEMP at REP9-019]



- 5.8.79. In order to partially quantify the benefits of the alternative (now adopted) layout of the main works compound, the ExA asked the Applicant to assess the impact on Rose Cottage (C6) which stands opposite the originally intended exit on to St Peter's Lane [EV-033]. The assessment [REP6-018] uses the BS 5288 'haul road calculation' method and averages the typical daily site movements equally over a 10-hour working day. The 'worst-case' assumes that car arrivals and general site arrivals occur in the same hour and does not take account of potential screening effects due to hoardings, soil stockpiles or bunds. All noise levels are below the construction SOAEL of 65dB $L_{Aeq,12h}$, but a 5dB reduction is achieved for the layout now adopted and included in the

OEMP. The ExA considers that such a reduction is both noticeable and well worth achieving the level of emissions expected.

- 5.8.80. Considerable effort was expended during the Examination in evolving a layout for the main site compound that might reduce the impact of the operation on the amenities of residents as much as possible. A suggestion made by Mr O'Reilly to provide an access into the compound from the A45 via the Airport Way Connector Road is rejected by the Applicant as unnecessarily hazardous and inefficient [REP6-015]. The former because such an access is constrained to the east and west by obstacles and is a slip-road off a slip-road: the latter because the Airport Way Connector Road is only available for northbound traffic leaving the motorway at Junction 6 while traffic from other directions must head south to Junction 5 in order to return northwards to leave the motorway at Junction 6. The ExA agrees with this assessment.
- 5.8.81. The ExA asked the Applicant [EV-043] to investigate a suggestion made by Camilla Burton to use the Airport Way Connector Road as an exit from the main site compound [EV-040]. This too is rejected by the Applicant [REP8-003, REP9-035]. The exit requires the extension of an embankment entailing about 15,000 tonnes of material to construct. It is needed at the start of the programme so that either the material must be imported from elsewhere, or the programme delayed. The embankment extension requires a further 3,300m² of tree and vegetation cover to be removed from the existing embankment and, at the end of the programme, the removal of all the material in the extended embankment. And, to accommodate the extended embankment within the confines of the compound, the southern boundary must be closer to the village of Bickenhill, contrary to the representations from residents and the Parish Council. Moreover, all construction traffic leaving the site must travel north on to the Airport Way roundabout in order to reach the A45, so interacting with traffic to the Airport. The suggestion results in a more expensive and sub-optimal arrangement in comparison to the access and egress now proposed. The ExA agrees with this assessment.
- 5.8.82. The Applicant evaluates the merits of 5 different locations for the main works compound [REP3A-004]. One of them (location 5, on a triangle of land across the railway line from the proposed main works compound) is rejected due to the potential presence of great crested newts [APP-137] and awkward access arrangements. However, this site had previously served as a works compound in connection with the widening of the A45 bridge across the railway line and otherwise accommodated a large derelict house. Hence, the ExA asked the Applicant to review its potential suitability, checking for the presence of great crested newts and exploring the possibility of reaching the site along the northern perimeter of the proposed compound to cross the railway bridge on the existing 'auxiliary carriageway' beside the A45 [EV-021]. Subsequently, when the absence of great crested newts was confirmed [REP4-005], the ExA sought clarification of the useable working area likely to be available at location 5 [EV-033].

5.8.83. In response the Applicant explains that access remains awkward, that the proximity of the railway restricts lifting operations, and that the presence of twin 132kV and 400kV overhead cables, together with a high-pressure gas pipeline, restricts a substantial portion of the 100,000m² site [REP6-015, REP6-018]. In addition, 3 derelict buildings are potential bat roosts. Just the constraints due to the presence of Statutory Undertakers equipment is enough to reduce the available working area to about 33,000m², less than 60% of the 56,000m² available in the proposed main works compound. The ExA agree with that assessment.

Living conditions – satellite compounds and stockpiles

5.8.84. In addition to the main works compound, about 11 satellite compounds are shown scattered across the Order Lands and close to specific civil engineering works. Such compounds will contain modest welfare and office facilities as well as localised storage and laydown areas. The general requirements and controls applying to the main works compound will also apply to the satellite compounds, where appropriate, in accordance with the Compound Management Plan, contained within the updated OEMP [REP9-019]. Such controls will provide some protection to residential amenities during the construction process.

5.8.85. At ISH5 on 'living conditions', concerns were expressed about the use of a site for stockpiling top-soil at the southern end of St Peter's Lane (plot 3/51a), the effect being to 'hem in' the village of Bickenhill between the main works compound to the north and mounds of earth on plot 3/51a to the south. However, it was explained [REP6-011] that the stockpile will only be 2m high and will be seeded to protect the soil. It will be screened by the existing trees and foliage on the site and removed by a tipper wagon for landscaping, as necessary and required for the Scheme. The ExA asked whether the Applicant had considered the noise implications of such a use for the site. In response, it was explained that, although specific details are absent, the OEMP [REP9-019] addresses measures that will need to be put in place and secured by the CEMP. This is designed to ensure that the operations on plot 3/51a and at satellite compounds will have no significant adverse effects. The ExA considers that such controls will help to minimise the harmful effects of the Scheme on residential amenities.

Living conditions – lighting, screening, noise and working hours

Lighting

5.8.86. At and following CAH2, concerns were expressed about the potentially intrusive effects of lighting, either in relation to the new roads and roundabouts or in relation to the compounds and works areas [REP7-021, REP7-024]. In response, the Applicant points to the protections provided in the REAC and OEMP [REP9-019]. This now requires that any lighting scheme 'will be designed positioned and directed so as not to unnecessarily intrude on adjacent buildings ... Lighting will be confined to locations where road safety is a priority so as to limit spill at night.' In addition, the Outline Compound Management Plan [REP8-009] includes

controls on lighting and illumination to minimise visual intrusion (or any adverse effects on sensitive ecology), which applies to both the main works compound and the satellite compounds across the Scheme. At ISH5 on 'living conditions' it was explained that lighting of the laydown area and low-level bollard lighting at the exit is required in the main works compound for security reasons; there may also be motion sensitive lighting in places. But lighting is to be limited due both to the controls in the REAC and the proximity to Birmingham Airport and its safeguarding zone [REP6-011].

- 5.8.87. At ISH5 on 'living conditions', the need to provide streetlights at the Barber's Coppice Roundabout was disputed. Essentially, the application of the Lighting Technical Note [REP2-021] to the Barber's Coppice and the Bickenhill Roundabouts uses an erroneous assessment of their respective 'lengths' [REP6-040]. The Applicant explains [REP8-007] that the initial assessment uses a preliminary design where the layout and design speed had yet to be fixed. The current design is different. The overall 'length' of Barber's Coppice Roundabout is 440m, not 740m as initially suggested: the overall 'length' of Bickenhill Roundabout remains the same at 330m. Nevertheless, the 'benefit cost ratio' is a function, not just of the 'lengths', but also of costs and accidents. In this case, the 'value' increases despite the reduction in 'length'. Even so, the installation of street lighting must also be a matter of judgement. Further refinements in the design of the roundabout are likely as the Scheme progresses and the final design, including the lighting, will be agreed in consultation with SMBC as the local highway authority. It will also be controlled by the OEMP and REAC [REP9-011], which the ExA recommends should be updated to include the measures set out in paragraph 7.1.3 of the Lighting Technical Note [REP2-021].

Screening and intrusive effects

- 5.8.88. Following ISH5 on 'living conditions' local residents examined the potential for further screening and landscaping to mitigate the effects of the main works compound on the village of Bickenhill. They suggest that visual and acoustic screening will be required around the whole of the compound and that, although the 2m high 'topsoil stack' might be sufficient in places, behind Church Farm and Bickenhill Green Court a 3.6m high screen (a 'topsoil stack' surmounted by vegetation) might not be enough. Although cross-sections of the mains works compound showing the potential mitigation from landscaped bunds is available [REP7-011], G9 of the REAC [REP9-011] now insists that *'No part of the authorised development is to commence until a landscaping scheme applicable to that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function. A copy of the landscaping scheme will be sent to the Parish Councils when submitted to the relevant planning authority and Birmingham Airport Ltd. The landscaping scheme prepared by the PC must reflect the mitigation measures set out in the REAC and must be based on the landscape strategy ...'* The ExA considers that this should provide the basis for the Parish Councils to usefully influence the landscaping proposals to be implemented.

- 5.8.89. At CAH1 Mr O'Reilly requested further details about the mitigation measures proposed at the front of Four Winds. A general indication is offered [Figure 8.3 APP-090] of the different types of planting and seeding that could be delivered as part of the Scheme to provide visual screening, ecological mitigation and landscape enhancement. R5 of the dDCO requires the production of a landscaping scheme. And the Applicant indicates [REP6-011] typical growth rates and points out that detailed landscaping proposals will be developed and refined as the Scheme progresses.
- 5.8.90. At ISH5 on 'living conditions', Camilla Burton expressed concern about the impact of the temporary bridge and realigned Catherine-de-Barnes Lane on her Church Farm property and business. As the realigned road passes close to paddocks, a ménage and the rear boundary, the noise of construction, of traffic and the glare of headlights are all likely to render those facilities unusable. This is likely to have a seriously detrimental affect not just on the amenities enjoyed at the property, but also on the ability to attract guests to the B&B business and riders to the stabling facilities. In response [REP7-011], the Applicant indicates that acoustic fencing could be erected along the boundary. (An illustration is at Action 17 of REP7-011, though other systems are also available.) The ExA considers that this may help but urges a solution to be explored in consultation with the occupants of Church Farm. The controls provided in the OEMP should ensure that the best available measures are implemented to minimise the harmful impacts on the property.
- 5.8.91. The ExA asked the Applicant to review the position of the proposed attenuation tank and access (Work No.35) into land beside Church Farm and the ménage and to provide information on possible alternatives [EV-021]. The ExA considers that, once the permanent realignment of Catherine-de-Barnes Lane is in place, the arrangement proposed perpetuates a potential intrusion of vehicles behind Church Farm and the visual impact of a metalled access into an otherwise quiet rural aspect within this village street. Since it is agreed that the relocation of the underground storage tank and its access on land to the south of St Peters Lane would not affect the drainage arrangements [REP6-015], it should be possible to avoid the impact on residents and the denudation in the rural character of Church Lane emanating from the configuration currently proposed.
- 5.8.92. The Applicant responds [REP9-026] that this option is discounted because the access and egress require a departure from standards and those defects and the provision of a layby off the realigned Catherine-de-Barnes Lane to service the attenuation tank might entail an increased risk of fly tipping and unregulated taxi parking. Moreover, the claim is that there are no significant environmental impacts associated with attenuation tank being located to the north of St Peter's Lane and the metalled access behind Church Farm is required to serve the agricultural land and to undertake maintenance of the Severn Trent aqueduct.
- 5.8.93. The ExA disagree [EV-021]. Not only are the environmental effects indicated above intrusive, especially in relation to the use of the manege

at Church Farm, but also locating the attenuation tank to the south has the advantage of positioning it on a roadside rather than introducing it to an otherwise relatively secluded area. In addition, a metalled access track into fields and farmland is considered unnecessary. It can hardly be required to serve the few fields behind Church Farm. Nor can it be necessary to allow the occasional maintenance vehicle to reach the Severn Trent aqueduct. A simple gate and ordinary agricultural access into the fields should suffice. And, such an arrangement maintains the rural character of this entrance into the village and this part of St Peter's Lane; the metalled remnants of the realigned road could then be removed, and the grass of an agricultural access restored. Hence, the ExA propose the insertion of a new Requirement into the dDCO. This is supported by the Bickenhill and Marston Green Parish Council and other IPs [eg REP9-028, REP9-033 and REP9-029]. Moreover, the ExA considers that the Requirement meets the tests set out in Advice Note 15 as it is precise, enforceable, necessary, relevant to the development, relevant to planning and reasonable in all other respects. It could also be further modified to require consultation with those affected by the change. The ExA therefore include this new Requirement (R16), with public consultation, within its rDCO.

Noise and working hours

- 5.8.94. At ISH6 on 'environmental considerations' and DCO3 concerns were raised about the normal operating hours sought by the Applicant. The normal operating hours sought are 07.00-18.00. The Parish Council, residents, local businesses and the Residents' Association considered such an early start disruptive and suggested that 08.00-18.00 is a more reasonable period [REP7-006, REP9-028, REP9-029]. These are the working hours that SMBC normally impose on building sites. And, they are the 'core hours' agreed with HS2, except that a 1 hour 'starting up and closing down' period is allowed before and after subject to the absence of any 'annoying' noise. Working outside of those hours requires agreement through the Section 61 consenting process [REP7-009]. The hours now agreed [SoCG at REP8-005] with SMBC are 07.00-18.00, but the intention is that no-one will arrive on site before 07.00 and no 'annoying' noisy activities will be undertaken before 08.00 unless subject to a section 61 consent from SMBC. This was confirmed at DCO4 and is included the OEMP, which also prevents engines from being left idling, adherence to a 'Considerate Constructors Scheme' and the appointment of a Community Liaison Officer with a phone line always available to receive complaints.
- 5.8.95. In spite of the thresholds identified in BS 5228 and SOAELs, an 'annoying noise' before 08.00 cannot be quantified or defined precisely. Hence, as clarified in response to concerns raised by Mr O'Reilly and others, the role of the Community Liaison Officer is crucial [REP7-009]. In the first instance, residents can contact the Community Liaison Officer, the complaint is to be logged and escalated, if appropriate, to the Principle Contractor with the power to stop an 'annoying noisy activity', if necessary. Provisions are contained in the OEMP for the installation of noise monitors and staff will be trained on noise management and the

requirement to follow a specified complaints procedure. Complaints can also be made to SMBC. In addition, G33b and G33c of the REAC within the OEMP [REP9-019] commits the PC to seek appropriate section 61 consents from SMBC during construction, including for works falling within and outside of the 'core' working hours, as well as adhering to certain specific additional restrictions. The latter include restricting working hours to 08.00-18.00 for piling operations at Solihull Road Bridge, Catherine-de-Barnes Lane North and South Bridges and the A45 Pedestrian Overbridge.

- 5.8.96. On that basis the ExA considers an appropriate balance is struck between protecting the living conditions of nearby residents and the timely delivery of this NSIP and recommends accordingly.

Conclusion

- 5.8.97. The NNNPS indicates that an ES should identify and assess any likely significant adverse health impacts and the Applicant should identify measures to avoid, reduce or compensate for adverse (and cumulative) health impacts, as appropriate. Hence, the overriding test here is whether the measures taken are sufficient to meet those requirements. The Applicant claims that the OEMP builds on embedded and standard mitigation measures to avoid or reduce environmental impacts during construction.
- 5.8.98. It is inevitable that the Scheme must take agricultural land in the area through which it passes and effect any associated farms or holdings. But, it is important to recognise the significance of those effects. The ExA considers that the loss of over 40ha of BMV must constitute a significant adverse effect, while the practical obliteration of 2 agricultural holdings and the scale of the losses experienced at 2 larger farms are also significant. Of course, compensation is payable for these losses.
- 5.8.99. It is similarly inevitable that the Scheme must sever the NMU routes that it crosses. However, although the ExA welcomes the intention to explore further connections across the A45 with SMBC, it considers that, in the absence of those further connections, the disruption and inconvenience due to the diversions imposed by the Scheme constitute a significant adverse effect. The measures to reduce or compensate for those harmful effects are insufficient to meet the aims of the NNNPS set out in paragraphs 4.79 to 4.82 and, worse still, they fail to foster the Government's aim of providing options to use sustainable, convenient and attractive modes of travel and bring about a step change in cycling and walking across the country by investing in high quality cycling and pedestrian routes, as indicated in paragraphs 3.15-3.17 and 5.216.
- 5.8.100. For motorised travellers the Scheme maintains most connections to nearby villages and towns as well as reducing congestion and increasing journey reliability, as described in section 5.2. However, those benefits are achieved at the expense of fostering a sense of severance and slightly increasing journey times for journeys to the Airport or to the A45 from Bickenhill. The ExA considers that such severance constitutes a

moderate adverse and significant effect. But, reducing congestion and increasing journey reliability, as described in section 5.2, is considered to be a considerable benefit of the Scheme.

- 5.8.101. Applicant's agrees that that the proposal will have a slight adverse effect on land designated as a 'General Business Site' in the Solihull Local Plan, but finds that the effects of demolition on an identified community is likely to be insignificant. The effects on air quality and noise are considered elsewhere (sections 5.11 and 5.12).
- 5.8.102. The ExA considers that the shortcomings of the 'Proportionate Reconfiguration' proposed within the DCO means that it should only be implemented if insurmountable impediments to the 'legacy' scheme are demonstrated. If that transpires to be the case, then the 'Proportionate Reconfiguration' should be amended to include the re-siting and rebuilding of the clubhouse, which is a feature of the 'legacy' scheme in order to chime with the spirit of the 'public sector equality duty'. However, there is no version of the 'Proportionate Reconfiguration' including the re-siting and re-building of the club house before the ExA, so that it is the shortcomings of the 'Proportionate Reconfiguration' that must weigh against the Scheme.
- 5.8.103. The ExA considers that confines of the mains works compound should be moved to the north and east of the proposed site to provide a buffer of about 100m between the compound and the village of Bickenhill, with the means of egress being positioned towards the Clock Interchange, in order to alleviate the impact on local residents. The OEMP now provides for just such a configuration. It also entails controls applying to the main works compound and to the satellite compounds designed to ensure that the operations will have no significant adverse effects. Lighting is to be designed to prevent unnecessarily intruding into adjacent buildings and confined to locations where road safety is a priority; the ExA intends to strengthen those provisions by including measures set out in paragraph 7.1.3 of the Lighting Technical Note. The ExA considers that those measures entail a comprehensive approach to avoiding or reducing the harmful effects associated with the Scheme; such measures properly meet the aims of the NNNPS set out in paragraphs 4.79 to 4.82.
- 5.8.104. The OEMP insists on the preparation of a landscaping scheme and makes provision for the scheme to be sent to the Parish Councils. The ExA considers that this should provide the basis for the Parish Councils to usefully influence the landscaping proposals.
- 5.8.105. Acoustic fencing is to be erected to mitigate the effects of the temporally realigned Catherine-de-Barnes Lane on the manège and living conditions at Church Farm. The ExA considers that further mitigation could be achieved by repositioning the attenuation tank from the north to the south side of St Peter's Lane. This is likely to deliver further benefits in affecting a roadside rather than a secluded area, in removing a metalled track and in restoring the rural character at this entrance into the village. The ExA considers that, with this requirement, the Scheme provides sufficient measures to avoid or reduce the harmful effects associate it.

However, without those measures the Scheme fails to properly comply with the aims of the NNNPS.

5.8.106. The OEMP now prevents engines from being left idling and insists on adherence to a 'Considerate Constructors Scheme', together with the appointment of a Community Liaison Officer. Those are, essentially, the measures through which the protocol, agreed with SMBC, of addressing 'annoying noisy activity' at any time (not just before 08.00 hours) is to operate. The ExA considers that such provisions strike an appropriate balance between protecting the living conditions of nearby residents and the timely delivery of this NSIP.

5.8.107. Pulling the above together, the ExA find that:

- The loss of over 40ha of BMV agricultural land constitutes a significant adverse effect, contrary to NNNPS paragraph 5.168 which states that applicants should seek to use areas of poor quality land in preference to that of higher quality. This weighs negatively against the Order being made.
- Moreover, the practical obliteration of two agricultural holdings and the scale of the losses experienced at two larger farms are also significant and weigh against the Order being made.
- The measures to reduce or compensate for the harmful effects on NMU routes insufficient to meet the aims of the NNNPS set out in paragraphs 4.79 to 4.82. Moreover, they fail to foster the Government's aim of providing options to use sustainable, convenient and attractive modes of travel and bring about a step change in cycling and walking across the country by investing in high quality cycling and pedestrian routes, as indicated in paragraphs 3.15-3.17 and 5.216. This weighs negatively against the Order being made.
- For motorised travellers the Proposed Development maintains most connections to nearby villages and towns as well as reducing congestion and increasing journey reliability. This benefit outweighs any sense of severance which would be experienced by residents of Bickenhill, who would have to turn south to go north. The effect on motorised travellers therefore weighs positively for the Order being made.
- The measures contained within the OEMP represent a comprehensive approach to avoiding or reducing harmful effects associated with main and satellite construction site compounds. These measures would be delivered via R4.
- With an additional Requirement relating to the repositioning the attenuation tank from the north to the south side of St Peter's Lane, the Proposed Development would provide sufficient measures to avoid or reduce the harmful effects associated with it, thereby meeting the aims of NNNPS paragraphs 4.79 to 4.82. On this basis, the effect on living conditions represents a neutral consideration. Without those measures the Proposed Development would fail to properly comply with the aims of the NNNPS and would weigh negatively against the Order being made.
- In relation to the impact on community facilities, the shortcomings of the 'Proportionate Reconfiguration', as proposed at the close of the

Examination, does not properly compensate the WGAA for the negative impact of the Scheme on this community facility. This is a negative consideration in relation to the DCO that fails to comply with paragraphs 4.79-4.82 of the NNNPS.

5.9. GEOLOGY AND SOILS

Policy Background

- 5.9.1. NNNPS at paragraph 5.168 identifies that "Applicants should take into account the economic and other benefits of the best and most versatile agricultural land (defined as land in grades 1, 2 and 3a of the Agricultural Land Classification). Where significant development of agricultural land is demonstrated to be necessary, applicants should seek to use areas of poorer quality land in preference to that of a higher quality. Applicants should also identify any effects, and seek to minimise impacts, on soil quality, taking into account any mitigation measures proposed."
- 5.9.2. Paragraph 5.176 further states that "The decision-maker should take into account the economic and other benefits of the best and most versatile agricultural land. The decision-maker should give little weight to the loss of agricultural land in grades 3b, 4 and 5, except in areas (such as uplands) where particular agricultural practices may themselves contribute to the quality and character of the environment or the local economy."
- 5.9.3. Paragraph 5.169 explains that applicants should safeguard any mineral resources on the proposed site as far as possible. At paragraph 5.182 it states that where a development has an impact on a Mineral Safeguarding Area, the SoS should ensure that the applicant has put forward appropriate mitigation measures to safeguard mineral resources.
- 5.9.4. Solihull Local Plan Policy 13 indicates the Mineral Safeguarding Areas for sand and gravel aggregate resources between Berkswell, Hampton and Meriden and east of the NEC and M42.
- 5.9.5. Policy P17 seeks, amongst other things, to safeguard the best and most versatile agricultural land in the Borough and encourage the use of the remaining land for farming. It states that "*Development affecting the best and most versatile land will be permitted only if there is an overriding need for the development or new use, and there is insufficient lower grade land available, or available lower grade land has an environmental significance that outweighs the agricultural considerations, or the use of lower grade land would be inconsistent with other sustainability considerations.*"
- 5.9.6. Warwickshire Minerals Plan Publication Consultation (December 2016) Policy MCS 5 states that mineral resources of local and national importance within the Mineral Safeguarding Areas will be safeguarded from needless sterilisation by non-mineral development.
- 5.9.7. Policy DM10 states that non-mineral development within the Minerals Safeguarding Areas should not proceed unless the proposals for non-

mineral development in the vicinity of permitted mineral sites or mineral site allocations would not unduly restrict the mineral operations or if certain criteria are met.

The Applicant's Approach

- 5.9.8. The Applicant's assessment of Geology and Soils is set out in ES Chapter 10 [APP-055]. This takes into account geology and geomorphology, (including geological designated sites, land stability and mineral resources), soils and contamination of land. The assessment is supported by:
- Appendix 10.1: Ground Investigation Report [APP-147], undertaken to obtain details of prevailing ground conditions and to assess the potential constraints associated with geology and soils.
 - Appendix 10.2: Agricultural Land Classification and Impact Assessment [APP-148], undertaken to investigate the Agricultural Land Classification (ALC) and soil resources of land potentially affected by the Proposed Development. The ALC survey has classified agricultural land by grade to enable the identification of any best and most versatile (BMV) land within the study area.
- 5.9.9. Also supporting the assessment are:
- Figure 10.1 – Geology and Soils – Sources/Constraints Plan [APP-096]
 - Figure 10.2 – Geology and Soils - Identified Receptors [APP-097]
 - Figure 10.3 - Geology and Soils - Identified Receptors – Aquifer Designations, Source Protection Zones and Drinking Water Safeguard Zones [APP-098]
 - Figure 10.4 - Geology and Soils - Identified Receptors - Agricultural Land Classification [APP-099]
 - Figure 10.5 - and Soils - Identified Receptors - Known Utilities [APP-100]
- 5.9.10. The assessment of significant effects contained within ES Chapter 10 includes human health and controlled waters. The ExA has considered these issues in the Population and Health and Road Drainage and Water Environment sections of this Report, and are not repeated here.
- 5.9.11. The Applicant's assessment methodology is set out in section 10.3, and includes a description of its scope, guidance, establishment of baseline conditions and the criteria applied to determine receptor sensitivity, magnitude of impact and significance of effect.
- 5.9.12. The defined study area for the assessment includes the area of land within the Order Limits and an additional distance of 250m extending from the same. This is referred to as the 'geology study area'. The exceptions to this are in respect of groundwater, surface water and potable water abstractions, where consideration is extended up to 500m from the Order Limits. This is referred to as the 'extended study area'.

- 5.9.13. Paragraph 10.8.1 explains that the Proposed Development has been designed, as far as possible, to avoid and minimise impacts and effects on the geology and soils environment through the process of design-development and by embedding measures into its design. Paragraphs 10.8.4 to 10.8.9 set out the proposed embedded and standard mitigation.
- 5.9.14. The prediction of impacts and the assessment of effects has taken account of the embedded and standard mitigation measures identified.

Issues arising

Construction

Agricultural land and other designations

- 5.9.15. The Agricultural Land Classification (ALC) system provides a method for assessing the quality of farmland. It classifies land into five grades, with 1 being the best and 5 being the worst and Grade 3 subdivided into Subgrades 3a and 3b.
- 5.9.16. ES Chapter 10, Table 10.1 sets out the criteria for establishing the sensitivity of the soil receptor and attributes a high importance/sensitivity to Grade 1 agricultural soils and a medium importance/sensitivity to Grades 2 and 3a. However, the NNNPS makes no distinction between agricultural land of Grades 1, 2 and 3a; all are classified as best and most versatile (BMV) agricultural land. This is the land that is most flexible, productive and efficient in response to inputs and which can best deliver future crops.
- 5.9.17. The Applicant was therefore asked to explain, in ExQ2 2.4.1 [PD-008], the basis for attributing a medium importance or sensitivity to the agricultural soil resource of Grade 2 and 3a agricultural land, rather than high, as for Grade 1.
- 5.9.18. The Applicant's response [REP4-010] acknowledges that Grades 1, 2 and 3a are all classified as BMV, and as such, agreed that all may be considered as having a high importance/sensitivity.
- 5.9.19. The Applicant's ALC survey found 21.4 hectares (ha) to be Grade 3a and 82ha to be Grade 3b. Grades 1, 2, 4 and 5 were found to be absent. A further 21.7ha of agricultural land was not surveyed due to site access limitations. ES paragraph 10.4.11 explains that these areas have been conservatively assumed as Grade 3a for the purpose of the assessment. However, ES paragraph 10.9.19 states that the construction of the Proposed Development would result in the loss of approximately 21.4ha of Grade 3a agricultural land, which only corresponds to that found in the surveyed area.
- 5.9.20. The Applicant was therefore asked to explain in ExQ2 2.4.3 [PD-008] why the land which was not surveyed was not subsequently included [in the figure for the total loss of Grade 3a agricultural land] and what the effects would be if it were?

- 5.9.21. In response the Applicant confirmed [REP4-010] that the 21.7ha assumed as Grade 3a should have been added to the 21.4ha to give a total of 43.1ha of Grade 3a agricultural land loss. The Applicant states that that this would still fall within the loss category of between 20ha and 50ha of BMV agricultural land and still result in a 'medium' magnitude of impact and thus no change to the findings or conclusions reported.
- 5.9.22. However, regardless of the thresholds used, the moderate adverse effect set out in ES paragraph 10.9.20 relies on a medium sensitivity being applied to Grade 3a BMV agricultural land, which as noted, the Applicant has agreed may be considered to have a high sensitivity. Accordingly, using the Applicant's Table 10.3 matrix, the effect would then be major adverse, rather than moderate.
- 5.9.23. Moreover, the Applicant was asked in ExQ2 2.4.2 [PD-008] to explain whether there is any inconsistency in that ES Table 10.2 attributes a high magnitude of impact for the loss of over 50ha of BMV agricultural land, whereas Table 13.4 (in ES Chapter 13, Population and Health [APP-058]) sets the threshold at 20ha.
- 5.9.24. The Applicant's response [REP4-010] acknowledges that ES Chapter 10 paragraph 10.3.34 erroneously states that the threshold adopted in the assessment [50ha] is defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015. For clarity, it is confirmed that Schedule 4 of this legislation only defines a 20ha consultation threshold. This is consistent with the 20ha threshold used in ES Chapter 13.
- 5.9.25. The Applicant's response to ExQ2 2.4.2 goes onto explain that the Chapter 10 magnitude of impact thresholds were principally established using professional judgement, in the absence of any nationally agreed methodology or criteria for determining the effects of a development on BMV agricultural land.
- 5.9.26. Notwithstanding the differences, the Applicant's position is to acknowledge the effect on BMV would remain significant as a consequence of the Proposed Development, irrespective of which methodology is applied. Nevertheless, little evidence has been provided to justify the professional judgement to use a 50ha threshold for this assessment. Indeed, Table 5 of the supporting Agricultural Land Classification and Impact Assessment [APP-147] actually attributes a high significance to the loss of 20ha or more BMV land and states that this threshold represents a measure of significance for the loss of such land which has been tried and tested in land use planning, and public inquiries over the last two decades or more. This is similar to the justification for the 20ha threshold set out in ES Chapter 13 (paragraph 13.3.36), which also refers to NE's statutory right to be consulted where such a threshold is exceeded.
- 5.9.27. The ExA therefore consider that a 20ha threshold should represent a high impact for this assessment. Although this would elevate the magnitude of

impact from medium to high, the significance effect would not be raised as it would already be major adverse.

- 5.9.28. The effect of the Proposed Development on the loss of Grade 3 agricultural land is assessed to be negligible (not significant). This is not disputed.
- 5.9.29. Where temporary loss of or damage to agricultural land would occur during construction, monitoring would be required to ensure the affected land is restored to agricultural use. The requirements for soil reinstatement, monitoring, and aftercare are detailed in the Outline Soil Management Plan appended to OEMP [REP9-019].

Mining and mineral site designations

- 5.9.30. ES paragraph 10.6.22 confirms that the Order Limits is not in an area that might be affected by coal mining.
- 5.9.31. The Solihull Local Plan and Warwickshire County Council Warwickshire Minerals Plan Publication Consultation (December 2016) identify a Mineral Safeguarding Area for sand and gravel aggregate within the geology study area. This is located within the triangular area of land bound by the M42, A45 and A452 at the northeast of the Order Limits.
- 5.9.32. The Applicant's assessment therefore recognises that there is potential for severance or sterilisation. However, the Applicant highlights that based on the SMBC Draft Local Plan Review Proposals Map, this area is proposed to be allocated as mixed use and is also traversed by the potential HS2 line. On this basis the Applicant considers it unlikely to be a regional or nationally significant mineral reserve. A medium sensitivity has therefore been applied and a low to very low magnitude of impact has been given as the road construction elements in this area are adjacent to the current M42 and A45. This results in a minor (adverse) to negligible (not significant) effect upon mineral resources.
- 5.9.33. The LIR of WCC in partnership with NWBC [REP2-038] is silent on matters relating to minerals and therefore draws no conclusions on Policies MCS 5 and DM10 from the Warwickshire Minerals Plan Publication Consultation (December 2016).
- 5.9.34. SMBC has confirmed [REP4-018] that it is satisfied with the content of Chapter 10 of the ES, including assessment methodology, mitigation measures and conclusions. The ExA find no reason to take a contrary position in terms of the impacts on the mineral resource.

Geological site designations

- 5.9.35. The Applicant's Chapter 10 assessment identifies no geologically designated sites within the Order Limits. However, Nursery Cottage, (Arden) Brickworks is a Local Geological Site located within the study area, approximately 230m from the Order Limits. It is assessed as having a medium sensitivity whilst a very low magnitude of impact has been identified. The resulting effect upon designated geological sites

during the construction phase is therefore assessed to be negligible. Again noting the position of SMBC, the ExA agree.

Ground stability

- 5.9.36. ES Chapter 10 recognises that earthworks including excavations and any potential foundations associated with bridge structures for example, together with any dewatering that may be required, could adversely affect ground stability and, subsequently, any proposed and surrounding structures through uncontrolled settlement. It is acknowledged that there may be a requirement to provide temporary support for site excavations and that this would be established during detailed design and where specified and implemented correctly, would be sufficient to mitigate the impacts generated.
- 5.9.37. It is assessed that any settlement of land would represent a low magnitude of change to land stability and that there is a low sensitivity given the general absence of development that might be affected. Therefore, the effect on land stability as a result of construction activities has been assessed as negligible (not significant).
- 5.9.38. As noted, SMBC has confirmed that it is satisfied with the findings on Chapter 10 and the ExA find no reason to take a contrary position in terms of the impacts on the ground stability.

Operational effects

- 5.9.39. There are no operational effects that fall to be considered in this section. As already indicated, matters relating to human health and controlled waters are considered in the Population and Health and Road Drainage and Water Environment sections of this Report.

Summary and Conclusions

- 5.9.40. The Proposed Development would result in a major adverse significance of effect on BMV agricultural land. This would conflict with NNNPS paragraph 5.168 which highlights that "where significant development of agricultural land is demonstrated to be necessary, applicants should seek to use areas of poorer quality land in preference to that of a higher quality."
- 5.9.41. There would also be conflict with Solihull Local Plan Policy P17 insofar as it seeks to safeguard BMV agricultural. The question of whether there is an overriding need, as required by the policy, is considered in section 7 of this Report.
- 5.9.42. In accordance with paragraph 5.176 of the NNNPS, the loss of lower category Grade 3b agricultural land is to be given little weight.
- 5.9.43. Where temporary loss of or damage to agricultural land occurs during construction, monitoring would be required to ensure the affected land is restored to agricultural use. The requirements for soil reinstatement, monitoring, and aftercare are detailed in the Outline Soil Management

Plan appended to the OEMP [REP9-019]. The OEMP, with associated Outline Soil Management Plan, would be delivered through the CEMP, which itself would also be secured through Requirement 4 in the recommended dDCO. On this basis, the ExA is satisfied that the Proposed Development would accord with NNNPS paragraph 5.168, insofar as the Applicant has sought to minimise impacts on soil quality.

5.9.44. As the road construction elements of the Proposed Development are adjacent to the current M42 and A45 and largely restricted to the periphery of the Mineral Safeguarding Area located at the northeast of the Order Limits, the ExA agrees with the Applicant's assessment that there would be a minor (adverse) to negligible (not significant) effect upon mineral resources. The ExA is therefore satisfied that the Proposed Development would safeguard the mineral resource as far as possible, in accordance with NNNPS paragraph 5.169. At the local level, neither SMBC nor WCC/ NWBC suggest that there is conflict with the identified adopted and emerging development plan policies.

5.9.45. Pulling the above together, the ExA's findings are that:

- The effects on land stability would be negligible and represent a neutral consideration, having regard to paragraphs 5.116 to 5.119 of the NNNPS.
- In accordance with paragraph 5.169 of the NNNPS, mineral resources have been safeguarded as far as possible. The minor to negligible adverse effects identified are not significant but do nonetheless weigh to that limited extent against the Order being made.
- The Applicant has sought to minimise impacts on soil quality in accordance with NNNPS paragraph 5.168. Measures contained within the dDCO would ensure the restoration of agricultural land temporarily lost or damaged during construction. This represents a neutral consideration.
- The Proposed Development would result in a major adverse significance of effect on BMV agricultural land, in conflict with paragraph 5.168 of the NNNPS. This weighs against the Order being made.

5.10. MATERIALS AND WASTE

Policy Background

5.10.1. The NNNPS addresses waste management in paragraphs 5.39 to 5.45. In line with broader national policy [Waste (England and Wales) Regulations 2011], developments are expected to ensure that sustainable waste management is implemented through the waste hierarchy as follows:

- prevention;
- preparing for reuse;
- recycling;
- other recovery, including energy recovery; and
- disposal.

5.10.2. It sets out that the SoS should consider the extent to which an applicant proposes an effective process that would be followed to ensure effective management of hazardous and non-hazardous waste arising from the construction and operation of the proposed development. The SoS should be satisfied that:

- any such waste will be properly managed, both on-site and off-site;
- the waste from the proposed facility can be dealt with appropriately by the waste infrastructure which is, or is likely to be, available; and
- adequate steps have been taken to minimise the volume of waste arisings, and of the volume of waste arisings sent to disposal, except where an alternative is the most sustainable outcome overall.

5.10.3. Where necessary, the Secretary of State should use requirements or planning obligations to ensure that appropriate measures for waste management are applied.

Applicant's Approach

5.10.4. ES Chapter 11: *Material Assets and Waste* [APP-056] considers the use of materials resources and the generation and management of waste associated with the Proposed Development. This is supported by Appendix 11.1 Excavated Materials Study [APP-149] and an Outline Environmental Management Plan (OEMP) [REP9-019], which includes an Outline Site Waste Management Plan (SWMP) and an Outline Materials Management Plan.

5.10.5. The Applicant's methodology for the Chapter 11 assessment is set out in section 11.7, and includes a description of its scope, the baseline conditions and the criteria applied to determine the magnitude of impact and significance of effect.

Design, mitigation and enhancement measures

5.10.6. ES Paragraph 11.8.1 explains that the Proposed Development has been designed, as far as possible, to avoid and minimise impacts and effects relating to material assets and waste through the process of design-development and by embedding measures into the design of the Scheme.

Embedded mitigation measures

5.10.7. ES paragraphs 11.8.4 and 11.8.5 explain that the design of the Proposed Development, and the planned approach to its construction, *"have been developed to achieve efficiencies in materials and waste, the main objectives being to reuse and recycle site-won materials on-site wherever possible, to minimise the need to import construction materials to site, and to reduce the quantity of waste to be exported off-site."*

5.10.8. The following principles have been considered:

- "reuse of excavated materials and the recycling of demolition materials within the Scheme;

- managing waste in accordance with the waste hierarchy, with a focus on designing-out and preventing waste arising where possible, and diverting waste from landfill through off-site recycling and recovery; and
- using other recycled and secondary materials during construction, where practicable.”

5.10.9. Paragraphs 11.8.6 to 11.8.9 explain that the retention of existing highways infrastructure within the design (at Clock Interchange, East Way and along the M42) has avoided the need to demolish and remove components that would have contributed to the total materials and waste generated. It is also explained that the Proposed Development has been designed to facilitate the reuse, where possible, of acceptable material arisings from earthworks cuttings and other excavations. Earthworks have also been designed to reduce the materials generated from cutting and that required to form embankments, and to reduce the need for excavations.

Standard mitigation measures

5.10.10. Construction of the Proposed Development would be subject to measures and procedures defined within a Construction Environmental Management Plan (CEMP). The CEMP would be produced prior to the commencement of construction by the appointed contractor and would be based on, and incorporate, the requirements of the OEMP [REP9-019]. The Outline SWMP, appended to the OEMP, sets out the measures that would be undertaken during construction to mitigate effects relating to material assets and waste. It also sets the following performance targets:

- at least 27% (by weight) of aggregates imported to site should comprise reused, recycled or secondary aggregates, for those applications where it is technically and economically feasible to substitute these alternative materials for primary aggregates; and
- recovery of at least 70% (by weight) of non-hazardous construction and demolition waste (excluding naturally occurring materials with Waste Code 17 05 04).

5.10.11. To minimise the quantity of waste arising and requiring disposal, the CEMP would require the appointed contractor to implement the following approaches, where practicable:

- “agree with material suppliers to reduce the amount of packaging or to participate in a packaging take-back scheme;
- implementation of a ‘just-in-time’ material delivery system to avoid materials being stockpiled, which can increase the risk of damage and subsequent disposal as waste;
- attention to material quantity requirements to avoid over-ordering and the generation of waste materials due to surplus;
- reuse of materials onsite wherever feasible, e.g. reuse of excavated soil for landscaping, recycling of demolition materials into aggregates;
- offsite prefabrication where practical;

- segregation of waste at source, where practical, to facilitate a high proportion and high-quality recycling; and
- offsite reuse, recycling and recovery of materials and waste where reuse onsite is not practical.”

5.10.12. The prediction of impacts and the assessment of effects takes into account the embedded and standard mitigation measures identified.

Assessment of likely significant effects

Material resources

5.10.13. As noted above, the Proposed Development would set a target of 27% for the use of recycled and secondary aggregates. This corresponds with the baseline target⁷⁶ for the West Midlands region for alternative aggregate materials (comprising secondary aggregates recovered from industrial and mining operations, and recycled aggregates produced from inert waste).

5.10.14. On the basis of the proximity of the Proposed Development to major urban areas, a good supply of alternative aggregate materials is expected. The Applicant also makes reference to the Mineral Products Association estimation⁷⁷ that, in 2017, 30% of aggregate sales in Great Britain were recycled and secondary aggregates. The Applicant therefore considers this target as likely to be achievable. On this basis and by applying the criteria in ES Table 11.1, the magnitude of impacts relating to material resources are assessed as being slight, resulting in an effect that is not significant.

5.10.15. By applying good industry practice to the management of waste, a 94.7% recovery rate is estimated from the quantities of non-hazardous waste arising during construction (excluding the excavated materials). It is highlighted that this exceeds the Government’s target⁷⁸ of 70% and the magnitude of impacts are therefore assessed as being slight, resulting in an effect that is not significant.

Excavated materials

5.10.16. Excavated materials, including acceptable fill materials and topsoil, would be used within the construction of the Proposed Development. Of the estimated 1,167,747m³ of materials arising, approximately 385,000m³ would be used during construction, including 260,000m³ of site-won acceptable fill material and 125,000m³ of topsoil. This material would be

⁷⁶ National and regional guidelines for aggregates provision in England 2005 to 2020. Department for Communities and Local Government (2009)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7763/aggregatesprovision2020.pdf

⁷⁷ Profile of the UK Mineral Products Industry Workbook: 2018 edition. Mineral Products Association (2018)
<https://mineralproducts.org/documents/Facts-at-a-Glance-2018.pdf>

⁷⁸ Waste Management Plan for England. Department for the Environment Food and Rural Affairs (2013)

used in accordance with a Materials Management Plan, to be prepared from the Outline included in the OEMP.

- 5.10.17. The surplus of excavated material generated is estimated at approximately 783,000m³, comprising, 636,000m³ of acceptable fill material, 91,000m³ of unacceptable fill material and 56,000m³ of topsoil. As a worst-case scenario, if it is assumed that all of the surplus excavated materials are disposed of to landfill, this would utilise approximately 0.93% of the permitted regional landfill capacity (defined as the West Midlands region and the bordering counties within the East Midlands region), as indicated in ES Table 11.3, or 0.19% of the permitted landfill capacity in England. By applying the criteria in ES Table 11.1, the magnitude of impacts are therefore assessed as being slight, resulting in an effect that is not significant.
- 5.10.18. It is explained that off-site management routes for surplus excavated materials are currently unknown and will be the responsibility of the appointed contractor. It is stated as likely that off-site reuse or recovery options would be identified for part or all of the surplus excavated materials, thus further reducing the quantity requiring disposal in landfill. To this end, Appendix 11.1 Excavated Material Options Assessment [APP-149] identifies sites that may be able to utilise excavated materials for restoration or beneficial use.

Waste

- 5.10.19. Construction of the Proposed Development is expected to generate approximately 99,532 tonnes (50,581m³) of non-hazardous construction and demolition waste, of which an estimated 26,571 tonnes (18,280m³) is expected to require management off-site. Based on a worst-case assumption that all is disposed of to landfill, this would utilise approximately 0.02% of the permitted regional landfill capacity (defined as the West Midlands region and the bordering counties within the East Midlands region) as shown in ES Table 11.3. However, in practice, it is envisaged that a large proportion of waste is likely to be recycled or recovered rather than disposed of to landfill.
- 5.10.20. It is stated that the Proposed Development would result in less than 1% reduction or alteration in the regional capacity of waste infrastructure, and that there is adequate disposal capacity within the region to accommodate all the waste (notwithstanding that it is envisaged that a high proportion of waste would be recycled or recovered rather than requiring disposal). The magnitude of impacts are therefore assessed as being slight, resulting in an effect that is not significant.

Issues Arising

- 5.10.21. The ES Chapter 11 issues relating to materials assets and waste are not raised by SMBC in its LIR [REP2-033] or in its SoCG [REP8-005] with the Applicant. Neither is it raised by WCC/ NWBC in their LIR [REP2-038] nor in the SoCG [AS-042] between WCC and the Applicant.

- 5.10.22. Nevertheless, WQ2 2.5.1 [PD-008], asked the Applicant to explain the approach which would be applied to ensuring that the targets for material resources, recycling and recovery rates for waste arisings would be achieved and how the magnitude of impacts would be assessed?
- 5.10.23. The Applicant's response [REP4-010] refers to the Outline SWMP, as setting the approaches, processes and management responsibilities to be followed to meet relevant targets and to measure performance standards during construction. However, as noted above, the Outline SWMP (paragraph B.4.3.2) sets out a performance target to recover at least 70% (by weight) of non-hazardous construction and demolition waste, whereas ES Table 11.8 anticipates that a rate of 94.7% may be achieved. This is a significant difference. Accordingly, the ExA consider there to be opportunity to raise the performance target in the Outline SWMP, and in doing so, improve the environmental outcome.
- 5.10.24. The ExA accept that the Applicant should not be required to re-run the ES Chapter 11 assessment based on actual figures recorded during construction. Nevertheless, as offered in the Applicant's response to WQ2 2.5.1, the ExA consider that there would be merit to the appointed contractor undertaking a post-scheme evaluation of performance against the assessment conclusions, and for the findings to be presented in the Handover Environmental Management Plan (HEMP). As Requirement 4 specifies that the HEMP must be made available in an electronic form suitable for inspection by members of the public, this would ensure appropriate transparency and accountability. In combination with the reporting and auditing procedures already contained within the Outline SWMP, this would also adequately address the ExA's WQ2 2.5.3 relating to monitoring of the targets. The ExA therefore consider that the Outline SWMP should be amended accordingly.
- 5.10.25. The ExA is satisfied with the Applicant's response [REP-010] to WQ2 2.5.2 that the quantity of surplus excavated materials requiring disposal in landfill would be minimised via the outline Materials Management Plan and the measures set out in section B.4.4 of the Outline SWMP.

Summary and Conclusions

- 5.10.26. The ExA is satisfied that the Applicant has adopted an appropriate methodology for the Chapter 11 assessment.
- 5.10.27. The Outline SWMP describes the procedures by which material resources and waste (including hazardous waste) would be managed during the construction of the Proposed Development. This document sets out the approaches, processes and management responsibilities to be followed to meet relevant targets, the requirement to apply the waste hierarchy, requirements for the reuse, recycling and recovery of materials, and the key indicators that will be used to measure performance standards during construction.
- 5.10.28. Nevertheless, the assessment has demonstrated that by applying good industry practice to the management of the waste, that an overall

recovery/recycling rate of non-hazardous construction and demolition waste (excluding naturally occurring materials with Waste Code 17 05 04) of 94.7% may be achieved. This is significantly higher than the target 70% stipulated in the Outline SWMP. Moreover, the baseline target for the recovery of non-hazardous construction and demolition waste is at least 70% by 2020, as set out European Waste Framework Directive 2008/98/EC, as transposed by The Waste (England and Wales) Regulations 2011 and The Waste Management Plan for England.

- 5.10.29. The ExA therefore suggest that the Outline SWMP target should be raised to at least 85%. Doing so would still allow the Applicant reasonable latitude during the construction phase.
- 5.10.30. Moreover, the ExA consider that the Outline SWMP should be amended to require a post-scheme evaluation of performance against the assessment conclusions, and for the findings to be presented in the HEMP, which would be delivered through Requirement 4 of the recommended dDCO. This would ensure appropriate transparency and accountability.
- 5.10.31. The OEMP, with associated Outline SWMP and Outline Materials Management Plan, would be delivered through the CEMP, which itself would also be secured through Requirement 4 in the recommended dDCO. Through the CEMP the relevant planning authorities would be actively involved as consultees. Construction of the Proposed Development would be subject to measures and procedures defined within the CEMP.
- 5.10.32. The ExA is therefore satisfied that material assets and waste arising from the construction of the Proposed Development would be able to be properly managed, that all necessary controls would be in place through the recommended dDCO, and that the Proposed Development complies with NNNPS paragraphs 5.39 to 5.45 in this respect.
- 5.10.33. These conclusions are not materially affected whether or not the ExA's suggested changes to the OEMP are made because the aforementioned 70% target for the recovery of non-hazardous construction and demolition waste would still be met. Nevertheless, the ExA considers its suggested changes to be highly desirable as the Government target is at least 70%.
- 5.10.34. Taking all these matters into account, the ExA finds that:
- The material assets and waste arising from construction would be properly managed and controlled in accordance with NNNPS paragraphs 5.39 to 5.45.
 - The effects of the Proposed Development on materials and waste represent a neutral consideration.

5.11. ROAD DRAINAGE AND THE WATER ENVIRONMENT

- 5.11.1. Water quality and resources are matters covered in the NNNPS at paragraphs 5.219 to 5.231. During construction and operation, it is recognised that projects can lead to increased demand for water and

cause discharges of pollutants, resulting in adverse ecological impacts; there may be an increased risk of spills and leaks. Such potentially harmful effects could compromise environmental objectives established under the Water Framework Directive (WFD) and the aims of River Basin Management Plans (RMBPs). Activities that discharge to the water environment are subject to pollution control. An Environmental Permit is required from the Environment Agency (EA) if a regulated activity is to be undertaken on or near a Main River, on or near a flood defence structure, or in a flood plain. A permit may also be required for the discharge of any 'unclean' construction site runoff. Hence, the NNNPS advises that decisions under the Planning Act 2008 (PA2008) should complement, but not duplicate, those taken under the relevant pollution control regime.

- 5.11.2. Flood risk is addressed at paragraphs 5.90 to 5.115 of the NNNPS. A flood risk assessment (FRA) should be carried out in accordance with the guidance provided in the NPPF. The SoS should be satisfied that where flood risk is a factor in determining an application for development consent, the Applicant should apply the Sequential Test as part of site selection and, if required, the Exception Test; the Applicant must demonstrate that the Scheme will be safe from flooding for its lifetime, taking account of the vulnerability of its users, without increasing flood risk elsewhere and, where possible, contributing to an overall reduction in the risk of flooding. The volume and peak flow rates of surface water run-off should be no greater than those prior to the implementation of the Scheme. And, where they might be, off-site arrangements should be designed to result in the same net effect.
- 5.11.3. Local policies seek to protect the natural environment, including water quality and the prevention of flood risks. Policy P10 of the Solihull Local Plan insists that any scheme affecting an SSSI will be subject to special scrutiny and policy P11 requires that the actions and objectives of the appropriate RBMP should be taken into account in striving to protect and improve the quality of water bodies. Sustainable drainage systems (SuDS) are to be utilised, if possible, and flood risks reduced; policy P15 aims to encourage sustainable design, including the use of SuDS. Policy LP31 of the emerging North Warwickshire Local Plan insists that schemes should not diminish flood storage capacity, protect the quality of ground or surface water and reduce the risk of pollution or flooding. Policy LP35 requires adherence to a WFD, protection or enhancement of ecological sites and the maintenance of run-off at greenfield run-off rates through the use of SuDS to reduce pollution and flood risks.
- 5.11.4. The Applicant addresses these policy requirements in the ES Chapter 14 [APP-059], in the WFD assessment [APP-156], the FRA [APP-159], and the Drainage Strategy [APP-160], as well as in applying the Highways Agency Water Risk Assessment Tool (HAWRAT) [APP-158]. Special consideration is given to potential impacts on the Bickenhill Meadows SSSI [APP-157, REP3-004, REP4-006, REP7-015].
- 5.11.5. Hollywell Brook and Shadow Brook cross the Order Lands, and both are designated as Main Rivers close to the M42; Hollywell Brook and Shadow

Brook become Main Rivers to the east of the motorway just 30m and 75m distant respectively.

The Applicant's Approach

Method and results

- 5.11.6. The assessment follows the overarching EIA methodology and guidance [APP-050] and the approach set out in the DMRB HD45/09 and HD33/06⁷⁹.
- 5.11.7. The Grand Union Canal is located above a slope towards the Scheme and beyond an intervening mound. Hence, the canal will not receive surface water or groundwater flows, or highway discharges from the Scheme and will not be affected. Similarly, Coleshill and Bannerly Pools SSSI is so far from any of the works proposed and, in any case, lacking in any hydrological connection, as to remain unaffected by the project.

Preliminary WFD assessment

- 5.11.8. The assessment finds that the Scheme will result in no significant adverse impacts to WFD relevant water bodies. Hence, the Scheme is compliant with the WFD objectives for all sections of the River Blythe assessed, for the Hatchford-Kingshurst Brook and the Tame Anker and Mease Secondary Combined (groundwater) water bodies, taking into account the mitigation measures identified [APP-156]. Such mitigation measures are to be adopted during construction to manage all pollution risks in accordance with the CEMP and as indicated in the list of 'outline management plans' to control pollution, water and flooding listed at G1 of the REAC [REP9-019]. Measures to treat surface water run-off and manage the risk of future routine road run-off and accidental spillages are indicated in the Drainage Strategy Report for the Scheme [APP-160]. Permissions will be required from the Environment Agency prior to construction related to discharges of any 'unclean' runoff, and for any activity within 8m of the bank of a main river or culvert on a main river.

Drainage Strategy

- 5.11.9. Consultation with Environment Agency (EA) and Natural England (NE) identified a preference for a drainage strategy based on SuDS with minimal maintenance requirements. However, Birmingham Airport identified a preference for a strategy avoiding any exacerbation of bird strikes. The drainage strategy is designed to meet both those preferences, as appropriate [APP-160]. It envisages road run-off being discharged to surrounding drainage ditches and small watercourses with intervening SuDS to provide appropriate attenuation of flows and treatment to avoid potential adverse effects on water quality. Water from the 15 drainage networks identified is to be treated using general filter drains, reed beds, swales and, in 3 cases, a 'vortex grit separator'.

⁷⁹ DMRB, (2009); Volume 11, Section 3, Part 10, HD45/09 Road Drainage and the Water Environment, Highways England 2009 and DMRB, Volume 4, Section 2, Part 3 – Geotechnics and Drainage (HD33/16), Highways England (2016).

Detention basins and open SuDS features are not intended in the vicinity of the Airport safeguarding zone, due to the risk of open water attracting migrating birds and the susceptibility of planes to bird strikes. Reed beds are to be planted at all outfall locations, save at the northern end of the mainline link road where a sump and storage tank (with added filters) and a swale arrangement is designed; shallow reed beds are to be netted and maintained with steepened banks and short grass.

5.11.10. A HAWRAT assessment is to confirm that carriageway run-off will receive adequate treatment prior to being discharged to existing ditches or brooks. Because the mainline link road is to be largely in a cutting (sometimes well below ground level), pumping stations will be required at some outfalls from reed beds and attenuation systems in order to achieve a connection into the existing watercourses. The location of existing drainage systems on the M42 and A45 will need to be assessed in order to determine whether existing pipework must be altered or extended. Cut-off drains are to be provided at the top of cut slopes and at the bottom of embankments; these will be kept separate from the carriageway drainage where a suitable outfall to an existing watercourse or ditch can be achieved.

5.11.11. Most of the drainage networks will utilise existing outfalls: new outfalls will drain the mainline link road, the realigned Catherine-de-Barnes Lane and the alterations to the Junction 6 slip roads. Culvert extensions are required on the A45 (west of Junction 6), at Hollywell Brook (north of Junction 6) and at Bickenhill Lane (near Birmingham International Airport). These will be designed to minimise adverse impacts on the existing channel form and function. Major ditch diversions are necessary to the west of Bickenhill Lane and to the east of the M42, north of Hollywell Brook.

HAWRAT assessment

5.11.12. A HAWRAT assessment for routine road runoff and groundwater, as well as an assessment of accidental spillage is undertaken in accordance with DMRB guidance [APP-158]. The assessment identifies that, in the absence of mitigation, the Scheme drainage networks 1A, 1B, 2A, 2B, 6, 8, 11, 13 and 14 all fail the assessment for routine road runoff both individually and cumulatively. Networks 1B, 2B, 8 and 11 fail for dissolved metal impacts and chronic sediment impacts. Networks 1A, 2A, 6, 13 and 14 fail due to chronic sediment-bound pollutants only.

5.11.13. The drainage design utilises filter drains, proprietary storage tanks, reedbeds, wetlands, and grassed swales, as appropriate for the drainage network. The immediate receiving watercourses tend to be small vegetated field ditches. These provide additional 'natural' treatment prior to discharge into the more significant watercourses such as the River Blythe. Provision of these treatments ensures that all networks meet the required standards. In addition, although networks 1A, 2A, 2B, 6, 10, 13 and 14 discharge into minor drainage ditches with very low flows, the use of swales and surface wetlands still provide compatible mitigation and provide protection to groundwater.

- 5.11.14. The assessment confirms that all networks pass the assessment of accidental spillage risk, there being less than a 1 in 100-year probability of an accidental spillage occurring for each network. Even so, spillage containment measures are included, such as the penstocks within reed beds, so that the risk is reduced still further.

Flood risk

- 5.11.15. The assessment shows that the majority of the Scheme is located within Flood Zone 1, with some parts to the north of Junction 6 located within Flood Zones 2 and 3 near to Hollywell Brook. Hydraulic modelling establishes that the brook does not over top its banks in the 1% Annual Exceedance Probability (AEP) event or 1% AEP plus 50% allowance for climate change. The assessment confirms that the land adjacent to Hollywell Brook is located in Flood Zone 1 rather than Flood Zone 3. Accordingly, the risk of flooding from Hollywell Brook is low and therefore compensatory storage in this area is not required. The assessment also confirms that the risk of flooding from surface water, drainage infrastructure and artificial sources is low. Given the mitigation measures incorporated into the drainage design, the risk of on-site or off-site flooding due to the Scheme is low. The Scheme will not increase flood risks elsewhere; indeed, it provides an improvement over the existing situation. Accordingly, drainage within the Scheme design meets the requirements of both the NNNPS and the NPPF.

- 5.11.16. The residual risk due to the failure of components, blockage or the exceedance of design events is to be addressed by regular maintenance to ensure that the system continues to perform as designed. To that end, the drainage networks have been split between the adopting authorities. SMBC will be responsible for taking ownership and maintenance responsibility for the realigned Catherine-de-Barnes Lane and associated side roads and Highways England will maintain the drains associated with the mainline link road, Junction 5A and the free flow links at Junction 6.

Bickenhill Meadows SSSI

- 5.11.17. This SSSI is divided into 2 units that lie either side of Catherine-de-Barnes Lane and will be separated by the cutting of the new mainline link road. Investigations indicate [REP3-004 and REP7-015, 2.2.1] that the NW Unit appears to depend on direct rainwater recharge to maintain the water table at a suitably high level to support the special MG4 grass communities evident there. The geology prevents any significant groundwater flow between the NW Unit and the mainline link road. Although about 5% of the surface water catchment will be cut off by the Scheme, this is unlikely to significantly alter the occasional subsurface flow through the Unit.
- 5.11.18. In contrast, the SE Unit lies on a 'bowl' of thicker and more extensive deposits. Groundwater within the granular layers of those deposits will generally flow into the SSSI from the south, north, and west and then out towards the northeast [REP7-015, 2.2.2]. The water table is likely to be maintained through winter and spring by a combination of rainwater recharge, infiltration from the northern ditch, limited groundwater flows

from elsewhere in the catchment and, potentially, some recharge due to the infiltration from the central watercourse. Although most of the cutting will be through the low permeability Mercia Mudstone, around 18% of the surface water catchment for the SSSI beneath and to the west of the mainline link road will be lost or cut off. Even though it is estimated that the MG4 grasslands might only lose 3.6% of the surface water catchment (a level within annual variations), it cannot be confirmed that damage to the sensitive grassland is unlikely over the long term. Hence, mitigation is to be provided for the wet meadow in the SE Unit. No loss of surface water is estimated for the 'dry' MG5 grasslands.

- 5.11.19. A passive, gravity fed solution has now been designed to maintain the MG4 grassland on, and the flow of water through, the SW Unit [REP7-015, 2.3.1]. This is the solution preferred by Natural England [REP4-017, REP6-023], the Warwickshire Wildlife Trust [REP4-024, REP6-025, REP7-003] and SMBC [REP4-018, REP8-005], subject to certain provisos; it is sustainable, with minimal intervention save for appropriate monitoring. It supersedes the initial proposal for a pumped solution. And, it exhibits obvious advantages over the use of a potable water supply or borehole pumping. The design entails the use road run-off from the realigned Catherine-de-Barnes Lane (about 40%) and greenfield runoff from adjacent fields (roughly 60%) collected and delivered to the northern ditch of the SSSI via a conveyance swale [REP3-004]. The ditch will then recharge the wet meadow's water table. Monitoring of the habitat, with appropriate mechanisms and trigger points, will ascertain whether other interventions might be necessary [REP7-015].

Issues Arising

- 5.11.20. Few concerns are raised in relation to water and drainage during the Examination. It is simply necessary to set out:
- responses from the EA and SMBC, and
 - the need to include MG5 communities in monitoring the Bickenhill Meadows SSSI

Responses from the EA and SMBC

- 5.11.21. The EA explain that their main concerns relate to the impact of the Scheme on flood risk and the quality of ground and surface waters with particular reference to WFD compliance [REP1-014]. They consider the Scheme to be acceptable. Nevertheless, additional consents will be required under the Environmental Permitting Regulations in relation to detailed designs to minimise environmental risks. They agree that the modelling accurately establishes the flood plain for a 100-year return event with an additional 50% to allow for climate change. Hence, the Scheme effectively lies within the low risk Flood Zone 1 and no flood compensation is required. The hydraulic model for Hollywell Brook is requested to update the flood zones held by the EA. And, additional or extended outfalls or culverts, as well as work within 8m of Holywell Brook and Shadow Brook (both 'Main Rivers'), is likely to require an Environmental Permit.

- 5.11.22. Although the preliminary WFD assessment indicates that the River Blythe does not currently meet requirements, the drainage strategy is based on SuDS principles and should provide adequate treatment of any pollutants in surface run-off via filter drains, wetlands, swales and ditches. The mitigation measures should ensure that all works are carried out in accordance with the OEMP, which includes a Water Environment Plan. Discharges of contaminated run-off are to be controlled under the Environmental Permitting Regulations.
- 5.11.23. SMBC deem the impact of the Scheme on drainage and water quality to be neutral; the methodology and baseline assessments are supported [REP2-033]. The mitigation of risks from water pollution provided by the CEMP is welcomed as is the adoption of BPM to limit impacts on the surrounding water environment. The consideration of future maintenance needs in the CEMP and the REAC is approved. The submission of a scheme that mitigates impacts on flooding and water quality is welcomed, particularly the treatment provided through adopting SuDS where possible. Any further provision towards greater drainage network resilience in relation to climate change or unforeseen events is to be welcomed.

MG5 communities in the Bickenhill Meadows SSSI

- 5.11.24. SMBC consider that the MG5 community within the SSSI should also be included in the monitoring arrangements [REP8-005] and that an appropriate design to minimise the hydrological impact of the Scheme is required [REP2-033, REP4-018].
- 5.11.25. Warwickshire Wildlife Trust suggest that there is a need to monitor the MG4 and MG5 grassland habitats as, together, they form a complex wetland mosaic on the same site [REP4-024, REP6-025, REP7-003]. It is likely that the MG5 grassland may be affected by too much water, just as the MG4 grassland may be affected by too little. Moreover, the SSSI is a seed donor site for other MG4 and MG5 unimproved wet meadow grasslands in the sub-region and this greatly increases its intrinsic value and significance. Hence, monitoring the condition of both grassland communities is 'absolutely necessary' rather than just 'if necessary', as described in the Action Points 1 and 2.
- 5.11.26. The ExA consider that the Outline Bickenhill Meadows SSSI Monitoring and Management Plan [REP7-015] now addresses these concerns. It provides for a passive, gravity fed solution designed to maintain the MG4 grassland, as Natural England, the Warwickshire Wildlife Trust and SMBC prefer. And, it addresses several of the initial provisos, such as the nature and definition of the trigger points, the consequential actions required, as well as the duration of, and arrangements for, the monitoring regime. This is to include the monitoring of key indicator species known to be characteristic of MG4 and MG5 communities and those negative indicators typical of poor conditions.

Conclusion

- 5.11.27. The WFD assessment is deemed to be acceptable by the EA who also consider that the 'drainage strategy', being based on SuDS principles, should provide adequate treatment of any pollutants in surface run-off via filter drains, wetlands, swales and ditches. The HAWRAT assessment confirms that those treatments will ensure that all drainage networks meet the required standards, which offers room for improvement over the current situation. SMBC similarly support the methodology and welcome mitigation of risks from water pollution provided by the CEMP and the adoption of BPM. Hence, the Scheme is compliant with the WFD objectives and the ExA is satisfied that the application meets the tests set out at paragraphs 5.225 to 5.226 of the NNNPS.
- 5.11.28. The EA agree that the modelling confirms that the land adjacent to Hollywell Brook is in Flood Zone 1, so that the risk of flooding is low and compensatory storage is not required. The risk of flooding from surface water, drainage infrastructure and artificial sources is also low. Given the mitigation measures incorporated into the drainage design the Scheme will not increase flood risks elsewhere and provides some improvement over the existing situation. Accordingly, drainage within the Scheme design meets the requirements of both the NNNPS and the NPPF.
- 5.11.29. The ExA consider that the Outline Bickenhill Meadows SSSI Monitoring and Management Plan now provides for a passive, gravity fed solution designed to maintain the MG4 grassland and an appropriate monitoring regime for both the MG4 and MG5 grassland communities.
- 5.11.30. For those reasons, the ExA consider that the impacts on the water environment and flood risk have been adequately assessed and the mitigation measures proposed both sufficient and adequately secured. It follows that the Scheme will meet the tests set out in paragraphs 5.90 to 5.115 and 5.219 to 5.231 of the NNNPS and would be in compliance with the WFD.
- 5.11.31. Pulling the above together, the ExA's findings are that:
- Effects on Bickenhill Meadows SSSI have been appropriately assessed and are capable of being acceptably mitigated by R13 in accordance with paragraph 5.29 of the NNNPS. The effect on this designated site is therefore a neutral consideration.
 - The Proposed Development is compliant with the WFD. This represents a neutral consideration.
 - Most of the Proposed Development is located in Flood Zone 1 and the risk of flooding is low. The assessment also confirms that the risk of flooding from surface water, drainage infrastructure and artificial sources is low. Given the mitigation measures incorporated into the drainage design, the risk of on-site or off-site flooding due to the Proposed Development is also low. The Proposed Development will not increase flood risks elsewhere; indeed, it provides an improvement over the existing situation. Matters relating to drainage and flood risk therefore weigh in favour of the Order being made.

- Consequently, impacts on the water environment and flood risk have been adequately assessed and mitigation measures proposed are both sufficient and adequately secured, thereby meeting the tests set out in NNNPS paragraphs 5.90 to 5.115 and 5.219 to 5.231.

5.12. NOISE AND VIBRATION

Policy Background

- 5.12.1. The NNNPS recognises that excessive noise can have wide-ranging impacts on the quality of human life and health, as well as on the use and enjoyment of special areas or the function and value of ecological sites. Similar considerations apply to vibration.
- 5.12.2. An assessment of noise and vibration should include:
- a description of the noise sources;
 - the identification of noise sensitive premises and areas;
 - the characteristics of the existing noise environment;
 - a prediction of how the development may affect the noise environment in the short and long term, and at relevant times;
 - the effects of those predictions on noise sensitive premises and areas;
 - mitigation measures, including the adoption of 'best available techniques'.
- 5.12.3. The prediction of road traffic noise should be based on the methodology set out in the *Calculation of Road Traffic Noise*⁸⁰ (CRTN). For the prediction, assessment and management of construction noise and vibration BS 5228⁸¹ is relevant. Natural England should be consulted in relation to the effects on designated sites for landscapes or conservation [APP-057].
- 5.12.4. The SoS should not grant consent unless, within the context of sustainable development, the Scheme:
- avoids significant adverse impacts on health and quality of life;
 - mitigates and minimises other adverse impacts on health and quality of life; and
 - contributes to improvements to health and quality of life through the effective management and control of noise, where possible.
- 5.12.5. The Government's policy on noise is set out in the Noise Policy Statement for England (NPSE). The long-term vision, consistent with the requirements of the NNNPS, is to '*promote good health and a good quality of life through the effective management of noise within the context of policy on sustainable development*'. To those ends, the Explanatory Note introduces concepts to establish what a significant

⁸⁰ Calculation of Road Traffic Noise DoT Welsh Office 1988

⁸¹ BS 5228:2009 + A1:2014 Code of Practice for noise and vibration control on construction and open sites. Part 2 - Vibration. British Standards Institution (2014)

effect might be (see table 2 below). However, it is recognised that *'it is not possible to have a single objective noise-based measure that is mandatory and applicable to all sources of noise in all situations'*. Consequently, the policy acknowledges that the SOAEL, for example, *'is likely to be different for different noise sources, for different receptors and at different times of the day'*.

Table 2: Adverse Effects and Noise Levels⁸²

No Observed Effect Level NOEL	Noise not present, no observed effect This is the level below which no effect can be detected.	No measures required
No Observed Adverse Effect Level NOAEL	Noise heard, but no change in behaviour etc discernible: slight effects on acoustic character, but no change in the quality of life.	No specific measures required
Lowest Observed Adverse Effect Level LOAEL	Noise heard and small changes in behaviour etc discernible: turning up volume of TV: speaking louder: closing windows sometimes: potential for some sleep disturbance: some effects on acoustic character: small changes in the quality of life. This is the level above which adverse effects on health and quality of life can be detected.	Mitigate and reduce to a minimum
Significant Observed Adverse Effect Level SOAEL	Noise leads to material change in behaviour etc: avoiding some activities when noise intrusive: keeping windows closed most of the time: potential for sleep disturbance and difficulty in getting to sleep: premature awakening: effects on acoustic character: quality of life diminished. This is the level above which significant adverse effects on health and quality of life occur.	Avoid

⁸² Adapted from the Noise Exposure Hierarchy and the Noise Policy Statement for England Explanatory Note, DEFRA, 2010

Unacceptable Adverse Effect Level UAEL	Noise very disruptive leading to extensive and regular changes in behaviour etc: inability to mitigate effect of noise: psychological stress: regular sleep disturbance: loss of appetite: significant, medically definable harm, both auditory and non-auditory	Prevent
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- 5.12.6. The NPPF requires planning policies and decisions to mitigate, and reduce to a minimum, potential adverse impacts of noise from new development, avoiding significant adverse impacts on health and the quality of life. The significant adverse impacts are referenced against the NPSE Explanatory Note, which is also referred to in the PPG, although it is the latter that introduce the concepts of 'No Observed Adverse Effect Level (NOAEL)' and an 'Unacceptable Adverse Effect Level (UAEL)'.
- 5.12.7. Noise and vibration from road traffic are not common law or statutory nuisances. Instead the Land Compensation Act 1973 and the Noise Insulation Regulations 1975 (as amended) (NIR) apply, the former to provide compensation to owners of land or property where a loss in value is caused by new or altered roads, the latter providing grants for undertaking noise insulation work in the qualifying parts of eligible buildings affected by traffic or construction noise. The Control of Pollution Act 1974 enables a Local Authority to serve a notice specifying how construction works are to be carried out, specifying working hours and noise or vibration limits. Breaching the terms of the notice is an offence.
- 5.12.8. Policy P14 of the adopted Local Plan for SMBC seeks to minimise the adverse impact of noise. Development likely to create significant noise will be permitted only if it is located away from noise sensitive uses or it incorporates measures to ensure adequate protection against noise. Noise sensitive development will be permitted only if it is located away from existing sources of significant noise, or if no suitable alternatives exist, the development incorporates measures to reduce noise intrusion to an acceptable level. It also aims to protect the tranquil and locally distinctive areas in the Borough by guiding new development, particularly those that will create significant noise, either directly or through associated transport, to locations that will avoid or minimise adverse impacts [REP2-033].

The Applicant's Approach

Method

- 5.12.9. The policies are quite prescriptive about what is required in an assessment of the noise and vibration effects caused by a scheme. The Applicants have complied with those requirements.

Operations

- 5.12.10. For the operational traffic noise assessment, a baseline noise survey has been undertaken at 9 monitoring locations, chosen in agreement with SMBCs EHO [APP-101, APP-152]. Those results are compared with the current (2016) noise derived from CRTN by way of validation. The latter is then used to derive long and short-term changes in road traffic noise in relation to the chosen LOAEL and SOAEL under the DM and DS scenarios, as well as the effects of the scheme (DM-DS). Receptors within 600m of the Scheme are assessed, including a small section of the Grand Union Canal and its associated receptors. Daytime and night-time predictions are derived for 2023 and 2038 following DMRB methodology [APP-057] with dB(A) LA10,18h being used as the index associated with annoyance from traffic noise.
- 5.12.11. A daytime SOAEL (measured at the façade) of 68dB LA10,18h is used; it is consistent with the daytime trigger in the NIR and roughly equivalent to 63dB LAeq,16h⁸³. The daytime LOAEL is set at 50dB LAeq,16h reflecting the World Health Organisation (WHO) Guidelines for Community Noise where 'moderate annoyance' occurs in outdoor living areas; this is broadly equivalent to 55dB LA10,18h. The night-time SOAEL is set at 55dB LAeq,8h, (free field) roughly equivalent to the interim night-time outdoor target provided in the WHO Night Noise Guidelines for Europe (NNG)⁸⁴; it is advised that road traffic noise above that level is associated with adverse health effects. The LOAEL is set at 40dB LAeq,8h (free-field), equating with the LOAEL in the NNG [APP-057].

Construction

- 5.12.12. The assessment of construction noise caused by the Scheme is derived (in advance of an appointed contractor) from the assumptions of a 'buildability' advisor. The estimates are based on reasonable worst-case situations entailing the number and type of plant, typical 'on' times, working areas and durations [APP-150] as experienced by 16 representative sensitive receptors [APP-101]. The assessment is in accordance with the methodology in BS 5228. This identifies SOAELs and LOAELs in relation to relevant ambient noise levels. The latter is the ambient noise level at the relevant time: the former varies depending on whether the ambient noise level is below, above or equal to a fixed set of levels. Methods used to assess the noise of construction traffic are similar to those employed for operational traffic noise but limited to within 10m

⁸³ This is the metric used in the World Health Organisation (WHO) Guidelines for Community Noise. 55d(BA) LAeq,16h is the level at which 'serious annoyance' ensues in outdoor living areas.

⁸⁴ Night Noise Guidelines for Europe (2018) advise that road traffic noise above 53 dB Lden (free-field) is associated with adverse health effects. As Lden (free-field) \approx LA10,18h (free-field), 53 dB Lden (free-field) \approx 56dB LA10,18h (façade) with a 3 dB(A) façade correction.

of the nearside carriageway. Predictions are undertaken for DM and DS scenarios in 2021, the peak year for construction [APP-057].

- 5.12.13. Vibration levels are estimated in accordance with the BS 5228 up to 100m from the relevant works. Potential impacts might entail damage to buildings and annoyance to occupiers, the former in accordance with BS 7385. This indicates that the probability of 'cosmetic' building damage tends to be zero for transient vibration levels less than 12.5ppv,mms⁻¹: for continuous vibration, the threshold is around 6ppv, mms⁻¹. The BS indicates that, at double those levels, minor damage (the formation of large cracks, loosening and falling plaster or cracks through brickwork) occurs and that with a further doubling, major damage (affecting structural elements, support columns, and the like) is likely.
- 5.12.14. For human receptors the LOAEL is defined as 0.3ppv,mms⁻¹, a level at which BS 5228 suggests that vibration might be just perceptible in residential environments. The SOAEL is defined as 1.0ppv,mms⁻¹, since it is likely that this will cause complaints, but can be tolerated with a warning and explanation to residents [APP-057]. This is combined with a qualitative assessment of the significance of the duration of construction noise or vibration levels above the SOAEL. Levels above the SOAEL for less than 10-days in any 15, or less than 40-days in any 6-months, is normally deemed to be insignificant. The timing, location and nature of the exceedances, together with the sensitivity of the receptor, also warrant consideration.
- 5.12.15. The impact of traffic induced vibration is assessed using dB LA10,18h and is similar to the incidence of annoyance from traffic noise but about 10% lower; it is assumed to be zero below 58dB(A). Following the guidance in DMRB, each property up to 40m from roads within 600m of the Scheme and where noise is predicted to be at or above 58dB LA10,18h, the percentage of people 'annoyed' by vibration is calculated [APP-057].

Páirc na hÉireann

- 5.12.16. The noise implications of reconfiguring the WGAA sports pitches is derived from guidance offered by Sport England indicating that, on the half-way line and 10m from the touchline, a typical noise from sporting events is 58dB LAeq,1h⁸⁶. This is based on 9 sessions on 3 artificial grass pitches (AGPs), including football, hockey and rugby and participation by men, women and children. The most significant noises are voices, except for hockey. An indication of noise from the car park is provided by the noise of a car door slamming, which is taken to be 78dB LAmax at 2m. The noise of a potential hurling wall is provided by the noise of a hockey ball hitting a backboard; it is 94 dB LAmax at 1m. Noise from the clubhouse is taken from the guidance given by the

⁸⁵ 12.5ppv,mms⁻¹ is the peak particle velocity (ppv) in millimetres per second (mms⁻¹)

⁸⁶ Design Guidance Note: Artificial Grass Pitch Acoustics - Planning Implications, Sport England

Institute of Acoustics⁸⁷. Initially 5 different options for the reconfiguration were assessed. These have now been superseded by the 'proportionate' reconfiguration proposed as part of the DCO [REP2-019]. This is most similar to option 5 except that a hurling wall is not now proposed. Option 3 was initially assessed as representing a worst-case reconfiguration for neighbouring residents. No noise assessment has been made for the 'legacy' scheme.

Results

Operations

- 5.12.17. An exact match between the baseline noise survey and the noise modelling is not to be expected. The latter is derived from typical weekday traffic conditions over a year: the former includes daily variations, the effects of wind, ambient noises and often screens of hedges, fences and buildings. Although the pattern exhibited by the model and the survey is as expected (the highest levels coincide and are affected by the busier roads), the surveyed results are, without exception, lower than the predictions. All but 2 of those differences are large enough to be noticeable (around 3dB(A) or above). Even so, given the reasons for those differences, the results are held to provide confidence that the noise modelling is robust.
- 5.12.18. In the opening year (2023), 3 dwellings are predicted to experience a minor increase in traffic noise due to the Scheme (DM-DS being an increase of 1.0-2.9 dB LA10,18h). The dwellings are Oak Tree Lodge on Shadowbrook Lane (ML2), The Barn and Orchard Cottage on St Peters Lane (all close to the new mainline link road). Everywhere else a negligible (0.1-0.9 dB LA10,18h) increase (38 dwellings) or decrease (112 dwellings) is predicted with 42 experiencing 'no change'. Negligible changes are also forecast for St Peter's Church, the NEC and the Grand Union Canal. The increases in traffic noise are due to the use of the mainline link road and the decreases partly due to the diversion of traffic from the M42.

⁸⁷ Good Practice Guide on the Control of Noise from Pubs and Clubs and its associated Annex, Institute of Acoustics

Table 3: Long-term changes in noise level⁸⁸

		Daytime dB L _{A10,18h}		Night-time dB L _{night,outside}	
		Number of dwellings		Number of dwellings	
		DM 2023-2038	DM 2023- DS 2038	DM 2023-2038	DM 2023- DS 2038
Increase in noise	0.1- 2.9	105	133	24	18
	3.0- 4.9				
	5.0- 9.9				
	≤10.0				
No change		28	27	10	14
Decrease in noise	0.1- 2.9	62	35	64	66
	3.0- 4.9				
	5.0- 9.9				
	≤10.0				

5.12.19. In the longer term the increase in traffic accounts for most of the dwellings experiencing negligible or minor increases in daytime traffic noise, although the redistribution engendered by the Scheme adds 28 dwellings to that number. By the same token, the Scheme 'benefits' 27 fewer dwellings. St Peter's Church, the NEC and the Grand Union Canal also experience negligible or minor increases in daytime traffic noise. The impact of the Scheme is different at night; 6 fewer dwellings experience increases in noise than in the DM scenario, 2 more enjoy small reductions and 4 more are sheltered from the general rise in noise due to general increases in traffic.

5.12.20. The level of traffic noise (as measured by dB LA10,18h) can be associated with the level of annoyance (% of people bothered very much or quite a lot by traffic noise) and the changes in traffic noise can be associated with the changes in levels of annoyance⁸⁹. The 6 properties identified as experiencing the greatest increase in annoyance are properties on St Peter's Lane (Orchard Cottage, The Barn, Ivy Cottage

⁸⁸ From tables 12.12 & 12.21 in APP-057

⁸⁹ Figures 2 and 3 in Volume 11, section 3, part 7: Traffic Noise and Vibration DMRB CD/153 1994

and Rose Cottage), Haystowe on Church Lane and Oak Tree Lodge on Shadowbrook Lane. The Barn and Orchard Cottage on St Peters Lane as well as Oak Tree Lodge on Shadowbrook Lane also experience initial minor increases in traffic noise. All must experience negligible or minor increases in traffic noise in the long-term. The properties are close to the new mainline link road and some are also close to the realigned Catherine-de-Barnes Lane.

Table 4: Long-term changes in annoyance from traffic noise level⁹⁰

		Number of dwellings	
		DM 2023-DM 2038	DM 2023-DS 2038
Increase in annoyance	≤10%	69	49
	10-20%		35
	30-40%		6
	≤40%		
No change		104	93
Decrease in annoyance	≤10%	22	12
	10-20%		
	30-40%		
	≤40%		

5.12.21. In comparison to the DM scenario, the Scheme reduces the number of dwellings experiencing noise levels above the relevant SOAEL both during the day and at night. The benefits are greater initially, the DS daytime scenario improving over the DM scenario by 8 dwellings in 2023 but only by 4 dwellings in 2038. Similarly, at night 17 fewer dwellings are above the SOAEL in the DS scenario initially but the difference is only 5 dwellings by 2038. The majority of dwellings which remain above the SOAEL are close to the main roads and experience only a negligible change in traffic noise due to the Scheme. There are no properties above the daytime SOAEL predicted to experience an increase of $\geq 1\text{dB LA}_{10,18\text{h}}$ as a result of the proposed development in the short term.

⁹⁰ From tables 12.13 & 12.22 in APP-057.

Table 5: Number of residential buildings above the SOAEL⁹¹

		Number	
		DAY 68dB L _{A10,18h}	NIGHT 55 dB L _{Aeq,8h}
2023	DM	44	112
	DS	36	95
2038	DM	44	94
	DS	40	89

5.12.22. At Bickenhill Meadows SSSI noise levels, with and without the Scheme, are between the LOAEL and SOAEL and there are no noise sensitive species there [APP-054]. Virtually no change due to the Scheme is anticipated in the area above the SOAEL or between the LOAEL and SOAEL at the River Blythe SSSI.

5.12.23. In summary, 2 properties on St Peter's Lane and 1 on Shadowbrook Lane will experience a 'minor' increase in operational traffic noise, but the noise level will be below the SOAEL. Properties on Church Lane, St Peters Lane, Middle Bickenhill Lane, Friday Lane, Solihull Road, Diddington Lane, Bickenhill Lane, NEC and St Peter's Church (38 in all) are expected to experience a negligible increase in noise. The Scheme will reduce the number of properties with noise levels above the SOAEL. Elsewhere the Scheme will engender no change or negligible reductions in operational traffic noise, though at 8 properties, the reductions will be below the SOAEL, namely The Dale, Four Winds, Old Station Road; Providence Cottage, Wyckhams Close, Shirley Fields, 1 Clock Cottage, and Springfields. The section of the Grand Union Canal within 600m of the Scheme will also experience a negligible decrease in noise.

Construction

5.12.24. It is estimated that construction noise will be below the SOAEL at The Woodlands (C1), the M42 slip road (C9), Shirley Fields (C13) and Old Station Road (C15) for all construction works. The distance of the Grand Union Canal from the nearest construction activity should ensure the absence of any significant adverse effect there. Everywhere else exceedances are anticipated for certain activities. Where possible and effective, a barrier is assumed to reduce the noise by 5dB(A). However, barriers are not effective or not practical at The Paradise (C2), Four Winds (C4), The Dale (C5) and Rose Cottage (C6) during the demolition of Solihull Road bridge and at 1 Clock Cottage (C8) during boundary fencing works. The significance of construction noise is derived from a qualitative assessment combining the duration of the activity and the degree to which noise emissions exceed the relevant SOAEL.

⁹¹ As table 12.23 in APP-057.

Table 6: Number of residential buildings above the SOAEL⁹²

Location	Exceed SOAEL by dB(A)	Activity	Duration & tests of significance	Result NS or S
C2 The Paradise	1 night	night-time demolition of Solihull Road Bridge (activity 19)	10 days 10 days in any 15	Unlikely NS
C3 Woodside (also, Mayfield)	2 daytime	works at Junction 5A, site clearance (activity 8)	10 days 10 days in any 15	Unlikely NS
	1-2 daytime	realignment of Solihull Road, surfacing works and demolition of Solihull Road overbridge (activities 12 and 19)	100 days >10 days in any 15 >40 days in 6 months	Likely S
	2 night	Junction 5A overbridge and Solihull Road overbridge, beam installation (activity 18)	5 days & 10 days (separated by 10 months) 10 days in any 15	Unlikely NS
	17 night	demolition of Solihull Road overbridge (activity 19)	10 days throughout 10 days in any 15	Likely S
C4 Four Winds	3 & 1 daytime	realign Catherine-de-Barnes Lane, earthworks and surfacing works (activities 5 & 12)	60 days & 100 days separated by 10 months >10 days in any 15 >40 days in 6 months Only when plant within 130-155m	Unlikely NS

⁹² Paragraphs 12.9.13-12.9.24 and table 12.17 in APP-057; where there appears to be disagreement between the text and the table the figures above follow the text

NS is not significant: S is significant. Night includes evening

Location	Exceed SOAEL by dB(A)	Activity	Duration & tests of significance	Result NS or S
	5 night	demolition of Solihull Road overbridge (activity 19)	10 days throughout 10 days in any 15	Likely S
C5 The Dale	5 to 10 daytime	realign Catherine-de-Barnes Lane, earthworks, boundary fencing and site clearance (activities 5, 7 & 8)	All relatively short duration	Unlikely NS
C5 The Dale	2 daytime	earthworks for mainline link road (activity 30).	7 months on 3 sections of the road >40 days in 6 months	Likely S
C5 The Dale	4 night	earthworks for mainline link road (activity 30).	7 months on 3 sections of the road >40 days in 6 months	Likely S
C5 The Dale	2 night	demolition of Solihull Road overbridge (activity 19)	10 days throughout 10 days in any 15 only just above SOAEL	Unlikely NS
C6 Rose Cottage (also 5 dwellings on St Peter's Lane)	1 to 12 daytime	realign Catherine-de-Barnes Lane, earthworks, drainage, fencing, site clearance and surfacing works (activities 5, 6, 7, 8 & 12)	100 days >10 days in any 15 >40 days in 6 months	Likely S
C6 Rose Cottage (also 5 dwellings on St Peter's Lane)	7 daytime	earthworks for mainline link road (activity 30).	7 months on 3 sections of the road >10 days in any 15 >40 days in 6 months	Likely S

Location	Exceed SOAEL by dB(A)	Activity	Duration & tests of significance	Result NS or S
	4 night	earthworks for mainline link road (activity 30).	7 months on 3 sections of the road >10 days in any 15 >40 days in 6 months	Likely S
C7 Farm Cottage	1 Night	night-time A45 NMU bridge gantry demolition (activity 20)	5 days >10 days in any 15 >40 days in 6 months	Unlikely NS
C8 1 Clock Cottage	3 daytime	Boundary fencing works (activity 7)	Relatively short duration nearby	Unlikely NS
(also 9 dwellings on Clock Lane)	5 Night	earthworks for mainline link road (activity 30)	7 months on 3 sections of the road >10 days in any 15 >40 days in 6 months Only if plant < 165m	Likely S
C10 Bridge House	5 daytime	north west free flow link underpass, piling, pile capping and decking (activity 22)	Risk of >10 days in any 15 >40 days in 6 months	Likely S
C10 Bridge House, Church Lane	10 night	night-time A45 NMU bridge gantry demolition (activity 20)	5 days >10 days in any 15 >40 days in 6 months	Unlikely NS

Location	Exceed SOAEL by dB(A)	Activity	Duration & tests of significance	Result NS or S
C11 The Lodge, A45 (also, dwellings in Wyckhams Close)	9 daytime	north west free flow link underpass, piling, pile capping and decking (activity 22)	Risk of >10 days in any 15 >40 days in 6 months	Likely S
C12 First Bungalow, East Way	1 daytime	connection of the M42 southbound to the A45 eastbound, site clearance (activity 8)	5 days >10 days in any 15 >40 days in 6 months	Unlikely NS
C14 The Bungalow, Church Lane	6 night	night-time A45 NMU bridge gantry demolition (activity 20)	5 days >10 days in any 15 >40 days in 6 months	Unlikely NS
C16 Providence Cottage, St Peter's Lane	1 to 9 daytime	realign Catherine-de-Barnes Lane, earthworks, fencing, site clearance, subbase and surfacing works (activities 5, 7, 8, 11 & 12)	100 days >10 days in any 15 >40 days in 6 months	Likely S
	3 night	earthworks for mainline link road (activity 30)	7 months on 3 sections of the road >10 days in any 15 >40 days in 6 months Only if plant < 180m [REP9-011]	Unlikely NS

5.12.25. In summary, although only 4 of the 16 representative receptors experience construction noise levels below the SOAEL, the significance of the exceedances experienced by a further 4 is reduced due to the 'limited' periods during which those exceedances are expected to prevail.

However, at the remaining 8 receptors (50%) significant adverse construction noise is anticipated. At Woodside (C3) this is expected to occur during both the day and night; this is also the case at The Dale (C5) and at Rose Cottage (C6). At Four Winds (C4) it is anticipated only during the night, as it is at 1 Clock Cottage (C8). In contrast, at Bridge House (C10) it is anticipated only during the day, as it is at The Lodge (C11) and Providence Cottage (C16).

- 5.12.26. For the vibration effects of construction, the SOAEL is not exceeded at any of the receptors during steady-state operations (assuming vibratory rollers are not used within 25m) nor at start-up or run-down (provided a 50m separation distance is maintained). The maximum ppv is between the LOAEL and SOAEL at 9 receptors. Most of the piling is to be undertaken by rotary boring, which avoids significant levels of vibration, though impact piling is needed for the sheet pile walls at the NEC underpass. The maximum ppv generated there exceeds the SOAEL at Bridge House (C10) when the activity is 75m to 111m distant. However, ppv levels are lower at greater distances and the activity continues up to 195m away. Hence, even though those works are anticipated to last 33 days, the likelihood of the SOAEL being exceeded for more than 10 days in 15 is reduced. It is assumed that the adverse effects are not significant. Similarly, no significant combined adverse effect of construction noise and vibration is anticipated at any receptor due to the short duration of the latter.
- 5.12.27. The noise from construction traffic increases noise levels by about 0.5dB, on average (18-hour AAWT flows). In the AM peak, increases between 1.1dB and 2.4dB are predicted on 3 road links around the Clock Interchange. In the PM peak an increase of 1.1dB at only one such road is predicted. Works on the M42 and A45, are likely to require management (speed restrictions, lane and slip road closures and vehicle re-routing) all of which could affect noise emissions. However, noise from construction traffic is unlikely to be significant and no further mitigation is required.

Páirc na hÉireann

- 5.12.28. The predicted noise levels from the reconfigured pitches are below the daytime and evening WHO guidelines for the onset of moderate community annoyance (50dB L_{Aeq}) at all the nearest receptors assessed [APP-153]. Even so, Four Winds and Solihull Music School are expected to experience an increase in comparison to the existing arrangement. For option 3 the increases are 3dB and 0.8dB, respectively: for option 5 the respective increases are 1.2B and 1.1dB: and, for the 'proportionate' reconfiguration 1.3dB and 0.6dB [REP4-010]. The latter increases are not normally perceptible as a change in noise levels. Everywhere else reductions are forecast [APP-153, table 1-8]. The 'proportionate' reconfiguration now proposed as part of the DCO [REP2-019] is most similar to option 5, save that a hurling wall is not now part of that scheme. The predicted noise levels from option 5 and the 'proportionate' reconfiguration are below the existing ambient noise levels for all receptors surveyed on Catherine-de-Barnes Lane and Shadowbrook

Lane⁹³; they are well below the predicted baseline traffic noise. This includes both the front and rear elevations at Four Winds.

- 5.12.29. For option 5, the car park and clubhouse remain in their current locations, so changes in noise levels emanating from those sources ought to be limited. The noise of a car door slamming in the car park is estimated to be 20.4dB L_{Amax} at Four Winds. It is assumed that the car park is used during the day, evening and night in conjunction with the use of the pitches and the clubhouse. But the predicted level is well below the relevant WHO guideline to prevent sleep disturbance (60dB L_{Amax}). And, the specification of the new club house will be designed to ensure that entertainment noise emanating from the building will not exceed relevant background levels [APP-153].
- 5.12.30. It follows that changes in noise levels emanating from the reconfigured sports pitches, clubhouse and car park, as intended in the option 5 and the 'proportionate' DCO scheme, are likely to be barely perceptible at Four Winds or elsewhere. Noise levels remain below the WHO guidelines and below ambient levels.
- 5.12.31. The Scheme generally increases the noise experienced at Páirc na hÉireann. Around the clubhouse, the likely increase on opening is up to 3dB. At the remaining northern pitch, there will be an increase of almost 5dB in a very small portion of the north eastern corner, though elsewhere increases of less than 3dB and less than 1dB. At the 2 new southern pitches there are negligible (less than 1dB) increases and decreases in noise. Hence, the likely significant effects affect only a very small portion of one pitch. The assessment has not taken account of any mitigating additional fencing or screening.

Mitigation

- 5.12.32. The noise emissions from the operational phase of the Scheme are to be mitigated through placing the mainline link road largely in cutting: by using a thin surface course system for Junction 5A and its slip roads as well as the mainline link road: and, by using the same surfacing arrangements for the north facing slip roads and free flow links at Junction 6 [REAC G32, REP9-019].
- 5.12.33. The Scheme is designed to avoid or minimise the effects of construction noise and vibration. Standard and embedded measures are to be implemented by the appointed contractor. The locations of the main site compound and associated storage areas are intended to reduce potential impacts and the appointed contractor will be required to develop and implement a Traffic Management Plan for the construction phase. This will present the haul routes and road management procedures used to manage traffic movements within the works, construction compounds

⁹³ This assumes that $L_{A10,18h} \approx L_{Aeq,18h} + 3dB$ in APP-057 table 12-11 and compares $L_{Aeq,18h}$ (the ambient noise level) with $L_{Aeq,1h}$ (the noise from the sports pitches)

and on the local road network in the vicinity of the closest NSRs [REP9-019].

- 5.12.34. The EMP [APP-172, REP9-019] details the measures to be undertaken during construction of the Scheme to mitigate temporary effects. Solid site hoarding is likely to be required at Woodside (C3), Four Winds (C4), The Dale (C5), Rose Cottage (C6), Farm Cottage (C7), 1 Clock Cottage (C8), Bridge House (C10), The Lodge (C11), Rose Farm Cottage (C12), The Bungalow (C14) and Providence Cottage (C16). Although solid barriers at 2m in height, might provide a 10dB reduction in construction noise at ground floor rooms, only a 5dB(A) reduction is assumed in calculations since complete screening may not be possible in practice. It may not be feasible to install long term barriers everywhere, so temporary barriers around individual plant or activities may be used, together with good communications with local residents. The contractor will undertake assessments to demonstrate noise and vibration compliance during the construction period and to inform the need for modifications. The use of barriers and 'best practice measures' are intended to minimise the impact of construction noise.

Issues Arising

- 5.12.35. The key concerns raised in relation to noise and vibration during the Examination are:
- cumulative levels of simultaneous construction noise from different sources
 - the insignificance or otherwise of construction noise levels above the SOAEL for 'short' periods
 - the use of NIR to define the SOAEL for operational noise and the consequences of using a SOAEL derived from the WHO guidelines
 - the applicability of Sport England's guidance to the noise from Gaelic games
- 5.12.36. The effects of noise or vibration from the site compounds is addressed in section 5.8, above.
- 5.12.37. Table 12.17 in the chapter 12 of the ES [APP-057] sets out the 'reasonable worst case mitigated (where possible) construction noise levels' for each of the 31 'work' activities at each of the 16 noise sensitive receptors (NSR) assessed. Significant noise emissions are identified as exceeding the relevant SOAEL and by their duration, either as lasting more than 10 days in any 15 or more than 40 days in 6 months. The ExA raised 2 concerns about that assessment at the ISH on living conditions [EV-023] and in the subsequent actions arising from that hearing [EV-033]. First, the noise from each activity appears to be assessed as a separate entity so that the cumulative impact of noise from several simultaneous noise sources might be overlooked. Second, dismissing noise above a relevant SOAEL as insignificant because it occurs for less than 2 weeks in any 3, or less than 8 weeks in any half year, may downplay the intrusive effects to be endured by receptors. These concerns, and the responses to them [REP7-011] are considered below.

Cumulative construction noise

- 5.12.38. The ExA acknowledges that the impact of construction noise at Rose Cottage (C6) (for example) is identified as significant. But, if some of the activities entailed in the realignment of Catherine-de-Barnes Lane were to occur simultaneously (perhaps earthworks, fencing and site clearance), the SOAEL could be exceeded by 15dB rather than 12dB. Similar considerations might apply at Providence Cottage (C16) and elsewhere. At Four Winds (C4) the possible simultaneous occurrence of earthworks for the mainline link road (activity 30) and site clearance for the realignment of Catherine-de-Barnes Lane (activity 8) might create an additional source of cumulative construction noise above the SOAEL.
- 5.12.39. The Applicant responds [REP7-011, item 9] that precise details of the construction programme has yet to be confirmed. It will incorporate some essential flexibility. The programme devised for the ES is, of necessity, a well-educated forecast and, as a matter of practice, a worst-case scenario. In many instances, the assumptions made result in noise levels that are highly unlikely to occur in practice. It is assumed that all plant used for an activity operate simultaneously and are positioned in relation to the receiver. Where barriers are anticipated to be required (and feasible) only a 5dB reduction is assumed at ground floor level, rather than 10dB, and no reduction is assumed at the first-floor façade.
- 5.12.40. In any case, the ES requires the contractor to undertake further assessments to demonstrate noise and vibration compliance during the construction period and to accurately identify the requirements for barriers. The OEMP [APP-172, REP9-019] requires that an Environmental Aspects Register is prepared as part of the CEMP to *'detail the attributes of the works that are expected to give rise to nuisance from noise and vibration. Appropriate controls shall be identified from this register and applied to control or reduce impacts as far as reasonably practicable, based on the measures set out within this plan.'* Moreover, adopting the 'Best Practicable Means', as required in the OEMP, works must be carefully programmed to minimise the impact of noise and vibration. This should include phasing of the works to minimise the likelihood that multiple activities will be undertaken simultaneously close to a receptor. Hence, the cumulative impact of multiple activities occurring simultaneously is not appropriate; such possibilities will be avoided by an appropriately phased programme.
- 5.12.41. The ExA is satisfied that the controls to be included in the CEMP are likely to minimise the probability of cumulative noise from simultaneous construction activities significantly adding to the noise to be endured by receptors. The ExA also notes that the CEMP will include provisions to foster communication and liaison between receptors and the appointed contractor, which should also help to avoid cumulative noise effects.

The duration of construction noise above the SOAEL

- 5.12.42. At first sight, the duration of noise from construction above a relevant SOAEL for periods of up to 2 weeks in any 3, or up to 8 weeks in any half

year, is likely to be intrusive. The ExA asked for further justification as to why that is not assessed as significant [EV-023 and EV-033].

- 5.12.43. The Applicant responds [REP7-011, item 9] that the guidance is taken from BS 5228. Because the ES is prepared prior to the appointment of a principal contractor, precise details of the construction programme have yet to be confirmed. The assessment is intended to be representative but conservative and, in many instances, the noise levels predicted are highly unlikely to occur for long periods of time, if at all. Moreover, there is scope to temper the predictions through the controls set out in the OEMP [APP-172, REP9-019] and those to be included in the CEMP.
- 5.12.44. Refinements to the construction programme have been made since the submission of the ES. It is now likely that the night-time Solihull Road overbridge demolition works (activity 19) will last for no more than 8 days (rather than 10), which falls below the relevant threshold. The noise levels above the SOAEL at Four Winds (C4) due to the realignment of Catherine-de-Barnes Lane (activities 5 and 12) are only anticipated when the works occur within an identified range and there are long periods when the operative plant and equipment are likely to be further away, so rendering a breach of the threshold unlikely. The night-time A45 NMU bridge gantry demolition (activity 20) is now only anticipated to last for 3 days rather than 5, again well below the threshold. The exceedance at Providence Cottage (C16) is now anticipated to occur when the average distance to the plant is below 180m. Since that is likely to be for a relatively short period, the duration is expected to fall below the relevant thresholds. And, although it is now proposed to undertake the excavation, piling and construction of the foundations and beam lifting for the A45 NMU bridge (activity 21) at night, those works are only expected to take 4 days. Hence, even though the night-time SOAEL is exceeded at Bridge House (C10) by 7dB and at The Bungalow (C14) by 3dB, such noise over such a short duration can be deemed insignificant.
- 5.12.45. The ExA notes that no further explanation is given about the guidance in BS 5882. And, although the refinements to the construction programme provide more certainty about the duration of certain works, they do not alter the receptors expected to endure construction noise levels above the SOAEL for significant periods of time; indeed, 50% of the receptors are anticipated to experience such adverse effects. Some of the exceedances are particularly high and each receptor is predicted to experience a source of construction noise at least 5dB above the relevant SOAEL. As each SOAEL is often set well above ambient noise levels, even small exceedances must be evident. Similarly, construction noise levels between the SOAEL and the LOAEL are likely to be heard as, for example, the plant and equipment used in the earthworks for the mainline link road (activity 30) move away from a receptor, the noise may, nevertheless, still be perceived and increase the background level.
- 5.12.46. The receptors are chosen as representative of the study area. As such, the results show that significant adverse effects of construction are pervasive and intrusive. The ExA considers that such harmful effects can only be addressed by assiduous adherence to the CEMP. The OEMP [APP-

172, REP9-019] requires that an Environmental Aspects Register is prepared detailing the works where noise and vibration are expected and setting out appropriate controls by adopting the 'Best Practicable Means' and careful programming to minimise the impact of noise and vibration. Phasing and the detailed design of feasible barriers are required, as is a further assessment to demonstrate noise and vibration compliance during the construction period. The CEMP will include provisions to foster communication and liaison between receptors and the appointed contractor. The ExA considers this to be an essential requirement to address the intrusive effects of widespread construction noise on receptors⁹⁴.

NIR as a SOAEL

- 5.12.47. The daytime effects of operational traffic noise are based on a daytime SOAEL consistent with the trigger in the NIR. Although there are plenty of precedents⁹⁵, the ExA is concerned that the NIR are not an appropriate basis to define the SOAEL in this location; the noise level may be too high; the regulations are not based on a behavioural response to noise emissions (unlike the definitions in the NPSE); although the NIR may often provide measures to render the internal level acceptable (as identified by the WHO and BS 8233) guidelines, they leave the external level unchanged, an important omission in a rural area such as this; and, the NPSE advises that different SOAELs may be appropriate to accommodate different situations and different circumstances. Hence, the ExA suggested that a SOAEL based on the WHO guidelines of 60dB $L_{A10, 18h}$ might be more appropriate⁹⁶ as representing a level slightly above that where serious community annoyance is engendered by traffic noise [PD-008 and PD-011, ExQ3,7.2-4]. Confirmation is provided by the latest WHO Environmental Noise Guidelines (2018)⁹⁷; the level suggested is above the level at which road traffic noise is associated with adverse health effects. The ExA asked the Applicant to review the assessment against the suggested SOAEL of 60dB $L_{A10, 18h}$ [PD-011].
- 5.12.48. Similarly, the ExA is concerned that the night-time SOAEL is set too high. It is set at 55dB $L_{Aeq,8h}$ and, although acceptable internally behind a closed window, is above recommended internal levels behind a partially open one; having to keep windows closed for most of the time because

⁹⁴ In the same vein, the layout of the main site compound and the Outline Compound Management Plan (OCMP) [REP8-009] should be designed to minimise the impact on the village of Bickenhill, see section 8.

⁹⁵ The Applicant refers to the A303 Amesbury to Berwick Downs, A303 Sparkford to Ilchester Dualling, A1 Birtley to Coal House Improvement and HS2 (various phases) use the same or very similar SOAEL.

⁹⁶ Since the level at which serious community annoyance is engendered by traffic noise in outdoor living areas is 55dB $L_{Aeq,16h} \approx 57dB L_{A10, 18h}$, which with an addition of 3dB $L_{A10, 18h}$ for 'robustness' (to ensure that the measure is where serious community annoyance occurs) is 60dB $L_{A10, 18h}$.

⁹⁷ The recommended 53dB $L_{den} \approx 53dB L_{A10, 18h}$ which with a façade correction of 3dB and addition of 3dB $L_{A10, 18h}$ for 'robustness' is about 59dB $L_{A10, 18h}$.

of noise is one characteristic of a SOAEL set out in the NPSE. Again, the ExA suggested that a SOAEL based on the WHO guidelines of 45dB $L_{Aeq, 8h}$ might be more appropriate as representing a level at which sleep disturbance could be avoided behind a partially open window. Confirmation is similarly provided in the latest WHO Environmental Noise Guidelines (2018), which indicate that 3% of respondents are highly disturbed by external sounds of 45dB $L_{night} \approx 45dB L_{Aeq, 8h}$. The ExA asked the Applicant to review the assessment against the suggested SOAEL of 45dB $L_{Aeq, 8h}$ [PD-011].

- 5.12.49. The Applicant responds [REP4-010, ExQ2, 6.1-4 to PD-008 and REP7-011, ExQ3, 7.2-4 to PD-011] that the SOAELs adopted are consistent with the levels used on several similar major infrastructure schemes, including those in sensitive or rural communities⁹⁸. Significant environmental effects can be identified above or below a SOAEL in relation to the EIA Regulations. Noise might cause small changes in behaviour, such as 'having to close windows for some of the time' and that might result in an overall 'small actual or perceived change in the quality of life', but that is more representative of a LOAEL than a SOAEL. That is confirmed by the WHO Environmental Noise Guidelines (2018), the aim of which is to define an exposure level at which effects certainly begin. And, the Institute of Acoustics (IOA) suggest that the WHO Environmental Noise Guidelines 2018 have been set just above the LOAEL. There is support for this stance in the Professional Practice Guidance: Planning and Noise (ProPG) at Figure 1⁹⁹. There an indicative scale for an 'Initial Site Noise Risk Assessment' suggests that a level for a daytime 'low risk adverse effect' is around 55-60dB $L_{Aeq, 16h}$ (free-field), whereas a 'medium risk of a significant adverse effect' is set at 65-70dB $L_{Aeq, 16h}$. The lower end of the latter range (65dB appropriately converted and with a façade correction) is roughly 70dB $L_{A10, 18h}$, only a little higher than the SOAEL used in the ES but substantially above that suggested by the ExA.
- 5.12.50. In any event, whatever SOAEL is used, the actual change in operational noise predicted everywhere is negligible or minor (<0.1 or 0.1-2.9dB $L_{A10, 18h}$, respectively). Such changes are 'not significant' for the purposes of the EIA Regulations. Hence, the noise levels that will be experienced by residents are largely the result of the prevailing ambient noise in the area. A lower SOAEL is not warranted since the acoustic character of the place already includes road traffic noise from motorways and other roads, as well as intermittent noise from aircraft as planes arrive at Birmingham International Airport nearby.
- 5.12.51. Similarly, the Applicant considers that the onset of sleep disturbance behind a partially open window identifies a night-time LOAEL rather than a SOAEL, while the NPSE indicates that a level where there is potential for some reported sleep disturbance is described best as a LOAEL. The

⁹⁸ See footnote 95

⁹⁹ Professional Practice Guidance: Planning and Noise: Association of Noise Consultants, Institute of Acoustic and Chartered Institute of Environmental Health (2017)

stance adopted in the ProPG also suggests that 'a low risk adverse effect' at night might occur at around 45-50dB $L_{Aeq,8h}$ (free-field) whereas 'a medium significant adverse effect' is set at around 55-60dB $L_{Aeq,8h}$. Again, the lower end of that latter range is consistent with the night-time SOAEL used by the Applicant.

Table 7: Dwellings above the SOAEL as suggested by the ExA¹⁰⁰

		Number	
		DAY 60dB $L_{A10,18h}$	NIGHT 45dB $L_{Aeq,8h}$
2023	DM	185	195
	DS	182	195
2038	DM	186	195
	DS	185	195

5.12.52. Notwithstanding such disagreements, the Applicant has acquiesced to the request of the ExA and reviewed the operational noise assessments against the suggested SOAELs for both night and day. As with the higher SOAELs used by the Applicant, there is a reduction in the properties experiencing noise levels above the daytime SOAEL, but the differences are much lower; the DS daytime scenario improving over the DM scenario by just 3 dwellings in 2023 but only by 1 dwelling in 2038. In addition, 3 properties (located on Shadow Brook Lane and St Peters Lane) are predicted to experience an increase of 1.0dB as a result of the Scheme; this may, depending on other factors, constitute a significant adverse effect for the purposes of the EIA Regulations. At night, however, all properties assessed endure noise levels above the night-time SOAEL with or without the Scheme. In addition, no properties are predicted to experience an increase of ≥ 1 dB as a result of the Scheme in the short term, so that no further significant adverse effects arise in EIA terms as a result of the lower night-time SOAEL.

5.12.53. As a result of this analysis, the ExA considers that a WHO related SOAEL demonstrates that receptors are likely to experience 'significant' operational traffic noise due to general increases in traffic (in response, for example, to employment growth and development) rather than the Scheme; there is virtually no difference between the DM and DS scenarios in the number of properties where noise is above the SOAEL. The differences are more apparent at the higher SOAEL used by the Applicant.

Sport England's guidance and the noise from Gaelic games

5.12.54. Because a noise survey has not been undertaken at the WGAA sports pitches, guidance offered by Sport England is used (a level of 58dB $L_{Aeq,1h}$ on the half-way line and 10m from the touchline) derived from the use of

¹⁰⁰ REP7-011, ExQ3, 7.2 table 2 and ExQ3 7.4 table 4

artificial grass pitches. This is not representative of either Gaelic football or hurling at the WGAA [REP2-059 and REP8-015]. The noise emanates from artificial grass pitches, none of the games in the survey involve 15 players a side, nor is it clear whether they are recreational or competitive. The noise from spectators appears to be absent, as does the noise of whistles. In any case, the noise will not be limited to a single game played for a period of 1 hour. On the contrary, it may occur on more than 1 pitch and over extended periods, especially at weekends. It will also be unpredictable and thus more intrusive than a steady, predictable sound. As such, the increased proximity of 2 pitches will change the acoustic character of Four Winds and constitute a significant adverse effect that has not been modelled.

- 5.12.55. The Applicant responds [REP4-010, ExQ2, 6.6-8] that the sports pitch noise model is updated to reflect the latest reconfiguration of the WGAA [REP2-019]. An area noise source is created for each pitch and calibrated by adjusting the sound power level per square metre to achieve 58dB at 10m from the halfway line. The predicted noise levels for the reconfigured pitches are below the daytime WHO Guidelines and below the prevailing ambient levels, albeit that an increase is predicted at Four Winds and the Solihull Music School. But such increases are not normally perceptible and constitute only a negligible or marginal adverse impact. Consequently, the latest reconfiguration of the WGAA facility is unlikely to have a significant adverse effect on nearby receptors.
- 5.12.56. The ExA acknowledges that there may well be differences between the noise emanating from the WGAA pitches and those 'typical' of an AGP facility, particularly during the fervour and excitement of cup matches. But there are similarities too. There are whistles and watchers at both and the clashes of hockey sticks bears some similarity to the use of the equipment in the WGAA games. More importantly, the assessment indicates that there is some leeway before the reconfiguration proposed might breach levels associated with a significant adverse effect or the WHO Guidelines to prevent even moderate annoyance from noise during the daytime and evening. In those circumstances, it is unlikely that the 'proportionate' reconfiguration proposed will result in adverse noise effects on nearby receptors sufficient to be significant.

Conclusion

- 5.12.57. Government policy requires that the Scheme should avoid noise being a significant adverse impact on health and the quality of life, should provide mitigation of other adverse effects and should entail controls and management to improve health and the quality of life, where possible.
- 5.12.58. For operational traffic noise those aims are mainly addressed in the design of the Scheme; the mainline link road is to be largely in cutting and a thin surface course system is to form the prevailing surface [REAC G32, REP9-019]. Even so, significant adverse operational effects are widespread, albeit that, where increases occur, few are 'minor', and most are 'negligible' in EIA terms. Only 2 properties on St Peter's Lane and 1 on Shadowbrook Lane will experience a 'minor' increase in operational

traffic noise (0.1-2.9dB): properties on Church Lane, St Peters Lane, Middle Bickenhill Lane, Friday Lane, Solihull Road, Diddington Lane, Bickenhill Lane, NEC and St Peter's Church (38 in all) will experience 'negligible' increases (<0.1dB). The significant adverse operational effects are largely due to a general increase in traffic and growth, as demonstrated by the practical equivalence of properties above the WHO-based SOAEL in the DM and DS scenarios. The Scheme will marginally reduce the number of properties with noise levels above the higher SOAEL used by the Applicant. A similar finding applies to the SSSIs within the study area. Hence, the improvements to Junction 6 and the easing of congestion on the M42 are accomplished without exacerbating the operational noise likely to be experienced in the DM scenario; indeed, marginal improvements are achieved in the DS scenario. Hence, within the constraints of the Scheme, the policy aims are addressed and, at least partially, met.

- 5.12.59. The effects of construction noise are more pervasive and intrusive. Some 50% of receptors are anticipated to experience a 'worst-case' noise level above the relevant SOAEL. Moreover, not only are some exceedances particularly high, but also several receptors experience construction noise some 5dB above the SOAEL, which is itself often set well above ambient noise levels; in some instances, noise from construction traffic will add to those levels at peak periods. But those are 'worst-case' effects sometimes entailing improbable coincidences. Detailed design and detailed assessments are required to demonstrate noise and vibration compliance with policy by the contractor, as are the use of barriers and 'best practicable means' [REAC G33, REP9-019]. Such control will minimise the probability of cumulative noise from simultaneous construction activities and address concerns of residents. Other measures under other legislation are also available to SMBC. On this basis the policy aims are addressed. On the face of it, however, they are not met for the noise emanating from the construction works. It is only in the context of achieving a more sustainable road network that the strenuous mitigation set out in the OEMP [REP9-019] can be taken to meet, at least partially, the aims of Government policy.
- 5.12.60. In relation to the vibration effects of the Scheme, management controls and operational methods identified in the OEMP [REAC G1, REP9-011] will ensure that no receptor should experience impacts above the SOAEL during steady-state operations. And, even during impact piling the effects on Bridge House (C10) are unlikely to be significant. No significant combined adverse effect of construction noise and vibration is anticipated. Hence, the Scheme will comply with policy in respect of the vibration effects.
- 5.12.61. Whether or not the 'typical' noise from an artificial grass pitch is analogous to that from the Gaelic games facilities, changes in noise levels from the 'proportionate' reconfiguration pursued in the DCO, are likely to be barely perceptible at Four Winds or elsewhere. Noise levels remain below the WHO guidelines and below ambient levels. And, although the Scheme generally increases the noise experienced at Páirc na hÉireann, the likely significant effects only occur in a very small

portion of one pitch, even without taking account of any mitigating additional fencing or screening. There is scope to implement such mitigation. Hence, the Scheme will comply with policy in respect of the effects of, and the effects on, Páirc na hÉireann.

5.12.62. Having regard to the above, the ExA concludes that:

- The method of assessment meets the requirements and methodology outlined in the NNNPS at paragraphs 5.189-5.191
- The design of the Scheme provides some mitigation against noise once the Scheme is operational and commitments in the REAC and OEMP should provide further relief. In that respect the Scheme complies with paragraph 5.189 of the NNNPS.
- Even so, increases in noise are likely to be widespread albeit that they are deemed to be 'minor' or 'negligible', in EIA terms. Moreover, such operational 'adverse' effects are largely due to a general increase in traffic. The Scheme will marginally reduce the number of properties with noise levels above the SOAEL compared to the DM scenario, constituting a slight positive effect.
- The effects of construction noise are more pervasive and cause about 50% of receptors to experience a 'worst-case' noise level above the relevant SOAEL.
- Stringent control exercised through the REAC and the OEMP, detailed design, the use of barriers and 'best practicable means', will minimise the probability of cumulative noise from simultaneous construction activities and provide mitigation. In this respect the requirements of NNNPS at address concerns of residents at paragraphs 5.189-5.191 are, at least partially, met.
- The vibration effects of the Scheme, due to the controls in the OEMP and the REAC, should ensure that no receptor experiences an impact above the SOAEL during steady-state operations. The piling effects on Bridge House (C10) are unlikely to be significant and no significant combined adverse effect of construction noise and vibration is anticipated. Hence, the Scheme will comply with Government policy and paragraphs 5.189-5.19 of the NNNPS with respect of the vibration effects during construction.
- Changes in noise levels from the 'Proportionate Reconfiguration' of the WGAA facility are likely to be barely perceptible and below the WHO guidelines at Four Winds or elsewhere.
- The Scheme generally increases the noise experienced at Páirc na hÉireann, but the likely significant effects only occur in a very small portion of one pitch and there is scope to implement appropriate mitigation. Hence, the Scheme will comply with policy in respect of the effects of, and the effects on, Páirc na hÉireann.

5.13. CLIMATE

Policy Background

5.13.1. Paragraphs 4.36 to 4.47 sets out how the NNNPS puts Government policy on climate change adaptation into practice, and in particular how applicants and the SoS should take the effects of climate change into account when developing and consenting infrastructure.

- 5.13.2. At paragraph 4.40 the NNNPS states that "New national networks infrastructure will be typically long-term investments which will need to remain operational over many decades, in the face of a changing climate. Consequently, Applicants must consider the impacts of climate change when planning location, design, build and operation."
- 5.13.3. It continues at paragraph 4.41 that "Where transport infrastructure has safety-critical elements and the design life of the asset is 60 years or greater, the applicant should apply the UK Climate Projections 2009 (UKCP09) high emissions scenario (high impact, low likelihood) against the 2080 projections at the 50% probability level."
- 5.13.4. Paragraph 4.42 states that "The applicant should take into account the potential impacts of climate change using the latest UK Climate Projections available at the time and ensure any environment statement that is prepared identifies appropriate mitigation or adaptation measures. This should cover the estimated lifetime of the new infrastructure."
- 5.13.5. Paragraph 5.16 explains that "The Government has a legally binding framework to cut greenhouse gas emissions by at least 80% by 2050... the impact of road development on aggregate levels of emissions is likely to be very small. Emission reductions will be delivered through a system of five year carbon budgets that set a trajectory to 2050. Carbon budgets and plans will include policies to reduce transport emissions, taking into account the impact of the Government's overall programme of new infrastructure as part of that."
- 5.13.6. At paragraph 5.17 it states that "It is very unlikely that the impact of a road project will, in isolation, affect the ability of Government to meet its carbon reduction targets. However, for road projects applicants should provide evidence of the carbon impact of the project and an assessment against the Government's carbon budgets."
- 5.13.7. Paragraph 5.18 goes onto to explain that "any increase in carbon emissions is not a reason to refuse development consent, unless the increase in carbon emissions resulting from the proposed scheme are so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets."
- 5.13.8. Solihull Local Plan Policy P9 states that the Council will take full account of national and local targets for reducing greenhouse gas emissions and that developers should ensure resilience to the impacts of a changing climate for the anticipated lifespan of the development.
- 5.13.9. Policy P15 expects all development proposals to achieve good quality, inclusive and sustainable design, which meet key principles, including ensuring that new development achieves the highest possible standard of environmental performance through sustainable design and construction and the location and layout in accordance with the guidance provided in Policy P9 – Climate Change.

The Applicant's Approach

- 5.13.10. ES Chapter 15 [APP-060] presents the results of an assessment of likely significant effects of the Proposed Development on climate. It outlines the methodology applied within the assessment and reports on the effects on climate from the emission of greenhouse gas emissions associated with the Proposed Development, and also to its resilience to climate change, as well as the impacts from climate change combined with the Proposed Development on the surrounding environment and receptors.
- 5.13.11. It is explained that UK Climate Projections 2009 (UKCP09) was used to identify the relevant climate projections for the appropriate geographic and timescale of the Proposed Development as the emerging UK Climate Projections 2018 (UKCP18) data was not available at the time of assessment. This issue was raised by SMBC in its LIR [REP2-033] and an updated Chapter 15 (a) [REP-003] was submitted at Deadline 3, using UKCP18. These updated projections provide climate projections out to 2100, facilitating the assessment of risk exposure to future climate conditions.

Identification and assessment of impacts

Greenhouse gas emissions

- 5.13.12. ES Chapter 15 recognises that UK has legally binding greenhouse gas (GHG) emission reduction targets and therefore the level of significance has considered how the Proposed Development would contribute to the UK's ability to achieve carbon reduction targets¹⁰¹ and meet relevant carbon budgets¹⁰². The Applicant's GHG emissions assessment comprises two parts. The first part considers construction of the Proposed Development, the majority of GHG emissions from which would be additional to the existing national GHG emissions inventory and are compared to the relevant UK carbon budgets.
- 5.13.13. The second part considers the operation and use of the Proposed Development, comprising GHG emissions from mechanical and electrical energy use (such as road lighting) and the impact from a variation in vehicle journeys. As at least part of the GHG emissions associated with the operation of the Proposed Development would be displaced from other parts of the road network, they have not been considered additional to the national GHG emissions inventory.
- 5.13.14. The GHG emissions operational assessment adopts a scenario-based approach. The first scenario is a 'do-minimum' scenario, which assumes that the Proposed Development is not implemented. The second considers a 'do-something' scenario, assuming that it is implemented and the GHG emission reductions from embedded mitigation measures are taken into account. A comparison of the GHG emissions for the do-

¹⁰¹ Set by The Climate Change Act 2008

¹⁰² Carbon Budgets, Department for Business, Energy and Industrial Strategy (2016)

minimum and do-something scenarios has been undertaken between the years 2023 and 2083 in accordance with Design Manual for Roads and Bridges: Volume 11, Section 3, Part 1 – Air Quality (DMRB guidance). This period represents the 60 year design life of the Proposed Development, post opening in 2023.

- 5.13.15. Impacts have been assessed by comparing estimated GHG emissions arising from the Proposed Development with the relevant UK carbon budgets, and the associated reduction targets. GHG emissions outputs are been reported as tonnes of carbon dioxide equivalent (tCO₂e).

Climate change resilience

- 5.13.16. A review of climate change resilience has been undertaken for the Proposed Development to identify potential climate change impacts, and to consider their potential consequence and likelihood of occurrence, taking account of the measures incorporated into its design. Resilience has been assessed against both gradual climate change and the risks associated with an increased frequency of severe weather events, referencing UKCP18 data.
- 5.13.17. The 60 year design life of the Proposed Development includes its construction and operational phases. However, paragraph 15.3.33 explains that as the construction phase would be much shorter in duration than the operational phase, and would be undertaken within the next ten years, future climate change is less relevant to the assessment of construction impacts and effects. The construction assessment has therefore followed a descriptive based approach. For the operational assessment, the likelihood and consequence of impacts and effects on receptors has been assessed based on a future time frame of operation (2080s).
- 5.13.18. The identification of the likely significant effects on receptors has been undertaken using professional judgement and has involved combining the measure of likelihood with the predicted consequence of impact, guided by the matrix in ES Table 15.3.

In-combination climate change impact assessment

- 5.13.19. ES Chapter 15 includes an in-combination climate change impact assessment to evaluate the combined impacts of future climate change and those associated with the Proposed Development. It is highlighted that projected changes to average climatic conditions as a result of climate change and an increased frequency and severity of extreme weather events, have the potential to impact the ability of the surrounding natural environment to adapt to climate change.
- 5.13.20. Temperature and precipitation variables have been obtained from UKCP18 and analysed to identify potential climate hazards that may impact receptors, including increased average temperatures, more frequent and heavier precipitation events and an increase in the frequency of severe storms.

5.13.21. The likelihood of climate hazards leading to an in-combination impact has been considered both the likelihood of an impact occurring, such as contaminant soil exposure due to ground movements, and the confidence levels associated with the change in climate hazard within the timescale, for example intense rainfall which would increase contaminant soil migration.

5.13.22. It is explained that the consequence of in-combination impacts has been based on the change to the significance of the effect of the Proposed Development on resources and receptors within each relevant environmental topic, taking account of the mitigation measures reported within each relevant assessment. The significance of effect has been determined by combining likelihood and consequence, as presented in ES Table 15.6.

Impact assessment

5.13.23. The assessment has considered the design life of the project, within which lifecycle stages have been identified to determine the short, medium and long term periods over which the climate projections apply. These are: 2020s – short term (2010-2039); 2050s - medium term (2040-2069); and 2080s – long term (2070-2099).

Design and mitigation

5.13.24. ES Chapter 15 (paragraphs 15.7.2 to 15.7.6) explain that the Proposed Development has been designed, as far as possible, to avoid and minimise impacts and effects relating to GHG and climate change through the process of design-development and by embedding mitigation measures into the design. These include:

- the incorporation of SuDS to handle road runoff and provide resilience against potential future flood events associated with climate change;
- the use of energy efficient road lighting to reduce energy consumption during operation;
- the incorporation of variable messaging systems to provide resilience during severe weather events;
- the specification and installation of highway electrical equipment, bridge joints and paved surfaces capable of withstanding high temperatures arising from severe weather events);
- the retention of existing highways infrastructure within the Scheme design to reduce GHG emissions associated with demolition activities and the transportation of associated arisings off-site;
- the reuse, where possible, of materials and arisings generated from construction works, to minimise GHG emissions associated with their transportation off-site and from the importation of materials to site;
- the inclusion of new or diverted footpaths and cycleways to preserve and improve non-motorised user connectivity and journeys, thereby promoting alternative non-motorised modes of transport to reduce GHG emissions;
- the implementation of emergency systems and response plans to respond to severe weather events; and

- the implementation of management and inspection procedures for road systems, drainage systems and landscaping to maintain or lengthen lifetime of assets.

5.13.25. The OEMP also sets out standard measures that would be undertaken by the appointed contractor during construction to mitigate temporary effects relating to GHG emissions and measures relating to climate resilience.

5.13.26. The prediction of impacts and the assessment of effects has taken account of the embedded and standard mitigation measures.

Assessment of significant effects

Greenhouse gas emissions

Construction

5.13.27. Based on the lifecycle stages of the Proposed Development, the assessment has identified that embodied carbon associated with materials use would be the biggest contributor to its carbon footprint. This is because of the high embodied carbon content of materials such as steel, concrete and bitumen. This would equate to 86% of construction emissions (151,303 tCO₂e). The remainder would primarily arise from waste and waste transport (9%), then fuel, electricity and water (3%) and business and employee travel (2%). The total emissions from the construction activity is calculated at 176,686 tCO₂e.

5.13.28. The construction period for the Proposed Development is programmed to run from 2020 to 2023, falling within the third and fourth UK carbon budget periods.

Operation

5.13.29. A comparison of operational road user GHG emissions between the 'do-minimum' and 'do-something' scenarios for 2023 and 2083 are presented in ES Table 15.9 [REP-003]. This shows an upward variation of 1,683 tCO₂e in year 2023, 11,540 tCO₂e in year 2083 and 611,513tCO₂e for the 60 year design life of the Proposed Development.

5.13.30. In relation to the UK Government's five year carbon budgets up to 2030, operation of the Proposed Development has been assessed over a 60-year period and would commence in 2023; this date falls within the 4th UK carbon budget period. ES Table 15.10 presents the net tCO₂e associated with operation during the fourth and fifth carbon budget period.

5.13.31. It is estimated that the total design life operational emissions over the 60 year period would be in the order of 17,132,015tCO₂e.

5.13.32. The assessment has identified that the emissions arising as a result of the Proposed Development represent less than 0.006% of the total emissions in any five year UK carbon budget during which they would arise. Accordingly, the assessment has concluded that the GHG emissions

impact of the Proposed Development would not have a material impact on the UK Government meeting its carbon reduction targets (paragraph 15.8.14 [REP3-003]).

Climate change resilience

Construction

- 5.13.33. The assessment has identified that climate resilience impacts and effects on the Proposed Development during the construction phase are not expected to be significant. This is because of the frequency and severity of impacts from climate change are predicted to increase over long-term timeframes whereas the construction period would be in the near future and shorter in duration. Accordingly, these impacts have not been considered further in the assessment.

Operation

- 5.13.34. The assessment of operational impacts and effects has considered the likelihood of climate events and hazards occurring, and the consequence of the potential impacts on disruption to the road network, taking account of the identified embedded and standard mitigation measures.
- 5.13.35. The findings, set out in within ES Table 15.15, conclude that no significant effects would occur to the Proposed Development (the assets and operation, maintenance and refurbishment) or to its end-users (including members of the public and commercial operators), arising from climate change.

In-combination climate change impact assessment

- 5.13.36. The outcomes of the assessment of the likelihood and consequence of in combination impacts, and the significance of in-combination effects during the construction and operational phases are presented within ES Table 15.16. For natural landscapes drainage systems and the water environment, human health and soils the significance is assessed to be either negligible or minor adverse.

Issues Arising

- 5.13.37. The issue of climate change in relation to the Proposed Development was not one that generated significant interest during the Examination or in the WR received.
- 5.13.38. Nevertheless, it is addressed in SMBC's LIR [REP2-033]. Here SMBC confirm it is content with the scope of the assessment and the approach taken to calculate the GHG emissions and the conversion factors used. SMBC also confirm it is content with the approach applied to the identification and assessment of impacts relating to GHG emissions and the measure of likelihood and consequence for climate change resilience assessment and the significance measure used. The ExA find no reason to disagree with SMBC on these issues and is satisfied with the methodology applied within the assessment.

- 5.13.39. However, The Climate Change Act 2008 (2050 Target Amendment) Order 2019 came into force on 27 June 2019. This amended the 2050 greenhouse gas emissions reduction target in the Climate Change Act 2008 from at least 80% to at least 100%, i.e. a net zero carbon target. This change, which came into force during the course of the Examination is not addressed in the Applicant's assessment. Given that the assessment has identified that the emissions arising as a result of the Proposed Development represent less than 0.006% of the total emissions in any five year UK carbon budget during which they would arise, the ExA does not envisage that the Applicant's conclusions would be materially affected.
- 5.13.40. As noted above, SMBC did raise concern in its LIR that UKCP09 was used to identify the relevant climate projections, rather than UKCP18. However, this was largely a timing issue and an updated Chapter 15 utilising UKCP18 was submitted at Deadline 3.
- 5.13.41. SMBC conclude on this section of its LIR that a comprehensive list of potential impacts on the Proposed Development likely to occur during the operational phase has been presented and that it agrees with the Applicant's conclusion that no significant effects would occur in respect of climate change and that SMBC agrees with this conclusion.
- 5.13.42. Whilst the issue of flood risk is considered in the Road Drainage and Water Environment section of this chapter, it is also relevant to note here that the WR from the Environment Agency [REP1-014], confirms that hydraulic modelling has been undertaken to accurately establish the flood plain in the critical 100 year plus 50% for climate change flood event. This has confirmed that flood flows do not come out bank at this location, and as such the proposals lie within low risk Flood Zone 1.
- 5.13.43. In terms of embedded mitigation, the ExA does not agree that the new or diverted footpaths and cycleways would preserve and improve non-motorised user connectivity and journeys, thereby promoting alternative non-motorised modes of transport to reduce GHG emissions. The ExA's reasoning in this regard is set out in section [insert relevant section] and is not repeated here. Nevertheless, in overall terms, the ExA does not consider that the Applicant's conclusions on climate are materially affected.

Summary and Conclusions

- 5.13.44. The ExA conclude that the effects of the Proposed Development on climate and its resilience to climate change, as well as the impacts from climate change combined with the Proposed Development on surrounding environment and receptors, has been adequately addressed, and has been considered by the Applicant in accordance with paragraphs 4.36 to 4.47 of the NNNPS.
- 5.13.45. In accordance with paragraph 5.17 of NNNPS the Applicant has provided evidence of the carbon impact of the project and an assessment against the Government's carbon budgets. The assessment has identified that the emissions arising as a result of the Proposed Development represent

less than 0.006% of the total emissions in any five year UK carbon budget during which they would arise. Accordingly, the assessment has concluded that the GHG emissions impact of the Proposed Development would not have a material impact on the UK Government meeting its carbon reduction targets. Having considered all relevant matters, the ExA find no reason to disagree, even taking into account the increase in the UK Government's carbon reduction targets for 2050, which came into force during the course of the Examination. Nevertheless, the SoS will need to be satisfied that this is the case.

- 5.13.46. The Proposed Development has been designed to be resilient to impacts arising from climate change and the assessment of operational impacts and effects has considered the likelihood of climate events and hazards occurring, and the consequence of the potential impacts on disruption to the road network, taking account of the identified embedded and standard mitigation measures. This has found that no significant effects would occur and the ExA find no reason to disagree. Similarly, the ExA find no reason to dispute the negligible or minor adverse outcome of the in-combination impacts of the Proposed Development during the construction and operational phases.
- 5.13.47. Based on these conclusions the Proposed Development would not be contrary to Solihull Local Plan Policies P9 and P15.
- 5.13.48. Taking all these matters into account, the ExA's findings on climate represent a neutral consideration.

5.14. THE RELATIONSHIP OF THE SCHEME TO OTHER PROJECTS

5.14.1. Sections 2.4 and 2.5 of this Report identify other strategic projects or proposals within or close to the Order Limits and considered during the Examination. These are:

- The proposed MSA at Junction 5A
- The 'legacy' scheme for the reconfiguration of the WGAA facilities beside Catherine-de-Barnes Lane
- UKC Hub Growth Area, which includes development planned at
 - Arden Cross
 - Jaguar Land Rover
 - Birmingham Business Park
 - Blyth Valley Business Park
 - The HS2 interchange station and connections to it
- Birmingham International Airport and International Railway Station and
- The NEC

MSA at Junction 5A

5.14.2. As indicated in section 2.4, a planning application for an MSA at Junction 5A was initially lodged in June 2015 and is awaiting determination in conjunction with a further proposal at Junction 4. Although the scheme at Junction 5A cannot reasonably be considered as committed development,

the Applicant has engaged with the Extra MSA Group with the aim of ensuring, where practicable, that the design of Junction 5A will not preclude delivery of the MSA. It does not. But, junction 5A will require considerable modification to accommodate the mooted MSA. Some of those necessary modifications increase the impact of the Junction on the Ancient Woodland at Aspbury's Copse: others will affect the functioning of the M42.

5.14.3. The necessary modifications to Junction 5A entail:

- The introduction of north facing slip roads and a spur from the western roundabout into the MSA.
- The introduction of weaving lengths between Junction 5A and Junction 6 that fall well below the normal 2km minimum for rural motorways, although there is approval in principle for such a departure.
- An 'up-grade' of the M42 to an 'all lane running' smart motorway from the current 'dynamic hard shoulder' regime.
- The introduction of a partially signalised design at Junction 5A with an additional lane on the north-bound approach, on the western roundabout and at the entrance and start of the mainline link road, together with a segregated left turn lane into the MSA.

5.14.4. As indicated in section 2.4, the result of all those modifications will allow the junction to accommodate the traffic likely to turn off the motorway to use the MSA with 6% spare capacity in the morning peak. In the absence of the partial signalisation and road widening, long queues will form, and congestion will occur. The road widening will impinge further on the adjacent Ancient Woodland at Aspbury's Copse. If built exactly as indicated on the Works Plans, the junction will result in the loss of 0.36ha of the Ancient Woodland: if moved 10m to the north within the LoD, the junction will result in the loss of 0.21ha of Ancient Woodland. The impact of the works to accommodate the MSA has not been quantified. However, practically the whole of the additional lane on the north-bound slip road must be within the Ancient Woodland. Moreover, the western roundabout and the initial section of the mainline link road is on an embankment. This will need to be widened to accommodate the extra traffic lane. It is likely that that too will impinge on the Ancient Woodland.

5.14.5. The provision of north-facing slip roads might enhance the resilience of the motorway in providing alternative routes to cope with unforeseen occurrences. On the other hand, more care may be required in negotiating the sub-standard weaving sections between Junctions 5A and 6. Further modifications to accommodate the MSA involve creating a longer span for the Solihull Road bridge across the motorway and providing 2 lanes in each direction.

5.14.6. Hence, although the design of Junction 5A does not preclude the provision of an MSA in this location, the Junction will require significant modification which will affect both the operation of the M42 and the impact of the Junction on the adjacent Ancient Woodland.

The WGAA sports facility

- 5.14.7. It is explained in section 2.5 that the WGAA consider that the proposed 'Proportionate Reconfiguration' of their sports facilities does not provide a proportionate and equivalent replacement for Páirc na hÉireann. In section 5.8 the ExA agrees with that view, for the reasons stated. The Applicant accepts that the need to reconfigure the WGAA facility creates an opportunity for a positive legacy, essentially by improving the WGAA facilities and making them available for wider use (the 'legacy' scheme). It is this scheme that the Applicant intends to pursue, and it is on this basis that objections from the WGAA are withdrawn. Although the broad principles of what is involved are known, precise details are still under discussion and will be the subject of a separate planning permission. Nevertheless, much (perhaps all) of the land required for the 'legacy' scheme is within the Order Limits and will be subject to Compulsory Acquisition within the terms of this DCO.
- 5.14.8. As explained elsewhere, because the 'legacy' scheme is not secured by the DCO, the ExA is unable to place reliance upon it being achieved in reaching its recommendation on the DCO application; the 'Proportionate Reconfiguration' is the only proposal promoted through the DCO. The shortcomings of the 'Proportionate Reconfiguration', as proposed at the close of the Examination, represents a residual and harmful impact on Páirc na hÉireann. This is a negative impact on this community facility for the ExA to consider in making its recommendation on the DCO.

UKC Hub Growth Area

- 5.14.9. As indicated in section 2.5, the UK Central Hub - Growth and Infrastructure Plan (2018) is reflected in both the emerging Local Plan Review and the UK Central strategy. It envisages some 32,000 new jobs around Junction 6 and elsewhere in Solihull by 2040. Although the TA identifies the potential for over 28,200 new jobs to materialise by 2041, the traffic forecasts fail to accommodate around 10,000 of the jobs envisaged in the emerging Local Plan Review or the UK Central strategy. The traffic generated by those jobs is to be catered for by future schemes that build on the improvements proposed in this application. This DCO Scheme is envisaged as a crucial second phase in a 4-phase programme of further infrastructure development.
- Phase 1 is the widening of the A45 bridge across the railway into Birmingham International Railway Station;
 - Phase 2 is this Scheme to improve Junction 6 on the M42;
 - Phase 3 (2019-2026) includes works undertaken by HS2 and the UGC to modify junctions on the A45, A452 and A446; and,
 - Phase 4 (2026-2041) includes improvements to address the growth outlined in the UK Central Hub - Growth and Infrastructure Plan. The latter states that: it is likely that further road capacity will be needed, and one potential solution would be to build link roads between the new M42 Southern Junction [Junction 5A] and the existing Junction 6 on both sides of the motorway to provide direct access to the UK Central Hub [and the] HS2 Station [REP4-010].

- 5.14.10. Individual elements included within the UK Central Hub - Growth and Infrastructure Plan (2018) are listed below.

Arden Cross

- 5.14.11. The Arden Cross proposals focus on the HS2 interchange station and envisage a Garden City carved from the Green Belt. As a proactive approach to maximise economic growth and job creation, the scheme accords with an aim of the NPPF.

Jaguar Land Rover

- 5.14.12. Emerging policy P1 in SMBC's Local Plan Review seeks to remove land from the Green Belt to support expansion of the plant; exceptional circumstances are claimed. Part of the site already has planning permission for a 'despatch facility'. Over 1,400 jobs are likely to materialise here by 2041 and are included in the traffic forecasts. There is the possibility of a further 1,700 jobs, but there is sufficient uncertainty to prevent their inclusion in the traffic forecasts [APP-174].

Birmingham Business Park.

- 5.14.13. Because much of the undeveloped land at the Business Park is subject to detailed planning permission, a 9ha site is allocated. There is the possibility of some 850 jobs materialising here, but they are not included in the traffic forecasts [APP-174].

Blythe Valley Business Park

- 5.14.14. Envisaged as a distinctive high-quality design, the Business Park benefits from an allocation for some 600 dwellings and a 'vision document' (endorsed by the Council) is now reflected in a planning application for a comprehensive mixed-use scheme for which permission has been granted. There is the possibility of nearly 4,000 jobs materialising here, but they are not included in the traffic forecasts [APP-174].

HS2

- 5.14.15. A parkway station is included in the HS2 Bill, but a more ambitious design is being pursued, in line with the vision of the UK Central strategy. Some of the land within the Order Limits is also required to accommodate the HS2 project and arrangements are in hand to secure a coordinated approach. HS2 withdrew its objections subject to agreement of protective provisions. The Applicant claims that these are agreed and, although that is stated in the covering letter at Deadline 10, as well as a nearly agreed asset protection agreement, explicit confirmation is not available. It is suggested that such confirmation is obtained by the SoS during the Decision Stage.
- 5.14.16. Quite apart from the road improvements planned for Phase 3 of the programme of infrastructure works (namely the modification of junctions on the A45, A452 and A446), substantial public transport improvements are proposed to integrate with HS2, including an automated 'people mover' to the NEC and Birmingham International Airport and extensions

to the West Midlands Metro system. Explicit modelling in PRISM caters for the planned HS2 Interchange station, with passenger forecasts generated through 'special generator' models derived, in this case, from the HS2 PLANET Modelling Assumptions. It is thus reasonably certain that the improvements proposed for Junction 6 will accommodate the growth in travel envisaged from HS2.

Birmingham Airport

- 5.14.17. The Airport Master Plan predicts that air passengers will increase substantially from 11.6m in 2016 to 27.2m in 2030. This is explicitly modelled in PRISM through forecasts derived from DfT UK Aviation Forecasts (2013) (the constrained central forecast) and the CAA Passenger Survey Report (2011). As updated forecasts (2017) are marginally less optimistic, the modelling actually allows for slightly more growth at the Airport than is currently forecast.
- 5.14.18. An extension to the main runway has already been completed although building across the A45 to provide a 'safety' area at the end of the runway still needs to be completed. That covered section of the A45 will terminate quite close to the western end of the slip roads and merge lanes of the improved Clock House interchange. However, subject to the Limits of Deviation, Birmingham Airport confirmed at Deadline 7 that the outstanding issues raised in their submission had been resolved. The Scheme thus accommodates the growth and development envisaged by the Airport.

National Exhibition Centre

- 5.14.19. The National Exhibition aims to expand its offer by erecting additional exhibition halls on the extensive surface car parks, which will be replaced by a series of multi-storey car parks. The TA demonstrates that the Scheme can cope robustly with almost all the annual variability likely to be encountered as well as the variation in traffic experienced at weekends.

Conclusion

- 5.14.20. The design of Junction 5A does not preclude the provision of an MSA in this location, but it will require significant modification which will affect both the operation of the M42 and the impact of the Junction on the adjacent Ancient Woodland.
- 5.14.21. The shortcomings of the 'Proportionate Reconfiguration', as proposed at the close of the Examination, represents a residual and harmful impact on Páirc na hÉireann. This is a negative impact on this community facility.
- 5.14.22. Nevertheless, the Scheme is a crucial second phase in a 4-phase programme of further infrastructure development to accommodate the growth envisaged in extant plans and programmes. It is likely to accommodate the growth in travel envisaged from HS2 and the Airport. Also, the TA demonstrates that the Scheme can cope robustly with

almost all the annual variability likely to be encountered as well as the variation in traffic experienced at weekends. This aspect of the Scheme represents a positive benefit in accordance with the aims set out in the NNNPS, particularly at paragraphs 2.1 and 2.2.

5.15. UTILITIES AND OTHER OPERATORS

Introduction

- 5.15.1. The Order Limits include lands in which Statutory Undertakers have rights or other interests. These include electricity, gas, water and telecommunication networks. Powers within the recommended DCO make provision for CA powers affecting the apparatus of these operators, subject to Schedule 12, Parts 1 to 5, which set out protective provisions in general and those honed to address the interests of a particular operator. Where necessary these are considered in relation to the tests imposed by section 127 of the PA2008, which requires that the SoS must be satisfied either that the land can be purchased and not replaced without serious detriment to the carrying on of the undertaking or, if purchased, it can be replaced by other land belonging to, or available for acquisition by, the undertaker without serious detriment to the carrying on of the undertaking. Similar tests apply to the acquisition of rights over land owned or occupied by statutory undertakers.
- 5.15.2. There are no special categories of land within the Order Limits that are subject to CA procedures. Hence, the provisions associated with sections 131 and 132 of the PA2008 do not apply here.

Statutory Undertakers

- 5.15.3. Schedule 12 of the DCO sets out protective provisions in:
- PART 1 - for the protection of electricity, gas, water and sewerage undertakers;
 - PART 2 - for the protection of operators of electronic communications code networks;
 - PART 3 - for the protection of National Grid as electricity undertaker;
 - PART 4 - for the protection of High Speed Two Limited
 - PART 5 - for the protection of Cadent Gas Limited

Severn Trent Water

- 5.15.4. The DCO allows for the re-routing of the Severn Trent aqueduct on an alignment facilitating maintenance by the operator. And, at CAH2, D8 and D9, the ExA was informed that agreement was close, or that a separate side agreement for the protection of assets was near [REP8-001, REP9-026]. However, no confirmation of any such agreement was received by the close of the Examination. There is no evidence that an agreement between STW and the Applicant is unlikely or that the Scheme will cause any serious detriment to STW in carrying on its undertakings. It follows that the protective provisions set out in Schedule 12, Part 1, for water and sewerage undertakers should suffice, if complemented by the mooted separate side agreement.

National Grid

- 5.15.5. National Grid confirms that an agreement is reached with the Applicant in relation to the protective provisions set out in Part 3 of the DCO specifically for the protection of its assets are agreed and its objections are withdrawn [AS-047].

HS2

- 5.15.6. HS2 has withdrawn its representations, strictly subject to the inclusion of the protective provisions in its favour (which it states were submitted to the ExA on Friday 15 November) being included within the DCO [AS-049]. However, the ExA has no record of the submission referred to. The Applicant's covering letter to its Deadline 10 submission confirms that it has agreed with HS2 protective provisions for the benefit of HS2, which are included on the face of the Order. These protective provisions are provided in Part 4 of the Applicant's 4th dDCO [REP9-011]. The Applicant also states that it is close to agreeing terms of an asset protection agreement with HS2.
- 5.15.7. The ExA therefore consider there to be no evidence that an agreement between HS2 and the Applicant is unlikely or that the Scheme will cause any serious detriment to HS2 in implementing its project. Nevertheless, without the submission referred to by HS2, the ExA is unable to corroborate whether the provisions it refers to are fully reflected in the Applicant's 4th dDCO. On this basis, the ExA recommends that the SoS request the 15 November protective provisions from HS2 in the course of the Decision Stage in order to satisfy himself that HS2's concerns are adequately addressed in the DCO, if made.

Cadent Gas Limited

- 5.15.8. Cadent Gas Limited (Cadent) confirms the existence of a side agreement sent to the Applicant [AS-046] to overcome its objections to the protective provisions set out in Part 5 of the DCO specifically for the protection of Cadent. However, that side agreement has not been executed by the Applicant and the few remaining points of disagreement are set out in the position statement at D10 [REP10-005]. Some of those disagreements relate to whether provisions should be within the DCO or in a side agreement and whether a particular clause should contain an explicit reference back to a provision for the submission of plans or not. But key disagreements concern whether Cadent 'must' or 'may' take reasonable steps in assisting to obtain the necessary facilities and rights on land for the necessary relocation of apparatus. In addition, there is disagreement about indemnity provisions.
- 5.15.9. The ExA considers that the disagreements submitted by Cadent are at variance with the tests set out in section 127 of the PA2008. The requirement is that Cadent should be protected from 'serious detriment' in undertaking its functions. Section 127 does not protect it from all the costs of doing so. Serious detriment is not demonstrated. Moreover, Cadent, like other road users, will derive some benefit from the improvements in efficiency and capacity of the SRN delivered by the

Scheme and, as a statutory undertaker, it should be obliged to help where appropriate. The recommended version of the protective provisions achieves those aims. The ExA recommend accordingly.

Agreements with other operators

Royal Mail

- 5.15.10. Royal Mail is concerned that road closures, traffic management and diversions due to the Scheme may affect the efficiency and delivery of its obligations [RR-004]. It seeks pre-consultation road closures etc, alternative access arrangements, and the Traffic Management Plan, which includes provisions to inform major road users (particularly Royal Mail) about works affecting the local network. At CAH2, the Applicant confirmed that an agreement was being finalised. However, nothing further was submitted. In those circumstances, the ExA recommend that R10 is amended to require consultation with Royal Mail on the Traffic Management Plan.

Esso

- 5.15.11. The Applicant advises [REP9-026] that a separate agreement with Esso Petroleum Company Limited (Esso) is proposed which does not require changes to the dDCO. However, neither that agreement nor confirmation from Esso materialised during the Examination. The Scheme potentially affects a 12" underground pipeline, which part of a network distributing the fuel across the UK [RR-034]. Esso is not a statutory undertaker and funds and operates this pipeline as a private company. Construction works close to the pipeline risk damage. Hence, protective provisions are sought to regulate works close to the pipeline, including a Pipeline Protection Agreement. The current arrangements are deemed inadequate [AS-021]. Consequently, the ExA recommends that the SoS request confirmation from Esso that agreement has been reached and its concerns have been met.

Birmingham Airport Limited

- 5.15.12. All matters are agreed in the signed Statement of Common Ground between the Airport and the Applicant [REP8-004], save for the issues relating to Article 6 (limits of deviation), which are discussed in Chapter 9 of this Report.

National Exhibition Centre

- 5.15.13. Almost everything remains 'under discussion' in the SoCG between the Applicant and the NEC [REP8-003]. Nevertheless, progress had been made between CAH1 and CAH2 and draft heads of terms (HoTs) suggested for a formal agreement to mitigate disruption to the NEC during construction of the Scheme. In the event the comments and amendments to the HoTs delivered by the NEC to the Applicant remain unanswered. The NEC Limited thus maintain their original objection to the Scheme [RR-014] until the SoCG and formal agreement are signed and completed.

Western Power Distribution

- 5.15.14. Discussions between the parties have been on-going since 16 April 2019. WPD are negotiating protective provisions with Highways England on the A30 Chiverton to Carland Cross scheme and have indicated that, when those negotiations are concluded, those provisions will form the basis of the protective provisions sought here as well as an asset protection agreement.

Conclusion

- 5.15.15. Having regard to the above, the ExA concludes that:
- General or specific protective provisions for each operator are almost agreed for all parties, but at the close of the Examination formal notification of those agreements remained absent. The ExA thus recommends that the SoS request confirmation that agreement has been reached in all cases.
 - The recommended version of the protective provisions is likely to achieve appropriate protection of assets and interests.

6. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

6.1. INTRODUCTION

- 6.1.1. This chapter of the Report sets out our analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State (SoS) for Transport, as the competent authority, in performing their duties under Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as codified) (the Habitats Directive) and Council Directive 79/409/EEC on the conservation of wild birds (2009/147/EC), as transposed in the UK through The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').
- 6.1.2. Regulation 63 of the Habitats Regulations states that if a plan or project is likely to have a significant effect on a European Site designated under the Habitats Regulations¹⁰³ (either alone or in-combination with other plans or projects), then the competent authority must undertake an appropriate assessment (AA) of the implications for that site in view of its conservation objectives. Consent can only be granted if the AA concludes that the integrity of European sites would not be adversely affected, subject to Regulation 64 (considerations of overriding public interest).
- 6.1.3. Evidence has been sought during the Examination from the Applicant and the relevant Interested Persons (IPs) through written questions and issue-specific hearings (ISHs), with the aim of ensuring that the SoS has such information as may reasonably be required to carry out their duties as the competent authority.

6.2. PROJECT LOCATION

- 6.2.1. As described in Chapter 2 above, the Proposed Development comprises a new junction located approximately 1.8 kilometres (km) south of the existing Junction 6 off the M42 (referred to as M42 Junction 5A), a new 2.4km long dual carriageway link road between M42 Junction 5A and Clock Interchange, capacity and junction improvements at Clock Interchange, new free flow links between the A45 and M42 motorway at M42 Junction 6, and a number of associated modifications to the existing strategic and local road network and public rights of way.
- 6.2.2. The Proposed Development's Order Limits do not overlap with any European site. The nearest European site, Ensor's Pool Special Area of Conservation (SAC), is located approximately 16.1km to the north east of the application site at its closest point.

¹⁰³ Sites of Community Importance (SCIs), Special Areas of Conservation (SACs), candidate SACs, Special Protection Areas (SPAs); and under UK policy, potential SPAs and listed Ramsar sites.

6.2.3. The Applicant identified European sites within 30km of the application site boundary, and accordingly considered the following four European sites for inclusion within the HRA:

- Ensor's Pool SAC
- Fens Pools SAC
- Cannock Extension Canal SAC
- River Mease SAC

6.2.4. No other European sites or features were identified by Natural England (NE) or any other IP. The Applicant did not identify any potential impacts on European sites in any other European Economic Area (EEA) States.

6.2.5. The Panel is satisfied that the Applicant has correctly identified all the relevant European sites and qualifying features/interests for consideration within the HRA.

6.3. HRA IMPLICATIONS OF THE PROJECT

6.3.1. The Proposed Development is not connected with or necessary to the management for nature conservation of any of the European sites considered within the Applicant's assessment.

6.3.2. The Applicant provided a Habitats Regulations Assessment report entitled 'Habitats Regulations Assessment: No Significant Effects Report (NSER) [APP-169] with the development consent order (DCO) application, together with screening matrices. The location of the four European sites identified above is shown on a figure contained in Appendix B of the NSER.

6.4. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS (LSE)

6.4.1. The methodology used to identify European sites that could be affected by the Proposed Development is set out in Sections 3, 4 and 5 of the NSER. The Applicant described how they determined what would constitute a 'significant effect' within Section 1 of the NSER.

6.4.2. A source-pathway-receptor approach was adopted for the HRA assessment, based on the advice contained in the European Commission's 2001 'Assessment of plans and projects significantly affecting Natura 2000 Sites: Methodological Guidance on the Provisions of Article 6(3) and 6(4) of the Habitats Directive' and the Planning Inspectorate's Advice Note 10 (AN10). Landtake, air quality, water quality and noise and vibration were identified as potential pathways through which the Proposed Development could affect a European site. A Zone of Influence (ZoI) was established according to the geographical extents over which it was considered each pathway could lead to significant effects on the interest features of European sites, based on Highways England's 2009 HRA guidance contained within their Design Manual for Roads and Bridges (DMRB).

- 6.4.3. The relevant baseline information pertaining to the location, designation, status, sensitivity and nature of qualifying features at each European site was obtained from data within the Environmental Statement (ES) and the published citations and conservation objectives for European sites (replicated in NSER Appendix C). Potential receptors were identified where the ZoI coincided either with a European site or with the foraging range of any mobile species that were a feature of a European site.
- 6.4.4. In line with the methodological guidance contained within the DMRB it was concluded that there were no European sites within 200m of roads considered to be affected by the Proposed Development, within 2km of the Proposed Development site boundary, or within 30km for which bats are a qualifying feature. The assessment therefore considered European sites between 2 - 30km of the Proposed Development (for which bats did not form part of the qualifying features), where it was considered that any of the potential pathways, as identified above, existed. Ensor's Pool SAC, Fens Pools SAC, Cannock Extension Canal SAC and River Mease SAC were accordingly identified for inclusion in the assessment on the basis that they were considered sensitive to hydrological change.
- 6.4.5. The Applicant's assessment of potential effects on these four European sites alone or in combination with other plans and projects is presented in Tables 6-1 to 6-4 of Section 6 of the NSER, which address each of the four pathways identified above. Screening matrices are provided in Tables D2 to D5 in Appendix D of the NSER. These summarise the outcomes of the assessments and cross-reference to relevant evidence contained in Tables 6-1 to 6-4 in relation to hydrological disturbance and in-combination effects of the Proposed Development with other plans and projects.
- 6.4.6. The Panel's First Written Questions (ExQ1) [PD-006] contained a number of questions (Q1.7.32 – Q1.7.40) that sought clarification in relation to HRA matters. The Applicant responded to each of these questions in their 'Response to the Examining Authority's First Written Questions' [REP2-007].
- 6.4.7. The Applicant's answers to ExQs 1.7.37 and 1.7.38 included revised versions of the screening matrices in the NSER, which had been updated to correct presentational errors and minor discrepancies within the matrices.
- 6.4.8. In respect of in-combination effects, in their answer to ExQ 1.7.36 the Applicant confirmed that the HRA screening exercise (set out in Section 6 of the NSER) had considered the potential for such effects, and referred to the conclusions of the exercise, which were that the Proposed Development would not have any likely significant effects alone on any of the four European sites considered in the assessment. On this basis the Applicant considered that the Proposed Development would not have any likely significant effects on any European sites in combination with other plans or projects (as stated in Sections 7 and 8 of the NSER). In response to ExQ 1.7.39, the Applicant provided revised Evidence Notes,

which corrected the references to the location of the relevant evidence in the NSER in relation to potential in-combination effects.

- 6.4.9. In response to ExQs 1.7.34 and 1.7.40 about the level of agreement with relevant consultees on the methodology used for the HRA and its conclusions, the Applicant stated that they had shared a draft NSER with NE in September 2018, and that NE had subsequently agreed with its findings that appropriate assessment was not required. ES Appendix 9.17 (APP-144) contains a letter from NE dated October 2018 in which this view is set out. NE, in their response to the ExQs [REP2-032], confirmed their satisfaction with the methodology that was used for the HRA and with the European sites and features that were considered. They also confirmed that they had reviewed the DCO application NSER and agreed that there was no potential for likely significant effects on any European Sites.
- 6.4.10. The Applicant's screening assessment concluded that the Proposed Development would have no likely significant effect, either alone or in-combination with other projects or plans, on the qualifying features of any of the four European sites considered in the assessment on the basis of the intervening distance and the absence of an impact pathway between the Proposed Development and the boundaries of each of the European sites. The Applicant's screening conclusion was not disputed by any IPs during the Examination. The Panel is satisfied that the screening conclusions are appropriate.

6.5. CONSERVATION OBJECTIVES

- 6.5.1. The conservation objectives for the four European sites considered in the HRA were provided by the Applicant in Appendix C of the NSER.

6.6. HRA CONCLUSIONS

- 6.6.1. Our understanding of HRA matters in relation to the Proposed Development is drawn from the information provided in the application, with reference to the NSER and the ES, and taking full account of the responses to relevant questions that we raised. No new relevant or important HRA issues or concerns were raised during the Examination by any IPs.
- 6.6.2. The Panel advises the SoS that on the basis of the information before us we consider 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 features, and that appropriate assessment is not required. We have reached this conclusion having applied the precautionary principle and being of the view that there is no remaining reasonable scientific doubt.

7. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

7.1. INTRODUCTION

7.1.1. The designated National Networks National Policy Statement (NNNPS) provides the primary basis for making decisions on development consent applications for national networks Nationally Significant Infrastructure Projects (NSIP) in England by the Secretary of State (SoS). Conclusions on the case for development consent set out in the application are therefore reached within the context of the policies contained in the NNNPS. However, as indicated in Chapters 3 and 4, in reaching the conclusions set out in this chapter, the ExA has taken all other relevant law and policy into account.

7.2. THE PLANNING BALANCE

7.2.1. The ExA's conclusions on the effects of the Proposed Development and its performance against relevant policy and legislation are summarised below, drawing on the analysis of planning considerations in Chapter 5 and Habitats Regulation Assessment (HRA) in Chapter 6 above.

Policy

7.2.2. The Scheme is significant in both national and local policy terms. It is in accordance with NNNPS section 2 in relation to congestion on the strategic network – increasing capacity, connectivity and resilience to support national and local economic activity. It is intended to improve journey quality, reliability and safety and to facilitate other projects, such as HS2, which contribute to travel choice, linkage and lower carbon travel.

7.2.3. In local terms, the Scheme is consistent with the aims set out in the Solihull LIR to facilitate job growth in the area and improve linkages to Birmingham Airport, Birmingham International Station and facilitate HS2.

7.2.4. As such, the Scheme benefits from the presumption in s104 in favour of the development where the proposal is in accordance with the NNNPS for the SRN but as discussed below, is not considered to be in accordance in respect of NMUs.

EIA considerations

7.2.5. The Proposed Development is Environmental Impact Assessment (EIA) development.

7.2.6. The submitted Environmental Statement, as augmented by material submitted during the Examination, has provided an adequate assessment of the environmental effects of the Proposed Development. This is sufficient to define the Rochdale Envelope for it and to secure its delivery within that envelope.

HRA considerations

- The ExA finds 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 features.
- The Proposed Development can proceed without an Appropriate Assessment being undertaken by the SoS.

Summary conclusions from planning issues

7.2.7. Need: roads, tracks and traffic

- The Proposed Development accords with Government policy to deliver national networks that meet the country's long-term needs, supporting a prosperous and competitive economy and, as an improvement at Junction 6 on the M42, it does so as paragraphs 2.23-2.27 of the NNNPS prescribes.
- The TA forecasts are calibrated against DfT's NTEM 6.2 and has been carried out in accordance with WebTAG guidance. They demonstrate that the Proposed Development will accommodate the forecast traffic generally in free-flow conditions and with spare capacity at all junctions.
- However, should all the jobs envisaged in local plans and programmes materialise, additional road infrastructure will be required. The Proposed Development provides the foundation for that additional infrastructure being stage 2 in a 4-stage programme and providing Junction 5A as an essential link to the development anticipated.
- The ExA considers that the approach to the provision of footpaths and NMU links fails to accord with the requirements set out in paragraphs 3.15-3.17 and 5.216 of the NNNPS.
- The improvements to the road network likely to be achieved by the Scheme is thus a strongly positive consideration.
- The failure of the Proposed Development to promote sustainable transport in the form of unattractive NMU routes is a negative consideration.

7.2.8. Cultural Heritage

- Impacts on the archaeological resource are capable of being managed as part of the dDCO requirements, consistent with NNNPS paragraph 5.142. The effect on archaeology is therefore a neutral consideration.
- Impacts on the historic landscape would be moderate to slight adverse and weigh negatively against the Order being made.
- The Proposed Development would fail to preserve the setting of five listed buildings, the desirability of which is set out in The Infrastructure Planning (Decisions) Regulations 2010 (IPDR) Regulation 3(1) and paragraph 5.130 of the NNNPS. The listed buildings affected are: St Peter's Church, Bickenhill (Grade I); Hampton Manor (Grade II) and its separately listed garden terraces, walls and steps (Grade II), and Clock Tower (Grade II*); and Grange farmhouse, Bickenhill (Grade II).
- The Proposed Development would neither preserve or enhance the character or appearance of Bickenhill and Hampton in Arden

Conservation Areas as anticipated by IPDR Regulation 3(2) and paragraph 5.130 of the NNNPS.

- The magnitude of harm identified in respect of the listed buildings and conservation areas would be less than substantial in the context of paragraphs 5.133 and 5.134 of NNNPS.
- The harm to designated heritage assets weighs negatively against the Order being made.
- No enhancement measures have been identified, as per the expectations of paragraph 5.137 of the NNNPS, to weigh against the harm found.
- When considering the impact of a Proposed Development on the significance of a designated heritage asset, NNNPS paragraph 5.131 requires the SoS to give great weight to the asset's conservation. The more important the asset, the greater the weight should be.

7.2.9. Air Quality

- The ExA is satisfied that appropriate mitigation measures would be secured through the OEMP via R4, such that there would be a neutral effect on air quality arising from the construction of the Proposed Development.
- The A45 from the Clock Interchange to M42 Junction 6 is subject to two Ministerial Directions relating to air quality. The ExA is satisfied that appropriate provision is made outside the DCO to enable SMBC to respond effectively to the Ministerial Directives.
- The Proposed Development is likely to have no significant effect on the Birmingham City-wide AQMA or those at Studley or Kenilworth.
- Although the effects of the Proposed Development on ecological sites is to increase concentrations of NO_x, albeit marginally, the majority of sites will meet, or fall well within, the standard limit of 30µgm-3. No new exceedances will occur.
- Overall, the ExA is satisfied that the Proposed Development is likely to have no significant effect on air quality and that in overall terms the tests in NNNPS paragraphs 5.10 to 5.15 are met.

7.2.10. Biodiversity, ecology and the natural environment

- Effects on Bickenhill Meadows SSSI have been appropriately assessed and are capable of being acceptably mitigated by R13 in accordance with paragraph 5.29 of the NNNPS. The effect on this designated site is therefore a neutral consideration.
- In accordance with paragraph 5.35 of the NNNPS the ExA is satisfied that the Applicant has taken measures to ensure protected species are protected from the adverse effects of the Proposed Development, such that this represents a neutral consideration.
- The Proposed Development would result in the loss of up to 0.46ha of ancient woodland contrary to NNNPS paragraph 5.32. This weighs significantly and negatively against the Order being made.
- The proposed replanting ratio does not significantly lessen the weight against the Order being made.

7.2.11. Landscape and visual impact

- The Proposed Development adheres to NNNPS paragraphs 5.149, 5.157 and 5.160 insofar as it has been designed, as far as possible, to minimise harm to the landscape and visual receptors.
- Nevertheless, the Proposed Development would still result in significant adverse effects on landscape character and visual amenity both in construction and in operation. These impacts weigh negatively against the Order being made.

7.2.12. Green Belt

- The ExA find that the Proposed Development both during construction and operation would amount to inappropriate development within the Green Belt. It would harm a fundamental aim of the Green Belt policy to maintain openness and would undermine the purposes of safeguarding the countryside from encroachment.
- In such circumstances, NNNPS paragraph 5.178 explains that:
- "Inappropriate development is by definition harmful to the Green Belt and there is a presumption against it except in very special circumstances."
- Green Belt harm therefore weighs negatively against the Order being made.

7.2.13. Population and health

- The loss of over 40ha of BMV agricultural land constitutes a significant adverse effect, contrary to NNNPS paragraph 5.168 which states that applicants should seek to use areas of poor quality land in preference to that of higher quality. This weighs negatively against the Order being made.
- Moreover, the substantial loss of two agricultural holdings and the scale of the losses experienced at two larger farms are also significant and weigh against the Order being made.
- The measures to reduce or compensate for the harmful effects on NMU routes are insufficient to meet the aims of the NNNPS set out in paragraphs 4.79 to 4.82. Moreover, they fail to foster the Government's aim of providing options to use sustainable, convenient and attractive modes of travel and bring about a step change in cycling and walking across the country by investing in high quality cycling and pedestrian routes, as indicated in paragraphs 3.15-3.17 and 5.216. This weighs negatively against the Order being made.
- For motorised travellers the Proposed Development maintains most connections to nearby villages and towns as well as reducing congestion and increasing journey reliability. This benefit outweighs any sense of severance which would be experienced by residents of Bickenhill, who would have to turn south to go north. The effect on motorised travellers therefore weighs positively for the Order being made.
- The measures contained within the OEMP represent a comprehensive approach to avoiding or reducing harmful effects associated with main and satellite construction site compounds. These measures would be delivered via R4.

- With an additional Requirement relating to the repositioning the attenuation tank from the north to the south side of St Peter's Lane, the Proposed Development would provide sufficient measures to avoid or reduce the harmful effects associated with it, thereby meeting the aims of NNNPS paragraphs 4.79 to 4.82. On this basis, the effect on living conditions represents a neutral consideration. Without those measures the Proposed Development would fail to properly comply with the aims of the NNNPS and would weigh negatively against the Order being made.
- In relation to the impact on community facilities, the shortcomings of the 'Proportionate Reconfiguration', as proposed at the close of the Examination, does not properly compensate the WGAA for the negative impact of the Scheme on this community facility. This is a negative consideration in relation to the DCO that fails to comply with paragraphs 4.79-4.82 of the NNNPS.

7.2.14. Geology and soils

- The effects on land stability would be negligible and represent a neutral consideration, having regard to paragraphs 5.116 to 5.119 of the NNNPS.
- In accordance with paragraph 5.169 of the NNNPS, mineral resources have been safeguarded as far as possible. The minor to negligible adverse effects identified are not significant but do nonetheless weigh to that limited extent against the Order being made.
- The Applicant has sought to minimise impacts on soil quality in accordance with NNNPS paragraph 5.168. Measures contained within the dDCO would ensure the restoration of agricultural land temporarily lost or damaged during construction. This represents a neutral consideration.
- The Proposed Development would result in a major adverse significance of effect on BMV agricultural land, in conflict with paragraph 5.168 of the NNNPS. This weighs against the Order being made.

7.2.15. Materials and waste

- The ExA is satisfied that material assets and waste arising from construction would be able to be properly managed, that all necessary controls would be in place through the recommended dDCO, and that the Proposed Development complies with NNNPS paragraphs 5.39 to 5.45 in this respect.
- The effects of the Proposed Development on materials and waste therefore represent a neutral consideration.

7.2.16. Road drainage and the water environment

- Effects on Bickenhill Meadows SSSI have been appropriately assessed and are capable of being acceptably mitigated by R13 in accordance with paragraph 5.29 of the NNNPS. The effect on this designated site is therefore a neutral consideration.
- The Proposed Development is compliant with the WFD. This represents a neutral consideration.

- Most of the Proposed Development is located in Flood Zone 1 and the risk of flooding is low. The assessment also confirms that the risk of flooding from surface water, drainage infrastructure and artificial sources is low. Given the mitigation measures incorporated into the drainage design, the risk of on-site or off-site flooding due to the Proposed Development is also low. The Proposed Development will not increase flood risks elsewhere; indeed, it provides an improvement over the existing situation. Matters relating to drainage and flood risk therefore weigh in favour of the Order being made.
- Consequently, impacts on the water environment and flood risk have been adequately assessed and mitigation measures proposed are both sufficient and adequately secured, thereby meeting the tests set out in NNNPS paragraphs 5.90 to 5.115 and 5.219 to 5.231.

7.2.17. Noise and vibration

- The design of the Proposed Development provides some mitigation against noise once operational and commitments in the REAC and OEMP should provide further relief. In that respect the Proposed Development complies with paragraph 5.189 of the NNNPS.
- Even so, increases in noise are likely to be widespread albeit that they are deemed to be 'minor' or 'negligible', in EIA terms. Moreover, such operational 'adverse' effects are largely due to a general increase in traffic. The Proposed Development will marginally reduce the number of properties with noise levels above the SOAEL compared to the DM scenario, constituting a slight positive effect.
- The effects of construction noise are more pervasive and cause about 50% of receptors to experience a 'worst-case' noise level above the relevant SOAEL.
- Stringent control exercised through the REAC and the OEMP and the use of barriers and 'best practicable means', will minimise the probability of cumulative noise from simultaneous construction activities and provide mitigation. In this respect the requirements of NNNPS at address concerns of residents at paragraphs 5.189-5.191 are, at least partially, met.
- The vibration effects of the Proposed Development, due to the controls in the OEMP and the REAC, should ensure that no receptor experiences an impact above the SOAEL during steady-state operations. The piling effects on Bridge House are unlikely to be significant and no significant combined adverse effect of construction noise and vibration is anticipated. Hence, the Proposed Development will comply with Government policy and paragraphs 5.189-5.19 of the NNNPS with respect of the vibration effects during construction.
- Changes in noise levels from the 'Proportionate Reconfiguration' of the WGAA facility are likely to be barely perceptible and below the WHO guidelines at Four Winds or elsewhere.
- The Proposed Development generally increases the noise experienced at Páirc na hÉireann, but the likely significant effects only occur in a very small portion of one pitch and there is scope to implement appropriate mitigation. Hence, the Proposed Development will comply with policy in respect of the effects of, and the effects on, Páirc na hÉireann.

- In those circumstances the ExA considers that the effects of the Scheme are broadly neutral.

7.2.18. Climate

- In accordance with paragraph 5.17 of NNNPS the Applicant has provided evidence of the carbon impact of the project and an assessment against the Government's carbon budgets. The assessment has concluded that the GHG emissions impact of the Proposed Development would not have a material impact on the UK Government meeting its carbon reduction targets. Having considered all relevant matters, the ExA find no reason to disagree, even taking into account the increase in the UK Government's carbon reduction targets for 2050, which came into force during the course of the Examination.
- The Proposed Development has been designed to be resilient to the impacts arising from climate change.
- The ExA find no reason to disagree with the Applicant's findings that no significant effects would arise from the likelihood of climate events and hazards occurring, and the consequence of the potential impacts on disruption to the road network.
- Taking all these matters into account, the ExA's findings on climate represent a neutral consideration.

7.2.19. The relationship of the scheme to other projects

- The design of Junction 5A does not preclude the provision of an MSA in this location, but it will require significant modification which will affect both the operation of the M42 and the impact of the Junction on the adjacent Ancient Woodland.
- The shortcomings of the 'Proportionate Reconfiguration', as proposed at the close of the Examination, represents a residual and harmful impact on Páirc na hÉireann. This is a negative impact on this community facility.
- Nevertheless, the Proposed Development is a crucial second phase in a 4-phase programme of further infrastructure development to accommodate the growth envisaged in extant plans and programmes. It will accommodate the growth in travel envisaged from HS2 and the Airport. Also, the TA demonstrates that it can cope robustly with annual traffic variations as well as those experienced at weekends. This aspect of the Scheme delivers positive benefits in line with the aims set out in the NNNPS, particularly at paragraphs 2.1 and 2.2.

The Balance of Issues

7.2.20. The NNNPS paragraph 4.2 advises that, subject to the provisions of s104 of the PA2008, the starting point for the determination of an application for a national networks NSIP is a presumption in favour of development.

7.2.21. In reaching conclusions on the case for the Proposed Development, the ExA has had regard to the NNNPS as the relevant NPS, the NPPF, the LIRs and all other matters which it considers both important and relevant

to the SoS's decision, including the concerns and objections raised by those who made submissions on the application.

- 7.2.22. The ExA has further considered whether the determination of this application in accordance with the relevant NPS would lead the UK to be in breach of any of its international obligations where relevant. The ExA concludes that, in all respects, this will not be the case.
- 7.2.23. Bringing the above conclusions together, the ExA note the Government's strong policy support for schemes that seek to deliver a well-functioning Strategic Road Network (SRN). The Proposed Development would help to deliver this policy. It accords with Government policy to deliver national networks that meet the country's long-term needs, supporting a prosperous and competitive economy and, as an improvement at Junction 6 on the M42, it does so as paragraphs 2.23-2.27 of the NNNPS prescribes.
- 7.2.24. The TA forecasts demonstrate that the Proposed Development will accommodate the forecast traffic generally in free-flow conditions and with spare capacity at all junctions. However, should all the jobs envisaged in local plans and programmes materialise, additional road infrastructure will be required. In this regard, the Proposed Development is a crucial second phase in a 4-phase programme of further infrastructure development to accommodate the growth envisaged in extant plans and programmes. It will accommodate the growth in travel envisaged from HS2 and the Airport. Also, the TA demonstrates that it can cope robustly with annual traffic variations as well as those experienced at weekends. This aspect of the Scheme delivers positive benefits in line with the aims set out in the NNNPS, particularly at paragraphs 2.1 and 2.2.
- 7.2.25. The improvements to the road network likely to be achieved by the Proposed Development is thus a strongly positive consideration in favour of the Order being made.
- 7.2.26. However, for the reasons explained at paragraphs in Chapter 5, ExA finds that the Proposed Development, both during construction and operation, would be inappropriate development for the purposes of Green Belt policy. As explained in NNNPS paragraph 5.178, "*Inappropriate development is by definition harmful to the Green Belt and there is a presumption against it except in very special circumstances [...]*"
- 7.2.27. Accordingly, a balancing exercise has to be undertaken to establish whether very special circumstances exist to justify development within the Green Belt and whether the Proposed Development accords with the NNNPS and NPPF.
- 7.2.28. The starting point is that, in view of the presumption against inappropriate development, "*the Secretary of State will attach substantial weight to the harm to the Green Belt, when considering any application for such development*" (NNNPS paragraph 5.178).

- 7.2.29. However, paragraph 5.171 recognises that *“Linear infrastructure linking an area near a Green Belt with other locations will often have to pass through Green Belt land. The identification of a policy need for linear infrastructure will take account of the fact that there will be an impact on the Green Belt and as far as possible, of the need to contribute to the achievement of the objectives for the use of land in Green Belts.”*
- 7.2.30. In this regard, the NNNPS paragraph 1.21 explains that *“Sitting alongside the NPS are the investment programmes for the road and rail networks – the Rail Investment Strategy (HLOS) and the Road Investment Strategy (RIS). These, together with the business plans prepared by the relevant delivery bodies, provide detailed articulation of the Government’s funding strategy for the road and rail networks and investment priorities over forthcoming periods.”*
- 7.2.31. The RIS outlines the Government’s plan for long term investment in the strategic road network. The Proposed Development forms part of the RIS and Government funding has been allocated to it. This includes plans for a *“comprehensive upgrade of the M42 junction 6 near Birmingham Airport, allowing better movement of traffic on and off the A45, supporting access to the airport and preparing capacity for the new HS2 station”*. There is therefore an identified national need for the Proposed Development and given that Junction 6 is located within the Green Belt, there implies an acknowledgement of there being an impact upon the same.
- 7.2.32. As noted, the Proposed Development has been designed, as far as possible to avoid or minimise harm to the landscape. Indeed, much of the mainline link road would be in cutting. Nevertheless, the Proposed Development would still result in significant adverse effects on the landscape both in construction and in operation. There would also be moderate to slight adverse effects on the historic landscape.
- 7.2.33. Construction effects would however be temporary. As none of the construction compounds are proposed to become permanent, their effect on the openness of the Green Belt would be confined to the length of time each is required in connection with the construction of the Proposed Development. The temporary nature of the impact is therefore a material consideration to be taken into account.
- 7.2.34. The Proposed Development would fail to preserve the setting of five listed buildings and would neither preserve nor enhance the character or appearance of two conservation areas. The magnitude of harm identified would be less than substantial in the context of paragraphs 5.133 and 5.134 of NNNPS. Nevertheless, when considering the impact of a Proposed Development on the significance of a designated heritage asset, NNNPS paragraph 5.131 requires the SoS to give great weight to the asset’s conservation.
- 7.2.35. There would also be harm from the loss of ancient woodland, agricultural land, including BMV land, and significant effects on two agricultural

holdings and two larger farms. There would be minor to negligible adverse effects on mineral resources.

- 7.2.36. The shortcomings of the 'Proportionate Reconfiguration', as proposed at the close of the Examination, represents a residual and harmful impact on Páirc na hÉireann. This is a negative impact on this community facility.
- 7.2.37. The measures to reduce or compensate for the harmful effects on NMU routes are insufficient and fail to foster the Government's aim of providing options to use sustainable, convenient and attractive modes of travel.
- 7.2.38. However, for motorised travellers the Proposed Development maintains most connections to nearby villages and towns as well as reducing congestion and increasing journey reliability. This benefit outweighs any sense of severance which would be experienced by residents of Bickenhill, who would have to turn south to go north. The effect on motorised travellers therefore weighs positively for the Order being made.
- 7.2.39. Improvements identified in terms of flood risk also weigh in favour of the Proposed Development.
- 7.2.40. Controls secured through the recommended dDCO would avoid or reduce the harmful effects on living conditions such that it represents a neutral consideration. Effects in relation to noise and vibration, air quality, materials and waste, land stability, soil quality and climate change can also be considered as neutral considerations.
- 7.2.41. The ExA finds no adverse effect, either alone or in-combination with other plans or projects, on any European site or its features. A neutral position can also be applied to the effects on Bickenhill Meadows SSSI and protected species.
- 7.2.42. Taking all these considerations into account, the ExA find that the material considerations weighing in favour of the proposed development clearly outweigh the potential harm to the Green Belt and the other identified harm, such that very special circumstances exist to justify the development within the Green Belt in accordance with the NNNPS and NPPF. This is consistent with the position of SMBC as set out in its LIR.

OVERALL CONCLUSIONS ON THE CASE FOR THE DEVELOPMENT

- 7.2.43. All the impacts identified fall to be considered together in the context of the Proposed Development as a whole. In particular, this consideration should be undertaken against the identified benefits of the Proposed Development in relation to the SRN and the Proposed Development's significant supporting role in economic terms, to which the ExA attach substantial weight.

- 7.2.44. In the ExA's judgement, the strategic benefits of the Proposed Development are such that they outweigh the impacts identified above.
- 7.2.45. The potential harm is outweighed by the benefits of the Proposed Development in meeting Government policy as set out in the NNNPS.
- 7.2.46. No HRA effects have been identified and there is no reason for HRA matters to prevent the making of the Order.
- 7.2.47. The ExA therefore conclude, for the reasons set out in the preceding chapters and summarised above, that development consent should be granted.

8. COMPULSORY ACQUISITION AND RELATED MATTERS

8.1. INTRODUCTION

8.1.1. The application DCO included proposals for the Compulsory Acquisition and Temporary Possession of land and rights over land. This Chapter covers the examination of the justification for the seeking of those powers and the position at the conclusion of the examination together with the ExA recommendation on the powers.

8.2. LEGISLATIVE REQUIREMENTS

8.2.1. CA powers can only be granted if the conditions set out in sections (s) 122 and s123 of the Planning Act 2008 (PA2008), together with relevant guidance in 'Guidance Related to Procedures for the Compulsory Acquisition of Land', DCLG, September 2013 (the former Department for Communities and Local Government (DCLG) CA Guidance) are met.

8.2.2. Section 122(2) of PA2008 requires that the land subject to CA must be required for the development to which the development consent relates or must be required to facilitate or be incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate¹⁰⁴.

8.2.3. Section 122(3) of PA2008 requires that there must be a compelling case in the public interest to acquire the land, which means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right.

8.2.4. Section 123 of PA2008 requires that one of three procedural conditions in subsections (2) to (4) must be met by the application proposal, namely:

- The condition is that the application for the order included a request for compulsory acquisition of the land to be authorised.
- The condition is that all persons with an interest in the land consent to the inclusion of the provision.
- The condition is that the prescribed procedure has been followed in relation to the land.

8.2.5. A number of general considerations also have to be addressed, either as a result of following the applicable guidance or in accordance with legal duties on decision-makers:

- all reasonable alternatives to CA must have been explored;
- the applicant must have a clear idea of how it intends to use the land subject to CA powers;

¹⁰⁴ DCLG CA Guidance

- the applicant must be able to demonstrate that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers; and
- the decision-maker must be satisfied that the purposes stated for the CA are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

8.2.6. Further to Part 1 of Schedule 5 to PA2008 at paragraph 2, TP powers are capable of being within the scope of a DCO. PA2008 and the associated DCLG CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers as, by definition, such powers do not seek to permanently deprive or amend a person's interests in land. Hence, the test of the justification for TP powers is based on the general need for powers to enable the construction of the project but with proper consideration of the impact of TP on the Human Rights of APs.

8.2.7. All relevant legislation and guidance are taken into account in the reasoning below and relevant conclusions are drawn at the end of this Chapter in relation to both CA and TP.

8.3. THE REQUEST FOR CA AND TP POWERS

8.3.1. The application draft Development Consent Order (dDCO) [APP-015] and all subsequent versions submitted by the Applicant up to the applicant's latest dDCO revision submitted at Deadline 9 [REP9-011] include provisions intended to authorise CA and TP of both land and rights.

8.3.2. The application was accompanied by a Book of Reference (BoR) [APP-020], Land Plans [APP-006 and APP-014], a Statement of Reasons (SoR) [APP-017] and a Funding Statement (FS) [APP-019]. These documents set out the land and rights sought by the Applicant together with the reasons for their requirement and the basis on which compensation would be funded.

8.3.3. By the close of the Examination, the most up-to-date versions were as follows:

- Updated EM [REP9-013], Updated SoR [REP9-015] and
- Updated BoR [REP9-017] all submitted at D9 together with their associated track change versions;
- the Key Plan was unchanged [APP-006]
- Land Plan Sheets 1-3 [REP9-002]
- Land Plan Sheets 4-7 [REP9-003]
- Updated Crown Land Plan at D10 [REP10-003]
- Updated Works Plan at D9 [REP4-004]

8.3.4. These documents taken together form the basis of the analysis in this Chapter. References to the BoR and the Land Plans in this Chapter from this point should be read as references to the latest revisions cited above and plot references employed in this Chapter are correct as per the most recently submitted Land Plans.

8.3.5. Powers requested under s127 are also included together with the request for Crown Land and are discussed below.

8.4. THE PURPOSES FOR WHICH LAND IS REQUIRED

8.4.1. The purposes for which the CA and TP powers are required are set out in the SoR and the BoR.

8.4.2. CA is being sought for the construction of new carriageway for the extended junction, the mainline road and the associated links roads together with alteration/improvement of existing carriageway and structures including demolition and the provision of new routes for NMUs, drainage and treatment systems and the relocation of apparatus. Creation of rights is also sought to provide for environmental mitigation.

8.4.3. TP is sought for the time-limited purpose of use of land for access to enable construction, to store materials, construct temporary works and remove those and other items of apparatus.

8.4.4. Articles 24 and 25 of the recommended dDCO respectively provide the power for the CA of land and incorporating the minerals code respectively and Article 26 covers notice and vesting powers and time periods for taking possession.

8.4.5. Art 27 relates to CA powers to acquire compulsorily existing rights and create and acquire new rights where necessary for the project. This land will also be subject to the general powers in Part 5 of the recommended dDCO, including the power to override private rights where they are inconsistent with the authorised development (Art 28).

8.4.6. Art 32 provides for access over and under streets, Art 34 provides TP powers for carrying out the proposed development including a 14 day minimum notice period and Art 35 provides TP powers for maintenance including a 28 day minimum notice period.

8.4.7. Art 37 potentially provides for the acquisition of Crown interests in any of the land affected. This is discussed further in Chapter 9 and below. No land is included in the DCO which is classed as special category land.

8.4.8. Other articles in the draft DCO may interfere with property rights and private interests:

- Article 16: Temporary Stopping Up
- Article 17: Stopping Up
- Article 22: Protective Works to Buildings
- Article 23: Authority to Survey
- Article 39: Felling or lopping of tress and removal of hedgerows

8.4.9. These powers do not fall under the same tests as CA. The general merits of these articles are therefore discussed in Chapter 9 regarding the DCO as a whole including representations made as to the impact of restrictions on access such as those by Gooch Estates [REP1-023, REP3-015].

8.5. EXAMINATION OF THE CA AND TP CASE

8.5.1. The examination of the application included consideration of all submitted written material relevant to CA and TP. Two Compulsory Acquisition Hearings (CAHs) were held together with unaccompanied and accompanied inspections of land subject to CA and TP requests. These processes are described below.

Written process

8.5.2. Within Relevant Representations (RR) the following raised objections or issues in relation to the CA or TP requests in the application, or the effects of it:

- Birketts LLP [RR-002] on behalf of the Trustees of the Gooch Will Trust [RR-002] who objected to the acquisition of land or rights and the impact of temporary possession on the operation of the Gooch Estate
- Cadent Gas [RR-005] has apparatus potentially affected by the scheme and at the start of the examination was in a process to examine the need for relocation and Protective Provisions to cover their statutory interests
- David Tucker Associates on behalf of Bracebridge Holdings Ltd (the National Motorcycle Museum and Conference Centre) [RR-009] in relation to the effect of the proposal on the access to their site from the existing Junction 6
- David Tucker Associates on behalf of Landsdowne Group [RR-010] in relation to access to Long Acre Farm from the existing A45
- DWF Law LLP on behalf of The Arden Hotel Ltd [RR-011] in respect of both TP on the operation of the existing hotel and CA in respect of the impact on the operation and future development of the hotel and site as well as the overall effect of construction on the hotel operation
- Gately Plc on behalf of Warwickshire Gaelic Athletic Association (WGAA) [RR-013] regarding the impact on Páirc na hÉireann in terms of both the pitches and the club house facilities given the specific needs of their sporting association in terms of land use, operation of the facilities and their development of Gaelic sports as a whole
- Gerald Eve on behalf of National Exhibition Centre Ltd [RR-014] in respect of the CA and TP of land and the impact on car parking and site development as well as general issues associated with the design and construction of the scheme on their operations
- Lynda Barnstaple on behalf of Mr Heathcliffe Boswell [RR-018] in relation to the impact of the scheme on the access to the Haven Caravan Park
- Lawrence Boswell [RR-019] in respect of the impact on the scheme on his property and his subsoil rights related to the Haven Caravan Park
- Philip O'Reilly [RR-026] objected to acquisition of his land and also to the impact of the scheme to reconfigure the WGAA on his property
- Shoosmiths LLP on behalf of Extra MSA Solihull Ltd [RR-028] in respect of their owned land and options on land associated with their

planning application for the development of a motorway service area adjacent to the project

- Solihull MBC [RR-029] in respect of aspects of the scheme design and construction
- Josephine Smyth on behalf of Damian Smyth [RR-017] in respect of access for residents of Clock Lane
- Thomas Smyth on behalf of the Estate (sic) of Mr D Rogers [RR-033] in respect of the impact of the scheme on access for his haulage business
- Veale Wasbrough Vizards LLP on behalf of Esso Petroleum Company Ltd [RR-34] in respect of rights associated with their pipeline and the need for a Pipeline Protection Agreement
- Warwickshire Wildlife Trust [RR-035] in respect of their Shadowbrook Meadow Nature Reserve and the wider local ecology and wetlands

8.5.3. David and Camilla Burton registered an objection at WR stage [AS-048] which was accepted by the ExA in relation to the impact on Church Farm of the scheme.

8.5.4. Objections were raised on behalf of Geoff Cattell, Mrs J Melbourn, Mssrs Ali and Choudhry and William Freeman and Sons by Barlow Associates at D4 [REP4-028] and further submissions at the CAHs.

8.5.5. Objections were also registered by HS2 Ltd [RR-016], National Grid Electricity Transmission PLC [RR-020] and Osborne Clarke LLP on behalf of Western Power Distribution (West Midlands) PLC [RR-024] but these were withdrawn by the close of the examination following agreements being reached.

8.5.6. The ExA's first written questions (ExQ1) [PD-006] requested the Applicant to provide an update of negotiations with parties in respect of which voluntary agreements were being sought in terms of acquisition of land and rights. Updates were given at intermediate deadlines with a final update at D9 from the Applicant [REP9-035] following the second CAH.

Hearings

8.5.7. Two CAHs were held [EV-017, EV-018 and EV-038]) as set out in Chapter 1 of this Report. A request to be heard at the CAHs was made by RC. The hearings were held to orally examine objections, the Applicant's case for CA and TP powers and to seek updates on negotiations.

Site Inspections

8.5.8. Two unaccompanied site inspections [EV-028 and EV-035] together with an accompanied site inspection [EV-029] provided the ExA with an understanding of the location and condition of land parcels proposed to be subject to CA and TP powers.

Non-material Changes

- 8.5.9. As noted in 1.4.9, the Applicant submitted a change request on 9 August 2019 [AS-027] which the ExA subsequently accepted the changes as non-material changes to the application [PD-015].
- 8.5.10. A proposed reconfiguration for the WGAA facility was also made during the examination to provide for alternative arrangements for the siting of pitches within the Páirc na hÉireann This included, inter alia, the deletion of Plot 3/1d as being no longer required following the reconfiguration proposal and this is reflected in the updated BoR tracked change version [REP9-018] incorporating all changes proposed by the Applicant during the examination.

8.6. Consideration of CA and TP Issues

- 8.6.1. This section sets out the Applicant's general case for CA and TP. Consideration of particular objections are in the following section and consideration of Human Rights and funding provision in later sections.
- 8.6.2. The updated SoR [REP9-015] sets out the requirement for the land and a justification for the Proposed Development against the NNNPS and other relevant policies.
- 8.6.3. Within the SoR the Applicant has addressed the general considerations which the DCLG Guidance indicates should be demonstrated to justify the powers sought as follows:
- reasonable alternatives to CA and TP have been explored;
 - the Applicant has a clear idea of how it intends to use the land;
 - the proposed acquisition is legitimate, proportionate and necessary;
 - there is a compelling case in the public interest;
 - there is funding for the acquisition; and
 - the interference with Human Rights is proportionate and justified.

Reasonable alternatives to CA and TP

- 8.6.4. The Applicant outlined in the SoR the consultation with AP and the steps taken to reach agreement where possible. The approach to design outlined in the process also considered how to minimise the impact of the scale and nature of CA. The Applicant has set out how the subdivision of the land into plots has attempted to limit the interference with rights through the proportionate application of the combination of CA of land or rights and also via TP when appropriate.
- 8.6.5. Where voluntary agreements have been reached these are included in the updated BoR [REP9-018] at the close of the examination. The status of negotiations has also been set out in the SoCGs submitted towards the close of the examination. Where matters were outstanding at the close of the examination these are considered in the sections below for APs.

The Applicant has a clear idea of how it intends to use the land

- 8.6.6. The updated SoR [REP0-015] records what each plot is to be used for. The Land Plans show the location of each plot and whether it is for the CA of land, rights over land, or TP. These were amended during the examination in response to submissions and following the CAHs.

The proposed acquisition is legitimate, proportionate and necessary and there is a compelling case in the public interest

- 8.6.7. The SoR sets out the need for the scheme and the economic and environmental benefits that the Applicant believes that the projects provides. This is largely supported by the LIRs and the ExA has considered in Chp 7 the overall case for the scheme and has considered, notwithstanding the cases of individual APs, that there is a need for the scheme and that the disbenefits are not outweighed by the benefits. As such the ExA consider there is a compelling case in the public interest and the necessity of each plot and powers for each AP is considered below.

8.7. HUMAN RIGHTS ACT (1998) CONSIDERATIONS

- 8.7.1. Given the powers of CA and TP included in the dDCO, Article 1 of the First Protocol (the right to peaceful enjoyment of property) is engaged. The ExA has considered the general operation of these powers for APs included in the BoR. The ExA consider that the proposed interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest having regard to the public benefits of the Proposed Development but the case of individual APs who registered objections to the powers affecting them are considered below.
- 8.7.2. Art 6 entitles APs to a fair and public hearing of their objections and is engaged. The written process and the CAHs of the examination have provided a public process to enable their objections to be considered fairly. The provision of compensation is also an essential consideration in the impact of interference in Human Rights and the rDCO contains provisions, discussed in Chapter 9, for compensation in accordance with recognised methods.

8.8. Consideration of individual objections and issues

National Motorcycle Museum and Conference Centre and Bracebridge Ltd

Adjacent to Junction 6

Interests: Rights to be acquired and / or created over plots 5/22 and 5/23

- 8.8.1. The Applicant seeks CA over land in plots 5/22 and 5/23. Land by agreement letters had been progressed but CA still required to complete transfer of all interests.

The ExA's considerations

- 8.8.2. At the close of the Examination there had been no further representations from the APs beyond their original representation. As such the ExA recommends that the CA for these plots is justified.

The Arden Hotel

Owner, CA of plot 4/11c, TP of plots 4/11a,b and TP plus rights of 4/94

Status summary: negotiation ongoing

- 8.8.3. TP is required to carry out construction works and CA to provide for reconfiguration of the WGAA. At the close of the examination a SoCG was submitted [REP10-006] outlining areas agreed and not agreed.

The ExA's considerations

- 8.8.4. There have been extensive discussions as to the scale and extent of the works required and the arrangements for protection of the operation of the hotel via the OEMP and CEMP. Compensation is available for the operator for through the DCO provisions. The agreements and the scale of the CA are such that there is no evidence that the business would be unviable. The ExA recommends that the CA of land and creation of rights is justified.

National Exhibition Centre

Off the A45 and adjacent to M43

Lessee Interests: CA of plots 4/3t, 5/29a, 5/29m, 5/29v, 6/2a; TP with permanent rights of plots 4/3af, 5/29c and 5/29u

Status summary: negotiations ongoing and via Birmingham CC as freeholder.

- 8.8.5. Discussions took place before and during the examination and a SoCG was submitted at D8 [REP8-003] and a further representation at D10 [REP10-009] expressing concern about the lack of Heads of Terms and that an updated SoCG and Formal Agreement had not been signed as a result.

The ExA's considerations

- 8.8.6. There is extensive evidence of discussions in relation to both the operation and construction elements and efforts to minimise the impacts on the NEC as an important economic element in the area and nationally. The NEC were invited to but chose not to attend the 2nd CAH as set out in their final representation. It is disappointing that agreements were not finalised by the close of the examination but there was evidence of longstanding co-operation between the Applicant and the NEC in relation to the management of activities at the centre.
- 8.8.7. Notwithstanding that, the ExA consider that the land and rights set out in the BoR are necessary for the delivery of the scheme and the impact of the CA on the NEC is a proportionate interference in their rights which is justified by the public interest in delivery of the scheme. None the less,

given the wider significance of the NEC the SoS may wish to satisfy themselves as to the position at the point of decision.

Solihull MBC

Owner and Occupier interests in plots on pages 105 to 117 in BoR

Status summary: discussion ongoing in relation to land rights

- 8.8.8. The updated BoR [REP9-015] at the close of the examination details the discussions but without any further specific reference to land agreements. Solihull expressed support for the Scheme in their LIR [REP2-033] and in their final SoCG [REP8-005].

The ExA's considerations

- 8.8.9. The reservations in the original representation have not been expressed further during the examination in respect of their own land. Concerns were mentioned in relation to the interests of some lessees and these have been considered in those relevant sections of this report. Given Solihull's repeated expression of support for the Scheme, the ExA recommend that there are no obstacles to the CA of land or creation of rights proposed in the BoR and to the Articles in rDCO.

Extra MSA Solihull Ltd

Interests as a beneficiary of an option agreement over multiple plots held by Gooch Estate for which CA required and TP over plots 2/59 and 2/65

Status summary: objections superseded

- 8.8.10. Shoosmiths LLP registered objections on behalf of Extra MSA [RR-0027] in respect of their options on land held by Gooch Estates for the creation of a new motorway services area on the M42. During the course of the examination a SoCG together with updates was lodged [REP5-005] which demonstrated agreement in respect of modelling and design arrangements which would potentially facilitate a service area provision. Whilst the objections were not formally withdrawn the evidence appears to demonstrate that the original concerns have been superseded. No objection was raised to the TP.

The ExA's considerations

- 8.8.11. The SoCG appears to substantially supersede objections which could have been associated with options on plots held by Gooch Estates et al and those will be considered below against any objections other than those raised originally by Extra MSA.

Esso Petroleum Ltd

Interests as Occupier or with Rights over a number of plots held by Gooch Estates and Geoff Cattell

Status summary: objections outstanding

8.8.12. Objections were raised in RR-34 on behalf of Esso Petroleum Ltd in respect of its pipeline which underlies land held by Gooch Estates and Geoff Cattell. Although this pipeline is not covered by statutory obligations, Esso has sought protective provisions and a pipeline agreement to protect its interests. This was reiterated in their submission AS-021 which sustained their objection in the absence of such provision. The Applicant observed the importance of unobstructed access to the pipeline in their reconfigured layout for WGAA [REP2-019] but the provisions and agreement remained outstanding at the close of the examination.

The ExA's considerations

8.8.13. The Esso pipeline does not fall to be considered under s127 but is none the less an important infrastructure element which merits appropriate protection. The Applicant stated in REP9-026 that agreement had been reached but a signed agreement was not submitted by the close of the examination. This is discussed further in Chapter 9. Subject to the provision of appropriate protections, the CA or land and rights held by Gooch Estates and Geoff Cattell can be considered against other issues if the SoS is able to satisfy themselves at the point of decision that these protections had been formally agreed and incorporated in the DCO as necessary.

Warwickshire Wildlife Trust

Shadowbrook Wildlife Reserve

TP with permanent rights of plots 3/22a, 3/22b and 3/25

Status summary: objections not formally withdrawn

8.8.14. The Warwickshire Wildlife Trust raised objections [RR-035] of the impact of the scheme generally but also specifically on their joint interest in the Shadowbrook local wildlife reserve. They did not formally withdraw the objections but the last SoCG [REP7-003] indicated agreement had been reached on provision for water resources and management arrangements across a range of sites affected by the Scheme.

The ExA's considerations

8.8.15. There is good evidence that agreement has been forthcoming between the Applicant and the Warwickshire Wildlife Trust in respect of mitigation of the impact of the Scheme and the limited rights of access need following temporary possession of the three plots in which the Trust has an interest. The ExA recommends that there is no impediment to the inclusion of the plots in the rDCO powers based on the evidence before the examination.

Heathcliffe Boswell and Lawrence Boswell

Haven Caravan Park

CA and TP with permanent rights Plots 3/3a, 3/23, 4/153 and 4/157

Status: objections outstanding

- 8.8.16. Objections were raised by the Boswells in respect of the general impact of the Scheme on the Haven Caravan Park but in particular in relation to the potential for the creation of a secondary access to the park. Solihull MBC [REP8-005] supports the potential for a secondary access but was not supportive of the potential location of the access as it related to the plots in the BoR. At the close of the examination the objections had not been withdrawn.

The ExA's considerations

- 8.8.17. Whilst the potential for the creation for the secondary access may be desirable it is not agreed with the local highway authority and the objections were not further detailed during the examination. As such there is no evidence of any serious detriment arising from the CA request and the ExA recommend that it should be supported if the SoS grants the DCO.

Gooch Estate

The Estates and Farm Office, Beccles

CA, TP and TP with creation of permanent rights of plots as set out in the updated BoR pages 96 to 97

Status: objections lodged and not withdrawn

- 8.8.18. Objections were lodged by Birketts LLP on behalf of the Trustees of Sir Timothy Gooch Will Trust – Hampton Estate – collectively known as the Gooch Estate. This includes land with an option agreement with Extra MSA – as discussed above – and has other interests for farming and estate management. This includes access for lessees and for maintenance which must be of appropriate width. The land being sought is mainly in agricultural use or covers Ancient Woodland and is noted in the SoR as being required for works, access, temporary works or environmental mitigation.
- 8.8.19. Representations were also made in writing [REP1-007, REP1-023, REP2-053, REP5-018, REP5-019, REP6-041, REP7-025] and at the two CAHs. The central issues were the justification for the scale and nature of the powers on all of the affected plots, the provision of appropriate farm access and protection to support existing agricultural uses including the adequacy of notice periods and the scale of access requirements by the Applicant as well as the protection of existing commercial activity and the viability of the option agreement land for Extra MSA given the extent of the powers being sought.
- 8.8.20. The submissions also noted that the Gooch Estate are supportive of the Scheme in general terms but was concerned at the lack of specific information and justification for many of the plots, particularly relating to environmental mitigation, as well as the accuracy of the characterisation of the existing land.

- 8.8.21. Particular concern was expressed over the impact of Article 27. This article allows for existing rights in land to be acquired as well as the land itself, and also for the acquisition of new rights and the imposition of restrictive covenants over land.
- 8.8.22. The Gooch Estate's concern [REP1-023] is that a substantial area of its land could be affected by the ability to impose restrictive covenants conferred by Art 27 and reference is made to paragraph 62 of the SoS's decision for the M4 Motorway (Junctions 3 to 12) (Smart Motorway) DCO 2016 (SI 863/2016) as follows:
- "to remove the power to impose restrictive covenants and related provisions as he does not consider that it is appropriate to give such a general power over any of the Order land as defined in article 2(1) in the absence of a specific and clear justification for conferring such a wide-ranging power in the circumstances of the proposed development and without an indication of how the power would be used"*
- 8.8.23. Reference is also made to the Morpeth Northern Bypass Order (SI 23/2015) where the SoS considered that the power to impose restrictive covenants over land within the Order limits should be limited to a specified list of plots.
- 8.8.24. The Gooch Estate similarly state that for the A19/A184 Testo's Junction Alteration DCO 2018 (SI 994/2018) and the M20 Junction 10a Development Consent Order 2017 (SI 1202/2017) the power to impose restrictive covenants was limited by reference to certain plots.
- 8.8.25. The Gooch Estate's do not consider such broad powers to be justified and request that they are removed from the DCO or alternatively limited to a list of specific plots, with justification provided for their inclusion.
- 8.8.26. The Applicant considers [REP-015] that the general power is justified as the flexibility to achieve its aim through the exercise of a lesser power to acquire rights or impose restrictive covenants, rather than acquiring the whole of the land outright, would allow the Applicant to take a proportionate approach should the opportunity arise. Without the inclusion of this article, the Applicant would have no alternative but to acquire the land outright if an alternative agreement could not be reached by private treaty.
- 8.8.27. The Applicant's EM [REP9-013] states that a provision of this kind is usual in Transport and Works Act orders and Hybrid Bills, and has been followed in a number of DCOs granted. The examples cited are Art 23 of The A14 Cambridge to Huntingdon Improvement Scheme DCO 2016 (SI 547/2016) and article 23 of aforementioned A19/A184 Testo's Junction Alteration DCO 2018.
- 8.8.28. The Applicant submitted an update on the issues arising from CAH2 [REP9-035] which included further details of the ecological mitigation strategy and the extent of the need for the 'Teardrop' land. Discussions were ongoing at the close of the examination on this and the timing and parameters of the use of TP powers to minimise the disruption to

harvesting. The updated SoR notes that at the close of examination Heads of Terms had been provided and discussions were ongoing to see if agreement could be reached.

The ExA's considerations

- 8.8.29. The ExA notes the significance of the Gooch Estate holdings and their important role for both farming and the local ecology. The ExA has reviewed the scale and extent of mitigation considered necessary especially in the light of the impact of the Scheme on Ancient Woodland in Chapter 5. Given the challenging nature of mitigation for this loss, the ExA has not assumed effective replacement but none the less considers that the case has been made out by the Applicant of the need for the maximum opportunity to provide replacement planting and habitat relocation including for protected species and soil management.
- 8.8.30. The ExA therefore welcomes the progress being demonstrated at the close of the examination on potential agreements. No evidence was presented that suggested that the scale and extent of the request for CA powers and rights creation, together with appropriate TP, would render any part of the Gooch Estate activity unviable. However, it is in the interest of all parties and the wider public interest at as much as there is a compelling case for the Scheme, it is also vital that mitigation is maximised and remaining woodland and the local ecology is protected as well as the economic benefit of agriculture.
- 8.8.31. The ExA is satisfied that the request for CA powers in respect of the Gooch Estate and the provisions in the DCO for notice and compensation are justified but notes the concern in relation to Art 27 powers to create restrictive covenants. Whilst there is a genuine concern about the potential to exercise the power there are valid reasons why the creation of covenants may be an appropriate and proportionate tool particularly to secure the establishing and security of environmental mitigation.
- 8.8.32. The SoS may wish to satisfy themselves as to the position at the point of decision on whether agreements have been reached but the ExA recommend that the SoS can make the rDCO put forward in Chapter 9 even without the formal agreements given the provisions already made for the CEMP and the OEMP as set out in Chapter 9.

Warwickshire Gaelic Athletic Association

Páirc na hÉireann, off Catherine-de-Barnes Lane

CA of plot 3/15b

Status: objections lodged and conditionally withdrawn

- 8.8.33. Objections were lodged by Gately plc on behalf of WGAA [RR-012] centrally on the basis that the Applicant failed to include in the dDCO sufficient land for an equivalent replacement of the existing pitches and for the relocation of the club house to service the proposed relocated pitches. They were supported in this position by representations from Sport England [RR-029] who gave reasons to advocate for a complete

replacement scheme (the legacy scheme) which also delivered wider benefits for both the WGAA and other sporting provision.

8.8.34. The Applicant had put forward a 'proportionate scheme' [REP2-019] to reconfigure the pitch replacement on the land within the dDCO, including to avoid the Esso pipeline, but without relocation of the club house. This was discussed with WGAA and other IPs and APs at the two CAHs. WGAA made a further submission [AS-039] including the implications of compensation for full replacement provision potentially including relocation of the whole club but indicated that they were prepared to work with the reconfigured scheme and as such, was prepared to work to resolve the CA powers over the extent of their own land and adjacent sites.

8.8.35. The difference views on proportionality v full replacement were considered at the CAHs, including the impact of the position on other APs who were concerned that the reconfigured scheme was inappropriate against the tests in the NNNPS and would result in loss of amenity to their own property. Chapter 5 considered the wider impacts of the WGAA facility and that is not repeated here.

The ExA's consideration

8.8.36. The examination reviewed all the evidence in relation to WGAA including its special nature, the impact on future development of any undue restrictions on Páirc na hÉireann and the PSED for the Irish and Scots. It is indeed preferable in sports development terms and for local economic impact if the fuller 'legacy' scheme were to be delivered. But it is not possible to import this wider scheme within the current DCO on natural justice terms at the later stages of an examination especially if additional land is required.

8.8.37. On this basis, the ExA consider that the need case has been demonstrated for the road Scheme and that the disadvantages of the reconfiguration proposal within the application are outweighed by the compelling public interest of the Scheme applied for and that certainty is needed to delivery of the road improvement. The update on the position of WGAA is helpful in recognising that balance of interests. All parties have agreed to continue to work towards finding a means to deliver the 'legacy' scheme which will include a planning consent for the proposal. The ExA has also considers the impact of the reconfiguration scheme on the users of the site in terms of the PSED, as discussed in Chap 5, but does not consider that the proposal would have an significant impact on one group to their detriment.

8.8.38. Given the qualified withdrawal of the WGAA initial objection [AS-039] and the incorporation of the reconfigured proposal, the ExA recommends that the SoS can justify the powers as set out in the SoR and rDCO to deliver the certainty required for the Scheme by the reconfiguration proposal but note that the legacy scheme would be preferable. The SoS may wish to satisfy themselves on the progress on the legacy scheme at the point of decision especially given the potential benefits of the legacy scheme to both sport and the wider interest. In the absence of an agreed legacy

scheme, the Applicants current reconfiguration proposal leaves the WGAA with a clubhouse which is detached from the reconfigured pitches and this significant negative has been taken into consideration in the assessment of impacts in Chp 5.8 and the overall planning balance in Chp 7.

Geoff Cattell

Woodhouse Farm, Catherine-de-Barnes Lane

CA of rights, TP and TP with creation of permanent rights as set out in the updated SoR pages 93 to 95

Status: objections raised and not withdrawn

- 8.8.39. Objections were lodged on behalf of Mr Cattell by Barlow Associates [REP4-028] including frustration at the lack of progress and provision of plans and terms for discussion to facilitate acquisition by agreement. Further submissions were made at D7 [REP7-017] and at the CAH2 by Mr Barlow. Mr Cattell's interests were affected by the removal of plot 3/1d from the CA request following the proposed reconfiguration of the WGAA. Mr Barlow expressed the concerns of Mr Cattell at CAH2 at the piecemeal nature of the land proposals in the BoR. In particular that plot 3/1d, having been initially included, was now left stranded adjacent to the WGAA ground with narrow access and a long walk for his cattle to access it.
- 8.8.40. The updated SoR details the position at the close of the examination including the deletion of 3/1d. Agreement was not reached at this point with Mr Cattell reiterating that he wished all of the original land required to be purchased by agreement so as to not leave him with unviable land.

The ExA's considerations

- 8.8.41. Mr Cattell's position was explored at CAH2 by the ExA. Whilst the reasons for the deletion of 3/1d are understood as consequential from the proposed reconfiguration of the WGAA site, it was for the Applicant to make the request for CA powers and, if the justification had been removed then the CA could not be considered further. It was still open to the Applicant to purchase more land than is necessary by agreement, under CA the overall impact of the plots being purchased on the operation of the farm would be considered as part of the compensation arrangements.
- 8.8.42. The ExA considered the Human Rights of Mr Cattell in terms of the impact of the requested powers on his home and family life, including the viability of his farming business. The evidence was not clear that the revised request was either so significant as to make the interference with his rights under the HRA disproportionate or that the effect of the request would rend his farm unviable. The provision of compensation was available to meet the demonstrable economic impact of the scale and nature of the CA of land and rights.

- 8.8.43. On this basis of the compelling need for the Scheme having been concluded, the ExA recommends that, if the SoS is in a position to give consent to the DCO for the powers and locations as set out in the BoR.

Philip O'Reilly

Four Winds, Catherine-de-Barnes Lane

CA of subsoil rights for plots 2/71 and 3/3a

Status: objections raised and not withdrawn

- 8.8.44. Objections were raised by Philip O'Reilly in RR-025 and RR-026 as an additional submissions [AS-020 and AS-050] which was accepted by the ExA, together with further submissions [REP2-058, REP2-059, REP2-060, REP2-061, REP-033, REP4-039, REP8-015, REP8-016] on both the general impacts of the Scheme on his property and access arrangements and at the CAHs as objecting to the CA powers. He also raised the impact of the proposed reconfiguration of the WGAA [REP2-019] on the quiet enjoyment of his home. He had also raised with the Applicant as to why all his land was not considered for CA given the scale of the impacts from both the highway elements and the WGAA reconfiguration.

The ExA's considerations

- 8.8.45. The ExA visited Four Winds as part of the ASV of 03 July 2019. The impacts of the dual carriageway and the potential reconfiguration of the WGAA are considered in Chp 5 in terms of the impact on Mr O'Reilly. The CA request for subsoil rights as part of the road configuration and to provide local access is not the main area of Mr O'Reilly's objection. He has raised the question both in written and oral submissions the acquisition of all of his property but that is not a matter before the examination.
- 8.8.46. Consequently, the consideration of the impact of CA on his Human Rights is limited to the direct impacts of the request for land in the DCO. This may be a source of frustration to Mr O'Reilly but the evidence is not sufficient to suggest that the impacts would rend his property uninhabitable which would provide a substantial challenge to the basis of the Applicant's approach to CA as to minimise the interference with rights. The ExA appreciates the frustration that this may cause Mr O'Reilly and that this has potentially been increased by the WGAA reconfiguration proposal.
- 8.8.47. On this basis the ExA notes that the urgent and compelling need for the Scheme is appropriate to justify the scale of interference with Mr O'Reilly's rights but the CA as requested. If the SoS decides to grant the DCO then the inclusion of these plots and the powers in the DCO are both justified as required by s122.

Messrs Ali and Choudhry

Argent House, Solihull

CA of plots 3/3a subsoil and 3/53a-d

Status: objections not withdrawn

- 8.8.48. Objections were lodged on behalf of Messrs Ali and Choudhry by Barlow Associates at REP4-028 including frustration at the lack of progress and provision of plans and terms for discussion to facilitate acquisition by agreement. No further details were provided during the examination. The updated SoR [REP9-015] notes amendments to the powers as excluding sub-soil rights from plots 3/53a, 3/53c and 3/53e and amending plot 3/53d to TP. Progression to the District Valuer was also noted.

The ExA's considerations

- 8.8.49. No specific evidence was provided to the examination as to the specific impact of the Scheme on the business or personal interests of Messrs Ali and Choudhry. The limited evidence suggests that agreement may be possible and in event the scale and extent of the rights has been reduced during the examination. Given the need for the Scheme and for certainty over the timely delivery of the works, the ExA recommends that the powers set out in the rDCO for the land and rights detailed in the BoR are proportionate and should be included if the SoS decides to consent the DCO.

William Freeman and Sons

Land in the vicinity of Catherine de Barnes Lane

CA of plot 3/3a subsoil and of plots 3/45a,b,c

Status: objections not withdrawn

- 8.8.50. Objections were lodged on behalf of William Freeman and Sons by Barlow Associates at REP4-028 including frustration at the lack of progress and provision of plans and terms for discussion to facilitate acquisition by agreement. No further details were provided during the examination. The updated SoR [REP9-015] notes amendments to the powers as excluding sub-soil rights from plots 3/45a and b and the removal of 3/45c from the request. Progression to the District Valuer was also noted,

The ExA's considerations

- 8.8.51. No specific evidence was provided to the examination as to the specific impact of the Scheme on the business or personal interests of William Freeman and Sons. The limited evidence suggests that agreement may be possible and in event the scale and extent of the rights has been reduced during the examination. Given the need for the Scheme and for certainty over the timely delivery of the works, the ExA recommends that the powers set out in the rDCO for the land and rights detailed in the BoR are proportionate and should be included if the SoS decides to consent the DCO.

David and Camilla Burton

Church Farm Accommodation, Church Lane

CA of plots 3/72 and 3/73e

Status: objections maintained

- 8.8.52. Objections were registered on behalf of David and Camilla Burton at WR stage as AS-048 which was accepted by the ExA. The objections related to the general impacts of the scheme and the CA of plots affecting their business of Church Farm Accommodation as well as the impact of the compound and the attenuation tank proposed in Work No. 35. They were represented at the CAHs (by Philip Cowen) to detail these objections and submitted further commentary to the examination [REP1-011, REP3-25, REP4-030, REP5-012, REP6-35, REP7-019]. In particular, they objected to the siting of the attenuation tank and the need for access over their land for maintenance due to the effect on their accommodation business.

The ExA's Considerations

- 8.8.53. The general impacts of the Scheme in terms of noise, construction traffic and diversions have been considered in Chapter 5. None the less, the CA impact of the plots and the Works proposed have a specific and direct impact on the business of the family, their guests and their arrangement for grazing animals and horse riding at their ménage. Both of these elements are a potential interference with the Human Rights of the family both to the peaceful enjoyment of their property and to the impact on their family life including their economic ability.
- 8.8.54. The appropriateness of the siting of the compound and attenuation tank have been discussed in Chapter 5.8 and the ExA have raised the question of an alternative arrangement to relocate these to the south of St Peter's Lane and are proposing a Requirement to that effect as necessary to make the proposed development acceptable.
- 8.8.55. Given the overall need for the Scheme and the need to avoid delay or uncertainty in the delivery of the road, if the SoS decides to consent the DCO, the ExA do not consider that the impact of the CA of these plots, including the level of interference in the Human Rights of the Burtons and their family, is so great as to merit refusal of the request for CA. But the ExA is making a clear recommendation that the alternative provision of the attenuation tank and compound is highly desirable and the SoS may wish to satisfy themselves that there is no reason not to support the recommended DCO with this Requirement. This is discussed further in Chapter 8.

Mrs J Melbourn

Salthill House, Chichester

CA of plots 3/3a, 3/23, 3/73a-f and 4/4a,b and TP of plots 4/1j-r,ap,aq,at,az,bb

Status: objections made but not further detailed

- 8.8.56. Objections were noted on behalf of Mrs Melbourn by Barlow Associates at REP4-028 including frustration at the lack of progress and provision of plans and terms for discussion to facilitate acquisition by agreement. No further details were provided during the examination but the updated SoR [REP9-015] notes progression to the District Valuer.

The ExA's considerations

- 8.8.57. Limited specific details were provided to the examination about the specific impacts of the requests for CA or TP on Mrs Melbourn's interests. Mr Cowen, at the CAH 2, made some comments about the potential impact of the access track on the security of her property near Church Farm. Any change to the attenuation tank and the associated access discussed above would similarly affect Mrs Melbourn's interests in the location of 3/73e. There was no detailed evidence as to the scale of any infringement with her Human Rights.
- 8.8.58. The limited evidence suggests that the potential for agreement exists. Given the absence of detailed objections and taking account of the compelling need for the scheme in the public interest, the ExA recommends that the requests for land set out in the BoR and the powers in the rDCO are justified if the SoS decides to consent the DCO.

Other Parties

- 8.8.59. Objections had been raised on behalf of the Lansdowne Group [RR-010] in respect of the access to Long Acre Farm. There are no plots associated with this in the BoR and general access issues have been dealt with in the traffic section of Chapter 5.
- 8.8.60. Representations were made from members of the Smyth family and the Executor of D Rogers in respect of subsoil rights on plots 4/153 and 4/157. The objections appear to relate to residential and commercial movements associated with the design of the scheme rather than to the specific subsoil rights covered in the BoR. The traffic section of Chapter 5 considers movement issues and the impact on residents and businesses. Hence, the ExA do not consider that these representations detract from the need for the rights requested via the DCO for these plots.
- 8.8.61. For all other APs as set out in the BoR, the ExA considers that in the absence of specific evidence of disproportionate impacts on Human Rights and given the evidence of efforts to reach agreement, the resort to CA powers is justified for a Scheme for which a compelling need has been identified. The rDCO also contains provision for appropriate compensation in respect of both CA and TP. As such, the ExA recommends to the SoS that the CA powers are appropriate and proportionate if they decide to consent the DCO.

8.9. Section 127 Considerations

- 8.9.1. Cadent Gas (West Midlands) are the Statutory Undertaker of gas distribution for the area of the scheme and have apparatus that may potentially be affected by the scheme. They objected to the impact of the CA and TP on their land and rights [RR-005] and sought protective provisions to protect those interests. At the close of the examination their objections had not been withdrawn as although a side agreement had been prepared [AS-046] it had not been fully completed.

- 8.9.2. The land within the BoR is clearly operational land and they have registered and not withdrawn objections as per PA2008 s127(1). The Applicant proposed a set of protective provisions in their updated dDCO and which the ExA has considered in their preferred DCO. Cadent confirmed their general agreement to a set of protective provisions [REP9-030] but subject to detailed wording issues.
- 8.9.3. The details of the protective provisions are set out in Chapter 9 and which the ExA considers represent appropriate protection for Cadent Gas to secure their statutory duties. Hence, the ExA consider that the rDCO allows the SoS to satisfy the tests in s127(2) and (3) for CA and s127(5) and (6) in respect of rights. The SoS may also wish to satisfy themselves as to the status of the side agreement at the point of decision.
- 8.9.4. For all other statutory undertakers objections were withdrawn at the close of the examination as per s127(1)(b).

8.10. Crown Land and Special Land

- 8.10.1. There is no special land included in the application. The position on Crown Land is complex and was in a process of change at the close of the examination following the creation of Highways England (HE) as a company rather than an executive agency. The BoR lists plots where the SoS is shown as the freeholder or plots where the SoS has an interest but all of which may be affected by the Transfer Agreement to HE. The Applicant set out their best understanding of the situation at D10 [REP10-003] wished to include the SoS plots as Crown Land and the dDCO powers as a precautionary measure. This is discussed further in Chapter 9.
- 8.10.2. There are also plots listed in Part 4 of the BoR which may become Crown Land when HS2 Ltd acquire or take possession of them but for which the timing is uncertain. In all of these cases it will be a matter for the SoS to satisfy themselves at the point of the decision as to the status of the land and the necessity or otherwise of the Crown Land powers in Article 37.

8.11. AVAILABILITY AND ADEQUACY OF FUNDS

- 8.11.1. The Applicant provided Funding Statement (FS) [APP-019] which sets out the estimated cost of the scheme (c£283M) including construction and compensation costs including the potential for blight claims. The FS also outlines the position of the scheme within the Road Investment Strategy and the underpinning of the RIS in the Highways England Delivery Plan. The scheme is also associated with the proposals for HS2 and is shown as a committed scheme in the 2018/19 delivery plan. The ExA consider that the FS demonstrates the availability of funds sufficient to provide confidence in the scheme deliverability if consent is granted by the SoS and for the protection of the interests of APs.

8.12. CONCLUSIONS

- 8.12.1. The Applicant has set out the case for the Scheme and the justification for its design as part of the need case for a project in the Road

Investment Strategy. The proposed use of all land affected has been reviewed and this justifies the requirements for the CA of the land. The temporary use of land and the CA of rights have been reviewed and the ExA agrees that the CA of rights and the TP of land for works related to the Proposed Development are also justified.

- 8.12.2. The land sought for the Proposed Development and subject to CA is land that is required for the purposes of s122(2) (a) and (b) of PA2008 and meets the tests set out in that section. It is land which is required for the development to which the development consent relates or is required to facilitate or is incidental to that development.
- 8.12.3. In considering the question of whether there is a compelling case in the public interest to acquire the land (s122(3) of PA2008), the ExA has taken into account the Applicant's case for CA and TP, as informed by its evidence on need and justification as set out in Chapters 4 and 5 above. The support for the Scheme by the relevant Local Authorities in the LIRs has also been considered.
- 8.12.4. Individual cases where objections were lodged to CA / TP have been considered. The ExA is satisfied that in respect of these, and for all remaining land about which there have been no formal objections and in respect of which specific individual matters have not been identified for detailed examination and reporting, the public benefit in delivering the Proposed Development would outweigh the private loss.
- 8.12.5. For the purposes of s122(3) of PA2008 the ExA concludes that:
- the case for the proposed Scheme has been set out as part of investment in the strategic road network and to facilitate local economic growth;
 - the development for which the land is sought would be in accordance with national policy as set out in NNNPS;
 - there is a need to secure the land and rights required to deliver the Scheme and to construct it within a reasonable timeframe;
 - the Scheme would represent a public benefit to be weighed in the balance;
 - the private loss to those affected has been mitigated through the selection of the land and the minimisation of the extent of the rights and interests proposed to be acquired;
 - the Applicant has explored reasonable alternatives to the CA of the rights and interests sought. However, for a project of this nature it is reasonable that the Applicant should retain CA and TP powers in a made Order as a guarantee against the possible failure of voluntary agreements which, if left unresolved, could cause substantial timescale and delivery cost over-runs that would not be in the public interest;
 - there are no alternatives which ought to be preferred; and
 - secure funding is available to enable the payment of any necessary compensation.
- 8.12.6. The case for CA powers requires it to be based on the case for the development overall. Chapter 7 reaches the conclusion that development

consent should be granted. As set out above, the CA powers sought by the Applicant are justified and should be granted because there is a compelling case in the public interest for land and interests to be compulsorily acquired and therefore the proposal would comply with PA2008 s122(3).

- 8.12.7. For land or rights against which no specific objections were raised, under PA2008 s123, for reasons set out at the outset of this Chapter, the condition in subsection (2) is met and therefore the ExA recommends that CA powers sought should be granted.
- 8.12.8. For the same reasons and based on the same evidence, it is also clear that the TP powers sought are necessary and should be granted.
- 8.12.9. The position in respect of Crown Land was not resolved at the close of the examination due to uncertainty regarding progress on both the Transfer Agreement and in relation to HS2. The SoS will need to satisfy themselves as the position on Crown Land at the point of decision from information within the department.
- 8.12.10. To further minimise the impact of the Scheme, the ExA has highlighted a number of issues which the SoS may wish to satisfy themselves on at the point of decision and which are noted further in Chapter 9 on the DCO and Chapter 10 in the Conclusions.

9. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

9.1. INTRODUCTION

- 9.1.1. The application draft Development Consent Order (dDCO) (3.1) [APP-015] and an Explanatory Memorandum (EM) [APP-016] were submitted by the Applicant as part of the application for development consent. The EM describes the purpose and effect of each article of, and the schedules to, the dDCO as originally submitted.
- 9.1.2. This chapter provides an overview of the Examination of the dDCO and the changes made between the application dDCO and the final 4th dDCO submitted by the Applicant at D9 [REP9-011] (3.1(c) together with a revised EM [REP9-013]. Throughout the Chapter, the ExA highlights the changes it considers necessary to be made to the 4th dDCO in order to arrive at the Recommended DCO (rDCO) in Appendix D to this Report.
- 9.1.3. The following sections of this chapter:
- report on the processes used to examine the dDCO and its progress through the Examination;
 - report on the structure of the dDCO;
 - summarise issues and changes made by the Applicant during the Examination;
 - summarise issues raised in the ExA's Commentary on the dDCO that have either been resolved, partly resolved or are not resolved and
 - report on the Applicant's other changes to its final 4th dDCO.
- 9.1.4. It then considers changes made to the 4th dDCO in order to arrive at the Recommended DCO (rDCO) in Appendix D to this Report.

9.2. THE EXAMINATION OF THE dDCO

- 9.2.1. The ExA's review of the application versions of the dDCO (3.1) [APP-015] and the EM [APP-016] commenced before the Preliminary Meeting. Consequently, the Rule 6 Letter of 23 April 2019 [PD-004] was accompanied by notice of Issue Specific Hearing (ISH)¹ on the content of the dDCO (Annex C). The agenda and Schedule of Matters and Questions relating to the dDCO was published on 16 May 2019 [EV-002]. This provided adequate notice to the Applicant and IPs before the start of the Examination that it was intended to hold an early ISH into the dDCO and provided them with detailed notice of the matters that would be raised.
- 9.2.2. An early hearing on the dDCO was held to address matters, issues and questions initially identified by the ExA during their assessment of preliminary issues, before its consideration of written representations. The ExA considered it necessary to examine these matters, issues and questions orally at the outset of the Examination, providing the maximum time for IPs to respond to them in their own subsequent written representations and for the Applicant, where necessary, to programme actions to address issues raised.

- 9.2.3. ISH 1 (DCO 1) was held on 22 May 2019, the day immediately following the PM. Audio recordings are available at [EV-005] and [EV-006].
- 9.2.4. Matters for examination arising from the dDCO and progress on them were tracked throughout the Examination, using further ISHs as follows:
- ISH 2 (DCO 2) was held on 2 July 2019. The Agenda can be found at [EV-008] and audio recordings are available at [EV-009] and [EV-010];
 - ISH 4 (DCO 3) was held on 21 August 2019. The Agenda and schedule of issues and questions can be found at [EV-031] and an audio recording is available at [EV-019].
 - ISH 7 (DCO 4), was held on 23 October 2019. The Agenda can be found at [EV-037] and audio recordings are available at [EV-042].
- 9.2.5. The Applicant updated the dDCO several times during the Examination, responding to issues raised in written questions, to written submissions by IPs and from issues arising at the ISHs. At each revision, the Applicant submitted a clean copy and a copy showing tracked changes from the previous clean copy version. The 'work-in-progress' versions of the dDCO submitted by the Applicant during the Examination were as follows:
- 3.1(a) 2nd Draft Development Consent Order (2nd dDCO), clean copy [REP3-002] and tracked changes [REP3-021] were submitted primarily in response to matters raised in the ISH 1 (DCO 1) and the Schedule of Matters and Questions relating to the dDCO [EV-002]; and
 - 3.1(b) 3rd Draft Development Consent Order (3rd dDCO), clean copy [AS-036] and tracked changes [REP5-002] were submitted following ISH 2 (DCO 2) and ISH 4 (DCO 3).
- 9.2.6. Time was reserved in the Examination Timetable for the ExA to publish a preferred dDCO or dDCO commentary on 31 October 2019. However, there were a number of agreed actions arising from ISH7 on 23 October 2019 [EV-044], which required a response by Deadline 8, on 5 November 2019. The ExA considered it would be sensible to review those responses before issuing its preferred dDCO or dDCO commentary. Consequently, a procedural decision to amend the Examination Timetable to allow for this was made on 28 October 2019 [PD-012]. This put back publication of the ExA's dDCO commentary until 8 November 2019 [PD-014].
- 9.2.7. The preamble to this procedural decision explains that irrespective of its recommendation to the SoS on the planning merits of the application, the ExA is under an obligation to preserve the SoS' decision-making discretion. It must provide the best obtainable dDCO to inform the SoS' decision about whether or not to grant development consent. It also explains that the purpose of the commentary is to:
- enable the Applicant to have regard to it prior to submitting the final 4th dDCO at Deadline 9 (15 November 2019);
 - to allow IPs to make final submissions on the dDCO; and
 -

- to enable the ExA to form any recommendations for changes to the drafting that it considers necessary and appropriate, as part of its preparation to report to the SoS.

9.2.8. The Applicant subsequently submitted its final 3.1(c) 4th Draft Development Consent Order (4th dDCO) as a clean copy [REP9-011] and tracked changed [REP9-012] at Deadline 9. These were accompanied by an amended clean copy EM [REP9-013] as well as tracked copy [REP9-014].

Structure of the DCO

9.2.9. This section records the structure of the 4th dDCO as follows.

ARTICLES

Part 1: Preliminary

- 1) Citation and commencement
- 2) Interpretation

Part 2: Principal Powers

- 3) Development consent etc. granted by the Order
- 4) Maintenance of authorised development
- 5) Maintenance of drainage works
- 6) Limits of deviation
- 7) Benefit of Order
- 8) Consent to transfer benefit of Order
- 9) Application of the 1990 Act
- 10) Application of the Community Infrastructure Levy Regulations 2010
- 11) Planning permission

Part 3: Streets

- 12) Street works
- 13) Application of the 1991 Act
- 14) Construction and maintenance of new, altered or diverted streets and other structures
- 15) Classification of roads etc.
- 16) Temporary stopping up and restriction of use of streets
- 17) Permanent stopping up, restriction of use and construction of streets, public rights of way and private means of access
- 18) Access to works
- 19) Clearways and prohibitions
- 20) Traffic regulation

Part 4: Supplemental Powers

- 21) Discharge of water
- 22) Protective work to buildings
- 23) Authority to survey and investigate the land

Part 5: Powers of Acquisition and Possession of Land

- 24) Compulsory acquisition of land
- 25) Compulsory acquisition of land – incorporation of the mineral code
- 26) Time limit for exercise of authority to acquire land compulsorily
- 27) Compulsory acquisition of rights and restrictive covenants
- 28) Private rights over land
- 29) Modifications of Part 1 of the 1965 Act
- 30) Application of the 1981 Act
- 31) Acquisition of subsoil or airspace only
- 32) Rights under or over streets
- 33) Temporary use of land for carrying out the authorised development
- 34) Temporary use of land for maintaining the authorised development
- 35) Statutory undertakers
- 36) Apparatus and rights of statutory undertakers in stopped up streets
- 37) Crown Rights
- 38) Recovery of costs of new connections

Part 6: Operations

- 39) Felling or lopping of trees and removal of hedgerows

Part 7: Miscellaneous and General

- 40) Application of landlord and tenant law
- 41) Operational land for purposes of the Town and Country Planning Act 1990
- 42) Defence to proceedings in respect of statutory nuisance
- 43) Protection of interests
- 44) Certification of plans and documents, etc.
- 45) Service of notices
- 46) No double recovery
- 47) Arbitration
- 48) Removal of human remains
- 49) Application, disapplication and modification of legislative provisions
- 50) Amendment of local legislation

SCHEDULES

Schedule 1 – Authorised Development

Schedule 2 - Requirements

Part 1 - Requirements

Part 2 – Procedure for Discharge of Requirements

Schedule 3 – Streets Subject to Street Works

Schedule 4 – Classification of Roads, Etc.

Part 1 – Special Roads

Part 2 – Trunk Roads

Part 3 – Classified Roads

Part 4 – Unclassified Roads

Part 5 – Speed Limits

Part 6 – Other Public Rights of Way

Schedule 5 – Temporary Stopping Up of Streets and Private Means of Access

Schedule 6 – Permanent Stopping Up of Streets, Public Rights of Way and Private Means of Access

Part 1 – Streets to be Stopped Up and for Which a Substitute is to be Provided

Part 2 – Streets to be Stopped Up and for Which No Substitute is to be provided

Part 3 – Public Rights of Way to be Stopped Up and for Which a Substitute is to be provided

Part 4 – Public Rights of Way to be Stopped Up and for Which No Substitute is to be provided

Part 5 – Private Means of Access to be Stopped Up and for Which as Substitute is to be Provided

Part 6 – Private Means of Access to be Stopped Up and for Which No Substitute is to be Provided

Part 7 – Alterations to Private Means of Access

Schedule 7 – Clearways Prohibitions and Restrictions

Schedule 8 – Land in Which Only New Rights Etc. May Be Acquired

Schedule 9 – Modification of Compensation and Compulsory Purchase Enactments for Creation of New Rights and Imposition of Restrictive Covenants

Schedule 10 – Land of Which Temporary Possession May Be Taken

Schedule 11 – Felling or Lopping of Trees and Removal of Hedgerows

Part 1 – Trees in Conservation Area

Part 2 – Hedgerows to be Removed or Managed

Schedule 12 – Protective Provisions

Part 1 – For the Protection of Electricity, Gas, Water and Sewerage Undertakers

Part 2 – For the Protection of Operators of Electronic Communications Code Networks

Part 3 – For the Protection of National Grid as Electricity Undertaker

Schedule 13 – Documents to be Certified

- 9.2.10. The structure of the dDCO is fit for purpose and no changes to the structure as outlined above are recommended.

Summary of issues and changes made by the Applicant during the Examination

- 9.2.11. Numerous changes have been made by the Applicant in the four iterations of the dDCO. Many are minor and uncontentious and are not repeated here. Also not repeated here are the queries raised by the ExA, either in written questions or at ISH's, which have been adequately justified by the Applicant, thereby not necessitating change to the dDCO.
- 9.2.12. Other provisions, which were the subject of discussion during the four dDCO ISHs and which are not included in the ExA's Commentary, are highlighted below.

General – use of 'guillotine' provisions

- 9.2.13. Several individual articles (such as 16, 20, 21 and 23) make provision for deemed consent to be granted if a consultee does not respond within a certain period – a 'guillotine' provision. The use of guillotine provisions was discussed or at least formed part of the agenda for all of the ISHs relating to the dDCO.
- 9.2.14. SMBC and WCC both confirmed that they raise no objections to the proposed guillotine provisions [REP2-037 and REP2-039]. Nevertheless, one IP in particular, the Gooch Estate, did raise concern over their use throughout the Examination (for example [REP1-023]). The Gooch Estate consider that the very broad powers conferred by these 'guillotine' provisions are not appropriate as the street authority or SoS may not have sufficient time to undertake the necessary consultation to fully understand the impact of the proposals within such limited time periods.
- 9.2.15. The Gooch Estate argue that it is not standard practice for all DCOs to confer 'guillotine' provisions in respect of temporary stopping up powers. Reference is made to the Morpeth Northern Bypass Order (SI 23/2015) which provides no such provision at corresponding Article 12 (Temporary prohibition or restriction of use of streets). The requirement is for consent from the street authority, with a provision that such consent is not to be unreasonably withheld.
- 9.2.16. The Gooch Estate also highlight that for the Morpeth Northern Bypass Order, 'guillotine' provisions were originally proposed with respect to the discharge of requirements. It states these were removed and replaced by provisions at paragraph 2 of Schedule 2 (Approvals of submitted schemes) which provide no time limits for approval of details submitted to discharge requirements but do state that:

"(3) Where any requirement specifies "unless otherwise approved by the relevant planning authority" such approval must not be given except in relation to minor or immaterial changes where the subject-matter of the approval sought (either by itself or in combination with other changes or proposed changes) is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement and such an approval must not be given in respect of any land outside the Order limits."

- 9.2.17. The Gooch Estate wishes to see provisions such as those used in the Morpeth Northern Bypass DCO utilised in this DCO.
- 9.2.18. The Applicant argues that the provisions are necessary and the inclusion of a longstop deemed consent provision is appropriate on the basis that the Proposed Development is a NSIP and needs to be delivered without undue delay [REP2-008]. The obligation on the determining authority is to make a decision within the specified date and the drafting is intended to prevent it from simply 'sitting' on such a request and making no effort to process it, resulting in unnecessary and unjustified delay.
- 9.2.19. The Applicant's response to the Gooch Estate in its written submission of case of the ISH 2 (DCO 2) [REP3-015] is that the provisions have been adopted from precedents contained and endorsed by the SoS in many other DCO schemes (both highway and non-highway). Examples cited include: The Cornwall Council (A30 Temple to Higher Carblake Improvement) Order 2015 (SI 147/2015); The Silvertown Tunnel Order 2018 (SI 574/2018); The Port of Tilbury Order 2019 (SI 0000/2019); and the National Grid (Richborough Connection Project) Development Consent Order 2017 (SI 817/2017).
- 9.2.20. In principle therefore the ExA is satisfied that such provisions are well precedented.
- 9.2.21. As an alternative to the 'guillotine' provisions', the Gooch Estate would be satisfied with an appeal procedure as set out in Appendix 1 to Advice Note 15 or the ability for the arbitration provisions under Article 47 to be utilised in the event of non-determination.
- 9.2.22. In this regard, the Applicant explains that any notice given would stipulate that if a decision is not given within the specified deadline that consent is deemed to have been given. Also if the determining authority is unable to reach a decision in that time it is open to that body to request additional information from the Applicant or to notify the Applicant that consent is not given, thereby allowing the arbitration provisions set out in article 47 to be instigated. However, the Applicant confirmed at ISH 4 (DCO 03) that it did not consider it necessary that these provisions be made explicit, as suggested by the ExA [EV-031].
- 9.2.23. Nevertheless, the Applicant has added an additional paragraph to Articles Art 16, 20, 21 and 23 in its 4th dDCO to the effect that any application to which these articles apply, must include a statement that the guillotine provision applies to that application. This is welcomed by the ExA.

- 9.2.24. At Deadline 6 the Gooch Estate confirmed that negotiations were at that time ongoing with the Applicant on its remaining objections to the dDCO [REP6-041]. However, confirmation was not received by the close of the Examination that any agreement had been reached. Accordingly, the ExA has assumed that the Gooch Estate's objections and concerns still stand.
- 9.2.25. Nevertheless, having regard to the lack of objection from SMBC and WCC, the additional clarification provided in the 4th dDCO and the justification and precedents provided by the Applicant, the ExA is satisfied that the use of guillotine provisions in the above stated articles and in paragraph 14 of Part 2 of Schedule 2 is reasonable and proportionate in the particular circumstances of this application. No additional changes are therefore considered necessary.

Art 2 – Interpretation

- 9.2.26. As per the approach to the A19/A184 Testo Junction Alteration Development Consent Order (SI 994/2018), all references to 'materially new or materially worse' were replaced in the 2nd dDCO with 'materially new or materially different'.
- 9.2.27. For clarity the Canal and River Trust requested that 'canal' be removed from the definition of 'watercourse' [REP1-009]. The Applicant confirmed at ISH 2 (DCO 2) that it wishes to retain as is. The ExA is satisfied that it is a standard definition that is well precedented. No change to this definition is therefore recommended.

Art 6 – Limits of deviation

- 9.2.28. Birmingham Airport's concern is that this article, subject to the agreement of the SoS, allows the height of the development to be increased with no maximum limit where that increase would not give rise to any materially new or materially different environmental effects [REP7-018]. However, in Birmingham Airport's view, this fails to take into account aerodrome safeguarding in this sensitive location directly to the south-east of its runway.
- 9.2.29. Birmingham Airport therefore seek to amend Art 6(2) to include the underlined text as follows:
- (2) The maximum limits of deviation set out in paragraph (1) do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation with the relevant planning authority and Birmingham Airport Limited, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects from those reported in the environmental statement or any new or materially different aerodrome safeguarding effects.*
- 9.2.30. Birmingham Airport consider that this would also ensure that the paragraph is consistent with the approach taken in R3.

9.2.31. However, the Applicant does not agree with this proposed change, explaining at ISH 7 (DCO 4), that the Limits of Deviation set the maximum legal bounds on the Applicant's ability to construct the Proposed Development. Although the Applicant has yet further flexibility to go beyond the Limits of Deviation, this is constrained by the fact that any changes to the Proposed Development can only be made where this would not give rise to any materially new or materially different environmental effects.

9.2.32. The Applicant's position is that this is a different issue from the impacts on aerodrome safeguarding and so the two should not be confused. The Applicant considers that aerodrome safeguarding is protected by R3(2), which states:

The Secretary of State must not approve any amended details under sub-paragraph (1) that exceed the maximum vertical limits of deviation shown on the works plans and on the engineering drawings and sections within the Airport safeguarding zone, unless the Secretary of State, following consultation with Birmingham Airport Limited, is satisfied that a deviation in excess of those limits would not adversely affect the safety of aircraft taking off or landing at, or flying in the vicinity of, Birmingham Airport or result in significant operational limitations being imposed on Birmingham Airport.

9.2.33. The ExA agree that the purpose of Art 6(2) and of R3(2) is different and one should not attempt to duplicate the other.

9.2.34. No changes to this provision are therefore recommended.

Art 12 – Street works

9.2.35. At the request of the ExA and IPs, Art 12(1) was amended in the 3rd dDCO to refer to a Schedule specifying the streets that the undertaker may enter on within the Order limits for the purposes of the authorised development, rather than relate to any street within the Order Limits as previously drafted.

9.2.36. At ISH 4 (DCO 3) the Gooch Estate confirmed it would welcome this addition. However, the Gooch Estate sought confirmation from the Applicant that it will agree to ensure that alternative access would be provided where existing access routes would be prevented through street works, stating that its objection to Article 12 would be withdrawn on that basis. Whilst as noted above, discussions were ongoing between the Gooch Estate and the Applicant, the ExA was not made aware of any resolution by the close of the Examination. Accordingly, the Gooch objection still stands.

9.2.37. However, on the basis of the greater certainty given by the schedule of streets affected, the ExA is satisfied that Art 12 as drafted is reasonable and proportionate in the particular circumstances of the application. No further changes are therefore recommended.

Art 13 – Application of the 1991 Act

- 9.2.38. The Applicant has explained that the provisions of the New Roads and Street Works Act 1991 that have been disapplied are primarily designed to regulate street works carried out by utility companies in respect of their apparatus, particularly provisions restricting the timing or location of when street works may be carried out [REP2-008].
- 9.2.39. The issue of contention during the Examination was whether or not it was reasonable or necessary to remove the powers available to the street works authority listed in paragraph 3.
- 9.2.40. SMBC in its Deadline 3 response state that powers within Section 58, Section 58(A) and Section 73(A) should remain with the Local Highway Authority (LHA) because the LHA is the correct body to ensure cooperation and coordination with utility providers and the Applicant to balance the hierarchy for need of works [REP3-023].
- 9.2.41. The Applicant's position is that the disapplication of these provisions is appropriate given the national significance of the RIS programme, the scale of works proposed, the specific authorisation given for the location of these works and the provisions in the dDCO, including the requirements that would regulate the works. For instance, given the national significance of the Proposed Development, the Applicant considers it should not be directed under the New Roads and Street Works Act 1991 to refrain from implementing in a timely fashion because a statutory undertaker had recently carried out its own works. The Applicant states that these modifications are common in non-highway and Highway DCOs, citing the M4 Motorway (Junctions 3 to 12) (Smart Motorway)
- 9.2.42. Development Consent Order (SI 863/2016) and the A19/A184 Testo's Junction Alteration Development Consent Order (SI 994/2018) as precedents [REP2-008].
- 9.2.43. On this basis the ExA are satisfied that the specified disapplication of the New Roads and Street Works Act 1991 is necessary and justified in the particular circumstances of the Proposed Development. No amendments are therefore recommended.

Art 16 – Temporary stopping up and restriction of streets

- 9.2.44. The Gooch Estate's concern relates to its ability to access its land and the right to have an alternative vehicular access provided where an existing access is blocked due to the temporary stopping up or restriction on use of streets [REP1-023].
- 9.2.45. The Applicant's response asserts that there is no statutory requirement to provide temporary vehicular access to premises abutting an affected street, during a period of temporary stopping up for works. Nevertheless, the Applicant confirmed that it would seek to agree with Gooch Estate a mechanism to ensure alternative vehicular access is available to their land where an access is prevented by a temporary stopping up [REP3-015].

- 9.2.46. However, as noted, this was not resolved by the close of the Examination. Nevertheless, paragraph 7 confirms that any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation.
- 9.2.47. The ExA is satisfied that this provision is acceptable and no amendments are recommended.

Art 23 – Authority to survey and investigate land

- 9.2.48. This article gives the Applicant the power to enter any land within the Order limits or where reasonably necessary, any land which is adjacent to, but outside the Order limits, for the purpose of surveying and investigating the land.
- 9.2.49. The Gooch Estate’s concerns are that this power is broad with potentially wide geographic limitations and the ability for significant works to be undertaken, and that there is no time limit on the exercise of the power. The Gooch Estate are unclear what “adjacent” means and highlight that it owns a significant amount of land that could be said to be ‘adjacent’ to the Order Limits. It considers that the powers to undertake surveys and investigations outside of the Order limits are onerous and unjustified such that they should be removed [REP1-023 and REP5-019].
- 9.2.50. In the eventuality that the ExA considers the powers justified, the Gooch Estate have requested that they are modified to be time limited and that no less than two months’ notice is given. It states that failure to provide this period of notice would result in operational difficulties for the farm and may result in health and safety concerns for those working on the land. The Gooch Estate refer to precedents for extended consultation periods such as the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016 (SI 863/2016) where the highway and street authorities have 6 weeks to determine an application before a deemed approval is conferred.
- 9.2.51. The Applicant points out that the power to survey on land adjacent to the Order limits may only be carried out where it is “reasonably necessary”. In this regard the Applicant explains that it would be necessary to complete a survey outside the Order Limits when a precautionary approach is not reasonable or sufficient, and the survey data is required to maintain legal compliance of the Proposed Development. It is envisaged that this is likely to be where there is an unavoidable risk of harm to a protected species and the survey is required to inform either a protected species derogation licence or non-licensed mitigation [REP3-015].
- 9.2.52. The Applicant also points out that the power could only be exercised on 14 days’ notice to the owner and occupier of the land and that the undertaker would be obliged to compensate for any loss suffered. There is, therefore, an incentive for the Applicant to ensure that the survey works are carried out as quickly as possible. NE submitted that such articles are commonly found in other DCOs and are also included in the model provisions. (The A14 Cambridge to Huntingdon Improvement

Scheme Development Consent Order 2016 (SI 547/2016) and the Silvertown Tunnel Order 2018 (SI 574/2018) are referenced in its EM.)

- 9.2.53. The ExA is therefore satisfied that in principle, such articles are well precedented and are acceptable in the particular circumstances of this application. Accordingly, the residual issue is the extent of the notice which would be provided.
- 9.2.54. At ISH 4 (DCO 3) the Applicant submitted that a 14-day notice period was proportionate and that a longer notice period may result in the species disappearing before investigative works could be carried out.
- 9.2.55. The ExA accept that species related surveys would be time sensitive and consider it unlikely that they would be significantly intrusive. To this end, the ExA asked at ISH 4 (DCO 3) whether a compromise could be a 14-day notice period for habitat surveys and a longer notice period for more intrusive engineering related surveys. The Gooch Estate submitted that even if notice periods were agreed between the parties, concern would still remain with the scope of the power. The Gooch Estate suggested that the dDCO is amended so that this power is only triggered if extra surveys are required by a statutory body. The Applicant confirmed that it would consider the suggestions raised and that these issues could also be addressed in the ongoing discussions with the Gooch Estate.
- 9.2.56. However, as explained these issues were not resolved by the close of the Examination and having regard to the above, the ExA consider it is necessary to amend the article so that 14 days' notice be provided for habitats surveys and six weeks is provided for all other surveys. This would correspond with the period referred to by the Gooch Estate for the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order (SI 863/2016) referred to above, even though that relates to a period of time before a deemed approval is conferred, rather than a notice period to survey and investigate land. On this basis it is not considered necessary that this power is only triggered if the surveys are required by a statutory body.
- 9.2.57. The ExA are mindful that these changes did not form part of its Commentary on the dDCO. However, the Applicant was aware of the suggestions made by the ExA to this effect (at ISH 4 (DCO 3)) and at that time it was expecting matters would be agreed by the parties. On balance, the ExA consider that the recommended changes represent a reasonable and proportionate compromise.

Art 27 – Compulsory acquisition of rights and restrictive covenants

- 9.2.58. As discussed in Chapter 8, the Gooch Estate's concern [REP1-023] is that a substantial area of its land could be affected by the ability to impose restrictive covenants conferred by Art 27 and that the power should either be removed or be limited to certain plots – as demonstrated by examples of made Orders by the SoS.

- 9.2.59. Conversely, the Applicant argued [REP-015] that the power is actually a more proportionate response in allowing the use of rights to avoid full acquisition and cites examples in TWA order, Hybrid Bills and other DCOs.
- 9.2.60. The ExA on balance agrees with the applicants position and that in the particular circumstances of this scheme, the general power provides flexibility to respond to the need to provide environmental mitigation, access and relocations which are more proportionately met than CA alone. No change is therefore proposed in the rDCO.

Art 37 - Crown rights

- 9.2.61. As discussed in Chapter 8, the Applicant's SoR [REP9-015] explains that land previously owned by the SoT was classified as Crown Land but as a result of the creation of Highways England (HE) in 2015 and the transfer of land formerly owned by the SoS to HE, the land in question no longer constitutes Crown Land as HE is a Strategic Highways Company and no longer an Executive Agency of the DfT.
- 9.2.62. The Statement of Reasons also explains that Part 4 of the Book of Reference [REP9-017] lists plots where the SoTfT is still registered as the freehold owner of the land at the Land Registry. Those plots are also shown on the Crown Land Plans [REP10-003]. Whilst the Applicant considers these plots to be within its ownership, pursuant to the Transfer Scheme referred to at above, they have been included as Crown Land interests as a precautionary measure, pending completion of the formal registration process for the transfer of title to these plots from the SoS to the Applicant.
- 9.2.63. Part 4 of the Book of Reference and the Crown Land Plans also identify plots where the DfT is noted as having an interest in the land. The Applicant explains that the relevant interests relate to highway functions and are therefore considered to be for its benefit, again pursuant to the Transfer Scheme. However, in order to be consistent with the approach taken in relation to plots of which the SoS is still the registered freehold owner, the Applicant explains that these plots have also been noted as Crown Land interests as a precautionary measure.
- 9.2.64. The Applicant had anticipated that the formal transfer of the ownership of these plots would be completed during the Examination, but this has not yet occurred. Therefore, the Applicant is seeking to secure the necessary consent for the compulsory acquisition of these Crown Land plots from the DfT.
- 9.2.65. During the course of the Examination, HS2 provided the Applicant with details of the land it expects to take temporary possession of or acquire permanently. These plots were listed in Part 4 of the Book of Reference. The SoR explains that this land will become Crown land when HS2 powers are exercised over it. However, the Applicant states that HS2 are unable to confirm when they intend to acquire or take possession of the land and that therefore it has made a Crown land application in respect of all of this land.

9.2.66. Although the Applicant's Deadline 10 covering letter [REP10-001] refers to the copies of a Crown Land application pursuant to section 135 of the PA2008, being submitted under separate cover, the ExA has no record of this submission.

9.2.67. Nevertheless, a definition of 'crown land plans' has been included in Art 1 (interpretation) of the Applicant's 4th dDCO. Art 24(2) (compulsory acquisition of land) has also been amended to refer to Art 37 (crown rights). Moreover, a new paragraph (2) has been added to Art 37, as follows:

- Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

9.2.68. It will be a matter for the SoS to satisfy themselves as to the position on Crown Land at the point of the decision.

Art 48 – Removal of human remains

9.2.69. At the request of the ExA and SMBC, Art 48(19) was added to the 3rd dDCO to provide that R9 (archaeological remains) applies in respect of any disturbed human remains deemed to be of archaeological interest.

Schedule 1 – Authorised development

Work No. 68

9.2.70. Works No. 68 relates to alterations to the existing Warwickshire Gaelic Athletic Association (WGAA) facilities, including the provision of the reconfigured sports pitches.

9.2.71. In its WR, WGAA proposed an amendment to the description of Work No. 68 to include demolition and replacement of the clubhouse [REP1-026]. However, the proposed reconfiguration of the WGAA facility before the ExA (Figure 8.21 [REP2-019]) does not include the relocation of the clubhouse. The Applicant argued that there is no need for the drafting to be amended [REP3-015]. Given that there was no agreement on this at the close of the examination then no change has been made to the rDCO.

9.2.72. However, as noted in Chapter 5, 7 and 8, the proposed reconfiguration of the WGAA pitches as set out by the applicant, in the absence of the revised wording, leaves the WGAA with a clubhouse stranded from the reconfigured pitches. There is a potential 'legacy' scheme which would have provided a resolution to this but that lies outside the bounds of the DCO. It is therefore a matter which is raised with the SoS to consider the position at the point of the decision, including whether progress has been made on a relocation of the club house within the Applicant's reconfiguration or via the legacy scheme.

Lettered works – further development

- 9.2.73. At the request of the ExA, the preamble paragraph to the Schedule 1 list of lettered works, was amended in the 3rd dDCO to make it clear that those works are not to give rise to any materially new or materially different environmental effects to those assessed in the ES.

Schedule 2 - Requirements

R4 – OEMP

- 9.2.74. As discussed at ISH 7 (DCO 4), the updated REAC/OEMP [REP9-019] has been amended to include the following commitments:
- Sharing a copy of the traffic management plan (R10) with the Parish Councils at the same time as this information is submitted to the local highway authority (G3).
 - Construction routes avoiding the villages of Catherine-de-Barnes and Hampton in Arden (G3).
 - Providing a copy of the proposed landscaping scheme to the Parish Councils when submitting to the relevant planning authority (G9).
 - The Community Liaison Officer using reasonable endeavours to provide not less than seven days written notice to affected residents of key scheme works which are likely to cause significant inconvenience.
- 9.2.75. Compliance with the commitments contained within the REAC is secured by R4.

R13 – Bickenhill Meadows SSSI

- 9.2.76. R13 was added to the 3rd dDCO and provides that no part of the authorised development that affects Bickenhill Meadows SSSI is to commence until a detailed monitoring and management plan has been approved by the SoS, following consultation with relevant planning authority and NE.

Schedule 13 – Certification of plans and documents, etc.

- 9.2.77. The Gooch Estate explain that it would like the CEMP included in the list of documents, so that it has an indication of construction methods and impacts [REP5-019]. Gooch Estate say [REP1-023] it is common procedure for HE schemes to include an outline CEMP as a certified document. Examples cited are Article 44 of The M20 Junction 10a Development Consent Order 2017 (SI 1202/2017) and Schedule 10 of the A19/A184 Testo's Junction Alteration Development Consent Order 2018 (SI 994/2018).
- 9.2.78. However, the Applicant explained at ISH 7 (DCO 4) that the OEMP does for this dDCO what the CEMP does on other schemes and the OEMP is already listed as a certified document [REP7-009]. The Applicant also refers to other DCOs promoted by it which adopt the approach taken in the case of this application. Whilst those cited (A303 Stonehenge, A303 Sparkford to Ilchester and A63 Castle Street, Hull) are yet to be decided, the ExA is satisfied that the CEMP would be delivered via the OEMP and

R4. As such it is not necessary for there to be a certified CEMP document. No change is therefore recommended.

ExA's Commentary on the dDCO -

DCO Provisions Not Recommended to be Changed

Article 15 – Classification of roads etc

- 9.2.79. The ExA's concern set out in its dDCO Commentary is that obstruction or severing of existing PROWs is likely to occur well before the Proposed Development is brought into use, so that if replacement footpaths were to be available before it was open to traffic, their use would help to restore connectivity and accessibility for pedestrians, cyclists and other non-motorised users. The Applicant was therefore requested to employ the suggested form of words for Art 15(7), which is now Art 15(8), to promote that possibility. SMBC's response confirms support for this [REP9-032].
- 9.2.80. Although the Applicant's response to the dDCO commentary is that this is not required, as the appropriate flexibility is already provided, it was agreed to amend the article so that it is clear that SMBC and the Applicant can agree an earlier opening date. Whilst the drafting is not exactly the same as that set out in the ExA commentary, the ExA is satisfied that its intentions are achieved and reference has been made to the highway authority rather than planning authority as suggested by SMBC.
- 9.2.81. No amendments to this provision are therefore recommended.

Article 20 – Traffic regulation

- 9.2.82. Art 20(2)(b) provides wide powers to introduce parking restrictions for the purposes of the Proposed Development, subject to the consent of the traffic authority. The Applicant has expressed a willingness [REP7-011] to use these powers to deter anti-social parking (including taxis) in the areas identified by local residents and parish councils, particularly in [REP6-028 and REP6-040].
- 9.2.83. It was agreed that details were to be devised, in consultation with SMBC, indicating how appropriate restrictions might be imposed while preventing, as far as possible, anti-social parking towards the centre of the village. The ExA, in its Commentary, welcomed this approach and requested the Applicant should, as appropriate, either make changes to this article so that the traffic regulation powers are focussed enough to allow the imposition of restrictions to prevent antisocial parking, or amend R10 (traffic management) to achieve the same.
- 9.2.84. The Applicant does not consider that amending Requirement 10 (Traffic Management) would be appropriate as the Traffic Management Plan relates to the imposition of restrictions on construction traffic. This is accepted by the ExA.

- 9.2.85. Nevertheless, the Applicant has amended Art 20(2) in the 4th dDCO to allow a traffic regulation order to be applied by it for the purposes of preventing the use of a road or for preserving or improving the amenity of the road. Thus the power may be exercised for the purposes of preventing the use of roads in a manner which is unsuitable, having regard to the character of the road and adjoining properties, or for preserving or improving the amenities of the area through which the road runs.
- 9.2.86. In response to the ExA's Commentary on the dDCO, SMBC acknowledge that following the introduction of Red Route parking restrictions on the roads in the immediate vicinity of Birmingham Airport in 2018, there has been an increase in the volume of short term parking on the streets in Bickenhill Village of vehicles waiting to pick up people arriving at Birmingham Airport. SMBC note that there are no parking restrictions in this area as any restrictions are only likely to displace the parking further towards the centre of the village and if introduced across the village, would then start to impact on the residents or their visitors.
- 9.2.87. SMBC take the view that there is no easy solution and doubt whether the Proposed Development will make any significant difference to current parking practices. If anything, SMBC consider that it could be argued that the new highway arrangement would make parking in the village less attractive.
- 9.2.88. Bickenhill and Marston Green Parish Council in its response to the ExA's Commentary on the dDCO express support for the strengthening of this Art, setting out specific concerns and requesting that restrictions are put in place and enforced.
- 9.2.89. In view of the above, the ExA consider that the Applicant's amendments to Art 20(2) represent a reasonable and pragmatic approach to addressing its concerns and those expressed by IPs.
- 9.2.90. No change to this provision is recommended.

Article 39 – Felling or lopping of trees and removal of hedgerow

- 9.2.91. ExA question 22 for ISH 1 (DCO 1) highlights that the Planning Inspectorate's Advice Note 15 suggests that articles such as these should include a Schedule and a plan to specifically identify the hedgerows to be removed (whether in whole or in part). This is to allow the question of their removal to be examined in detail. The same applies to protected trees either subject to a TPO or within a Conservation Area.
- 9.2.92. Although the necessity for such schedules was questioned by the Applicant in this case, the 3rd dDCO added to 39(4):
- 9.2.93. The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits and specified in Schedule 9A (hedgerows to be removed or managed) that is required to be removed.

- 9.2.94. This was subsequently deleted in the Applicant's 4th dDCO and the following two paragraphs added:
- 9.2.95. (2) Without limiting the powers of paragraph (1), the undertaker may remove any tree within a conservation area that is specified in Part 1 of Schedule 11 (trees in conservation areas to be removed or managed).
- 9.2.96. (3) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (4), remove or manage any hedgerow within the Order limits and specified in Part 2 of Schedule 11 (hedgerows to be removed or managed) that is required to be removed or managed.
- 9.2.97. Paragraph (3) is broadly in line with that suggested by the ExA in its dDCO Commentary.
- 9.2.98. Prior to making these changes the Applicant provided the following information (at Deadline 6) relating to the felling or lopping of trees and removal of hedgerows, so as to obtain a clearer understanding of the impact of the provision:
- Volume 8.78: A Table which identifies the trees that are located within the boundary of a Conservation Area [REP6-019]; and
 - Volume 8.79: Important Hedgerow Criteria [REP6-020].
- 9.2.99. As per good practice point 6 of Advice Note 15, Schedule 11 Part 1 identifies the trees likely to be affected that are within a conservation Area. Whilst no plan is included, reference is made to Appendix 8.2 [APP-128] (albeit with the wrong references), which identifies the location of the trees. However, G7 is listed within Schedule 11 Part 1 even though aforementioned Volume 8.78 confirms that it is not within the footprint of the Proposed Development. The ExA therefore recommend that it should be removed from Schedule 11. This is reflected in the rDCO in Annex D to this Report, along with the aforementioned reference corrections.
- 9.2.100. Similarly, although Part 2 of Schedule 11 does not include a plan, it does refer to Appendix 9.3 [APP-131], thereby allowing the hedgerows to be identified. Again, there is a minor error in the reference, which is corrected in the rDCO at Appendix D. Also, according to Annex B of the Applicant's Hedgerow Report [APP-131], hedgerow reference H102 is not an important hedgerow. 'Ecological' should not therefore appear in the third column of this Schedule and has been deleted in the rDCO.
- 9.2.101. Subject to the aforementioned amendments to Schedule 11, the ExA is satisfied that the amended Art 39 now meets good practice point 6 of Advice Note 15.
- 9.2.102. Moreover, at the request of the ExA, Art 39(4) has been amended to refer to no unnecessary damage to hedgerows, as well as trees and shrubs.

Schedule 1 – Authorised Development –

Further development within the Order limits Works (a)-(o)

- 9.2.103. The Detailed Schedule 1 Matrix provided at Appendix C to the Applicant's response [REP2-008] to the ExA's Schedule of Matters and Questions relating to the dDCO [EV-002], sets out how the lettered works (a)-(o) relate to the numbered works 1-76. The ExA in its Commentary on the dDCO stated that there would be some value in terms of clarity and certainty to refer to this in Schedule 1 and to append the Matrix to the dDCO. A form of words was suggested.
- 9.2.104. The Applicant's response explains that the Matrix was provided for information purposes only, and that it is indicative and was not prepared in the expectation that it would be appended to the dDCO as a binding Schedule.
- 9.2.105. The Applicant's view is that the listing of numbered works against the lettered works in Schedule 1 represents unnecessary duplication which could serve to confuse parties. Further, specifically attributing the lettered works to each numbered work runs the risk of works being accidentally omitted and removes any flexibility that maybe needed to deal with unforeseen events at detailed design stage.
- 9.2.106. The ExA accept that being overly prescriptive could prevent or hinder the Applicant from dealing with issues arising. Moreover, as explained by the Applicant, the lettered works are ancillary to, and supportive, of the numbered works. Also, the preamble paragraph to the Schedule 1 list of lettered works was amended in the 3rd dDCO, at the request of the ExA, to make it clear that the lettered works are not to give rise to materially new or materially different environmental effects to those assessed in the ES.
- 9.2.107. The ExA note the concerns of IPs, such as the Gooch Estate [REP1023], but consider, having regard to the above, that reasonable safeguards are provided.
- 9.2.108. No change to this provision is therefore recommended.

Schedule 2 - Requirements

R1, 3, 4, 5 and 8 as they relate to Birmingham Airport

- 9.2.109. In its Deadline 6 submission [REP6-030], Birmingham Airport set out its comments on the Applicant's 3rd dDCO, including those relating to Requirements 1, 3 and 4.
- 9.2.110. For Requirement 1, these related to matters of interpretation, such as that for the airport safeguarding zone. For Requirement 3 (detailed design) Birmingham Airport sought an addition to paragraph 2, to protect its operation. For Requirement 4 (OEMP) amendments were sought to address concerns relating to night-time lifting operations and for the Management Plan for the Main Site Compound to encompass all compounds.

- 9.2.111. These issues were discussed at ISH 7 (DCO 4) and it was an agreed action for the Applicant and Birmingham Airport to discuss further [EV-044]. Birmingham Airport subsequently confirmed at Deadline 7 that following a meeting with the Applicant on 24 October 2019, the outstanding issues raised in their aforementioned submission have been resolved to its satisfaction [REP7-018]. (This is subject to one exception relevant to Article 6 – Limits of deviation, which is discussed above.)
- 9.2.112. The Applicant’s response to the ExA’s dDCO commentary also confirms that the changes discussed at the meeting with Birmingham Airport have been included into its 4th dDCO.
- 9.2.113. Amendments had previously been incorporated into the 2nd dDCO [REP3-002], at the request of Birmingham Airport [REP4-029]. These related to Requirements 5 (landscaping) and 8 (surface and foul water drainage) to ensure consultation with Birmingham Airport.
- 9.2.114. The ExA is satisfied that no further amendments are necessary to address the concerns of Birmingham Airport in respect of Requirements 1, 3, 4, 5 and 8.

R4 – OEMP

- 9.2.115. R4(3)(d)(xvi) of the 3rd dDCO requires the CEMP must include the Management Plan for the Main Site Compound. However, at the request of the ExA, and a number of IPs, the scope of the Management Plan was subsequently widened to include the proposed satellite compounds. Accordingly, the ExA in its Commentary on the dDCO sought to ensure that this was appropriately secured by the Compound Management Plan [REP8-009] forming part of the updated OEMP/ REAC or be a Certified Document in its own right.
- 9.2.116. In response the Applicant has updated Requirement 4(3)(d)(xvi) in its 4th dDCO to refer to the Compound Management Plan (rather than the Management Plan for the Main Site Compound). The Outline Compound Management Plan has also been included as Appendix P to the updated OEMP [REP9-019]. The OEMP and the individual underlying outline management plans that sit beneath it would be certified in accordance with Art 44 (Certification of plans and documents, etc.) and Schedule 13 of the dDCO. The Applicant (or its Principal Contractor) must make the CEMP in accordance with OEMP and must include, amongst other things, a Compound Management Plan (R4).
- 9.2.117. Moreover, in accordance with the ExA’s request, the plan at Appendix 1 of the Outline Compound Management Plan, contained within the updated OEMP, reflects that submitted at Deadline 6 and the ExA’s preference. This demonstrates how the main site compound (Work No. 69) could be pushed further to the north and east to increase the buffer to the nearest residential properties in Bickenhill. This request is supported by IPs responses to the ExA’s Commentary on the dDCO, for example REP9-028, REP9-029 and REP9-033. The Outline Compound Management Plan also makes provision to address the concerns of

Bickenhill and Marston Green Parish Council relating to visual and acoustic screening and single storey facilities.

9.2.118. Also, the Applicant has included an additional commitment within the updated REAC as follows:

G4b

So far as reasonably practicable, Highways England and/or the PC will design and layout the main site compound to reduce potential impacts on the residents of Bickenhill. This will include arranging the site in such a way so it is compatible with the layout shown in Appendix 1 to the Outline Compound Management Plan.

9.2.119. In response to the ExA Commentary on the dDCO, SMBC has stated that it would welcome more detailed discussions with the Applicant and their contractor to see how this alternative would work safely and not have traffic backing up on to the Clock Interchange.

9.2.120. On the basis that R4(4) requires the CEMP to be agreed by the SoS following consultation with the relevant planning authority, the ExA consider that appropriate measures would be in place to allow for such discussion.

9.2.121. Moreover, commitment G3 of the REAC states that the use of a signalised system at the main site compound exit will be further reviewed with the local highway authority and developed in the traffic management plan, as required by R10, which itself is to be agreed in consultation with the relevant planning authority.

R4 – Adherence to working hours

9.2.122. The ExA note in its Commentary on the dCO that in agreeing to the working hours proposed, SMBC seek to prevent annoying or disturbing noisy activities taking place between the hours of 07:00 and 08:00. This would follow the approach that it has adopted for the construction works for HS2.

9.2.123. The ExA also note that although BS 5228 provides objective thresholds for construction noise in various situations, such noises may well be annoying or disturbing when heard between 07.00 and 08.00 hours. In those circumstances, the ExA in its Commentary state that R4(3)(c) should refer to the intended limitations on construction noise levels between those hours. Accordingly, amendments were proposed so that the specified working hours would be subject to no annoying or disturbing noise activities (referencing an identified protocol to be agreed between SMBC and the Applicant) taking place between the hours of 07:00 and 08:00.

9.2.124. The Applicant does not support the inclusion of the additional wording proposed by the ExA for R4 on the basis that the protocol for preventing annoying or disturbing noisy activities is to seek consent under section 61 of The Control of Pollution Act 1974. Accordingly, in the Applicant's

opinion, the proposed additional wording would replicate an existing control and thus would not meet the test of necessity in paragraph 15.2 of Advice Note 15.

- 9.2.125. Notwithstanding this, the Applicant has referred to further commitments in the updated REAC, namely G33b and G33c. The former states that where necessary, the PC would seek appropriate section 61 consents from SMBC during the construction of the Proposed Development, including for works that would fall within and outside of the set core working hours. The later states that notwithstanding the provisions of Requirement 4 (OEMP), the PC would adhere to the additional operational restrictions set out within its associated table. This includes restricted working hours of between 08:00 to 18:00 for piling operations at Solihull Road Bridge, Catherine-de-Barnes Lane North and South Bridges and the A45 Pedestrian Overbridge.
- 9.2.126. To ensure compliance with the working hours set out in G33c of the REAC, the Applicant has amended Requirement 4(3)(c) in its 4th dDCO to state that the CEMP must:
- require adherence to *any* working hours set out in the REAC or, where no such hours are set out, to working hours of 07.00 – 18.00 on Mondays to Fridays and 08.00 – 13.00 on Saturday except for...
- 9.2.127. SMBC's stated preference, in response to the ExA's Commentary, is to prevent annoying or disturbing noisy activities taking place between the hours of 07:00 and 08:00 near sensitive properties, which could be agreed with SMBC in advance. However, SMBC also explain that the activities shown as an exception in the proposed amendment by the ExA would normally be covered by a section 61 notice under The Control of Pollution Act 1974. To this end, commitment G33b of the REAC would address this.
- 9.2.128. Bickenhill and Marston Green Parish Council confirm in its response to the ExA's Commentary that it remains concerned about working hours commencing before 08:00. It requests that no activities taking place between the hours of 07:00 and 08:00 are heard by local residents and businesses [REP9-028]. The Parish Council anticipate that this could be achieved by limiting annoying and disturbing activities and having suitable mitigation. The Parish Council also request that the ExA recommend that SMBC should consult with all relevant IP's in respect of the protocol which is to be devised for addressing the noise issues arising from the construction works between the hours 07:00 and 08:00. This is similarly requested by other IPs, for example [REP9-029].
- 9.2.129. However, the protocol essentially agreed between SMBC and the Applicant, as set out within their SoCG [REP8-005], is that Section 61 consents would be sought. Such applications would contain the steps proposed to be taken to minimise noise resulting from the works.
- 9.2.130. The Applicant also confirmed at ISH 7 (DCO 4) that the 07:00 start time is the earliest time that the workforce would arrive at the site and that no

works (except those described within 4(3)(C)(i) to (xiv)) would take place before 07:00. It was also explained that the Outline Pollution Management Plan, contained within the OEMP, requires construction traffic not to leave their engines idling. Other measures would be put in place in accordance with Outline Compound Management Plan, to mitigate the effects of construction activities and the contractor would be required to adhere to the Considerate Constructors Scheme. Residents would also be able to contact the appointed Community Liaison Officer and a 24/7 phone line would be available for residents to ring if they had complaints. Complaints could also be made to SMBC.

- 9.2.131. The ExA is also conscious that the effect of preventing construction work prior to 07:00 would in all likelihood increase the overall duration of the works and any associated effects.
- 9.2.132. The ExA therefore consider, on balance, that the aforementioned measures strike an appropriate balance between protecting the living conditions of nearby residents and the timely delivery of this NSIP.
- 9.2.133. Accordingly, no further amendments are considered necessary to R4, in respect of working hours.

R9 – Archaeological remains

- 9.2.134. Following discussion relating to R9 at ISH 4 (DCO 3), the Applicant confirmed its intention to adopt wording consistent with that being used on the A303 Stonehenge NSIP, requiring the Applicant to put forward an archaeological strategy and work in accordance with it. Consequently, R9 of the Applicant's 3rd dDCO removed much of the detail which might reasonably be found within such a strategy.
- 9.2.135. In response to the ExA's Commentary on the dDCO, the Applicant clarified that it did not propose to produce a 'final' Written Scheme of Investigation (WSI) at Examination stage, as this would be prepared in advance of commencement of works, following consultation with SMBC, in accordance with R9. This is consistent with the expectations stated by SMBC, also in response to the ExA's Commentary.
- 9.2.136. The Applicant proposes that the final WSI would be largely based on the WSI contained in Appendix 7.1 of the ES [APP-123]. Therefore, where archaeological remains are discovered, the Applicant envisages that the methodology, monitoring, reporting and archiving obligations set out in Appendix 7.1, are likely to be replicated in the final WSI.
- 9.2.137. Whilst SMBC acknowledge that an archaeological WSI has been included in Appendix 7.1 of the ES, it highlights that this only covers the arrangements for archaeological evaluation by trial trenching. It does not include any provision for undertaking any further archaeological works should archaeological features be identified during that trial trenching, or provision for alternative approaches to assessing and mitigating archaeological impacts if these are considered more appropriate. In SMBC's view, the WSI should detail the proposed archaeological fieldwork, and subsequent post-excavation analysis, reporting,

publication and archiving arrangements as well as the arrangements to be put in place should any archaeological remains not previously identified be revealed during the development.

- 9.2.138. For the purposes of R9, the ExA agree that the WSI is the best document to include this detail, rather than in the Requirement itself. Moreover, the Applicant's final dDCO R9 requires consultation with SMBC, thereby providing opportunity to agree the content and scope of the WSI, which must be agreed by the SoS prior to the commencement of development.
- 9.2.139. The Applicant and SMBC have also agreed that R9 should be amended so that it is clear that it applies to areas of potential archaeological interest. This is reflected in the Applicant's final dDCO R9 and the ExA is satisfied that no further amendments are necessary.

R13 – Bickenhill Meadows SSSI

- 9.2.140. The ExA's Commentary on the dDCO suggests amendments to R13, discussed and agreed at ISH 7 (DCO 4), so that Natural England are consulted on the Bickenhill Meadows SSSI Monitoring and Management Plan. It was also suggested to insert at the end of R13(2)(b), now R13(2)(c), the following additional text:

which must be taken in the event that the trigger points are met or exceeded.

- 9.2.141. These changes have been incorporated into the Applicant's Final dDCO.
- 9.2.142. No further changes to R13 are therefore recommended beyond those referred to below relating to Work No. 76.

New R14 relating to the configuration of the main site compound

- 9.2.143. The ExA's Commentary on the dDCO proposes the insertion of a new R14 as follows:

14(1) Notwithstanding the details shown on any Certified Plan and Document listed in Schedule 11 of this Order, work to construct the main site compound shall not commence until a scheme for its configuration has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.

(2) Unless otherwise agreed by the relevant planning authority, the scheme must show how the compound could be configured to the north and east and an entrance and exit onto Catherine-de-Barnes Lane achieved at the northern end of the compound. Those access arrangements may entail prohibiting a right turn at the northern exit, or the provision of traffic lights and the possible re-programming of additional phases in constructing the main line link road.

- 9.2.144. The responses of a number of IPs, including [REP9-028, REP9-029 and REP9-033] are supportive of this additional Requirement.

- 9.2.145. The Applicant's response is that it has sought to address this matter through the additional commitment within the REAC and by updating the plan at Appendix 1 to the Outline Compound Management Plan, as explained above. The Appendix 1 plan shows the main site compound being configured to the north and east and with the entrance and exit onto Catherine-de-Barnes Lane towards the north western corner of the compound.
- 9.2.146. Moreover, for reasons which it has cited, the Applicant does not consider that a separate Requirement dealing with the layout of the main site compound would be appropriate for inclusion under the policy tests described in Paragraph 15.2 of Advice Note 15.
- 9.2.147. Whilst the ExA does not necessarily agree with those reasons, it is satisfied that the updated OEMP, which includes the Outline Compound Management Plan with associated Appendix 1 plan, and the additional commitment within the REAC, would reasonably address those concerns that the additional Requirement sought to address.
- 9.2.148. The ExA note the additional concerns expressed by Bickenhill and Marston Green Parish Council [REP9-028] but is satisfied that issues relating to construction traffic is reasonably addressed by R10.

DCO Provisions Recommended to be Changed

Art 39 - Felling or lopping of trees and removal of hedgerows

- 9.2.149. This Art allows for the felling or lopping of trees and removal of hedgerows.
- 9.2.150. Prior to Deadline 6 the Applicant submitted an Ancient Woodland Clarifications and Proposed Additional Measures Technical Note [AS-035]. This document includes several measures to reduce the impact on, and to enhance the management of, ancient woodland. These measures have subsequently been incorporated in the updated REAC and made binding through the OEMP [REP9-019]. However, as set out in its dDCO commentary, the ExA consider that Art 39 should explicitly state, for the avoidance of doubt, that the measures should bind the Applicant over and above the provisions set out in Art 39 (which allows the felling or lopping of any tree within the order limit). This is considered all the more important as the Applicant has not amended paragraph (1) as per the ExA's dDCO commentary which effectively would have identified those trees and shrubs which may be felled or lopped.
- 9.2.151. The ExA note the Applicant's submission at ISH 7 (DCO 4) that it would require the powers in Art 39 to apply to ancient woodland. However, paragraph 5.32 of NNNPS states that the SoS should not grant development consent for any development that would result in the loss or deterioration of irreplaceable habitats including ancient woodland unless the national need for and benefits of the development, in that location, clearly outweigh the loss. On this basis, it is not considered appropriate to allow for further felling or lopping of ancient woodland beyond that which has specifically been considered.

- 9.2.152. The ExA is mindful of the A19/A184 Testo Junction Alteration Development Consent Order (SI 994/2018) cited as a precedent in the Applicant's EM [REP9-013] but has not been made aware that there are reasonably comparable ancient woodland considerations in that case.
- 9.2.153. The ExA therefore recommend that Art 39 be amended to prevent the general powers of paragraph (1) being applied to ancient woodland. This change is included in the rDCO provided at Appendix D to this Report.

Work No. 76 and R13 – Bickenhill Meadows SSSI

- 9.2.154. Careful work and consultation between the Applicant, Natural England, Warwickshire Wildlife Trust and SMBC has resulted in an agreed Bickenhill Meadows SSSI Hydrological Investigation Technical Note (v9.1) [REP3-004]. This promotes a 'passive' solution to providing sufficient water to maintain the Shadowbrook Lane (SE) unit of the SSSI rather than the 'pumped' solution currently referred to in Work No.76. The Applicant was therefore asked to amend the description for Work No.76 to reflect the proposed solution set out in the Technical Note. A form of words was suggested.
- 9.2.155. The Applicant's response is that it would not be helpful to amend the description in the manner suggested, as it would result in Work No. 76 covering two alternatives. Also, the Applicant does not consider that the works required to deliver the 'passive' solution are substantial enough to constitute a numbered work.
- 9.2.156. Instead the Applicant suggests that it would be appropriate to amend R13 by adding a new paragraph 4, which makes it clear that the Applicant may only implement Work No. 76 if it has been determined, in accordance with the Outline Bickenhill Meadows SSSI Monitoring and Management Plan, that the passive solution has failed.
- 9.2.157. The ExA agrees that amending R13 as suggested would in principle be an appropriate way in which to deal with this issue. However, the new paragraph inserted into the Applicant's final dDCO states:
- (4) Work No. 76 in Schedule 1 (authorised development) must not be carried out unless in accordance with the requirements of the detailed Bickenhill Meadows SSSI Monitoring Management Plan.*
- 9.2.158. This does not make it explicit that Work No. 76 may only be implemented if the passive solution has failed. Moreover, as the Monitoring and Management Plan is to be agreed at a later date, the ExA cannot be certain at this time what its requirements will be. It is recommended therefore that paragraph (4) be amended as follows:
- (4) Work 76 shall only be carried out if it has been determined, in accordance with the Bickenhill Meadows SSSI Monitoring and Management Plan, that the passive solution to mitigate the loss of surface water catchment area has failed.

- 9.2.159. The ExA has included this change to R13 in its rDCO at Appendix D to this Report.
- 9.2.160. SMBC, in its response to the ExA's Commentary on the dDCO state that it would prefer that land areas that includes swales etc. are handed back to the landowners with restrictive covenants on landowners to ensure they are maintained and not amended in the future [REP9-032]. The ExA is satisfied that these are matters of detail for the Monitoring Management Plan which SMBC would be consulted upon, as stipulated by R13.

New R15 Altering the priority of the Catherine-de-Barnes Lane and St Peters Lane Junction

- 9.2.161. The ExA in its Commentary on the dDCO note that the Applicant has previously considered the altered priority for this junction but discounted it due to the need for a departure from standards, for visibility reasons, and because of the possibility that a 'straight' alignment might encourage vehicles leaving St Peter's Lane to do so without stopping.
- 9.2.162. The ExA acknowledge that the road layout might need to be altered, but state in its Commentary that it does not agree that land beyond the Order limits would be required, or that necessary road signs and safety features would clutter the roadside scene (similar signs and features would be required by the current proposal) or that the departure from standards would lead to worse or unacceptable road hazards. The ExA consider that the opposite would be the case.
- 9.2.163. Hence, the ExA proposed the insertion of a new R15 as follows:

15(1) Notwithstanding the details shown on any Certified Plan listed in Schedule 11 of this Order, no part of the realignment of Catherine-de-Barnes Lane is to commence until a scheme for the northern junction of St Peter's Lane and Catherine-de-Barnes Lane has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.

(2) Unless otherwise agreed by the relevant planning authority, the scheme must change the vehicular junction priority from St Peter's Lane to the realigned section of Catherine-de-Barnes Lane.

- 9.2.164. The Applicant's response [REP9-026] refers to SMBC confirming at ISH 7 (DCO4) that the change in junction priority would not be acceptable to the local highway authority because the layout would require departures from standard for forward looking visibility at the intersection with St Peters Lane.
- 9.2.165. Nevertheless, the Applicant has reviewed whether it is possible to provide layouts for the junction, that change the priority as requested by the ExA and comply with the recognised DMRB standards. The Applicant explains that it has produced a number of alternative layouts (shown in Appendix 1 to its response on the ExA's Commentary) but, in the time available, has not been able to produce a layout that complies with DMRB standards and fits within the Order limits.

- 9.2.166. The Applicant's view is that the proposed new R15 would be contrary to the tests set out in the Planning Inspectorate's Advice Note 15. In particular, given the stated opposition of SMBC to the reprioritisation, the Applicant considers that paragraph (2) would be ineffective and thus not reasonable.
- 9.2.167. SMBC response confirms the above in that it would not support a change in priority at this junction [REP9-032]. SMBC explain that it explored three design options with the Applicant for the priority at re-aligned Catherine-de-Barnes Lane/ St Peter's Lane junction depending on the available land and taking into consideration the number and severity of the departures from standard associated with each design option. Of these, SMBC's preferred option is for priority for traffic on St Peter's Lane to Catherine-de-Barnes Lane North overbridge (Option 3). With this layout, traffic on the re-aligned Catherine-de-Barnes Lane would have to give way/ stop for the traffic on the St Peter's Lane. On this basis, SMBC say that the sharp bend would have no effect on the traffic manoeuvres around the junction. Also traffic intending to turn right onto/ out of re-aligned Catherine-de-Barnes Lane would have good forward visibility. As a result, SMBC say the potential risk of accident on this layout has been reduced to the minimum. It also points out that that there would be five departures from standard, whereas Option 1 would have 11 and Option 2 would have eight departures. SMBC therefore support Option 3.
- 9.2.168. Bickenhill and Marston Green Parish Council and other IPs confirm in their response that they agree with the comments made by the ExA [REP9-028, REP9-033 and REP9-029]. The latter response also requests a further amendment to a new R15 to enable public consultation.
- 9.2.169. The ExA acknowledge the defects identified. However, given the limited traffic and local function of Catherine-de-Barnes Lane once the mainline link road is operational, the ExA consider that those defects would actually serve as traffic calming features rather than road hazards. This is not considered to be a situation where strict adherence to DMRB guidelines is necessary; indeed, insistence on it here sits oddly with the significant reductions countenanced elsewhere. Not only are there numerous examples of similar configurations in the local road network throughout the country, but also the contextual constraints of this junction might make Manual for Streets a better guide to their resolution than the DMRB.
- 9.2.170. Even if some adjustment to the road layout might be required, it is hard for the ExA to see why land beyond the Order limits would be required. And, even though road signs and safety features might be necessary, similar signs and features would be required by the DCO proposal.
- 9.2.171. The ExA therefore propose the insertion of a new Requirement entailing the preparation of a scheme to change the priority at the junction of St Peter's Lane and the realigned Catherine-de-Barnes Lane. As the views of local residents are known, it is not considered necessary to require public consultation. This new requirement is included in the rDCO at Appendix D as R14. There are some minor changes to the drafting set out above,

including updating the Schedule reference, plus the inclusion of a further paragraph which stipulates that the authorised development is to be carried out in accordance with the scheme to be agreed. The second paragraph is also amended as the SoS is the most appropriate body to make the decision.

New R16 - Relocation of the underground storage tank and access (Work No. 35)

- 9.2.172. The ExA in its commentary note that it is agreed that the relocation of the underground storage tank and its access on land to the south of St Peter's Lane would not affect the drainage arrangements and that it would be within the Limits of Deviation for Work No.35 [REP6-015].
- 9.2.173. However, this option is discounted by the Applicant because the access and egress would require a departure from standard and those defects (the provision of a layby off the realigned Catherine-de-Barnes Lane) are deemed to entail an increased risk of fly tipping and unregulated taxi parking.
- 9.2.174. The ExA explain in its commentary that those impediments could be avoided with measures within the dDCO and that this option has the advantage of locating the drainage arrangements to a roadside rather than introducing them to an otherwise relatively secluded area; the access to the fields and the aqueduct on the northern side of St Peters Lane thus need only be to an agricultural standard.
- 9.2.175. Hence, the ExA proposed the insertion of a new R16 as follows:
- 16(1) Notwithstanding the details shown on any Certified Plan listed in Schedule 11 of this Order, no part of the realignment of Catherine-de-Barnes Lane is to commence until an amended scheme for the underground storage tank and associated access (Work No.35) is submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.*
- (2) Unless otherwise agreed by the relevant planning authority, the amended scheme must relocate the underground storage tank and access from the northern to the southern side of St Peter's Lane.*
- 9.2.176. The Applicant's response [REP9-026] is that such a Requirement would not be appropriate for inclusion under the tests described in Paragraph 15.2 of Advice Note 15 because:
- there are no significant environmental effects on Church Farm Accommodation, or any other receptor, associated with the location of the attenuation tank to the north of St Peters Lane reported in the Environmental Statement;
 - the Applicant considers that any anti-social effects of locating a tank to the north of St Peters Lane can be avoided through the dDCO in the same way that the ExA consider that any anti-social effects of

locating the tank to the south can be, namely through traffic regulation measures;

- the access that would be required to the attenuation tank would be similar to that which the Applicant would provide for the owner of the land to the north of Church Farm Accommodation in any event;
- the location to the north of St Peters Lane would remain secluded even with the addition of a buried attenuation tank that would not be visible;
- given that there is a need to provide an access to the north of St Peters Lane in any event, if, contrary to the Applicant's expectations, the access arrangements did give rise to anti-social behaviour, this Requirement could potentially lead to anti-social behaviour in two locations in close proximity; and
- the residents to the south of St Peters Lane have not been notified or asked to comment on this proposed change.

9.2.177. Bickenhill and Marston Green Parish Council and other IPs again confirm in their response that they agree with the comments made by the ExA [REP9-028, REP9-033 and REP9-029]. The latter response also requests a further amendment to enable public consultation.

9.2.178. The ExA disagree about the absence of environmental effects from the current proposal as there would be the intrusion of vehicles behind Church Farm and the visual impact of a metalled access in a village street. The ExA's view is that the Requirement would meet the tests set out in Advice Note 15 as it is precise, enforceable, necessary, relevant to the development, relevant to planning and reasonable in all other respects. It could also be further modified to require consultation with those affected by the change.

9.2.179. The ExA therefore include this new Requirement as R15, within its rDCO at Appendix D. There are some minor changes to the drafting set out above, including updating the Schedule reference, as well as requiring local consultation and the authorised development to be carried out in accordance with the scheme to be agreed. The second paragraph is also amended as the SoS is the most appropriate body to make the decision.

Schedule 12 – Protective provisions

National Grid

9.2.180. National Grid Electricity Transmission Plc (National Grid) has confirmed that it has now reached an agreement with the Applicant in relation to the protective provisions included within the dDCO and other commercial arrangements between the parties [AS-047]. Accordingly, National Grid has withdrawn its RR. The protective provision for National Grid is provided in Part 3 of the Applicant's final dDCO. No amendments are therefore recommended.

HS2

9.2.181. HS2 has also withdrawn its representations, strictly subject to the inclusion of the protective provisions in its favour (which it states were submitted to the ExA on Friday 15 November) being included within the

DCO [AS-049]. However, the ExA has no record of the submission referred to. The Applicant's covering letter to its Deadline 10 submission confirms that it has agreed with HS2 protective provisions for the benefit of HS2, which are included on the face of the Order. These protective provisions are provided in Part 4 of the Applicant's final dDCO. The Applicant also states that it is close to agreeing terms of an asset protection agreement with HS2.

- 9.2.182. However, without the submission referred to by HS2, the ExA is unable to corroborate whether those provisions fully reflect those set out in the Applicant's 4th dDCO. On this basis, the ExA recommends that the SoS request the 15 November protective provisions from HS2 in the course of the Decision Stage in order to satisfy himself that HS2's concerns are adequately addressed in the DCO, if made.

Severn Trent Water

- 9.2.183. At Compulsory Acquisition Hearing 2 (CAH2) on 22 October 2019, the Applicant confirmed that it was in the process of agreeing protective provisions with Severn Trent Water Limited (STW) and that it was expected to reach an agreement shortly. An email on the same date from STW similarly confirmed that negotiations between the parties on the terms of an asset protection agreement are continuing and that only a small number of points remain to be agreed [AS-043].
- 9.2.184. At Deadline 8 the Applicant advised that an asset protection agreement has been agreed and is in the process of being completed [REP8-001]. In its Deadline 9 response to the ExA's Commentary on the dDCO, the Applicant advised that a separate agreement had been reached with STW, which does not require changes to the dDCO [REP9-026]. However, confirmation to this effect was not received from STW by the close of the Examination.
- 9.2.185. On this basis, the ExA recommends that the SoS request confirmation from STW as to whether it is satisfied that it will remain able to deliver its public services at all times during the implementation of the Proposed Development on the basis of the amended protective provisions within Schedule 12, Part 1, for water and sewerage undertakers. Or, if not, whether the concerns of SWT [AS-009] have been adequately addressed in a separate side agreement.

Cadent Gas Limited

- 9.2.186. Cadent Gas Limited (Cadent) confirms the existence of a side agreement sent to the Applicant [AS-046] to overcome its objections to the protective provisions set out in Part 5 of the DCO specifically for the protection of Cadent. However, that side agreement has not been executed by the Applicant and the few remaining points of disagreement are set out in the position statement at D10 [REP10-005]. Some of those disagreements relate to whether provisions should be within the DCO or in a side agreement and whether a particular clause should contain an explicit reference back to a provision for the submission of plans or not. But key disagreements concern whether Cadent 'must' or 'may' take

reasonable steps in assisting to obtain the necessary facilities and rights on land for the necessary relocation of apparatus. In addition, there is disagreement about indemnity provisions.

- 9.2.187. The ExA considers that the disagreements submitted by Cadent are at variance with the tests set out in section 127 of the PA2008. The requirement is that Cadent should be protected from 'serious detriment' in undertaking its functions. Section 127 does not protect it from all the costs of doing so. Serious detriment is not demonstrated. Moreover, Cadent, like other road users, will derive some benefit from the improvements in efficiency and capacity of the SRN delivered by the Proposed Development and, as a statutory undertaker, it should be obliged to help where appropriate. The recommended version of the protective provisions achieves those aims. The ExA recommend accordingly.

Other agreements

Royal Mail

- 9.2.188. Royal Mail is concerned that its future ability to provide an efficient mail sorting and delivery service to the public in accordance with its statutory obligations may be adversely affected by the construction of the Proposed Development [RR-004]. Royal Mail explain that it has seven operational delivery offices within 14 miles of Junction 6 of the M42 and that any periods of road disruption/ closure, night or day, have the potential to impact operations. In order to address this Royal Mail requests that the DCO, if made, includes specific requirements that:
- It is pre-consulted by the Applicant on any proposed road closures, diversions, alternative access arrangements, hours of working and the content of the final Traffic Management Plan.
 - The final Traffic Management Plan includes provision for a mechanism to inform major road users about works affecting the local network (with particular regard to Royal Mail's distribution facilities in the vicinity of the application site).
- 9.2.189. At CAH2, the Applicant confirmed that it had reached agreement with Royal Mail and that this was in the process of being finalised. However, no further update to this effect was provided by close of Examination. Royal Mail's dDCO related requests therefore remain outstanding.
- 9.2.190. Given that the operation of the Royal Mail is in the public interest, the ExA recommended that R10 be amended to require consultation with Royal Mail on the Traffic Management Plan. Before inclusion in the DCO, if made, the ExA recommends that the SoS seek clarification from the Applicant and Royal Mail as to whether an agreement has been finalised, thereby negating the need to amend R10.

Esso

- 9.2.191. In its response to the ExA's Commentary, the Applicant advised that a separate agreement is proposed with Esso Petroleum Company Limited (Esso), which does not require changes to the dDCO [REP9-026].

However, the ExA was not made aware that agreement had been reached by the close of the Examination.

- 9.2.192. In its RR, Esso explain that the Proposed Development potentially impacts and interferes with its existing underground 12" fuel multi-product pipeline, which is one of a network of fuel distribution pipelines that form a critical part of the UK's fuel supply [RR-034]. Esso highlight that it has funded, constructed and operates this pipeline as a private company and not pursuant to any statutory undertaker powers. This pipeline is protected by easements secured through deeds of grant with the individual landowners and occupiers who host the pipeline.
- 9.2.193. Esso's concerns are that construction works near or over the Esso pipeline can damage the pipeline or affect its future operation and objects to any interference with, extinguishment or suspension of the land rights relating to the pipeline or any activity that risks its operation. Esso therefore highlight that it will need to agree protective provisions to be included in the DCO to regulate how the Applicant would work in proximity to the pipeline asset. Esso also state that a Pipeline Protection Agreement (PPA) will be required to ensure Esso's pipeline is protected.
- 9.2.194. Esso also confirmed that the drafting of the dDCO, which at the time of writing would have been the 1st draft submitted with the application, is inadequate to protect its interests as a private oil pipeline operator [AS-021]. It explains that as Esso is not a statutory undertaker and does not have the backing of statutory rights, it will require protective provisions that respond to its particular rights and obligations.
- 9.2.195. On this basis, the ExA recommends that the SoS request confirmation from Esso as to whether agreement has been reached and whether its concerns have been met.

Applicant's other changes to its final 4th dDCO

- 9.2.196. The Applicant's Deadline 8 covering letter set out its intention to make a number of changes to the final (4th) dDCO [REP8-001]. Those not discussed above are set out below, along with other changes made.

Art 15 – Classification of roads etc.

- 9.2.197. The Applicant's new paragraph (7) confirms that from the date on which the slip roads to be constructed as part of Work Nos. 4 and 5 are open for traffic, the provisions of the M42 (Junction 3A to 7) (Actively Managed Hard Shoulder and Variable Speed Limits) Regulations 2005 (the 2005 Order) are amended. This is to ensure that the new slip roads are subject to variable speed limits imposed by the 2005 Order in relation to the section of motorway between junctions 3A to 7. The ExA raise no issue with this change.

Art 19 – Clearways, prohibitions and restrictions

- 9.2.198. Amendments to paragraph 1 are comparable to the normal restrictions that operate on clearways and motorways and are acceptable.

Non-material changes to the Proposed Development

- 9.2.199. As explained in Chapters 1 and 2 of this report, the Applicant notified the ExA of its intention to request what it considered to be a non-material change on 26 July 2019 and subsequently submitted this request in its letter dated 9 August 2019 [AS-027]. These were subsequently accepted by the ExA as non-material changes to the application [PD-015]. They now form the basis on which the ExA will make its recommendation to the SoS and the dDCO has been amended accordingly.

Drafting errors

- 9.2.200. The Applicant's Deadline 10 covering letters draws the ExA's attention to two typographical errors in the 4th dDCO [REP10-001]. These are picked up in the rDCO along with any others found by the ExA.

Other changes

- 9.2.201. The ExA also note that the third column of the table of certified plans and documents is titled 'Revision'. However, the Applicant's master document list within the Guide to the Application [REP10-002] and individual documents refer to 'Version' numbers. Therefore, for clarity, consistency and the avoidance of doubt, the ExA has amended the third column and the references contained therein to reflect the Applicant's latest Guide to the Application and the version numbers of each individual document. The ExA has also updated the documents references in the second column which have not been updated.
- 9.2.202. As a result of the DCO some other consents and agreements may be needed and these will similiary need to be recorded.

CONCLUSIONS ON THE DCO

- 9.2.203. The ExA has considered all iterations of the dDCO as provided by the Applicant, from the application version to the final 4th dDCO submitted at D9.
- 9.2.204. Many of the issues identified during the Examination, including the ExA's Commentary, are satisfactorily addressed in the 4th dDCO or in application documents, such as the OEMP, which are certified by dDCO.

However, there are a number of outstanding changes which are required to the 4th dDCO, which are explained in the recommendations set out in this chapter. They are also included in the rDCO in Appendix D of this Report.

Taking all matters raised in this chapter and all matters relevant to the DCO raised in the remainder of this Report fully into account, if the SoS is minded to make the DCO, it is recommended to be made in the form set out in Appendix D.

10. SUMMARY OF FINDINGS AND CONCLUSIONS

10.1. INTRODUCTION

10.1.1. This Chapter summarises the ExA's conclusions arising from the Report as a whole and sets out the primary recommendation to the Secretary of State (SoS).

10.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

10.2.1. In relation to s104 of Planning Act 2008 (PA2008) the ExA concludes in summary that:

- making the recommended draft Development Consent Order (dDCO) would be in accordance with the National Policy Statement for National Networks (NNNPS), and would not substantively conflict with relevant development plan policy and other relevant policy, all of which have been taken into account in this Report;
- specific regard has been given to the Local Impact Reports from Solihull Metropolitan Borough Council and Warwickshire County Council in partnership with North Warwickshire Borough Council;
- whilst the SoS is the competent authority under the Habitats Regulations and will make the definitive assessment, the Proposed Development would not be likely to have significant effects on European sites, species or habitats and this finding has been taken into account in reaching the recommendation;
- in regard to all other matters and representations received, there are no important and relevant matters that would individually or collectively lead to a different recommendation from that below; and
- with the mitigation proposed through the recommended dDCO, there are no adverse impacts arising from the Proposed Development that would outweigh its benefits; and there is no reason to indicate that the application should be decided other than in accordance with the relevant National Policy Statement, NNNPS.

10.2.2. The ExA has considered the case for Compulsory Acquisition and Temporary Possession of land and rights required in order to implement the Proposed Development.

10.2.3. In each case the CA and TP powers requested are considered necessary to enable the Applicant to complete the Proposed Development. In addition, there is a compelling case in the public interest, the Applicant has a clear idea of how it intends to use the land, and funds are available for the implementation.

10.2.4. The ExA has had regard to the provisions of the Human Rights Act 1998. In some cases, there would be interference with the peaceful enjoyment of possessions in contravention of Article 1 of the First Protocol of the Human Rights Act 1998.

- 10.2.5. However, with the weight of national policy in favour of the Proposed Development, the wider public interest qualifies any interference with the human rights of the owners and occupiers affected by CA and TP of lands. The interference in their human rights would be proportionate and justified in the public interest.
- 10.2.6. The ExA has had regard to the Public Sector Equality Duty (PSED). The Proposed Development does not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, there is no breach of the PSED.
- 10.2.7. As required by Regulation 3(1) of the Infrastructure Planning (Decisions) Regulations 2010, the ExA has had regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess. Also as required by Regulation 3(2), we have had regard to the desirability of preserving or enhancing the character or appearance of conservation areas.
- 10.2.8. The ExA has found that the Proposed Development would fail to preserve the setting of five listed buildings and would neither preserve nor enhance the character or appearance of two conservation areas. This has been taken into account in the above Green Belt and planning balance.
- 10.2.9. With the changes to the recommended dDCO proposed in Appendix D to this Report, the Proposed Development meets the tests in s104 of PA2008.

10.3. RECOMMENDATION

- 10.3.1. Findings and conclusions on important and relevant matters are set out in this Report. In considering the recommendation, the Secretary of State may wish to be satisfied on the following points:
- Crown Land position at the point of decision;
 - The agreement of a legacy scheme for WGAA or relocation of the club house in the WGAA reconfiguration scheme
 - Agreements with Gooch Estates including for mitigation land
 - Status of the proposed agreement with NEC
 - Cadent Gas side agreement
 - Esso provisions and pipeline agreement
 - Land for relocation of the Work 35 attenuation tank
 - Land for realignment of road junction associated with new Requirement 15
 - Whether the Applicant should be requested to update the OEMP/ REAC at Decision Stage to include the measures set out in paragraph 7.1.3 of the Lighting Technical Note to ensure that the latest lighting technology with the most appropriate lantern and colour temperature would be used in the Proposed Development to minimise light-spill and reduce night time landscape and visual impacts.
 - Whether the Outline Site Waste Management Plan (outline SWMP) target for the recovery/recycling rate of non-hazardous construction

and demolition waste contained within the Outline Environmental Management Plan (OEMP) should be raised to 85% or above.

- Whether the Outline SWMP should be amended to require a post-scheme evaluation of performance against the assessment conclusions, and for the findings to be presented in the Handover Environmental Management Plan, which would be delivered through Requirement 4 of the recommended dDCO.
- Whether the GHG emissions impact of the Proposed Development would have a material impact on the UK Government meeting its increased carbon reduction targets, which came into force during the course of the Examination.

10.3.2. Subject to the above, the SoS is recommended:

- To make The M42 Junction 6 Order 202X in the form attached at Appendix D to this Report.

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APPENDIX A: THE EXAMINATION

APPENDIX A: THE EXAMINATION

The table below lists the main events that occurred during the Examination and the procedural decisions taken by the Examining Authority (ExA)

Date	Event
23 April 2019	<p>Procedural Decision: 'Rule 6 Letter' Issue [PD-004] by the ExA of:</p> <ul style="list-style-type: none"> • Draft Examination Timetable • Procedural Decisions • Notification of Hearings
21 May 2019	Preliminary Meeting
21 May 2019	Open Floor Hearing 1 (OFH1)
22 May 2019	<p>Issue Specific Hearing 1 (ISH1)</p> <p>ISH1 on the draft Development Consent Order (DCO 1)</p>
22 May 2019	<p>Unaccompanied Site Inspection 1 (USI1)</p> <ul style="list-style-type: none"> • Proposed application site and locations prospectively within the setting of the proposed development
31 May 2019	<p>Procedural Decision: 'Rule 8 Letter' Issue [PD-006] by the ExA of:</p> <ul style="list-style-type: none"> • Examination Timetable • Procedural Decisions • Notification of Hearings • The ExA's Written Questions (ExQ1)
3 June 2019	<p>Deadline 1 Deadline for receipt of:</p> <ul style="list-style-type: none"> • Notification of wish to speak at a Compulsory Acquisition Hearing • Request to hold a further Open Floor Hearing

Date	Event
	<ul style="list-style-type: none"> • Notification of wish to speak at an Issue Specific Hearing • Notification of suggested locations, and their justifications, for the Accompanied Site Inspection (ASI) on 3 and 4 July and any comments on the current draft ASI – which was submitted prior to the PM where 2 days for the ASI was agreed • Notification by statutory parties of wish to be considered as an Interested Party • Notification of wish to have future correspondence electronically • Comments on Relevant Representations (RRs) • Written Representations (WRs) and summaries of all WRs which exceed 1500 words • Any further information requested by the Panel for this Deadline
24 June 2019	<p>Deadline 2 Deadline for receipt of:</p> <ul style="list-style-type: none"> • Local Impact Reports (LIRs) from local authorities • Statements of Common Ground (SoCGs) requested by the Panel • Responses to the Panel’s First Written Questions • Applicant to provide a final ASI itinerary based on requests received at D1 • Post hearing submissions including written submissions of oral case, arising from hearings held on 21 or 22 May

Date	Event
	<ul style="list-style-type: none"> • Comments on any additional information and submissions received for D1 • Comments on any further information requested by the Panel for Deadline 1
2 July 2019	<p>Issue Specific Hearing 2 (ISH2)</p> <p>ISH2 on the need for improvements at junction 6 on the M42</p>
2 July 2019	<p>Issue Specific Hearing 3 (ISH3)</p> <p>ISH3 on the draft Development Consent Order (DCO 2)</p>
3 July 2019	<p>Accompanied Site Inspection (ASI)</p> <ul style="list-style-type: none"> • Proposed application site and locations prospectively within the setting of the proposed development
4 July 2019	<p>Accompanied Site Inspection (ASI)</p> <ul style="list-style-type: none"> • Proposed application site and locations prospectively within the setting of the proposed development
15 July 2019	<p>Deadline 3</p> <p>Deadline for the receipt of:</p> <ul style="list-style-type: none"> • Comments on WRs which were received at D2 • Any responses to comments on RRs which were received at D1 • Comments on LIRs which were received at D2 • Comments on responses received at D2 to the Panel's First Written Questions • Post hearing submissions including written submissions of oral cases, arising from Hearings on 2 July 2019

Date	Event
	<ul style="list-style-type: none"> • Updates to Statements of Common Ground • Responses to any further information requested by the Panel • Comments on any additional information or submissions received for the previous deadline
16 July 2019	Issue [PD-007] by the ExA of: <ul style="list-style-type: none"> • Notification of Hearings
5 August 2019	Publication [PD-008] by ExA of: <ul style="list-style-type: none"> • The ExA's Further Written Questions (ExQ2)
9 August 2019	Applicant submitted formal notification of proposed changes to the Application
12 August 2019	Deadline 3A Deadline for the receipt of: <ul style="list-style-type: none"> • Updated Guide to the Application • Outline Management Plan for Main Site Compound • Consideration of Alternative Locations for the M42 Junction 6 Main Site Compound • Response to CPRE Letter dated 15 July 2019 • Transport Modelling Hierarchy
20 August 2019	Compulsory Acquisition Hearing 1 (CAH1) Compulsory Acquisition (CA) and Temporary Possession (TP)
21 August 2019	Issue Specific Hearing 4 (ISH4) ISH4 on the Issue Specific Hearing (DCO) Content of the draft Development Consent Order (DCO 3)

Date	Event
22 August 2019	<p>Open Floor Hearing</p> <p>Open Floor Hearing</p>
2 September 2019	<p>Issue [PD-009] by the ExA of:</p> <ul style="list-style-type: none"> • Notification of Hearings
2 September 2019	<p>Deadline 4 Deadline for the receipt of:</p> <ul style="list-style-type: none"> • Responses to the Panel’s Second Written Questions (if required) • Responses to any further information requested by the Panel • Updates to Statements of Common Ground (SoCG) requested by the Panel • Comments on any additional information or submissions received by previous deadline
13 September 2019	<p>Issue [PD-010] by the ExA of:</p> <ul style="list-style-type: none"> • Amended Examination Timetable • Notification of Hearings • Procedural Decisions • Request for further information
16 September 2019	<p>Deadline 5 Deadline for the receipt of:</p> <ul style="list-style-type: none"> • Applicant’s revised draft DCO • Responses to further information requested by the Panel • Post hearing submissions including written submissions of oral cases, arising from Hearings on 20-22 August 2019

Date	Event
	<ul style="list-style-type: none"> • Comments on any additional information or submissions received by previous deadline
23 September 2019	Publication [PD-011] by the Panel of: <ul style="list-style-type: none"> • Further Written Questions (ExQ3)
1 October 2019	Issue Specific Hearing 5 (ISH5) ISH5 on Living conditions
2 October 2019	Issue Specific Hearing 6 (ISH6) ISH6 on Environmental matters
2 October 2019	Unaccompanied Site Inspection 2 (USI2) <ul style="list-style-type: none"> • Proposed application site and locations prospectively within the setting of the proposed development
11 October 2019	Deadline 6 Deadline for the receipt of: <ul style="list-style-type: none"> • Comments on the draft DCO, submitted on D5 • Responses to the Panel’s Third Written Questions • Post hearing submissions including written submissions of oral cases, arising from Hearings on 1-2 October 2019 • Environmental Appraisals and Consultation Report on the Proposed changes to the application • Responses to any further information requested by the Panel • Comments on any additional information or submissions received by previous deadline
22 October 2019	Compulsory Acquisition Hearing 2 (CAH2)

Date	Event
	Compulsory Acquisition (CA) and Temporary Possession (TP)
23 October 2019	<p>Issue Specific Hearing 7 (ISH7)</p> <p>ISH7 on the Issue Specific Hearing (DCO) Content of the draft Development Consent Order (DCO 4)</p>
28 October 2019	<p>Deadline 7</p> <p>Deadline for the receipt of:</p> <ul style="list-style-type: none"> • Comments on responses to the Panel’s Third Written Questions • Responses to any further information requested by the Panel • Comments on any additional information or submissions received by previous deadline • Post hearing submissions including written submissions of oral cases, arising from Hearings
28 October 2019	<p>Issue [PD-012] by the ExA of:</p> <ul style="list-style-type: none"> • Amended Examination Timetable • Procedural Decisions
31 October 2019	<p>Issue [PD-013] by the ExA of:</p> <ul style="list-style-type: none"> • Procedural Decision postponing decision on change requests
5 November 2019	<p>Deadline 8</p> <p>Deadline for the receipt of:</p> <ul style="list-style-type: none"> • Responses to any further information requested by the Panel • Comments on any additional information or submissions received by previous deadline
8 November 2019	<p>Publication [PD-014] by the Panel of:</p>

Date	Event
	<ul style="list-style-type: none"> The Examining Authority's draft Development Consent Order (dDCO) commentary schedule of changes
12 November 2019	Issue [PD-015] by the ExA of: <ul style="list-style-type: none"> Amended Examination Timetable Procedural Decisions on change requests Request for further information
15 November 2019	Deadline 9 Deadline for the receipt of: <ul style="list-style-type: none"> Comments on the Panel's preferred dDCO or dDCO commentary Final draft DCO to be submitted by the Applicant in the statutory instrument (SI) template with the SI template validation report, together with a revised version of the Explanatory Memorandum Responses to any further information requested by the Panel
20 November 2019	Deadline 10 Deadline for the receipt of: <ul style="list-style-type: none"> Responses to any further information requested by the Panel Comments on any additional information or submissions received by previous deadline
21 November 2019	Close of Examination [PD-016]

APPENDIX B: EXAMINATION LIBRARY

M42 Junction 6 Improvement Examination Library

Updated – 22 November 2019

This Examination Library relates to the M42 Junction 6 Improvement application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document. A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites and will be used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- This is a working document and will be updated periodically as the examination progresses.
- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate, is published to the National Infrastructure Website but is not included within the Examination Library as such advice is not an examination document.
- This document contains references to documents from the point the application was submitted.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

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Category	Reference
Application Documents As submitted and amended version received before the PM. Any amended version received during the Examination stage to be saved under the Deadline received	APP-xxx
Adequacy of Consultation responses	AoC-xxx
Relevant Representations	RR-xxx
Procedural Decisions and Notifications from the Examining Authority Includes Examining Authority's questions, s55, and post acceptance s51	PD-xxx
Additional Submissions Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination	AS-xxx
Events and Hearings Includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant's hearing notices, and responses to Rule 6 and Rule 8 letters	EV-xxx
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<p>Deadline 2:</p> <p><i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses</p>	<p>REP2-xxx</p>
<p>Deadline 3</p> <p><i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses</p>	<p>REP3-xxx</p>
<p>Deadline 3A</p> <p><i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses</p>	<p>REP3A-xxx</p>
<p>Deadline 4</p> <p><i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses</p>	<p>REP4-xxx</p>
<p>Deadline 5</p> <p><i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses</p>	<p>REP5-xxx</p>
<p>Deadline 6</p> <p><i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses</p>	<p>REP6-xxx</p>
<p>Deadline 7</p> <p><i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses</p>	<p>REP7-xxx</p>
<p>Deadline 8</p> <p><i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses</p>	<p>REP8-xxx</p>
<p>Deadline 9</p> <p><i>State what type of submissions was requested for this deadline in the heading</i></p>	<p>REP9-xxx</p>

Includes R17 responses	
Deadline 10 <i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses	REP10-xxx
Other Documents Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents	OD-xxx

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APP-002	Highways England 1.2 Covering Letter and Schedule of Compliance with Section 55
APP-003	Highways England 1.3 - Application Form
APP-004	Highways England 1.4 - Electronic Index
APP-005	Highways England 2.1 - Location Plan
APP-006	Highways England 2.2 - Land Plans
APP-007	Highways England 2.3 - Works Plans
APP-008	Highways England 2.4 - General Arrangement Plans
APP-009	Highways England 2.5 - Streets, Rights of Way and Access Plans
APP-010	Highways England 2.6 - Traffic Regulation Measures Plans including clearways and weight limits
APP-011	Highways England 2.6 - Traffic Regulation Measures Plans including speed limits
APP-012	Highways England 2.7 - Classification of Road Plans
APP-013	Highways England 2.8 - Engineering Drawings and Sections including drainage engineering drawings and structures cross sections
APP-014	Highways England 2.9 - Crown Land Plans
APP-015	Highways England 3.1 - Draft Development Consent Order
APP-016	Highways England 3.2 - Explanatory memorandum
APP-017	Highways England 3.3 - Consents and Agreements Position Statement
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APP-152	Highways England 6.3 - Environmental Statement Appendix 12.3 Baseline Noise Survey Report
APP-153	Highways England 6.3 - Environmental Statement Appendix 12.4 Reconfiguration of Warwickshire Gaelic Athletics Association
APP-154	Highways England 6.3 - Environmental Statement Appendix 13.1 Driver Stress Calculation
APP-155	Highways England 6.3 - Environmental Statement Appendix 13.2 Agricultural Data Sheets
APP-156	Highways England 6.3 - Environmental Statement Appendix 14.1 Preliminary Water Framework Directive Assessment (pWFD)
APP-157	Highways England 6.3 - Environmental Statement Appendix 14.2 Bickenhill Meadows SSSI – Preliminary Hydrological Investigation Technical Note
APP-158	Highways England 6.3 - Environmental Statement Appendix 14.3 Assessment of Routine Road Runoff and Spillage Risk to Watercourses (HAWRAT Assessment)

APP-159	Highways England 6.3 - Environmental Statement Appendix 14.4 Flood Risk Assessment
APP-160	Highways England 6.3 - Environmental Statement Appendix 14.5 Drainage Strategy
APP-161	Highways England 6.3 - Environmental Statement Appendix 16.1 Cumulative effects: screening methodology
APP-162	Highways England 6.3 - Environmental Statement Appendix 16.2 Long List of Developments
APP-163	Highways England 6.3 - Environmental Statement Appendix 16.3 Short List of Developments
APP-164	Highways England 6.3 - Environmental Statement Appendix 16.4 Cumulative Assessment Table
APP-165	Highways England 6.4 - Non-technical summary
APP-166	Highways England 6.5 - Scoping Opinion
APP-167	Highways England 6.6 - Assessment of Historic Environmental Effects
APP-168	Highways England 6.7 - Assessment of Nature Conservation Effects
APP-169	Highways England 6.8 - Habitat Regulations Assessment: No Significant Effects Report
APP-170	Highways England 6.9 - Statement of Statutory Nuisance
APP-171	Highways England 6.10 - Flood Risk Assessment
APP-172	Highways England 6.11 - Outline Environmental Management Plan (OEMP)
APP-173	Highways England 7.1 - Planning Statement and National Policy Statement Accordance Table
APP-174	Highways England 7.2 - Transport Assessment Report
Adequacy of Consultation Responses	
AoC-001	Coventry City Council Adequacy of Consultation Representation
AoC-002	Gloucestershire County Council Adequacy of Consultation Representation
AoC-003	Northamptonshire County Council Adequacy of Consultation Representation
AoC-004	North Warwickshire Borough Council Adequacy of Consultation Representation
AoC-005	Solihull Metropolitan Borough Council Adequacy of Consultation Representation

AoC-006	Warwickshire County Council Adequacy of Consultation Representation
Relevant Representations	
RR-001	AXIS on behalf of Mr Eugene Moore
RR-002	Birketts LLP on behalf of The Trustees of the Sir Major Timothy Gooch Will Trust
RR-003	Birmingham Airport
RR-004	BNP Paribas Real Estate on behalf of Royal Mail Group Limited
RR-005	Cadent Gas Limited
RR-006	Canal and River Trust
RR-007	Catherine de Barnes Residents Association
RR-008	CPRE Warwickshire
RR-009	David Tucker Associates on behalf of Bracebridge Holdings Ltd
RR-010	David Tucker Associates on behalf of Lansdowne Group
RR-011	DWF Law LLP on behalf of The Arden Hotel Limited
RR-012	Gateley Plc on behalf of Warwickshire Gaelic Athletic Association
RR-013	Genting Solihull Limited
RR-014	Gerald Eve – National Exhibition Centre Limited
RR-015	Health and Safety Executive
RR-016	High Speed Two (HS2) Ltd *WITHDRAWN*
RR-017	Josephine Smyth on behalf of Damian Smyth
RR-018	Lydia Barnstaple on behalf of Mr Heathcliffe Boswell
RR-019	Mr Heath Cotterill
RR-020	National Grid Electricity Transmission PLC and National Grid *WITHDRAWN*
RR-021	Natural England
RR-022	Network Rail Infrastructure Limited *WITHDRAWN*
RR-023	North Warwickshire Borough Council
RR-024	Osborne Clarke LLP on behalf of Western Power Distribution (West Midlands) PLC
RR-025	Philip O'Reilly
RR-026	Philip O'Reilly
RR-027	Shoosmiths LLP on behalf of Extra MSA Solihull Limited
RR-028	Solihull Metropolitan Borough Council
RR-029	Sport England
RR-030	The Open Spaces Society
RR-031	The Ramblers – Warwickshire Area
RR-032	The Woodland Trust
RR-033	Thomas Smyth on behalf of Estate of Mr D Rogers
RR-034	Veale Wasbrough Vizards LLP on behalf of Esso Petroleum Company Limited (James Taylor-Lawyer)
RR-035	Warwickshire Wildlife Trust
Procedural Decisions and Notifications from the Examining Authority	
PD-001	Notification of Decision to Accept Application
PD-002	Section 55 Checklist
PD-003	Appointment of the Examining Authority Notice of appointment of the Examining Authority

PD-004	Rule 6 letter - Notification of the preliminary meeting and matters to be discussed
PD-005	Examining Authority Schedule of the Panel's issues and questions relating to the draft Development Consent Order (DCO1)
PD-006	Rule 8 - notification of timetable for the examination including The Examining Authority's written questions and requests for information (ExQ1)
PD-007	Rule 13 Notification of Hearings
PD-008	The Examining Authority's written questions and requests for information (ExQ2)
PD-009	Rule 13 Notification of Hearings
PD-010	Notification of a change to the Examination Timetable, Notice of procedural decision, notification of hearings and request for further information Rule 8(3), Rule 9, Rule 13 and Rule 17
PD-011	The Examining Authority's written questions and requests for information (ExQ3)
PD-012	Rule 8 (3) - Notification of a change to the Examination Timetable
PD-013	ExA letter postponing the decision on Applicant's proposed change to the dDCO
PD-014	The Examining Authority's draft Development Consent Order (dDCO) commentary schedule of changes - Issued 8 November 2019
PD-015	Rule 8(3), Rule 9 and Rule 17 letter - issued 12 Nov 2019 The ExA's decision on the Applicant's proposed changes to the original Development Consent Order (DCO) application, change to Examination Timetable, request for further information
PD-016	Notification of completion of the Examining Authority's Examination
Additional Submissions	
AS-001	Birmingham City Council Additional Submission - Accepted at the discretion of the Examining Authority
AS-002	Birmingham Airport Additional Submission - Accepted at the discretion of the Examining Authority
AS-003	Birmingham Dogs Home Additional Submission - Accepted at the discretion of the Examining Authority
AS-004	Coventry City Council Additional Submission - Accepted at the discretion of the Examining Authority
AS-005	Harlaxton Energy Networks Ltd Additional Submission - Accepted at the discretion of the Examining Authority
AS-006	Highways England

	Additional Submission - Accepted at the discretion of the Examining Authority 4.3 - Book of Reference (Updated)
AS-007	Historic England Additional Submission - Accepted at the discretion of the Examining Authority
AS-008	Ministry of Defence Additional Submission - Accepted at the discretion of the Examining Authority
AS-009	NATS Additional Submission - Accepted at the discretion of the Examining Authority
AS-010	Public Health England Additional Submission - Accepted at the discretion of the Examining Authority
AS-011	Highways England Additional submission accepted at the discretion of the Examining Authority
AS-012	Open Spaces Society Additional Submission - Accepted at the discretion of the Examining Authority
AS-013	Severn Trent Water Limited Additional submission accepted at the discretion of the Examining Authority
AS-014	Barbara Tocher Additional Submission - Accepted at the discretion of the Examining Authority
AS-015	Bickenhill and Marston Green Parish Council Additional Submission - Accepted at the discretion of the Examining Authority
AS-016	Heath Cotterill Additional Submission - Accepted at the discretion of the Examining Authority
AS-017	Highways England Additional Submission - Accepted at the discretion of the Examining Authority ASI Itinerary – pre-PM
AS-018	Mr David Cuthbert Additional Submission - Accepted at the discretion of the Examining Authority
AS-019	Health and Safety Executive Additional Submission - Accepted at the discretion of the Examining Authority
AS-020	Philip O'Reilly Additional Submission - Accepted at the discretion of the Examining Authority
AS-021	Veale Wasbrough Vizards LLP on behalf of Esso Petroleum Company Limited Additional Submission - Accepted at the discretion of the Examining Authority
AS-022	Barbara Tocher Additional Submission - Accepted at the discretion of the Examining Authority

AS-023	Highways England Additional Submission - Accepted at the discretion of the Examining Authority following the recent ASI 8.30 Accompanied Site Inspection Pack
AS-024	Highways England Additional Submission - Accepted at the discretion of the Examining Authority following the recent ASI 8.31 Indicative Proposal for Main Compound and Office for M42 J6 Scheme
AS-025	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - Clarification about referencing in Highways England's response to ExA's written questions
AS-026	Barbara Tocher Additional Submission - Accepted at the discretion of the Examining Authority
AS-027	Highways England Additional Submission - Non-material change requests to the Application
AS-028	Barbara Tocher Additional Submission - Accepted at the discretion of the Examining Authority
AS-029	Network Rail Infrastructure Limited Additional Submission - Withdrawal of Relevant Representation. Accepted at the discretion of the Examining Authority
AS-030	Gerald Eve LLP on behalf of The National Exhibition Centre Additional Submission - Accepted at the discretion of the Examining Authority
AS-031	GTC Additional Submission - Accepted at the discretion of the Examining Authority
AS-032	Hampton-in-Arden Parish Council Additional Submission - Accepted at the discretion of the Examining Authority
AS-033	Hampton-in-Arden Parish Council Additional Submission - Accepted at the discretion of the Examining Authority
AS-034	Highways England Additional Submission - 8.62 Bat Survey Report - Accepted at the discretion of the Examining Authority
AS-035	Highways England Additional Submission - 8.64 Ancient Woodland Clarifications and Proposed Additional Measures Technical Note - Accepted at the discretion of the Examining Authority
AS-036	Highways England Additional Submission - 3.1(b) Draft Development Consent Order (Clean) - Accepted at the discretion of the Examining Authority

AS-037	Natural England Additional Submission – Natural England’s comments on Highways England’s - 8.64 Ancient Woodland Clarifications and Proposed Additional Measures Technical Note - Accepted at the discretion of the Examining Authority
AS-038	National Grid Electricity Transmission PLC Additional Submission – Protective Provisions. Accepted at the discretion of the Examining Authority
AS-039	Gateley Hamer on behalf of Warwickshire Gaelic Athletic Association Additional Submission – Warwickshire Gaelic Athletic Association (WGAA) updated position statement - accepted at the discretion of the Examining Authority
AS-040	Gerald Eve LLP on behalf of The National Exhibition Centre Additional Submission – NEC update on the agreement with Highways England - accepted at the discretion of the Examining Authority
AS-041	High Speed Two (HS2) Limited Additional Submission – High Speed Two (HS2) update on the Planning Performance Agreement with Highways England - accepted at the discretion of the Examining Authority
AS-042	Highways England Additional Submission – 8.9(b) Statement of Common Ground with Warwickshire County Council - accepted at the discretion of the Examining Authority
AS-043	Severn Trent Water Limited Additional Submission – Severn Trent Water Limited’s update on asset protection agreement - accepted at the discretion of the Examining Authority
AS-044	Nick Evans on behalf of Highways England Additional Submission - Protective provisions - accepted at the discretion of the Examining Authority
AS-045	Barlow Associates Limited Additional Submission - Response to the ExA’s letter of 12 Nov 2019 - accepted at the discretion of the Examining Authority
AS-046	Cadent Gas Limited Additional Submission – Side Agreement - Accepted at the discretion of the Examining Authority
AS-047	National Grid Electricity Transmission Plc Additional Submission - Protective Provisions - Accepted at the discretion of the Examining Authority
AS-048	Camilla and David Burton Additional Submission - Accepted at the discretion of the Examining Authority
AS-049	High Speed 2 (HS2) Additional Submission - Protective Provisions - Accepted at the discretion of the Examining Authority

AS-050	Philip O'Reilly Additional Submission - Accepted at the discretion of the Examining Authority
Events and Hearings	
Accompanied, Unaccompanied Site Inspection and Hearings	
EV-001	Agenda for Open Floor Hearing 1
EV-002	Agenda for Issue Specific Hearing 1 : draft Development Consent Order (DCO)
EV-003	Recording of Preliminary Meeting – 21 May 2019
EV-004	Recording of Open Floor Hearing – 21 May 2019
EV-005	Recording of Issue Specific Hearing 1 – Part 1 of 2 - 22 May 2019
EV-006	Recording of Issue Specific Hearing 1 – Part 2 of 2 - 22 May 2019
EV-007	Preliminary Meeting Note
EV-008	Agenda for Issue Specific Hearings 2 and 3
EV-009	Recording of Issue Specific Hearing 2 – Part 1 of 2 – 2 July 2019
EV-010	Recording of Issue Specific Hearing 2 – Part 2 of 2 – 2 July 2019
EV-011	Recording of Issue Specific Hearing 3 – Part 1 of 2 – 2 July 2019
EV-012	Recording of Issue Specific Hearing 3 – Part 2 of 2 – 2 July 2019
EV-013	Severn Trent Water Written submission to inform Issue Specific Hearing 4 on the draft Development Consent Order (DCO 3) - Accepted at the discretion of the Examining Authority
EV-014	Warwickshire Gaelic Athletic Association Written submission to inform Compulsory Acquisition Hearing 1 (CAH 1) - Accepted at the discretion of the Examining Authority
EV-015	National Grid Electricity Transmission PLC Written submission to inform Compulsory Acquisition Hearing 1 (CAH 1) - Accepted at the discretion of the Examining Authority
EV-016	HS2 Ltd Written submission clarifying current position and attendance at Compulsory Acquisition Hearings - Accepted at the discretion of the Examining Authority
EV-017	Recording of Compulsory Acquisition Hearing (CAH) - Part 1 - 20 August 2019
EV-018	Recording of Compulsory Acquisition Hearing (CAH) - Part 2 - 20 August 2019
EV-019	Recording of Issue Specific Hearing 4 (ISH4) - 21 August 2019
EV-020	Recording of Open Floor Hearing (OFH) - 22 August 2019
EV-021	Action Points from Compulsory Acquisition Hearing
EV-022	Action Points from Issue Specific Hearing 4 (DCO 3)
EV-023	Agenda for Issue Specific Hearing 5 on Living Conditions
EV-024	Agenda for Issue Specific Hearing 6 on Environmental Matters

EV-025	Open Spaces Society Submission by Open Spaces Society to inform Issue Specific Hearing 5 on Living Conditions - accepted at the discretion of the Examining Authority
EV-026	Recording of Issue Specific Hearing 5 (ISH5) on Living Conditions - 1 October 2019
EV-027	Recording of Issue Specific Hearing 6 (ISH6) on Environmental Matters - 2 October 2019
EV-028	Note of Unaccompanied Site Inspection - 22 May 2019
EV-029	Accompanied Site Inspection Itinerary
EV-030	Agenda for Compulsory Acquisition Hearing
EV-031	Agenda for Issue Specific Hearing 4 (DCO 3) on the draft Development Consent Order
EV-032	Agenda for Open Floor Hearing 2
EV-033	Action Points from Issue Specific Hearing 5 – Living conditions on 01 Oct 2019
EV-034	Action Points from Issue Specific Hearing 6 – Environmental matters on 02 Oct 2019
EV-035	Note of Unaccompanied Site Inspection 2 – 02 Oct 2019
EV-036	Agenda for Compulsory Acquisition Hearing 2 (CAH2)
EV-037	Agenda for Issue Specific Hearing 7 (DCO 4) on the draft Development Consent Order (dDCO)
EV-038	Recording of Compulsory Acquisition Hearing 2 (CAH2) – 22 October 2019
EV-039	Camilla Burton Proposed Reconfiguration of St Peter’s Lane and Catherine-de-Barnes Lane - Submission by Camilla Burton to inform Issue Specific Hearing 7 on draft Development Consent Order - accepted at the discretion of the Examining Authority
EV-040	Camilla Burton Proposed Reconfiguration of the Compound and Exits - Submission by Camilla Burton to inform Issue Specific Hearing 7 on draft Development Consent Order - accepted at the discretion of the Examining Authority

EV-041	Philip O'Reilly Application of the Sport England Guidance - Submission by Philip O'Reilly to inform Issue Specific Hearing 7 on draft Development Consent Order - accepted at the discretion of the Examining Authority
EV-042	Recording of Issue Specific Hearing 7 on the revised content of the draft Development Consent Order (DCO4) – 23 October 2019
EV-043	Action Points from Compulsory Acquisition Hearing (CAH2) - 22 Oct 2019
EV-044	Action Points from Issue Specific Hearing 7 (DCO 4) - 23 Oct 2019
Representations	
Deadline 1 – 3rd June 2019	
<ul style="list-style-type: none"> • ie) Written Representations • Responses to ExA's first written Questions • Local Impact Reports • Statements of Common Ground • Other submissions 	
REP1-001	Highways England Deadline 1 Submission - Cover Letter
REP1-002	Highways England Deadline 1 Submission - Comments on the Relevant Representations
REP1-003	Highways England Deadline 1 Submission - Updated Guide to the Application
REP1-004	Highways England Deadline 1 Submission - Record of Engagement with Mr Philip O'Reilly
REP1-005	Axis on behalf of Applegreen PLC Deadline 1 Submission - Written Representation, notification of wish to speak at a Issue Specific Hearing
REP1-006	Bickenhall and Marston Green Parish Council Deadline 1 Submission - Written Representation, Notification of attendance at Hearings and Accompanied Site Inspection
REP1-007	Birketts LLP on behalf of Gooch Estate Deadline 1 Submission - Notification of attendance at Issue Specific Hearing and Accompanied Site Inspection
REP1-008	Cadent Gas Limited Deadline 1 Submission - Written Representation, notification of wish to speak at a Issue Specific Hearing and Compulsory Acquisition Hearing - Late submission accepted at the discretion of the ExA
REP1-009	Canal & River Trust Deadline 1 Submission - Written Representation, notification of wish to speak at Issue Specific Hearing, notification of attendance, suggested locations, and their justifications for the Accompanied Site Inspection

REP1-010	Catherine de Barnes Residents Association Deadline 1 Submission - Written Representation
REP1-011	Camilla and David Burton Deadline 1 Submission - Written Representation, notification of wish to speak at a Issue Specific Hearings, notification of attendance, suggested locations, and their justifications for the Accompanied Site Inspection
REP1-012	Cotswolds Conservation Board Deadline 1 Submission - Written Representation
REP1-013	DTA Transportation Limited Deadline 1 Submission - Written Representation
REP1-014	Environment Agency Deadline 1 Submission - Written Representation
REP1-015	Metropolitan Borough of Solihull Council Deadline 1 Submission - Notification of wish to attend an Accompanied Site Inspection, suggested locations and their justifications. Notification by statutory party of wish to be considered as an Interested Party
REP1-016	National Exhibition Centre Limited Deadline 1 Submission - Written Representation and Summary, notification of wish to speak at a Compulsory Acquisition Hearing, notification of attendance, suggested locations, and their justifications for the Accompanied Site Inspection
REP1-017	National Grid plc Deadline 1 Submission - Written Representation, notification of wish to speak at a Issue Specific Hearing and Compulsory Acquisition Hearing
REP1-018	Natural England Deadline 1 Submission - Written representation summary
REP1-019	Natural England Deadline 1 Submission - Written Representation
REP1-020	Open Spaces Society Deadline 1 Submission - Written Representation and Summary. Notification of suggested locations and their justifications for the Accompanied Site Inspection
REP1-021	Open Spaces Society Deadline 1 Submission - Notification of wish to speak at a Issue Specific Hearing. Notification of attendance, suggested locations and their justifications for the Accompanied Site Inspection
REP1-022	Pegasus Group Deadline 1 Submission - Comments on Relevant Representations, notification of wish to speak at a Issue Specific Hearing, notification of attendance at Accompanied Site Inspection
REP1-023	The Gooch Estate Deadline 1 Submission - Written Representation
REP1-024	Warwickshire Campaign to Protect Rural England Deadline 1 Submission - Comments on Relevant Representations, notification of attendance at Hearings and notification of attendance, suggested locations, and their justifications, for the Accompanied Site Inspection

REP1-025	Warwickshire County Council Deadline 1 Submission - Written Representation and notification of wish to attend an Issue Specific Hearing
REP1-026	Warwickshire Gaelic Athletic Association Deadline 1 Submission - Written Representation - Late submission accepted at the discretion of the ExA
REP1-027	Warwickshire Gaelic Athletic Association Deadline 1 Submission - Comments on Relevant Representations, notification of attendance at Compulsory Acquisition Hearing and notification of attendance, suggested locations, and their justifications, for the Accompanied Site Inspection
REP1-028	Woodland Trust Deadline 1 Submission - Written Representation
REP1-029	Andy Bennett Deadline 1 Submission - Written Representation and Summary, notification of wish to speak at a Compulsory Acquisition Hearing, notification of attendance, suggested locations, and their justifications for the Accompanied Site Inspection
REP1-030	Eleanor O'Brien Deadline 1 Submission - Written Representation
REP1-031	Heath Cotterill Deadline 1 Submission - Written Representation, notification of attendance at Hearings and notification of attendance, suggested locations and their justifications for the Accompanied Site Inspection
REP1-032	Mike Robinson Deadline 1 Submission - Written Representation
REP1-033	Philip O 'Reilly Deadline 1 Submission - Deadline 2, Post hearing submissions arising from hearings held on 21 or 22 May, accepted at the discretion of the ExA at Deadline 1
REP1-034	Philip O 'Reilly Deadline 1 Submission - Notification of suggested locations, and their justifications for the Accompanied Site Inspection
REP1-035	Philip O 'Reilly Deadline 1 Submission - Comments on Relevant Representations
REP1-036	Rehan Mian Deadline 1 Submission - Written Representation
REP1-037	Sian Manton Deadline 1 Submission - Written Representation
REP1-038	Stephen Thompson Deadline 1 Submission - Written Representation
REP1-039	Tom and Barbara Tocher Deadline 1 Submission - Written Representation
Deadline 2 – 24th June 2019 <ul style="list-style-type: none"> • Comments on Written Representations • Comments on responses to ExA's first written Questions • Other submissions 	

	<ul style="list-style-type: none"> • Responses to comments on relevant representations • Comments on Local Impact Reports
REP2-001	Highways England Deadline 2 Submission - Cover Letter
REP2-002	Highways England Deadline 2 submission – 8.1a Accompanied Site Inspection
REP2-003	Highways England Deadline 2 submission - Figure 8.2a Viewpoint Location Plan (Sheet 10 of 31)
REP2-004	Highways England Deadline 2 submission - 8.3a Comments on the Relevant Representations (Clean)
REP2-005	Highways England Deadline 2 submission - 8.3a Comments on Relevant Representations (Tracked Changes)
REP2-006	Highways England Deadline 2 submission - 8.4a Guide to the Application
REP2-007	Highways England Deadline 2 submission - 8.6 Responses to Examining Authority's First Written Questions
REP2-008	Highways England Deadline 2 submission - 8.7 Responses to examining Authority's Questions on the Development Consent Order (DCO)
REP2-009	Highways England Deadline 2 submission - 8.8 Statement of Common Ground between Solihull Metropolitan Borough Council and Highways England
REP2-010	Highways England Deadline 2 submission - 8.9 Statement of Common Ground between Warwickshire County Council and Highways England
REP2-011	Highways England Deadline 2 submission - 8.10 Statement of Common Ground between Natural England and Highways England
REP2-012	Highways England Deadline 2 submission - 8.11 Statement of Common Ground between Warwickshire Wildlife Trust and Highways England
REP2-013	Highways England Deadline 2 submission - 8.12 Statement of Common Ground between Woodland Trust and Highways England
REP2-014	Highways England Deadline 2 submission - 8.13 Statement of Common Ground between National Grid and Highways England
REP2-015	Highways England Deadline 2 submission - 8.14 Statement of Common Ground between Western Power and Highways England
REP2-016	Highways England Deadline 2 submission - 8.15 Statement of Common Ground between Cadent Gas and Highways England
REP2-017	Highways England

	Superseded by Deadline 2 submission - 8.19 Updated Statement of Common Ground between High Speed 2 (HS2) and Highways England. Late Submission accepted at the discretion of the Examining Authority
REP2-018	Highways England Deadline 2 submission - 8.20 Statement of Common Ground between Birmingham Airport Ltd and Highways England
REP2-019	Highways England Deadline 2 Submission - 8.21 Proposed Proportionate Reconfiguration of the Warwickshire Gaelic Athletic Association Facility
REP2-020	Highways England Deadline 2 submission – 8.22 Museum of London Archaeology Interim Archaeological Investigation Report
REP2-021	Highways England Deadline 2 submission - 8.23 Lighting Technical Note
REP2-022	Highways England Deadline 2 submission - 8.24 Junction 5A Operational Assessment
REP2-023	Highways England Deadline 2 submission - 8.25 Outline Bird Strike Management Plan
REP2-024	Highways England Deadline 2 submission - 8.26 Written Submission of the Applicant's case put orally at the OFH on 21 May 2019 and the first ISH on the dDCO on 22 May 2019
REP2-025	Highways England Deadline 2 submission - 8.27 Environmental Statement Figures 4.1
REP2-026	Highways England Deadline 2 submission - 8.28 Environmental Statement Figures 4.4
REP2-027	Highways England Deadline 2 submission - 8.29 Embedded Mitigation Table
REP2-028	Highways England Deadline 2 submission - Figure 9.1A(a) Statutory Nature Conservation Designations Within The Study Area
REP2-029	Highways England Deadline 2 submission - FIGURE 9.1B (a) Non-Statutory Nature Conservation Designations Within The Study Area
REP2-030	Birmingham Airport Deadline 2 Submission - Written submissions of oral case, arising from Issue Specific hearing held on 22 May
REP2-031	Health and Safety Executive Deadline 2 Submission - Statements of Common Ground (SoCGs) requested by the Panel
REP2-032	Natural England Deadline 2 Submission - Response to Examining Authority's First Written Questions
REP2-033	Solihull Metropolitan Borough Council

	Deadline 2 Submission - Local Impact Report
REP2-034	Solihull Metropolitan Borough Council Deadline 2 Submission - Response to Examining Authority's Written Questions - Conservation
REP2-035	Solihull Metropolitan Borough Council Deadline 2 Submission - Response to Examining Authority's Written Questions - Archaeology
REP2-036	Solihull Metropolitan Borough Council Deadline 2 Submission - Draft Statement of Common Ground between Solihull Metropolitan Borough Council and Highways England
REP2-037	Solihull Metropolitan Borough Council Deadline 2 Submission - Response to Rule 6 and Rule 8 Questions
REP2-038	Warwickshire County Council Deadline 2 Submission - Local Impact Report
REP2-039	Warwickshire County Council Deadline 2 Submission - Position Statement
REP2-040	Warwickshire County Council Deadline 2 Submission - Local Impact Report Executive Summary
REP2-041	Applegreen plc Deadline 2 Submission - Responses to Examining Authority's Written Questions
REP2-042	Apple green plc Deadline 2 Submission - Submissions Overview Document
REP2-043	Applegreen plc Deadline 2 Submission - Response to Examining Authority's First Written Questions - Appendix A
REP2-044	Applegreen plc Deadline 2 Submission - Response to Examining Authority's First Written Questions - Appendix B
REP2-045	Applegreen plc Deadline 2 Submission - Response to Examining Authority's First Written Questions - Appendix C
REP2-046	Applegreen plc Deadline 2 Submission - Applegreen- Response to Examining Authority's First Written Questions - Appendix D
REP2-047	Applegreen plc Deadline 2 Submission - Response to Examining Authority's First Written Questions - Appendix E
REP2-048	Applegreen plc Deadline 2 Submission - Response to Examining Authority's First Written Questions - Appendix F
Rep2-049	Applegreen plc Deadline 2 Submission - Response to Comments on Relevant Representation
REP2-050	Woodland Trust Deadline 2 Submission - Response to Examining Authority's Written Questions
REP2-051	Canal and River Trust

	Deadline 2 Submission - Response to Examining Authority's Written Questions
REP2-052	Genting Solihull Limited Deadline 2 Submission - Response to Examining Authority's Written Questions
REP2-053	The Gooch Estate Deadline 2 Submission - Written Summary of Oral Submissions
REP2-054	Extra MSA Group (Extra) Deadline 2 Submission - Response to the DCO Panel's Questions for Deadline 2
REP2-055	Extra MSA Group (Extra) Deadline 2 Submission - Correspondence to the DCO Panel on Extra's Behalf dated 24th June 2019 to address the DCO Panel's Questions and the Accompanied Site Visit
REP2-056	CPRE Warwickshire Deadline 2 Submission - Response to Examining Authority's First Written Questions
REP2-057	National Exhibition Centre Limited Deadline 2 Submission - Response to Examining Authority's First Written Questions - Late Submission Accepted at the Discretion of the Examining Authority
REP2-058	Philip O'Reilly Deadline 2 Submission - Response to HE document 8.3 Comments on the Relevant Representations
REP2-059	Philip O'Reilly Deadline 2 Submission - Critique of Highways England Document - 6.3 Environmental Statement - Appendix 12.4 - Reconfiguration of Warwickshire Gaelic Athletic Association
REP2-060	Philip O'Reilly Deadline 2 Submission - Record of engagement with HE and AECOM (12th December 2017 - 6th June 2019)
REP2-061	Philip O'Reilly Deadline 2 Submission - Request for further Open Floor Hearing
REP2-062	Highways England Deadline 2 submission - 8.19 Updated Statement of Common Ground between High Speed 2 (HS2) and Highways England. Late Submission accepted at the discretion of the Examining Authority
<p>Deadline 3 – 15th July 2019</p> <ul style="list-style-type: none"> • Comments on WRs which were received at D2 • Any responses to comments on RRs which were received at D1 • Comments on LIRs which were received at D2 • Comments on responses received at D2 to the Panel's First Written Questions • Post hearing submissions including written submissions of oral cases, arising from Hearings on 2 July 2019 • Updates to Statements of Common Ground • Responses to any further information requested by the Panel • Comments on any additional information or submissions received for the previous deadline 	
REP3-001	Highways England

	Deadline 3 Submission - 8.32 Cover Letter
REP3-002	Highways England Deadline 3 Submission - 3.1 (a) Draft Development Consent Order
REP3-003	Highways England Deadline 3 Submission - 6.1 Environmental Statement Chapter 15 (a) - Climate
REP3-004	Highways England Deadline 3 Submission - 6.3 Environmental Statement Appendix 14.2 (a) Bickenhill Meadows SSSI - Preliminary Hydrological Investigation Technical Note
REP3-005	Highways England Deadline 3 Submission - 8.4 (b) Guide to the Application
REP3-006	Highways England Deadline 3 Submission - 8.8 (a) Statement of Common Ground with Solihull Metropolitan Borough Council
REP3-007	Highways England Deadline 3 Submission - 8.14 (a) Statement of Common Ground with Western Power Distribution (East Midlands) PLC
REP3-008	Highways England Deadline 3 Submission - 8.20 (a) Statement of Common Ground with Birmingham Airport Ltd
REP3-009	Highways England Deadline 3 Submission - 8.33 The Applicant's comments to written representations which were received at Deadline 1
REP3-010	Highways England Deadline 3 Submission - 8.34 Applicant's comments on responses received at Deadline 2 to the Panel's First Written questions
REP3-011	Highways England Deadline 3 Submission - 8.35 Applicant's Response to Local Impact Report: Solihull Metropolitan Borough Council
REP3-012	Highways England Deadline 3 Submission - 8.36 Applicant's Response to Local Impact Report: Warwickshire County Council
REP3-013	Highways England Deadline 3 Submission - 8.37 Aquatic Macroinvertebrate Survey Report 2018
REP3-014	Highways England Deadline 3 Submission - 8.38 Bat Survey Report 2018
REP3-015	Highways England Deadline 3 Submission - 8.39 Written Submission of Applicant's Case at the Second ISH on 2 July 2019
REP3-016	Highways England Deadline 3 Submission - 8.40 Written Submission of Applicant's Case at the Third ISH on 2 July 2019
REP3-017	Highways England Deadline 3 Submission - 8.41 Assessment of Potential Footpath Connectivity between the A45 and Birmingham International Railway Station
REP3-018	Highways England

	Deadline 3 Submission - 8.42 junction 5A Location and Constraints Summary
REP3-019	Highways England Deadline 3 Submission - 8.43 further Information in Support of the Transport Assessment Report
REP3-020	Highways England Deadline 3 Submission - 8.44 Applicant's Comments on any Additional Information or Submissions Received at deadline 2
REP3-021	Highways England Superseded by Deadline 3 submission – 8.45 Updated Comparison between Application Draft and Second Draft DCOs. Late Submission accepted at the discretion of the Examining Authority
REP3-022	Solihull Metropolitan Borough Council Deadline 3 Submission - Post hearing submission and response to further information requested by the Panel
REP3-023	Warwickshire County Council Deadline 3 Submission - Response to any further information requested by the Panel: Transport Assessment
REP3-024	Applegreen plc Deadline 3 Submission - Comments on responses received at D2 to the Panel's First Written Questions and comments on other submissions received for the previous deadline
REP3-025	Camilla and David Burton Deadline 3 Submission - Comments on any additional information or submissions received for the previous deadline
REP3-026	Catherine de Barnes Residents Association Deadline 3 Submission - Comments on any additional information or submissions received for the previous deadline
REP3-027	CPRE Warwickshire Deadline 3 Submission - Post hearing submission
REP3-028	Heath Cotterill Deadline 3 Submission - Comments on responses received at D2 to the Panel's First Written Questions and comments on any additional information or submissions received for the previous deadline
REP3-029	Heath Cotterill Deadline 3 Submission - Post hearing submissions including written submissions of oral cases, arising from Hearings on 2 July 2019
REP3-030	Jonathan Horton Deadline 3 Submission - Comments on any additional information or submissions received for the previous deadline
REP3-031	Pegasus Group Deadline 3 Submission - Comments on responses received at D2 to the Panel's First Written Questions
REP3-032	Philip Clover Deadline 3 Submission - Written Representation

REP3-033	Philip O'Reilly Deadline 3 Submission - Response to Highways England Deadline 2 Documents 8.20, 8.23, 8.25 & 8.26
REP3-034	Highways England Deadline 3 submission – 8.45 Updated Comparison between Application Draft and Second Draft DCOs. Late Submission accepted at the discretion of the Examining Authority
<p>Deadline 3A – 12th August 2019</p> <ul style="list-style-type: none"> • Updated Guide to the Application • Outline Management Plan for Main Site Compound • Consideration of Alternative Locations for the M42 Junction 6 Main Site Compound • Response to CPRE Letter dated 15 July 2019 • Transport Modelling Hierarchy 	
REP3A-001	Highways England Deadline 3A Submission - Cover Letter
REP3A-002	Highways England Deadline 3A Submission - 8.4(c)Guide to the Application
REP3A-003	Highways England Deadline 3A Submission - 8.46 Outline Management Plan for Main Site Compound
REP3A-004	Highways England Deadline 3A Submission - 8.47 Consideration of Alternative Locations for the M42 Junction 6 Main Site Compound
REP3A-005	Highways England Deadline 3A Submission - 8.49 Response to CPRE Letter dated 15 July 2019
REP3A-006	Highways England Deadline 3A Submission - 8.50 Transport Modelling Hierarchy and Growth in Future Year Traffic
<p>Deadline 4 – 2nd September 2019</p> <ul style="list-style-type: none"> • Responses to the Panel’s Second Written Questions • Responses to any further information requested by the Panel • Updates to Statements of Common Ground (SoCG) requested by the Panel • Comments on any additional information or submissions received by previous deadline 	
REP4-001	Highways England Deadline 4 Submission - Cover Letter
REP4-002	Highways England Deadline 4 Submission - 8.4 (d) Updated Guide to the Application

REP4-003	Highways England Deadline 4 Submission - 8.48 Lichen Survey Report 2019
REP4-004	Highways England Deadline 4 Submission - 8.51 Archaeological Investigation Report
REP4-005	Highways England Deadline 4 submission - 8.52 Great Crested Newt Survey Report 2019
REP4-006	Highways England Deadline 4 submission - 8.54 Position Statement on SSSI Mitigation
REP4-007	Highways England Deadline 4 Submission - 8.55 Soil Survey Report
REP4-008	Highways England Deadline 4 Submission - 8.56 Applicant's Comments on any Additional Information or Submissions Received at Deadline 3
REP4-009	Highways England Deadline 4 Submission - 8.57 Details of Compensation Documents
REP4-010	Highways England Deadline 4 Submission - 8.58 Applicant's Response to the Panel's Second Written Questions
REP4-011	Highways England Deadline 4 Submission - 8.59 Written Summary of Applicant's Case at the Compulsory Acquisition and Temporary Possession
REP4-012	Highways England Deadline 4 Submission - 8.60 Written Summary of Applicant's Case at the Fourth ISH (DCO 3) on 21 August 2019
REP4-013	Highways England Deadline 4 Submission - 8.61 Written Summary of Applicant's Case at the Second Open Floor Hearing on 22 August 2019
REP4-014	Highways England Deadline 4 Submission - 8.12(a) Statement of Common Ground with The Woodland Trust
REP4-015	Bickenhill and Marston Green Parish Council Deadline 4 Submission - Comments on any additional information or submissions received by previous deadline
REP4-016	Environment Agency Deadline 4 Submission - Response to the Panel's Second Written Questions
REP4-017	Natural England Deadline 4 Submission - Response to the Panel's Second Written Questions and Update to Statement of Common Ground (SoCG)
REP4-018	Solihull Metropolitan Borough Council Deadline 4 Submission - Responses to the Panel's Second Written Questions

REP4-019	Solihull Metropolitan Borough Council Deadline 4 Submission - Update to Statement of Common Ground (SoCG) requested by the Panel (Clean)
REP4-020	Solihull Metropolitan Borough Council Deadline 4 Submission - Update to Statement of Common Ground (SoCG) requested by the Panel (Tracked)
REP4-021	Solihull Metropolitan Borough Council Deadline 4 Submission - Comments on submission from CPRE Warwickshire received at previous deadline
REP4-022	Warwickshire County Council Deadline 4 Submission - Response to the Panel's Second Written Questions
REP4-023	Warwickshire County Council Deadline 4 submission - Update to Statement of Common Ground (SoCG) requested by the Panel
REP4-024	Warwickshire Wildlife Trust Deadline 4 Submission - Response to the Panel's Second Written Questions
REP4-025	Axis on behalf of Applegreen PLC Deadline 4 Submission - Response to the Panel's Second Written Questions
REP4-026	Axis on behalf of Applegreen PLC Deadline 4 Submission - Response to the Panel's Second Written Questions
REP4-027	Axis on behalf of Applegreen PLC Deadline 4 Submission - Updated Response to Examining Authority's First Written Question 1.0.3
REP4-028	Barlow Associates Limited on behalf of Mrs J Melborn, G Cattell, Messrs Ali and Choudhry, William Freeman and Sons Deadline 4 Submission - Update provided at CAH (20 August)
REP4-029	Birmingham Airport Deadline 4 submission - Response to Action Points from CAH (20 August) and ISH4 (21 August) - Comments on draft Development Consent Order (dDCO) and update to Statement of Common Ground (SoCG) requested by the Panel
REP4-030	Camilla and David Burton Deadline 4 Submission - Response to the Panel's Second Written Questions and Post hearing submissions including written submissions of oral cases, arising from Hearings on 20-22 August 2019 (ISH4, CAH and OFH2)
REP4-031	CPRE Warwickshire Deadline 4 Submission - Response to the Panel's Second Written Questions
REP4-032	CPRE Warwickshire Deadline 4 Submission - Published early to facilitate Examination

REP4-033	Genting Solihull Limited Deadline 4 Submission - Response to the Panel's Second Written Questions
REP4-034	Heath Cotterill Deadline 4 Submission - Comments on any additional information or submissions received by previous deadline
REP4-035	National Exhibition Centre Limited Deadline 4 Submission - Response to the Panel's Second Written Questions and update following Compulsory Acquisition Hearing in relation to Statement of Common Ground
REP4-036	Open Spaces Society Deadline 4 Submission - Response to the Panel's Second Written Questions
REP4-037	Pegasus Group on behalf of Extra MSA Group Deadline 4 Submission - Response to the DCO Panel's Questions and Update to Statement of Common Ground
REP4-038	Pegasus Group on behalf of Extra MSA Group Deadline 4 Submission - Comments on submissions received by previous deadline - published early to facilitate Examination
REP4-039	Philip O'Reilly Deadline 4 Submission - Post hearing submission including written submission of oral case, arising from OFH (22 August) and Questions. Response to Action Points from CAH (20 August) - Specifications
<p>Deadline 5 – 16th September 2019</p> <p>Deadline for the receipt of:</p> <ul style="list-style-type: none"> • Applicant's revised draft DCO • Responses to further information requested by the Panel • Post hearing submissions including written submissions of oral cases, arising from Hearings on 20-22 August 2019 • Comments on any additional information or submissions received by previous deadline 	
REP5-001	Highways England Deadline 5 Submission - Cover Letter
REP5-002	Highways England Deadline 5 Submission - 3.1 (b) Draft Development Consent Order (track changes)
REP5-003	Highways England Deadline 5 Submission - 8.10 (a) Statement of Common Ground with Natural England
REP5-004	Highways England Deadline 5 Submission - 8.11 (a) Statement of Common Ground with Warwickshire Wildlife Trust

REP5-005	Highways England Deadline 5 Submission - 8.17 Statement of Common Ground with Extra MSA Group
REP5-006	Highways England Deadline 5 Submission - 8.25(a) Outline Bird Strike Management Plan
REP5-007	Highways England Deadline 5 submission - 8.4 (e) Guide to the Application
REP5-008	Highways England Deadline 5 Submission - 8.63 Applicant's Comments on any additional information or submissions received by Deadline 4
REP5-009	Highways England Deadline 5 Submission - 8.8 (b) Statement of Common Ground with Solihull Metropolitan Borough Council
REP5-010	Highways England Deadline 5 Submission - 8.9 (a) Statement of Common Ground with Warwickshire County Council
REP5-011	Axis on behalf of Applegreen PLC Deadline 5 Submission - Comments on any additional information or submissions received by previous deadline
REP5-012	Camilla and David Burton Deadline 5 Submission - Comments on any additional information or submissions received by previous deadline
REP5-013	Catherine de Barnes Residents Association Deadline 5 Submission - Comments on any additional information or submissions received by previous deadline
REP5-014	Gateley Hamer on behalf of Warwickshire Gaelic Athletic Association Deadline 5 Submission - Post hearing submission arising from Compulsory Acquisition Hearing on 20 August 2019
REP5-015	Open Spaces Society Deadline 5 Submission - Comments on any additional information or submissions received by previous deadline
REP5-016	Pegasus Group on behalf of Extra MSA Group Deadline 5 Submission - Update to Statement of Common Ground (SoCG)
REP5-017	Philip O 'Reilly Deadline 5 Submission - Post hearing submission arising from Compulsory Acquisition Hearing on 20 August 2019
REP5-018	The Gooch Estate Deadline 5 Submission - Written submission of Oral Case from Compulsory Acquisition Hearing on 20 August 2019
REP5-019	The Gooch Estate Deadline 5 Submission - Written submission of Oral Case from Issue Specific Hearing on 21 August 2019

REP5-020	The Gooch Estate Deadline 5 Submission - Comments on any additional information or submissions received by previous deadline - Technical Note 2
Deadline 6 – 11th October 2019 Deadline for the receipt of: <ul style="list-style-type: none"> • Comments on the draft DCO, submitted on D5 • Responses to the Panel’s Third Written Questions • Post hearing submissions including written submissions of oral cases, arising from Hearings on 1-3 October 2019 • Environmental Appraisals and Consultation Report on the Proposed changes to the application • Responses to any further information requested by the Panel • Comments on any additional information or submissions received by previous deadline 	
REP6-001	Highways England Deadline 6 Submission - Cover Letter
REP6-002	Highways England Deadline 6 Submission - 8.10(b) Statement of Common Ground with Natural England
REP6-003	Highways England Deadline 6 Submission - 8.11(b) Statement of Common Ground with Warwickshire Wildlife Trust
REP6-004	Highways England Deadline 6 Submission - 8.16 Statement of Common Ground with National Exhibition Centre Limited
REP6-005	Highways England Deadline 6 Submission - 8.19(b) Statement of Common Ground with High Speed 2 (HS2) Ltd
REP6-006	Highways England Deadline 6 Submission - 8.4(f) Guide to the Application
REP6-007	Highways England Deadline 6 Submission - 8.65 Fungi Survey Report 2019
REP6-008	Highways England Deadline 6 Submission - 8.66 Outline Bird Strike Management Plan (Tracked Changes)
REP6-009	Highways England Deadline 6 Submission - 8.67 Consultation Statement for Proposed Non-Material Changes to the DCO
REP6-010	Highways England Deadline 6 Submission - 8.68 Applicant's Responses to Examining Authority's Third Round of Written Questions

REP6-011	Highways England Deadline 6 Submission - 8.69 Post Hearing submissions - Written summary of Oral Case for the ISH on Living Conditions on 1 October 2019
REP6-012	Highways England Deadline 6 Submission - 8.70 Post Hearing Submissions - Written Summary of Oral Case for the ISH on Environmental Matters on 2
REP6-013	Highways England Deadline 6 Submission - 8.71 Supplementary Environmental Appraisal Report on the proposed non-material changes
REP6-014	Highways England Deadline 6 Submission - 8.72 Applicant's Responses to Actions in respect of ISH on dDCO on 21 August 2019
REP6-015	Highways England Deadline 6 Submission - 8.73 Applicant's Responses to actions in respect of ISH on Compulsory Acquisition on 20 August 2019
REP6-016	Highways England Deadline 6 Submission - 8.75 Bat Survey Report 2019 Addendum
REP6-017	Highways England Deadline 6 Submission - 8.76 Warwickshire Gaelic Athletic Association Position Statement
REP6-018	Highways England Deadline 6 Submission - 8.77 Applicant's Responses to actions in respect of ISH on Living Conditions on 1 October 2019 -
REP6-019	Highways England Deadline 6 Submission -8.78 Tree Preservation Orders and Trees within a Conservation Area
REP6-020	Highways England Deadline 6 Submission - 8.79 Important Hedgerow Criteria
REP6-021	Highways England Deadline 6 Submission - 8.8(c) Statement of Common Ground with Solihull Metropolitan Borough Council
REP6-022	National Grid Electricity Transmission PLC Deadline 6 Submission - Comments on the draft DCO, submitted on D5
REP6-023	Natural England Deadline 6 Submission - Responses to the Panel's Third Written Questions
REP6-024	Severn Trent Water Deadline 6 Submission - Comments on the draft DCO, submitted on D5
REP6-025	Warwickshire Wildlife Trust Deadline 6 Submission - Responses to the Panel's Third Written Questions

REP6-026	Woodland Trust Deadline 6 Submission - Responses to the Panel's Third Written Questions
REP6-027	Axis on behalf of Applegreen PLC Deadline 6 Submission - Comments on any additional information or submissions received by previous deadline
REP6-028	Bickenhill and Marston Green Parish Council Deadline 6 Submission - Comments on any additional information or submissions received by previous deadline
REP6-029	Birmingham Airport Deadline 6 Submission - Comments on any additional information or submissions received by previous deadline
REP6-030	Birmingham Airport Deadline 6 Submission - Comments on the draft DCO, submitted on D5
REP6-031	Cadent Gas Limited Deadline 6 Submission - Comments on any additional information or submissions received by previous deadline
REP6-032	Catherine de Barnes Residents Association Deadline 6 Submission - Comments on any additional information or submissions received by previous deadline
REP6-033	Catherine de Barnes Residents Association Deadline 6 Submission - Comments on any additional information or submissions received by previous deadline
REP6-034	Catherine de Barnes Residents Association Deadline 6 Submission - Comments on any additional information or submissions received by previous deadline
REP6-035	Camilla and David Burton Deadline 6 Submission - Post hearing submissions including written submissions of oral cases, arising from Hearings on 1-3 October 2019
REP6-036	Heath Cottherill Deadline 6 Submission - Comments on any additional information or submissions received by previous deadline
REP6-037	Metropolitan Borough of Solihull Council Deadline 6 Submission - Responses to the Panel's Third Written Questions and Response to Action Points arising from Hearings on 1-3 October 2019
REP6-038	Pegasus Group on behalf of Extra MSA Group Deadline 6 Submission - Responses to the Panel's Third Written Questions
REP6-039	Philip O 'Reilly Deadline 6 Submission - Unanswered Questions on WGAA from Open Floor Hearing (22nd August 2019)
REP6-040	Philip O 'Reilly Deadline 6 Submission - Issue Specific Hearing on Living Conditions (1st October 2019)

REP6-041	The Gooch Estate Deadline 6 Submission - Comments on the draft DCO, submitted on D5
REP6-042	CPRE Warwickshire Deadline 6 Submission
REP6-043	Gateley Hamer on behalf of Warwickshire Gaelic Athletic Association Deadline 6 Submission – Position Statement. Late Submission accepted at the discretion of the Examining Authority
<p>Deadline 7 – 28th October 2019</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Comments on responses to the Panel’s Third Written Questions • Responses to any further information requested by the Panel • Comments on any additional information or submissions received by previous deadline • Post hearing submissions including written submissions of oral cases, arising from Hearings 	
REP7-001	Highways England Deadline 7 Submission - Cover Letter
REP7-002	Highways England Deadline 7 Submission - 8.4(g) Guide to the Application
REP7-003	Highways England Deadline 7 Submission - 8.11(c) Statement of Common Ground with Warwickshire Wildlife Trust
REP7-004	Highways England Deadline 7 Submission - 8.18 Statement of Common Ground with Arden Hotel
REP7-005	Highways England Deadline 7 Submission - 8.74 Outline Biodiversity Management Plan
REP7-006	Highways England Deadline 7 Submission - 8.80 Applicant's Comments on any Additional Information or Submissions Received by Deadline 6
REP7-007	Highways England Deadline 7 Submission - 8.82 Interim Biodiversity Impact Calculation
REP7-008	Highways England Deadline 7 Submission - 8.83 Written Submission of Oral Case for ISH on Compulsory Acquisition and Temporary Possession on 22 October 2019

REP7-009	Highways England Deadline 7 Submission - 8.84 Written Submission of Oral Case for ISH on dDCO on 23 October 2019
REP7-010	Highways England Deadline 7 Submission - 8.85 Applicant's Comments on Responses Received at Deadline 6 to the Panel's Third Written Questions
REP7-011	Highways England Deadline 7 Submission - 8.86 Actions Arising out of ISH on Living Conditions on 1 October 2019 for Deadline 7
REP7-012	Highways England Deadline 7 Submission - 8.87 Actions Arising out of ISH on Environmental Matters on 2 October 2019 for Deadline 7
REP7-013	Highways England Deadline 7 Submission - 8.88 Actions Arising of ISH on Compulsory Acquisition and Temporary Possession on 22 October
REP7-014	Highways England Deadline 7 Submission - 8.89 Actions Arising out of ISH on dDCO 4 on 23 October
REP7-015	Highways England Deadline 7 Submission - 8.91 Outline Bickenhill Meadows SSSI Monitoring and Management Plan
REP7-016	Highways England Deadline 7 Submission - 8.92 Outline Bird Strike Management Plan (Tracked)
REP7-017	Barlow Associates Limited on behalf of Mr Geoff Cattell Deadline 7 Submission - Post hearing submissions including written submissions of oral cases, arising from Compulsory Acquisition Hearing - 22nd October 2019
REP7-018	Birmingham Airport Deadline 7 Submission - Post hearing submissions including written submissions of oral cases, arising from Hearings
REP7-019	Camilla and David Burton Deadline 7 Submission - Post hearing submissions including written submissions of oral cases, arising from Hearings
REP7-020	Catherine de Barnes Residents Association and Hampton in Arden Parish Council Deadline 7 Submission - Comments on any additional information or submissions received by previous deadline

REP7-021	Heath Cotterill Deadline 7 Submission - Post hearing submissions including written submissions of oral cases, arising from Compulsory Acquisition Hearing - 22nd October 2019 and Issue Specific
REP7-022	Pegasus Group on behalf of Extra MSA Group Deadline 7 Submission - Post hearing submissions including written submissions of oral cases, arising from Hearings
REP7-023	Philip O 'Reilly Deadline 7 Submission - Post hearing submissions including written submissions of oral cases, arising from Compulsory Acquisition Hearing - 22nd October 2019
REP7-024	Philip O 'Reilly Deadline 7 submission - Comments on any additional information or submissions received by previous deadline 3
REP7-025	The Gooch Estate Deadline 7 Submission - Post hearing submissions including written submissions of oral cases, arising from Compulsory Acquisition Hearing - 22nd October 2019
<p>Deadline 8 – 5th November 2019</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Responses to any further information requested by the Panel • Comments on any additional information or submissions received by previous deadline 	
REP8-001	Highways England Deadline 8 Submission - Cover Letter
REP8-002	Highways England Deadline 8 Submission - 8.4(h) Guide to the Application
REP8-003	Highways England Deadline 8 Submission - 8.16 (a) Statement of Common Ground with National Exhibition Centre Limited
REP8-004	Highways England Deadline 8 Submission - 8.20 (b) Statement of Common Ground with Birmingham Airport Ltd
REP8-005	Highways England Deadline 8 Submission - 8.8 (d) Statement of Common Ground with Solihull Metropolitan Borough Council

REP8-006	Highways England Deadline 8 Submission - 8.93 Actions Arising out of ISH on Compulsory Acquisition and Temporary Possession on 22 October for Deadline 8
REP8-007	Highways England Deadline 8 Submission - 8.94 Actions Arising out of ISH on dDCO 4 on 23 October for Deadline 8
REP8-008	Highways England Deadline 8 Submission - 8.95 Applicant's Comments on any Additional information or Submissions Received by Deadline 7
REP8-009	Highways England Deadline 8 Submission - 8.96 Outline Compound Management Plan (Tracked Changes)
REP8-010	Natural England Deadline 8 Submission - Comments on any additional information or submissions received by previous deadline
REP8-011	Axis on behalf of Applegreen PLC Deadline 8 Submission - Comments on any additional information or submissions received by previous deadline
REP8-012	Cadent Gas Limited Deadline 8 Submission - Comments on any additional information or submissions received by previous deadline
REP8-013	Camilla and David Burton Deadline 8 Submission - Comments on any additional information or submissions received by previous deadline
REP8-014	ESP Utilities Group Ltd Deadline 8 Submission - Comments on any additional information or submissions received by previous deadline
REP8-015	Philip O'Reilly Deadline 8 Submission - Comments on submissions received by previous deadline - Response to Highways England Deadline 7 Documents 8.80, 8.83, 8.84, 8.86 and 8.89
REP8-016	Philip O'Reilly Deadline 8 Submission - Response to any further information requested by the Panel - Response to Action Points - Issue Specific Hearing 7

Deadline 9 - 15th November 2019

Deadline for receipt of:

- Comments on the Panel's preferred dDCO or dDCO commentary
- Final draft DCO to be submitted by the Applicant in the statutory instrument (SI) template with the SI template validation report, together with a revised version of the Explanatory Memorandum
- Responses to any further information requested by the Panel

REP9-001	Highways England Deadline 9 Submission - Cover Letter
REP9-002	Highways England Deadline 9 Submission - 2.2(a) Land Plans (Sheets 1-3)
REP9-003	Highways England Deadline 9 Submission - 2.2(a) Land Plans (Sheets 4-7)
REP9-004	Highways England Deadline 9 Submission - 2.3(a) Work Plans
REP9-005	Highways England Deadline 9 Submission - 2.4(a) General Arrangement Plans
REP9-006	Highways England Deadline 9 Submission - 2.5(a) Streets, Rights of Way and Access Plans
REP9-007	Highways England Deadline 9 Submission - 2.6(a) Traffic Regulation Measures Plans Part 1 - Clearways and Weight Limits
REP9-008	Highways England Deadline 9 Submission - 2.6(a) Traffic Regulation Measures Plans Part 2 - Speed Limits
REP9-009	Highways England Deadline 9 Submission - 2.7(a) Classification of Road Plans
REP9-010	Highways England Deadline 9 Submission - 2.8(a) Engineering Drawings and Sections
REP9-011	Highways England Deadline 9 Submission - 3.1(c) Draft Development Consent Order-Clean
REP9-012	Highways England Deadline 9 Submission - 3.1(c) Draft Development Consent Order-Tracked
REP9-013	Highways England Deadline 9 Submission - 3.2(a) Explanatory Memorandum- Clean
REP9-014	Highways England Deadline 9 Submission - 3.2(a) Explanatory Memorandum - Tracked
REP9-015	Highways England Deadline 9 Submission - 4.1(a) Statement of Reasons-Clean
REP9-016	Highways England Deadline 9 Submission - 4.1(a) Statement of Reasons-Tracked

REP9-017	Highways England Deadline 9 Submission - 4.3(a) Book of Reference-Clean
REP9-018	Highways England Deadline 9 Submission - 4.3(a) Book of Reference-Tracked
REP9-019	Highways England Deadline 9 Submission - 6.11(a) Outline Environmental Management Plan - Clean
REP9-020	Highways England Deadline 9 Submission - 6.11(a) Outline Environmental Management Plan - Tracked
REP9-021	Highways England Deadline 9 Submission - 8.4(i) Guide to the Application
REP9-022	Highways England Deadline 9 Submission - 8.94 Actions Arising out of ISH on dDCO 4 on 23 October for Deadline 8 - Clean
REP9-023	Highways England Deadline 9 Submission - 8.94 Actions Arising out of ISH on dDCO 4 on 23 October for Deadline 8-Tracked
REP9-024	Highways England Deadline 9 Submission - 8.97 Actions Arising out of ISH on dDCO 4 on 23 October 2019 for Deadline 9 - Clean
REP9-025	Highways England Deadline 9 Submission - 8.98 Applicant's Comments on any Additional Information or Submissions Received by Deadline 8
REP9-026	Highways England Deadline 9 Submission - 8.99 Response to the ExA's Commentary on the dDCO
REP9-027	AECOM Deadline 9 Submission - Responses to any Further Information Requested by the Panel
REP9-028	Bickenhill and Marston Green Parish Council Deadline 9 Submission - Comments on the Panel's Preferred dDCO or dDCO Commentary
REP9-029	David and Camilla Burton Deadline 9 Submission - Comments on the Panel's Preferred dDCO or dDCO Commentary
REP9-030	Cadent Gas Limited Deadline 9 Submission - Comments on the Panel's Preferred dDCO or dDCO Commentary
REP9-031	Open Spaces Society Deadline 9 Submission - Comments on Highways England Deadline 7 submission
REP9-032	Solihull Metropolitan Borough Council Deadline 9 Submission - Comments on the Panel's Preferred dDCO or dDCO Commentary
REP9-033	Heath Cotterill Deadline 9 Submission - Comments on the Panel's Preferred dDCO or dDCO Commentary

REP9-034	Philip O'Riley Deadline 9 Submission - Responses to any Further Information Requested by the Panel
REP9-035	Highways England Deadline 9 Submission - 8.93(a) Actions Arising out of ISH on Compulsory Acquisition and Temporary Possession on 22 October for Deadline 8 – clean version - Late Submission accepted at the discretion of the Examining Authority
REP9-036	Highways England Deadline 9 Submission - 8.93(a) Actions Arising out of ISH on Compulsory Acquisition and Temporary Possession on 22 October for Deadline 8 – tracked version - Late Submission accepted at the discretion of the Examining Authority
Deadline 10 – 20th November 2019	
Deadline for receipt of: <ul style="list-style-type: none"> • Responses to any further information requested by the Panel (if required) • Comments on any additional information or submissions received by previous deadline 	
REP10-001	Highways England Deadline 10 Submission - Cover Letter
REP10-002	Highways England Deadline 10 Submission - 8.4(j) Guide to the Application
REP10-003	Highways England Deadline 10 Submission - 2.9(a) Crown Land Plans - Volume 2
REP10-004	Highways England Deadline 10 Submission - 8.100 Applicant's comments on any Additional Information or Submissions Received by Deadline 9
REP10-005	Highways England Deadline 10 Submission - 8.101 Position Statement on Cadent Gas Protective
REP10-006	Highways England Deadline 10 Submission- 8.18(a) Statement of Common Ground with Arden Hotel
REP10-007	Bickenhill and Marston Green Parish Council Deadline 10 Submission - Comments on any additional information or submissions received by Deadline 9
REP10-008	Camilla and David Burton Deadline 10 Submission - Comments on any additional information or submissions received by previous deadline
REP10-009	Gerald Eve LLP on behalf of The National Exhibition Centre Deadline 10 Submission - Comments on any additional information or submissions received by previous deadline

REP10-010	Heath Cotterill Deadline 10 Submission - Comments on any additional information or submissions received by previous deadline
REP10-011	Philip O 'Reilly Deadline 10 Submission - Comments on any additional information or submissions received by previous deadline - Response to Highways England Deadline 9 Document 8.93(a) - Late Submission accepted at the discretion of the Examining Authority
REP10-012	Philip O 'Reilly Deadline 10 Submission - Comments on any additional information or submissions received by previous deadline - Response to Solihull Metropolitan Borough Council Deadline 9 Submission - Late Submission accepted at the discretion of the Examining Authority
REP10-013	Philip O 'Reilly Deadline 10 Submission - Comments on any additional information or submissions received by previous deadline - Response to Highways England Deadline 9 Documents 2.6(a), 2.8(a), 3.1(c), 4.1(a), 4.3(a), 8.94 & 8.98 - Late Submission accepted at the discretion of the Examining Authority
Other Documents	
OD-001	Section 51 advice following Acceptance decision Section 51 advice to the Applicant
OD-002	Highways England Section 56 Notice
OD-003	Highways England Certificate of compliance
OD-004	Highways England Regulation 16 Notice
OD-005	Regulation 32 Transboundary Screening

APPENDIX C: LIST OF ABBREVIATIONS

APPENDIX C: LIST OF ABBREVIATIONS

Acronym or abbreviation	Reference
APs	Affected Persons
AQMA	Air Quality Management Area
ASI	Accompanied Site Inspection
BMGPC	Bickenhill and Marston Green Parish Council
BMV	Best and Most Versatile
BoR	Book of Reference
CA	Compulsory Acquisition
CdBRA	Catherine de Barnes Residents Association
CPRE	Campaign to Protect Rural England Warwickshire
CRWA	The Countryside and Rights of Way Act 2000
D	Deadline
DCO	Development Consent Order
DEFRA	Department for Environment Food and Rural Affairs
DHSR	Dynamic Hard Shoulder Running
DfT	Department for Transport
EEA	European Economic Area
EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
EM	Explanatory Memorandum
EP	Environmental Permit
EPS	European Protected Species
ERAs	Emergency Refuge Areas
ES	Environmental Statement
ExA	Examining Authority
ExQ	Examining Authority written questions
ha	hectares
HAPC	Hampton-in-Arden Parish Council
HE	Highways England
HEMP	Handover Environmental Management Plan
Hist E	Historic England
HRA	Habitats Regulations Assessment
HS2	High Speed 2
IAPI	Initial Assessment of Principal Issues
IP	Interested Party
ISH	Issue Specific Hearing
LCAs	Local Character Areas
LEP	Local Enterprise Partnership
LIR	Local Impact Report
LNR	Local Nature Reserve
LoD	Limits of Deviation
LOAEL	Lowest Observable Adverse Effect Level
LV	limit values
MoD	Ministry of Defence
MPO	The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009

MSA	Motorway Service Area
NE	Natural England
NEC	National Exhibition Centre
NERCA2006	Natural Environment and Rural Communities Act 2006
NG	National Grid
NGET	National Grid Electricity Transmission
NGG	National Grid Gas
NIDP	National Infrastructure Delivery Plan
NMUs	Non-Motorised Users
NNNPS	National Policy Statement for National Networks
NNR	National Nature Reserve
NOEL	No Observed Effect Level
NPA2017	Neighbourhood Planning Act 2017
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPSE	Noise Policy Statement for England
NSIP	Nationally Significant Infrastructure Project
NT	National Trust
NTEM	National Trip End Model
NWBC	North Warwickshire Borough Council
NIDP	National Infrastructure Delivery Plan
OEMP	Outline Environmental Management Plan
OfGEM	Office of Gas and Electricity Markets
OFH	Open Floor Hearing
OMMP	Outline Monitoring and Management Plan
OSS	Open Spaces Society
PA 2008	Planning Act 2008
PHE	Public Health England
PM	Preliminary Meeting
PPG	Planning Practice Guidance
PRISM	Policy Responsive Integrated Strategy Mode
PRoW	Public Right of Way
PSED	Public Sector Equality Duty
pWFD	Preliminary Water Framework Directive Assessment
RIES	Report on the Implications for European Sites
RIS	Road Investment Strategy
RR	Relevant Representation
RSPB	Royal Society for the Protection of Birds
SAC	Special Area of Conservation
SMBC	Solihull Metropolitan Borough Council
SOAEL	Significant Observed Adverse Effect Level
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
sq m	square metres
SRN	Strategic Road Network
SSSI	Site of Special Scientific Interest
STW	Severn Trent Water
TA	Transport Assessment
TCPA1990	Town and Country Planning Act 1990 (as amended)

TN	Technical Note
TP	Temporary Possession
UNEPC	United Nations Environmental Programme Convention
USI	Unaccompanied Site Inspection
WACA1981	The Wildlife and Countryside Act 1981
WCC	Warwickshire County Council
WFD	Water Framework Directive Assessment
WGAA	Warwickshire Gaelic Athletic Association
WR	Written Representation
WWT	Warwickshire Wildlife Trust
ZTV	Zone of Theoretical Visibility

APPENDIX D: THE RECOMMENDED DCO

202[] No. []

INFRASTRUCTURE PLANNING

The M42 Junction 6 Development Consent Order 202[]

Made - - - - 202[]

Coming into force - - 202[]

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SCHEDULE 13 — DOCUMENTS TO BE CERTIFIED

An application has been made to the Secretary of State, in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a), for an Order granting development consent under section 37 of the Planning Act 2008 (“the 2008 Act”(b)).

The application was examined by a panel (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The panel, having examined the application with the documents that accompanied the application, and considered the representations made and not withdrawn, has, in accordance with section 83 of the 2008 Act, submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the panel, has decided to make an Order granting development consent for the development described in the application [with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application].

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 117, 120, 122 and 123 of, and paragraphs 1 to 3, 10 to 15, 17, 19 to 23, 26, 33, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

PART 1 PRELIMINARY

Citation and commencement

1. This Order may be cited as the M42 Junction 6 Development Consent Order 202[] and comes into force on [] 202[].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(d);

“the 1965 Act” means the Compulsory Purchase Act 1965(e);

“the 1980 Act” means the Highways Act 1980(f);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(g);

“the 1984 Act” means the Road Traffic Regulation Act 1984(h);

“the 1990 Act” means the Town and Country Planning Act 1990(i);

“the 1991 Act” means the New Roads and Street Works Act 1991(a);

(a) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522 S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524 and S.I. 2017/572.

(b) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).

(c) S.I. 2010/103, amended by S.I. 2012/635.

(d) 1961 c. 33.

(e) 1965 c. 56.

(f) 1980 c. 66.

(g) 1981 c. 66.

(h) 1984 c. 27.

(i) 1990 c. 8.

“the 2008 Act” means the Planning Act 2008^(b);

“address” includes any number or address for the purposes of electronic transmission;

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

“authorised development” means the development and associated development described in Schedule 1 (authorised development), and any other development authorised by this Order, which is development within the meaning of section 32 (meaning of development) of the 2008 Act;

“the book of reference” means the document of that description referenced in Schedule 13 (documents to be certified) certified by the Secretary of State as the book of reference for the purposes of this Order;

“bridleway” has the same meaning as in the 1980 Act;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“classification of road plans” means the plan of that description referred to in Schedule 13 (documents to be certified) certified by the Secretary of State as the classification of road plans for the purposes of this Order;

“commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations, ecological surveys and pre-construction ecological mitigation, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment, diversion and laying of underground apparatus and site clearance, and the temporary display of site notices or advertisements, and “commencement” is to be construed accordingly;

“the crown land plans” means the plans listed in Schedule 13 (documents to be certified) and certified as the crown land plans by the Secretary of State for the purposes of this Order;

“cycle track” has the same meaning as in the 1980 Act;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“the engineering drawings and sections” means the drawings and sections listed in Schedule 13 (documents to be certified) and certified as the engineering drawings and sections by the Secretary of State for the purposes of this Order;

“environmental statement” means the document of that description certified as the environmental statement by the Secretary of State for the purposes of this Order;

“footway” and “footpath” have the same meaning as in the 1980 Act;

“highway”, “highway authority” and “local highway authority” have the same meaning as in the 1980 Act;

“the land plans” means the plans listed in Schedule 13 (documents to be certified) and certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 6 (limits of deviation) and shown on the works plans;

“maintain” in relation to any part of the authorised development includes to inspect, repair, adjust, alter, improve, landscape, preserve, remove, reconstruct, refurbish or replace, provided such works do not give rise to any materially new or materially different environmental effects

(a) 1991 c. 22.

(b) 2008 c. 29.

to those identified in the environmental statement, and any derivative of “maintain” is to be construed accordingly;

“Order land” means the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily, and described in the book of reference;

“the Order limits” means the limits of lands to be acquired or used permanently or temporarily shown on the land plans and works plans within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(a);

“relevant planning authority” means in any given provision of this Order, the planning authority for the area to which the provision relates;

“special road” means a highway which is a special road in accordance with section 16 (general provisions as to special roads) of the 1980 Act or by virtue of an order granting development consent;

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8) (statutory undertakers’ land) of the 2008 Act;

“street” means a street within the meaning of section 48 (street, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

“streets, rights of way and access plans” means the plans listed in Schedule 13 (documents to be certified) and certified as the streets, rights of way and access plans by the Secretary of State for the purposes of this Order;

“the temporary construction works” means Work Nos. 69, 70, 71, 72, 73, 74 and 75;

“traffic authority” has the same meaning as in section 121A (traffic regulations) of the 1984 Act(b);

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“trunk road” means a highway which is a trunk road by virtue of—

- (a) section 10 (general provision as to trunk roads) or 19(1) (certain special roads and other highways to become trunk roads) of the 1980 Act;
- (b) an order or direction under section 10 of that Act;
- (c) an order granting development consent; or
- (d) any other enactment;

“undertaker” means Highways England Company Limited (Company No. 09346363), whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” means the plans listed in Schedule 13 (documents to be certified) and certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land

(a) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1992 (c.34). There are other amendments to section 7 which are not relevant to the Order.

(b) As inserted by paragraph 70 of Schedule 8 to the 1991 Act, and subsequently amended by section 271 of the Greater London Authority Act 1999; paragraphs 70 and 95 of Schedule 1 to the Infrastructure Act (c.7); S.I. 1999/1920 and S.I. 2001/1400.

which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) References in this Order to the creation and acquisition of rights over land includes references to rights to oblige a party having an interest in land to grant those rights referenced in the Order, at the direction of the undertaker, either—

(a) to an affected person directly, whether that person's land or rights over land have been adversely affected by this Order, and, where that is the case, the rights referenced in the Order are to be granted for the benefit of the land in which that affected person has an interest at the time of the making of this Order; or

(b) to any statutory undertaker for the purpose of their undertaking.

(4) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(5) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(6) References to any statutory body includes that body's successor bodies from time to time that have jurisdiction over the authorised development.

(7) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the streets, rights of way and access plans.

(8) References in this Order to numbered works are references to works as numbered in Schedule 1 (authorised development).

(9) In this Order, the expression "includes" is to be construed without limitation.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development.

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

Maintenance of authorised development

4. The undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

Maintenance of drainage works

5.—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article "drainage" has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991(a).

(a) 1991 c. 59.

Limits of deviation

6.—(1) In carrying out the authorised development the undertaker may, so far as the undertaker considers it necessary or convenient—

- (a) deviate laterally from the lines or situations shown on the works plans to the extent of the limits of deviation shown on those plans;
- (b) deviate vertically from the levels of the authorised development shown on the engineering drawings and sections—
 - (i) in respect of the construction of a new Solihull Road Overbridge referred to in Work No. 3, to a maximum of 1.5 metres upwards or downwards; and
 - (ii) in respect of any other work comprised in the authorised development, to a maximum of 0.5 metres upwards or downwards.

(2) The maximum limits of deviation set out in paragraph (1) do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation with the relevant planning authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects from those reported in the environmental statement.

Benefit of Order

7.—(1) Subject to paragraph (2) and article 8 (consent to transfer benefit of Order), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which the consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of Order

8.—(1) Subject to paragraph (4), the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the grantee”) for a period agreed between the undertaker and the grantee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), includes references to the transferee or the grantee.

(3) The exercise by any person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply by or under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where the transfer or grant is made to—

- (a) Solihull Metropolitan Borough Council for the purposes of undertaking Works Nos. 3, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 30, 31, 34, 35, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53 and 54;
- (b) Cadent Gas Limited (company number 10080864, whose registered office is at Ashbrook Court Prologis Park, Central Boulevard, Coventry CV7 8PE) (or a related subsidiary company) for the purposes of undertaking Works Nos. 55, 56, 57, 58, 59, 60 and 61;
- (c) Severn Trent Water Limited (company number 02366686, whose registered office is at Severn Trent Centre, 2 St John's Street, Coventry CV1 2LZ) for the purposes of undertaking Works Nos. 62 and 63;

- (d) Western Power Distribution Public Limited Company (company number 09223384, whose registered office is at Avonbank, Feeder Road, Bristol, Avon BS2 0TB) (or a related subsidiary company) for the purposes of undertaking Works Nos. 64 and 65; and
- (e) Esso Petroleum Company, Limited (company number 00026538, whose registered office is at Ermyn House, Ermyn Way, Leatherhead, Surrey KT22 8UX) for the purposes of undertaking Work No. 66.

Application of the 1990 Act

9.—(1) This article applies where the land is used for the temporary construction works.

(2) Where this article applies, section 57(2) of the 1990 Act (planning permission required for development) applies as if the development consent granted by this Order were planning permission granted for a limited period.

Application of the Community Infrastructure Levy Regulations 2010

10.—(1) The Community Infrastructure Levy Regulations 2010(a) apply to the authorised development as if regulation 5(2) of those Regulations (meaning of “planning permission”) referred to development consent which is deemed to be granted for a limited period by an order made under section 114(1)(a) of the 2008 Act (grant or refusal of development consent) rather than to planning permission which is granted for a limited period.

(2) Development consent is deemed to be granted for a limited period for the temporary construction works and any other temporary buildings or works authorised by this Order.

Planning permission

11. If planning permission is issued pursuant to the 1990 Act for development any part of which is within the Order limits following the publication of this Order that is—

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; and
- (b) required to complete or enable the construction, use or operation of any part of the development authorised by this Order,

then the carrying out, use or operation of such development pursuant to the terms of the planning permission is not to constitute a breach of the terms of this Order.

PART 3

STREETS

Street works

12.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in column (2) of Schedule 3 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street or carry out works to strengthen or repair the carriageway;
- (c) place or keep apparatus in the street;
- (d) maintain, renew or alter apparatus in the street or change its position;
- (e) demolish, remove, replace and relocate any street furniture;

(a) S.I. 2010/948.

- (f) execute any works to provide or improve sight lines;
- (g) execute and maintain any works to provide hard and soft landscaping;
- (h) carry out re-lining and placement of road markings;
- (i) remove and install temporary and permanent signage; and
- (j) execute any works required for, or incidental to, any works referred to in subparagraphs (a) to (i).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Subject to article 13 (application of the 1991 Act), the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

Application of the 1991 Act

13.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 (dual carriageways and roundabouts)(a) of the 1980 Act or section 184 (vehicle crossings over footways and verges)(b) of that Act.

(2) In Part 3 of the 1991 Act, in relation to works which are major highway works by virtue of paragraph (1), references to the highway authority concerned are to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers of this Order—

- section 56 (power to give directions as to timing)(c);
- section 56A (power to give directions as to placing of apparatus)(d);
- section 58 (restrictions on works following substantial road works)(e);
- section 58A (restriction on works following substantial street works)(f);
- section 73A (power to require undertaker to re-surface street)(g);
- section 73B (power to specify timing etc. of re-surfacing)(h);
- section 73C (materials, workmanship and standard of re-surfacing)(i);
- section 78A (contributions to costs of re-surfacing by undertaker)(j); and
- Schedule 3A (restriction on works following substantial street works)(k).

-
- (a) Section 64 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1965 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).
 - (b) Section 184 was amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48); section 4 of, and paragraph 45(11) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11); and section 168 of, and paragraph 9 of Schedule 8 and Schedule 9 to, the New Roads and Street Works Act 1991.
 - (c) Section 56 was amended by section 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
 - (d) Section 56A was inserted by section 44 of the Traffic Management Act 2004.
 - (e) Section 58 was amended by section 51 of, and Schedule 1 to, the Traffic Management Act 2004.
 - (f) Section 58A was inserted by section 52 of the Traffic Management Act 2004.
 - (g) Section 73A was inserted by section 55 of the Traffic Management Act 2004.
 - (h) Section 73B was inserted by section 55 of the Traffic Management Act 2004.
 - (i) Section 73C was inserted by section 55 of the Traffic Management Act 2004.
 - (j) Section 78A was inserted by section 57 of the Traffic Management Act 2004.
 - (k) Schedule 3A was inserted by Schedule 4 to the Traffic Management Act 2004.

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 16 (temporary stopping up and restriction of use of streets), whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

- (5) The provisions of the 1991 Act(a) referred to in paragraph (4) are—
- section 54 (advance notice of certain works)(b), subject to paragraph (6);
 - section 55 (notice of starting date of works)(c), subject to paragraph (6);
 - section 57 (notice of emergency works)(d);
 - section 59 (general duty of street authority to co-ordinate works)(e);
 - section 60 (general duty of undertakers to co-operate);
 - section 68 (facilities to be afforded to street authority);
 - section 69 (works likely to affect other apparatus in the street);
 - section 75 (inspection fees);
 - section 76 (liability for cost of temporary traffic regulation); and
 - section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 14 (construction and maintenance of new, altered or diverted streets and other structures)—

- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act;
- (b) means the undertaker is by reason of any duty under that article to maintain a street, to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (c) has effect in relation to maintenance works which are street works within the meaning of the 1991 Act, as respects which the provisions of Part 3 of the 1991 Act apply.

Construction and maintenance of new, altered or diverted streets and other structure

14.—(1) Any street (other than a special road or a trunk road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the street lies and, unless otherwise agreed in writing with the local highway authority, the street including any culverts or other structures laid under it, must be maintained by and at the expense of the local highway authority from its completion.

(2) Where a street (other than a special road or a trunk road) is altered or diverted under this Order, the altered or diverted part of the street must be completed to the reasonable satisfaction of the local street authority in whose area the street lies and, unless otherwise agreed in writing with the local street authority, that part of the street, including any culverts or other structures laid under it, must be maintained by and at the expense of the local street authority from its completion.

(a) Sections 54, 55, 57, 60, 68 and 69 were amended by sections 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(b) As also amended by section 49(1) of the Traffic Management Act 2004.

(c) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.

(d) As also amended by section 52(3) of the Traffic Management Act 2004.

(e) As amended by section 42 of the Traffic Management Act 2004.

(3) In the case of a bridge constructed under this Order to carry a highway (other than a special road or a trunk road) over a special road or a trunk road, the highway surface (being those elements over the waterproofing membrane) must be maintained by and at the expense of the local highway authority and the remainder of the bridge, including the waterproofing membrane and structure below, must be maintained by and at the expense of the undertaker.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street or other structure under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street or structure to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (5), the court must in particular have regard to the following matters—

- (a) the character of the street or structure and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street or structure of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street or structure;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street or structure to which the action relates was likely to cause dangers to users of the street or structure; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street or structure before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street or structure to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street or structure and that the competent person had carried out those instructions.

Classification of roads etc.

15.—(1) The roads described in Part 1 (special roads) of Schedule 4 (classification of roads, etc.) are to be—

- (a) classified as special roads for the purpose of any enactment or instrument which refers to highways classified as special roads; and
- (b) provided for the use of traffic of Classes I and II of the classes of traffic set out in Schedule 4 to the 1980 Act.

(2) From the date on which the undertaker notifies the Secretary of State that the roads described in Part 1 (special roads) of Schedule 4 have been completed and are open for traffic—

- (a) the undertaker is the highway authority for those roads; and
- (b) they are classified as trunk roads for the purpose of any enactment or instrument which refers to highways classified as trunk roads.

(3) From the date on which the roads described in Part 2 (trunk roads) of Schedule 4 are completed and open for traffic, they are to become trunk roads as if they had become so by virtue of an order under section 10(2) (general provision as to trunk roads) of the 1980 Act specifying that date as the date on which they were to become trunk roads.

(4) From the date on which the roads described in Part 3 (classified roads) of Schedule 4 are completed and open for traffic, they are to become classified roads for the purpose of any enactment or instrument which refers to highways classified as classified roads as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

(5) From the date on which the roads described in Part 4 (unclassified roads) of Schedule 4 are completed and open for traffic, they are to become unclassified roads for the purpose of any enactment or instrument which refers to unclassified roads.

(6) From the date on which the roads specified in Part 5 (speed limits) of Schedule 4 are open for traffic, no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of that Part along the lengths of road identified in the corresponding row of column (2) of that Part.

(7) From the date on which Work Nos. 4 and 5 are open for traffic, the M42 (Junctions 3A to 7) (Actively Managed Hard Shoulder and Variable Speed Limits) Regulations 2005(a) are amended as follows—

(a) after paragraph 4(c) of the Schedule (relevant roads), insert—

“; and

(d) on-slip road which connects the northbound carriageway of the M42 with Junction 5A”; and

(b) after paragraph 5(c) of the Schedule, insert—

“; and

(d) off-slip road which connects the southbound carriageway of the M42 with Junction 5A”.

(8) The public rights of way set out in Part 6 (public rights of way) of Schedule 4 and identified on the rights of way and access plans are to be constructed by the undertaker in the specified locations and open for use from—

(a) the date on which the authorised development is open for traffic; or

(b) such date as soon as reasonably practicable after the construction of the public right of way as may be agreed by the undertaker and the local highway authority.

(9) The application of paragraphs (1) to (8) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters, including by an instrument made under the 1984 Act where the matter in question could have been included in an order made under that Act.

Temporary stopping up and restriction of use of streets

16.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter, divert or restrict the use of any street and may for any reasonable time—

(a) divert the traffic from the street; and

(b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily stopped up, altered, diverted or restricted under the powers conferred by this article, and which is within the Order limits, as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) Without limitation on the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in column (2) of Schedule 5 (streets to be temporarily stopped up) to the extent specified by reference to the letters and numbers shown on the streets, rights of way and access plans, in column (3) of that Schedule, and may provide a temporary diversion.

(a) S.I. 2005/1671.

(5) Save as to streets in respect of which the undertaker is the street authority, the undertaker must not temporarily stop up, alter or divert—

- (a) any street specified as mentioned in paragraph (4) without first consulting the street authority; and
- (b) any other street without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(6) Where the undertaker provides a temporary diversion under paragraph (4), the new or temporary alternative route is not required to be of a higher standard than the temporarily stopped up street or in column (2) of Schedule 5.

(7) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(8) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

(9) Any application to which this article applies must include a statement that the provisions of paragraph (8) apply to that application.

Permanent stopping up, restriction of use of streets, public rights of way and private means of access

17.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets, public rights of way and private means of access specified in column (1) of Parts 1, 2, 3, 4, 5, 6 and 7 of Schedule 6 (permanent stopping up of streets, public rights of way and private means of access) to the extent specified and described in column (2) of those Parts of that Schedule.

(2) No street, public right of way or private means of access specified in columns (1) of Parts 1, 3 and 5 of Schedule 6 is to be wholly or partly stopped up under this article unless—

- (a) the new street, public right of way or private means of access to be constructed and substituted for it, which is specified in column (3) of those Parts of that Schedule, is open for use and, in the case of a street, has been completed to the reasonable satisfaction of the street authority; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street, public right of way or private means of access to be stopped up is first provided and, in the case of a street, is subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street, public right of way or private means of access until the completion and opening of the new street, public right of way or private means of access in accordance with sub-paragraph (a).

(3) No street, public right of way or private means of access specified in column (1) of Parts 2, 4 and 6 of Schedule 6 is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street or private means of access to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) the undertaker is in possession of the land; or
- (b) there is no right of access to the land from the street or private means of access concerned; or
- (c) there is reasonably convenient access to the land otherwise than from the street or private means of access concerned; or
- (d) the owners and occupiers of the land have agreed to the stopping up.

(5) Where a street or private means of access has been stopped up under this article—

- (a) all rights of way over or along the street or private means of access so stopped up are extinguished; and

(b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street or private means of access as is bounded on both sides by land owned by the undertaker.

(6) The undertaker may, in connection with the carrying out of the authorised development, alter the private means of access specified in column (1) of Part 7 of Schedule 6 as specified in column (2) of that Part.

(7) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(8) This article is subject to article 36 (apparatus and rights of statutory undertakers in stopped up streets).

Access to works

18. The undertaker may, for the purposes of the authorised development, form and layout means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Clearways, prohibitions and restrictions

19.—(1) From such day as the undertaker may determine, except as provided in paragraph (3), no person is to cause or permit any vehicle to enter any part of the lengths of road or wait on any part of the lengths of road described in column (1) of Part 1 (traffic regulation measures (clearways and prohibitions)) of Schedule 7 (clearways, prohibitions and restrictions) where it is identified in the corresponding row of column (2) of that Schedule that entry to such lengths of road are prohibited or such lengths of road are to become a clearway, except upon the direction of, or with the permission of, a uniformed constable or uniformed traffic officer.

(2) From such day as the undertaker may determine, except as provided in paragraph (3), no person may cause or permit any vehicle to use any part of the length of road described in column (1) of Part 2 (traffic regulation measures (weight restrictions)) of Schedule 7 (clearways, prohibitions and restrictions) where that vehicle exceeds the weight restriction specified in column (2) of that Part.

(3) Nothing in paragraphs (1) or (2) applies—

- (a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—
 - (i) the removal of any obstruction to traffic;
 - (ii) the maintenance, improvement, reconstruction or operation of the road;
 - (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any electronic communications apparatus as defined in Schedule 3A (the electronic communications code) to the Communications Act 2003(a); or
 - (iv) any building operation or demolition;
- (b) in relation to a vehicle being used—
 - (i) for police, ambulance, fire and rescue authority or traffic officer purposes;
 - (ii) in the service of a local authority, safety camera partnership or Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;
 - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(b); or

(a) 2003 c. 21. Schedule 3A was inserted by section 4 of, and Schedule 1 to, the Digital Economy Act 2017 (c. 30).

(b) 1991 c. 56.

- (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000(a); or
- (c) in relation to a vehicle waiting when the person in control of it is—
 - (i) required by law to stop;
 - (ii) obliged to stop in order to avoid an accident; or
 - (iii) prevented from proceeding by circumstances outside the persons control.

(4) No person is to cause or permit any vehicle to wait on any part of the roads described in paragraph (1) for the purposes of selling, or dispensing of, goods from that vehicle, unless the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispensed.

(5) Paragraphs (1), (2), (3) and (4) have effect as if made by order under the 1984 Act, and their application may be varied or revoked by an order made under that Act or any other enactment which provides for the variation or revocation of such orders.

(6) In this article, “traffic officer” means an individual designated under section 2 (designation of traffic officers) of the Traffic Management Act 2004(b).

Traffic regulation

20.—(1) This article applies to roads in respect of which the undertaker is not the traffic authority.

(2) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development or for the purposes set out in section 1(1)(d) (preventing the use of the road) or (f) (preserving or improving amenity) of the 1984 Act—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(3) The power conferred by paragraph (2) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (2) may have effect both before and after the expiry of that period.

(4) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).

(5) The undertaker must not exercise the powers conferred by paragraph (2) unless it has—

- (a) given not less than—
 - (i) 12 weeks’ notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
 - (ii) 4 weeks’ notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,
 to the chief officer of police and to the traffic authority in whose area the road is situated; and

(a) 2000 c. 26.

(b) 2004 c. 18.

- (b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of the receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of the receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).
- (6) Any prohibition, restriction or other provision made by the undertaker under paragraph (2)—
- (a) has effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
 - (ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking spaces)(a) of the 1984 Act, and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and
 - (b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(b).
- (7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers of paragraph (2) within a period of 24 months from the opening of the authorised development.
- (8) Before exercising the powers conferred by paragraph (2), the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.
- (9) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.
- (10) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.
- (11) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.
- (12) Any application to which this article applies must include a statement that the provisions of paragraph (11) apply to that application.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

21.—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(c).

(a) As amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(1) of, and paragraph 39 of Schedule 8 to, the 1991 Act.

(b) 2004 c. 18.

(c) 1991 c. 56.

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld or delayed.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works under this article, damage or interfere with the bed or banks of any watercourse forming part of a main river, subject to the works that are authorised under this Order.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(a).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency (known as Homes England), the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(b) have the same meaning as in that Act.

(9) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application that person will be deemed to have granted consent or given approval, as the case may be.

(10) Any application to which this article applies must include a statement that the provisions of paragraph (9) apply to that application.

Protective work to buildings

22.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage, and place on, leave on and remove from the building any apparatus and equipment for use in connection with the survey.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

(a) S.I. 2016/1154.

(b) 1991 c. 57.

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 47 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Without affecting article 46 (no double recovery) nothing in this article relieves the undertaker from any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act.

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (compulsory acquisition provisions) of the 2008 Act.

(11) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(12) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

Authority to survey and investigate the land

23.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development including, where reasonably necessary, any land which is adjacent to, but outside the Order limits, and—

- (a) survey or investigate the land;

- (b) without limitation on the scope of sub-paragraph (a), make any excavations or trial holes and boreholes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer, subsoil and groundwater and remove soil and water samples and discharge water samples on to the land;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes and boreholes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land for habitat related surveys and six weeks' notice for all other surveys.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes and boreholes.

(4) No trial holes or boreholes are to be made under this article—

- (a) in land located within a highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld or delayed.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (4)(a) in the case of a highway authority; or
- (b) under paragraph (4)(b) in the case of a street authority,

that authority will be deemed to have granted consent.

(7) Any application to which this article applies must include a statement that the provisions of paragraph (6) apply to that application.

(8) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

PART 5

POWERS OF ACQUISITION AND POSSESSION OF LAND

Compulsory acquisition of land

24.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or is incidental to it.

(2) This article is subject to paragraph (2) of article 27 (compulsory acquisition of rights and restrictive covenants), paragraph (9) of article 33 (temporary use of land for carrying out the authorised development) and article 37 (crown rights).

Compulsory acquisition of land – incorporation of the mineral code

25.—(1) Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(a) are incorporated in this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated;
- (b) for “the acquiring authority” substitute “the undertaker”; and
- (c) for “undertaking” substitute “authorised development”.

Time limit for exercise of authority to acquire land compulsorily

26.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as modified by article 29 (modifications of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 30 (application of the 1981 Act).

(2) The authority conferred by article 33 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights and restrictive covenants

27.—(1) Subject to paragraphs (2) to (4), the undertaker may acquire such rights over the Order land, or impose restrictive covenants affecting the Order land, as may be required for any purpose for which that land may be acquired under article 24 (compulsory acquisition of land) by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 8 (land in which only new rights etc. may be acquired) the undertaker’s powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive covenants, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) of, and Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to, the 1965 Act, as substituted by paragraph 5(8) of Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants), where the undertaker acquires a right over land or the benefit of a restrictive covenant affecting land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 9 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

Private rights over land

28.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished from whichever is the earlier of—

- (a) the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) the date of entry on the land by the undertaker under section 11(1)(a) (power of entry) of the 1965 Act.

(a) 1981 c. 67.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of the rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or the burden of the restrictive covenant from whichever is the earlier of—

- (a) the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or
- (b) the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker that are within the Order limits are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138(b) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 35 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of the right or the imposition of the restrictive covenant over or affecting the land;
 - (ii) the undertaker's appropriation of it;
 - (iii) the undertaker's entry onto it; or
 - (iv) the undertaker's taking temporary possession of it,that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Modifications of Part 1 of the 1965 Act

29.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125(a) (application of compulsory acquisition provisions) of the 2008 Act is modified as follows.

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- (a) Section 11(1) was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981, section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1), and sections 186(1) and (2), 187 and 188 of the Housing and Planning Act 2016 (c. 22).
 - (b) Section 138 was amended by section 23(1) and (4) of the Growth and Infrastructure Act 2013 (c. 27) and S.I. 2017/1285.

(2) In section 4A(1)(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118(c) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily) of the M42 Junction 6 Development Consent Order 202[](d)”.

(3) In section 11A(e) (powers of entry: further notice of entry)—

(a) in subsection (1)(a), after “land” insert “under that provision”;

(b) in subsection (2), after “land” insert “under that provision”.

(4) In section 25(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 26 (time limit for exercise of authority to acquire land compulsorily) of the M42 Junction 6 Development Consent Order 202[]”.

(5) In Schedule 2A (counter- notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 31(3) (acquisition of subsoil or airspace only) of the M42 Junction 6 Development Consent Order 202[], which excludes the acquisition of subsoil or airspace only from this Schedule.”; and

(b) after paragraph 29, insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under articles 22 (protective work to buildings), 33 (temporary use of land for carrying out the authorised development) or 34 (temporary use of land for maintaining the authorised development) of the M42 Junction 6 Development Consent Order 202[].”.

Application of the 1981 Act

30.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as so applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of act), for subsection 2 substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.

(4) In section 5(f) (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.

(5) Omit section 5A(g) (time limit for general vesting declaration).

(6) In section 5B(1)(h) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 (legal challenges

(a) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

(b) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (C. 22).

(c) Section 118 was amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25, to the Localism Act 2011 (c. 20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c. 2).

(d) S.I. 202[]/[].

(e) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

(f) Section 5 was amended by Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(g) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

(h) Section 5B(1) was inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).

relating to applications for orders granting development consent) of the Planning Act 2008 the five year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily) of the M42 Junction 6 Development Consent Order 202[](a)".

(7) In section 6(b) (notices after execution of declaration) in subsection (1)(b) for "section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981" substitute "section 134(c) (notice of authorisation of compulsory acquisition) of the Planning Act 2008".

(8) In section 7(d) (constructive notice to treat) in subsection (1)(a), omit "(as modified by section 4 of the Acquisition of Land Act 1981)".

(9) In Schedule A1(e) (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

(10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 29 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace only

31.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or of the airspace over the land referred to in paragraph (1) of article 24 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or the airspace over land referred to in paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 29 (modification of Part 1 of the 1965 Act));
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153 (4A)(f) (blighted land: proposed acquisition of part interest; material detriment test) of the Town and Country Planning Act 1990.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

Rights under or over streets

32.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

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- (a) S.I. 202[]/[]
 - (b) Section 6 was amended by section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22).
 - (c) Section 134 was amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 and S.I. 2012/16.
 - (d) Section 7(1) was substituted by paragraphs 1 and 3 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).
 - (e) Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).
 - (f) Subsection (4A) of section 153 was inserted by section 200(1) and (2) of the Housing and Planning Act 2016.

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, will be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

33.—(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 26(1) (time limit for exercise of authority to acquire land compulsorily)—

- (a) enter on and take temporary possession of—
 - (i) the land specified in column (1) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any electric line, electrical plant, structures, apparatus, buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings or structures on that land; and
- (d) construct any works on that land as are mentioned in Schedule 1 (authorised development).

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph 1(a)(ii).

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 10 unless and to the extent that it is authorised to do so by the acquisition of rights over land or the creation of new rights over land pursuant to article 27 (compulsory acquisition of rights and restrictive covenants), or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section (4) of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;

- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
- (c) restore the land to a condition better than the relevant land was in before temporary possession;
- (d) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development;
- (e) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development; or
- (f) remove or reposition any apparatus belonging to statutory undertakers or necessary mitigation works.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (4) does not prevent the undertaker giving up possession of the land.

(8) Subject to article 46 (no double recovery), nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from—

- (a) acquiring new rights over any part of that land under article 27 (compulsory acquisition of rights and restrictive covenants); or
- (b) acquiring any part of the subsoil or airspace over (or rights in the subsoil of or airspace over) that land under article 31 (acquisition of subsoil or airspace only).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(11) Section 13 (refusal to give possession to acquiring authority)(a) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in paragraph (1).

Temporary use of land for maintaining the authorised development

34.—(1) Subject to paragraph (3), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter onto any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and

(a) Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

(a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken.

(4) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of—

(a) the authorised development or any of its parts,

(b) the public, or

(c) the surrounding environment, and

in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

(5) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land but the undertaker is not required to restore the land to a condition better than the relevant land was in before temporary possession was taken.

(7) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (6) does not prevent the undertaker giving up possession of the land.

(8) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(9) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(10) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(11) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(12) Section 13 (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(13) In this article “the maintenance period”, in relation to any part of the authorised development means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Statutory undertakers

35.—(1) Subject to the provisions of Schedule 12 (protective provisions), article 27 (compulsory acquisition of rights and restrictive covenants) and paragraph (2), the undertaker may—

(a) acquire compulsorily, or acquire new rights or impose restrictive covenants over any Order land belonging to statutory undertakers; and

(b) extinguish the rights of, and remove or reposition apparatus belonging to, statutory undertakers over or within the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—

- (a) Part 3 (street works in England and Wales) of the 1991 Act; and
- (b) article 36 (apparatus and rights of statutory undertakers in stopped up streets) of this Order.

Apparatus and rights of statutory undertakers in stopped up streets

36.—(1) Where a street is stopped up under article 17 (permanent stopping up and restriction of use of streets, public rights of way and private means of access), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 17 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) (interpretation of chapter 1) of the Communications Act 2003(a).

Crown rights

37.—(1) Nothing in this order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker to take, use, enter upon or in any manner interfere with any land or rights of any description (including any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of The Crown Estate Commissioners;
- (b) belong to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

Recovery of costs of new connections

38.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 35 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 35, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(a) 2003 c. 21.

(3) This article does not have effect in relation to apparatus to which article 36 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” means a gas, water, electricity or sewerage undertaker.

PART 6 OPERATIONS

Felling or lopping of trees and removal of hedgerows

39.—(1) Subject to paragraph (4), the undertaker may fell or lop any tree or shrub with the exception of ancient woodland within or overhanging land within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

(2) Without limiting the powers of paragraph (1), the undertaker may remove any tree within a conservation area that is specified in Part 1 of Schedule 11 (trees in conservation areas to be removed or managed).

(3) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (4), remove or manage any hedgerow within the Order limits and specified in Part 2 of Schedule 11 (hedgerows to be removed or managed) that is required to be removed or managed.

(4) In carrying out any activity authorised by paragraphs (1), (2) or (3), the undertaker must do no unnecessary damage to any tree, shrub or hedgerow and must pay compensation to any person for any loss or damage arising from such activity.

(5) Any dispute as to a person’s entitlement to compensation under paragraph (4), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

(6) In this article “hedgerow” has the same meaning as in The Hedgerow Regulations 1997^(a) and includes important hedgerows.

PART 7 MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

40.—(1) This article applies to—

(a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(a) S.I. 1997/1160.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the Town and Country Planning Act 1990

41. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.

Defence to proceedings in respect of statutory nuisance

42.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990^(a) in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974^(b); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protection of interests

43. Schedule 12 (protective provisions) to the Order has effect.

(a) 1990 c. 43. There are amendments to this Act which are not relevant to this Order.

(b) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 c. 43. There are other amendments to the 1974 Act which are not relevant to this Order.

Certification of plans and documents, etc.

44.—(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents set out in Schedule 13 (documents to be certified) to the Secretary of State for certification as true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 13 requires to be amended to reflect the terms of the Secretary of State’s decision to make the Order, that plan or document in the form amended to the Secretary of State’s satisfaction is the version of the plan or document required to be certified under paragraph (1).

(3) A plan or document so certified will be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

45.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement will be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of

(a) 1978 c. 30.

that notice or other document the sender will provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation will be final and will take effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article will not be taken to exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

No double recovery

46. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

Arbitration

47. Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Removal of human remains

48.—(1) In this article “the specified land” means the land within the Order limits.

(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Subject to paragraph (12), before any such remains are removed from the specified land the undertaker must give notice of the intended removal describing the specified land and stating the general effect of the following provisions of this article by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the relevant planning authority.

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person is to, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker is to remove the remains and cause them to be reinterred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves are to be re-interred in individual containers which are to be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation is to be sent to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were reinterred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) is to be sent by the undertaker to the relevant planning authority.

(12) No notice is required under paragraph (3) before the removal of any human remains where the undertaker is satisfied—

- (a) that the remains were interred more than 100 years ago; and
- (b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

(13) In this article—

- (a) references to a relative of the deceased are to a person who—
 - (i) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased; or
 - (ii) is, or is a child of, a brother, sister, uncle or aunt of the deceased.
- (b) references to a personal representative of the deceased are to a person or persons who—
 - (i) is the lawful executor of the estate of the deceased; or

(ii) is the lawful administrator of the estate of the deceased.

(14) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(15) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(16) Section 25 of the Burial Act 1857(a) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) does not apply to a removal carried out in accordance with this article.

(17) Section 239 (use and development of burial grounds) of the 1990 Act applies—

(a) in relation to land, other than a right over land, acquired for the purposes of the authorised development (whether or not by agreement), so as to permit use by the undertaker in accordance with the provisions of this Order; and

(b) in relation to a right over land so acquired (whether or not by agreement), or the temporary use of land pursuant to articles 33 (temporary use of land for carrying out the authorised development) or 34 (temporary use of land for maintaining the authorised development), so as to permit the exercise of that right or the temporary use by the undertaker in accordance with the provisions of this Order,

and in section 240(1) (provisions supplemental to ss. 238 and 239) of the 1990 Act reference to “regulations made for the purposes of sections 238(3) and (4) and 239(2)” means, so far as applicable to land or a right over land acquired under this Order, paragraphs (2) to (15) of this article and in section 240(3) of the 1990 Act reference to a “statutory undertaker” includes the undertaker and reference to “any other enactment” includes this Order.

(18) The Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950(b) do not apply to the authorised development.

(19) Requirement 9 (archaeological remains) of Part 1 of Schedule 2 (requirements) applies in respect of any disturbed human remains determined to be of archaeological interest.

Application, disapplication and modification of legislative provisions

49.—(1) The provisions of the Neighbourhood Planning Act 2017(c), insofar as they relate to temporary possession of land under articles 33 (temporary use of land for carrying out the authorised development) and 34 (temporary use of land for maintaining the authorised development) of this Order, do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development and, within the maintenance period defined in article 34(12), any maintenance of any part of the authorised development.

(2) Despite the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 of the Community Infrastructure Levy Regulations 2010(d) any building comprised in the authorised development is to be—

(a) a building into which people do not normally go; or

(b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

Amendment of local legislation

50.—(1) The following local enactments, and any byelaws or other provisions made under any of those enactments, are hereby excluded and do not apply insofar as inconsistent with a provision of, or a power conferred by, this Order—

(a) 1857 c. 81.

(b) S.I. 1950/792.

(c) 2017 c. 20.

(d) S.I. 2010/948, amended by S.I. 2011/987; there are other amending instruments but none are relevant to this Order.

- (a) Birmingham and Oxford Junction Railway Act 1846(a) sections XXIV and XXV;
- (b) London and North Western Railway (Additional Powers) Act 1879(b) sections ix, xiv, xxxii and xxxv;
- (c) London and North Western Railway Act 1880(c) section xviii and xix;
- (d) London and North Western Railway Act 1893(d) (c. clxvi) section xxv;
- (e) West Midlands County Council Act 1980(e) sections 6, 11 and 12;
- (f) Midland Metro Act 1992(f) sections 3 to 9;
- (g) Midland Metro (No 2) Act 1993(g) (c. vi) sections 3, 6 and 12;
- (h) High Speed Rail (London – West Midlands) Act 2017(h).

(2) For the purpose of paragraph (1) a provision is inconsistent with the exercise of a power conferred by this Order if and insofar as (in particular)—

- (a) it would make it an offence to take action, or not to take action, in pursuance of the power;
- (b) action taken in pursuance of the power would cause the provision to apply so as to enable a person to require the taking of remedial or other action or so as to enable remedial or other action to be taken;
- (c) action taken in pursuance of a power or duty under the provision would or might interfere with the exercise of any work authorised by this Order.

(3) Paragraphs (1) and (2) are subject to Schedule 12 (protective provisions).

(4) Where any person notifies the undertaker in writing that anything done or proposed to be done by the undertaker or by virtue of this Order would amount to a contravention of a statutory provision of local application, the undertaker must as soon as reasonably practicable, and at any rate within 14 days of receipt of the notice, respond in writing setting out—

- (a) whether the undertaker agrees that the action taken or proposed does or would contravene the provision of local application;
- (b) if the undertaker does agree, the grounds (if any) on which the undertaker believes that the provision is excluded by this article; and
- (c) the extent of that exclusion.

Date

Name
Title
Department for Transport

(a) 1846 c. cccxxxvii.
 (b) 1879 c. cxlii.
 (c) 1880 c. cxlv.
 (d) 1893 c. clxvi.
 (e) 1980 c. xi.
 (f) 1992 c. vii.
 (g) 1993 c. vi.
 (h) 2017 c. 7.

SCHEDULES

SCHEDULE 1

Articles 2 and 3

AUTHORISED DEVELOPMENT

In the administrative areas of North Warwickshire District Council and Solihull Metropolitan Borough Council

A nationally significant infrastructure project as defined in sections 14 (nationally significant infrastructure projects: general) and 22 (highways) of the 2008 Act, and associated development as defined in section 115 of the 2008 Act, comprising:

Work No. 1 – as shown on Sheet Nos. 1, 2, 3, 5, 6 and 7 of the works plans and being the improvement of the northbound and southbound carriageways of the M42 Motorway between Junctions 5 and 7 (approximately 8.35 kilometres in length), such works including—

- (a) the alteration of 4 no. portal gantries above the M42 Motorway within the gantry siting locations shown as Gantry Type 1 on Sheet Nos. 1, 5 and 6 of the works plans, including the installation of new signs, signals, sign illumination, control cabinets, power and communication cable connections;
- (b) the construction of 5 no. portal gantries above the M42 Motorway within the gantry siting locations shown as Gantry Type 3 on Sheet Nos. 1, 2 and 5 of the works plans, including the installation of new gantry foundations, gantry structures, earthwork retaining structures, signs, signals, sign illumination, control cabinets, power and communication cable connections;
- (c) the construction of 9 no. cantilever gantries above the M42 Motorway within the gantry siting locations shown as Gantry Type 4 on Sheet Nos. 1, 2 and 6 of the works plans, including the installation of new gantry foundations, gantry structures, earthwork retaining structures, signs, signals, sign illumination, control cabinets, power and communication cable connections;
- (d) the demolition of 7 no. portal gantries above the M42 Motorway within the gantry siting locations shown as Gantry Type 5 on Sheet Nos. 1, 2, 5 and 6 of the works plans, including the removal of the gantry foundations, gantry structures, earthwork retaining structures, signs, signals, sign illumination, control cabinets, power and communication cable disconnections;
- (e) the demolition of 6 no. cantilever gantries above the M42 Motorway within the gantry siting locations shown as Gantry Type 6 on Sheet Nos. 1, 2 and 6 of the works plans, including the removal of the gantry foundations, gantry structures, signs, signals, sign illumination, control cabinets, power and communication cable disconnections;
- (f) the construction of 1 no. emergency refuge area on the northbound carriageway at the locations shown on Sheet No. 2 of the works plans;
- (g) the demolition of 3 no. emergency refuge areas on the northbound carriageway at the locations shown on Sheet Nos. 2 and 6 of the works plans; and
- (h) the demolition of 3 no. emergency refuge areas on the southbound carriageway at the locations shown on Sheet Nos. 2 and 6 of the works plans.

In the administrative area of Solihull Metropolitan Borough Council

Work No. 2 – as shown on Sheet Nos. 4 and 5 of the works plans and being the improvement of the eastbound and westbound carriageway of the A45 from a point approximately 650 metres west

of Clock Interchange to a point approximately 715 metres east of the M42 Junction 6 (approximately 2.4 kilometres in length), such works including—

- (a) the alteration of 1 no. cantilever gantry above the westbound carriageway of the A45 within the gantry siting locations shown as Gantry Type 2 on Sheet No. 4 of the works plans, including the installation of new signs, signals, sign illumination, control cabinets, power and communication cable connections;
- (b) the construction of 2 no. cantilever gantries above the eastbound carriageway of the A45 within the gantry siting locations shown as Gantry Type 4 on Sheet No. 4 of the works plans, including the installation of new gantry foundations, gantry structure, earthwork retaining structures, signs, signals, sign illumination, control cabinets, power and communication cable connections; and
- (c) the demolition of 1 no. portal gantry above the eastbound carriageway of the A45 within the gantry siting locations shown as Gantry Type 5 on Sheet No. 4 of the works plans, including the removal of gantry foundations, gantry structures, signs, signals, sign illumination, control cabinets, power and communication cable disconnections.

Work No. 3 – as shown on Sheet No. 2 of the works plans and being the demolition of the existing Solihull Road Overbridge (approximately 65 metres in length) and the construction of a new Solihull Road Overbridge, a two lane single carriageway with a widened southern verge for future footway provision (approximately 110 metres in length). New overbridge required to facilitate slip roads to Junction 5A (Works Nos. 4 and 5). New overbridge will require Solihull Road to be raised on embankment to the east and west of the new overbridge structure for a distance of approximately 225 metres (east) and 325 metres (west) respectively.

Work No. 4 – as shown on Sheet No. 2 of the works plans and being the construction of a new M42 off-slip road (approximately 850 metres in length) both in cutting and on embankment that diverges from the M42 and connects to the new Junction 5A of the M42 (Work No. 6), including the demolition of approximately 125 metres of existing sheet pile wall to accommodate the new off slip road.

Work No. 5 – as shown on Sheet No. 2 of the works plans and being the construction of a new M42 on-slip road (approximately 750 metres in length) both in cutting and on embankment that merges onto the M42 from the new Junction 5A of the M42 (Work No. 6).

Work No. 6 – as shown on Sheet No. 2 of the works plans and being the construction of a new Junction 5A of the M42, approximately 120 metres north of the proposed Solihull Road Overbridge (Work No. 3). Junction 5A to consist of a two lane eastern roundabout and a two lane western roundabout, both constructed on embankment. Roundabouts to be connected via a new Junction 5A overbridge (approximately 45m in length), featuring a two lane eastbound carriageway and a single lane plus hard shoulder on the western carriageway.

Work No. 7 – as shown on Sheet Nos. 2, 3 and 4 of the works plans and being the construction of a new 2.4 kilometre dual carriageway mainline link on both embankment and in cutting connecting Junction 5A (Work No. 6) to Clock Interchange (Work No. 20). The new mainline link to include the construction of earthwork retaining structures and to necessitate the demolition of the residential property known as “Heath End House”.

Work No. 8 – as shown on Sheet Nos. 2 and 3 of the works plans and being the construction of a new single lane on-slip road in cutting (approximately 690 metres in length) commencing at Barber’s Coppice Roundabout (Work No. 12) and connecting to the northbound carriageway of the proposed mainline link road (Work No. 7).

Work No. 9 – as shown on Sheet No. 3 of the works plans and being the construction of a new two lane off-slip road (approximately 510 metres in length) in cutting commencing at the southbound carriageway of the new mainline link road (Work No. 7) and connecting to the proposed Bickenhill Roundabout (Work No. 14).

Work No. 10 – as shown on Sheet Nos. 3 and 4 of the works plans and being the construction of—

- (a) a new single lane plus hard-shoulder northbound diverge (approximately 640 metres in length) in both cutting and on embankment from the mainline link road (Work No. 7) and joining the Airport Way connector road from the A45 Westbound (Work No. 19); and
- (b) a new field access to land severed by the construction of Work Nos. 7 and 10 identified as point 4/23 on Sheet 4 of the Streets, Rights of Way and Access Plans.

Work No. 11 – as shown on Sheet No. 2 of the works plans and being the construction of the realigned two lane single carriageway B4438 Catherine-de-Barnes Lane (approximately 240 metres in length) in both cutting and on embankment, south of Barber’s Coppice Roundabout (Work No. 12).

Work No. 12 – as shown on Sheet No. 2 of the works plans and being the construction of a new two lane roundabout on embankment, to be known as Barber’s Coppice Roundabout. Roundabout positioned to the east of the Birmingham Dog’s Home facility, providing connections to the realigned B4438 Catherine-de-Barnes Lane (Works Nos. 11 and 13), the new single lane northbound on-slip road to the new mainline link road at Work No. 7 (Work No. 8) and existing properties on the western arm.

Work No.13 – as shown on Sheet Nos. 2 and 3 of the works plans and being the construction of the realigned two lane single carriageway B4438 Catherine-de-Barnes Lane (approximately 760 metres in length) in both cutting and embankment, connecting Barber’s Coppice Roundabout (Work No. 12) with Bickenhill Roundabout (Work No. 14). New carriageway to include the construction of a new overbridge (approximately 82 metres in length) to be known as Catherine-de-Barnes South Overbridge, to provide a crossing of the new mainline link road (Work No. 7), south of the proposed realigned Shadowbrook Lane (Work No. 17). Construction of a new field access to land severed by Work No. 7 as shown at point 3/38 on Sheet 3 of the Streets, Rights of Way and Access Plans.

Work No. 14 – as shown on Sheet No. 3 of the works plans and being the construction of a new two lane roundabout in both cutting and on embankment, to be known as Bickenhill Roundabout. Roundabout positioned to the west of Bickenhill, providing connections to the realigned B4438 Catherine-de-Barnes Lane (Work No.13), the realigned Catherine-de-Barnes Lane (Work No. 15), the new two lane southbound off-slip road from the mainline link road (Work No. 9) and the realigned St Peters Lane (Work No. 18).

Work No. 15 – as shown on Sheet No. 3 of the works plans and being the construction of the realigned two lane single carriageway Catherine-de-Barnes Lane (approximately 490 metres in length) in both cutting and on embankment, connecting Bickenhill Roundabout (Work No. 14) with the T Junction of Catherine-de-Barnes Lane and St Peters Lane (Work No. 16). Construction of a new field access to land severed by Work No. 7 as shown at point 3/49 on Sheet 3 of the Streets, Rights of Way and Access Plans.

Work No. 16 – as shown on Sheet No. 3 of the works plans and being the construction of realigned new two lane single carriageway realigned Catherine-de-Barnes Lane (approximately 290 metres in length) and associated footway to the junction with Clock Lane. To include the construction of a new overbridge, to be known as Catherine-de-Barnes North Overbridge, to provide a crossing of the new mainline link road (Work No. 7). Works to also include tie in works to the existing St Peters Lane access to the village of Bickenhill.

Work No. 17 – as shown on Sheet No. 3 of the works plans and being the realignment of approximately 125 metres of Shadowbrook Lane to connect with the realigned B4438 Catherine-de-Barnes Lane (Work No. 13).

Work No. 18 – as shown on Sheet No. 3 of the works plans and being the construction and realignment of approximately 50 metres of the southern section of St Peters Lane, including revised access points in order to connect to Bickenhill Roundabout (Work No. 14).

Work No. 19 – as shown on Sheet No. 4 of the works plans and being the alteration of the existing Airport Way connector road linking the A45 Westbound to Airport Way, to accommodate

the connection with the mainline link road at Work No. 10 and the closure of the dedicated free flow link from M42 Junction 6 to the Airport (Work No. 29).

Work No. 20 – as shown on Sheet No. 4 of the works plans and being improvements to the existing Clock Interchange, including the upgrade of the junction from a two to a three lane interchange, the installation of traffic signals and alterations to the on-slip and off-slip roads to accommodate the new three lane junction arrangement. Works to also include the removal of the existing footway (both approximately 85 metres in length) on the eastern and western structures of Clock Interchange.

Work No. 21 – as shown on Sheet No. 4 of the works plans and being the construction of a new free flow link (approximately 762 metres in length) from the mainline link road (Work No. 7) on both embankment and in cutting to connect to the A45 Westbound carriageway, approximately 600 metres to the west of Clock Interchange. Free flow link road to diverge from the mainline link road approximately 150 metres to the south of Clock Interchange.

Work No. 22 – as shown on Sheet No. 4 of the works plans and being the realignment of the existing single carriageway A45 Eastbound to Bickenhill Lane free flow link road (the realigned section of road to be approximately 390 metres in length, constructed on embankment and in cutting) to accommodate the realignment works to Bickenhill Lane North and South (Work Nos. 23 and 24).

Work No. 23 – as shown on Sheet No. 4 of the works plans and being the alteration of the existing Bickenhill Lane carriageway from two lanes to three lanes northbound from Clock Interchange and associated tie in works to Bickenhill Lane Roundabout.

Work No. 24 – as shown on Sheet No. 4 of the works plans and being the alteration of the existing Bickenhill Lane carriageway from three lanes to four lanes southbound from Bickenhill Lane Roundabout to connect to Clock Interchange, including tie in works at Bickenhill Lane Roundabout and the removal of the existing segregated left turn lane onto the A45 Eastbound, with all four lanes to converge to a stop line at Clock Interchange.

Work No. 25 – as shown on Sheet No. 5 of the works plans and being improvements to M42 Junction 6 Interchange and its associated on-slips and off-slips roads, including the upgrade of the M42 Northbound off-slip to four lanes from three lanes.

Work No. 26 – as shown on Sheet Nos. 4, 5 and 6 of the works plans and being the construction of a new free flow single carriageway with hard shoulder link road (approximately 1610 metres in length) on both embankment and in cutting, connecting the A45 Eastbound and M42 Northbound.

Work No. 27 – as shown on Sheet No. 5 of the works plans and being the construction of a new free flow link road (approximately 750 metres in length) with single carriageway and hard shoulder on both embankment and in cutting, connecting the M42 Southbound to the A45 Eastbound.

Work No. 28 – as shown on Sheet Nos. 5 and 6 of the works plans and being the construction of a new two lane diverge slip road (approximately 635 metres in length) on embankment and in cutting from the M42 Southbound, connecting to the relocated East Way Roundabout (Work No. 30).

Work No. 29 – as shown on Sheet No. 5 of the works plans and being the closure of the dedicated single lane free flow link from M42 Junction 6 Northbound to Airport Way.

Work No. 30 – as shown on Sheet No. 5 of the works plans and being the construction of the new East Way Roundabout, such works to include—

- (a) the removal of the existing East Way Roundabout and its associated connection from the M42 Southbound Diverge; and
- (b) the construction of a new East Way Roundabout on embankment to accommodate the new southbound diverge arrangement (Work No. 28). Works to include the realignment of, and associated tie in works for, each spur of the East Way carriageway and the private

means of access to land south of East Way. East Way Roundabout to be relocated approximately 115 metres north west of the existing East Way Roundabout and 80 metres to the east of the existing East Way Overbridge.

Work No. 31 – as shown on Sheet No. 5 of the works plans and being the alteration of Middle Bickenhill single lane one way egress to a single lane two way access and egress arrangement to maintain connectivity to Middle Bickenhill.

Work No. 32 – as shown on Sheet No. 2 of the works plans and being the installation of drainage attenuation and treatment systems to the south east of the new Junction 5A (Work No. 6) to accommodate the undertaker's assets. Works to include the removal of an existing underground storage tank, the installation of a new underground storage tank with filter media, a pump station, swales and a reed bed system to provide attenuation and treatment. A new access track will be constructed off Solihull Road to the east of the existing properties to enable access to the proposed attenuation and treatment facilities for maintenance purposes between points 2/1 and 2/2 on Sheet 2 of the Streets, Rights of Way and Access Plans.

Work No. 33 – as shown on Sheet No. 2 of the works plans and being the installation of drainage attenuation and treatment systems to the north west of the new Junction 5A (Work No. 6) to accommodate the undertaker's assets. Works to include the installation of an underground storage tank, pump station, reed bed and swale to provide attenuation and treatment. Access for maintenance to be constructed off the Public Right of Way M123 by approximately 385 metres between points 2/7 and 2/3 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans.

Work No. 34 – as shown on Sheet No. 2 of the works plans and being the installation of an attenuation system adjacent to Barber's Coppice Roundabout (Work No. 12) to accommodate Solihull Metropolitan Borough Council assets. Works to include the installation of an underground storage tank to provide attenuation and treatment and maintenance layby.

Work No. 35 – as shown on Sheet No. 3 of the works plans and being the installation of drainage attenuation and treatment systems south of Clock Interchange and adjacent to Catherine-de-Barnes North Overbridge to accommodate Solihull Metropolitan Borough Council assets. Works to include the installation of an underground storage tank and swales to provide attenuation and treatment. Access for maintenance to be provided off the T-junction of St Peters Lane and the realigned Catherine-de-Barnes Lane (Work No. 16).

Work No. 36 – as shown on Sheet No. 4 of the works plans and being the installation of drainage attenuation and treatment systems to the South West of Clock Interchange (Work No. 20) to accommodate the undertaker's assets. Works to include the installation of an underground storage tank with filter media, pump station and swales to provide attenuation and treatment.

Work No. 37 – as shown on Sheet No. 5 of the works plans and being the installation of drainage attenuation and treatment systems to the North East of Junction 6 to accommodate the undertaker's assets. Works to include the installation of a reed bed and swales to provide attenuation and treatment. Access for maintenance to be provided to the east of the proposed East Way Roundabout (Work No. 30(b)).

Work No. 38 – as shown on Sheet No. 2 of the works plans and being the construction of an accommodation bridge (approximately 30 metres in length) across the new mainline link road for the redirected public right of way (Work No.46).

Work No. 39 – as shown on Sheet No. 4 of the works plans and being the construction of a Pedestrian Overbridge (approximately 60 metres in length) across the A45.

Work No. 40 – as shown on Sheet No. 4 of the works plans and being the construction of a pedestrian underpass (approximately 20 metres in length) and an associated footway/cycleway ramp (approximately 230 metres in length in total) to the east of the pedestrian underpass, to maintain connectivity on the Airport Way connector road.

Work No. 41 – as shown on Sheet No. 2 of the works plans and being the construction of a pedestrian footpath (approximately 440 metres in length) commencing at Barber's Coppice

Roundabout (Work No. 12) and connecting to Public Rights of Way M122 and M123, approximately 75 metres east of the proposed Accommodation Bridge (Work No. 38).

Work No. 42 – as shown on Sheet No. 2 of the works plans and being the construction of a pedestrian footpath (approximately 50 metres in length) on the west of Barber’s Coppice Roundabout (Work No. 12) in order to connect the pedestrian footpath at Work No. 41 with the existing Catherine-de-Barnes footway adjacent to Birmingham Dogs Home.

Work No. 43 – as shown on Sheet No. 3 of the works plans and being the construction of a new footway/cycleway (approximately 790 metres in length) on the northbound carriageway of the realigned B4438 Catherine-de-Barnes Lane (Work No.13).

Work No. 44 – as shown on Sheet No. 4 of the work plans and being the construction of a footway/cycleway (approximately 350 metres in length) to provide a connection between the existing footway/cycleway at Clock Lane and Catherine-de-Barnes Lane and the proposed Pedestrian Underpass (Work No. 40) and Airport Way connector road (Work No.19).

Work No. 45 – as shown on Sheet No. 4 of the works plans and being the construction of a footway/cycleway (approximately 400 metres in length) adjacent to the proposed A45 Westbound carriageway free flow link road (Work No. 21) and connecting to the footway/cycleway routes at the Pedestrian Underpass (Work No. 40) and the Airport Way connector road (Work No. 19).

Work No. 46 – as shown on Sheet No. 2 of the works plans and being works to stop up the existing section of Public Right of Way M123 (approximately 120 metres in length) and redirected across the proposed Accommodation Bridge (Work No. 38).

Work No. 47 – as shown on Sheet No. 2 of the works plans and being works to stop up the existing section of Public Right of Way M122 (approximately 370 metres in length). East to west connectivity to be maintained via proposed footway to Barber’s Coppice Roundabout (Work No. 41).

Work No. 48 – as shown on Sheet No. 3 of the works plans and being works to stop up the existing section of Public Right of Way M113 (approximately 130 metres in length). Public Right of Way M113 to be reconnected to the realigned B4438 Catherine-de-Barnes Lane (Work No. 13) via the new Private Means of Access to the west of the new mainline link road (Work No. 54(b)).

Work No. 49 – as shown on Sheet No. 3 of the works plans and being works to stop up the existing Public Right of Way M113a (approximately 390 metres in length). Access to the B4438 Catherine-de-Barnes Lane to be maintained via Public Right of Way M113 and the new Private Means of Access to the west of the new mainline link road (Work No. 54(b)).

Work No. 50 – as shown on Sheet No. 3 of the works plans and being works to stop up the existing section of Public Right of Way M112 (approximately 190 metres in length). Public Right of Way M112 to be reconnected to the realigned Catherine-de-Barnes Lane (Work No. 16) via the new Private Means of Access to the west of the new mainline link road (Work No. 54(b)).

Work No. 51 – as shown on Sheet No. 3 of the works plans and being works to stop up the existing section of Public Right of Way M109 (approximately 100 metres in length). Public Right of Way M109 to be reconnected to the realigned Catherine-de-Barnes Lane (Work No. 16) via the new Private Means of Access to the west of the new mainline link road (Work No. 54(b)).

Work No. 52 – as shown on Sheet No. 3 of the works plans and being works to stop up the existing footway/cycleway situated on Catherine-de-Barnes Lane (approximately 560 metres in length).

Work No. 53 – as shown on Sheet No. 4 of the works plans and being works to realign the existing Public Right of Way M106 (approximately 386 metres in length) due to the construction of the new mainline link road (Work No. 7) and to connect to the existing Airport Way connector road (Work No. 19).

Work No. 54 – as shown on Sheet Nos. 2 and 3 of the works plans and being the construction of—

- (a) Private Means of Access to the property known as Four Winds and any associated tie in works; and
- (b) a new Private Means of Access and Public Right of Way running to the west of the new mainline link road (Work No. 7) to provide access to the Warwickshire Gaelic Athletic Association facilities (Work No. 68) and adjacent land. The Private Means of Access will be split at a point just north of the existing Warwickshire Gaelic Athletic Association facilities. The Public Right of Way will be continuous in order to mitigate any severance of Public Rights of Way M109, M112 and M113.

Work No. 55 – as shown on Sheet No. 2 of the works plans and being the diversion of a local high pressure gas main due to the construction of the slip roads to the new Junction 5A of the M42 (Works Nos. 4 and 5).

Work No. 56 – as shown on Sheet Nos. 2 and 3 of the works plans and being the diversion of a local high pressure gas main (approximately 885 metres in length) due to the construction of the new mainline link road (Work No. 7) and on-slip from Barber’s Coppice Roundabout (Work No. 8).

Work No. 57 – as shown on Sheet Nos. 4 and 5 of the works plans and being the diversion of a local high pressure gas main due to the construction of the A45 Eastbound to M42 Northbound free flow link (Work No. 26).

Work No. 58 – as shown on Sheet Nos. 4 and 5 of the works plans and being the removal or relocation of a Gas Governor situated off the North West Quadrant of Junction 6 of the M42 due to the construction of the A45 Eastbound to M42 Northbound free flow link (Work No. 26).

Work No. 59 – as shown on Sheet No. 4 of the works plans and being the diversion of a medium pressure gas main due to the construction of the new free flow link road from the new mainline link road at Work No. 7 to the A45 Westbound carriageway (Work No. 21).

Work No. 60 – as shown on Sheet No. 4 of the works plans and being the diversion of a medium pressure gas main due to the construction of the A45 Pedestrian Overbridge and its associated ramps (Work No. 39).

Work No. 61 – as shown on Sheet No. 4 of the works plans and being the diversion of a medium pressure gas main due to the construction of the A45 Eastbound to M42 Northbound free flow link (Work No. 26).

Work No. 62 – as shown on Sheet No. 2 of the works plans and being the diversion of an aqueduct pipeline running east/west to the south of the A45 corridor, due to the construction of the new mainline link road (Work No. 7), the proposed pedestrian underpass (Work No. 40) and the new single lane plus hard-shoulder northbound diverge from the new mainline link road (Work No.10), connecting to the Airport Way connector road from the A45 Westbound to Airport Way (Work No.19).

Work No. 63 – as shown on Sheet No. 4 of the works plans and being the diversion of an aqueduct pipeline running east/west to the south of the A45 corridor, due to the construction of the new mainline link road (Work No. 7), the proposed pedestrian underpass (Work No. 40) and the new single lane plus hard-shoulder Northbound diverge from the new mainline link road (Work No. 10), connecting to the Airport Way connector road from the A45 Westbound to Airport Way (Work No. 19).

Work No. 64 – as shown on Sheet Nos. 4 and 5 of the works plans and being the diversion of 132kV overground electricity cables and associated infrastructure due to the construction of the proposed A45 Eastbound to M42 Northbound free flow link road (Work No.26).

Work No. 65 – as shown on Sheet No. 4 of the works plans and being the diversion of 132kV overground electricity cables and associated infrastructure due to the construction of the proposed A45 Eastbound to M42 Northbound free flow link road (Work No. 26).

Work No. 66 – as shown on Sheet No. 2 of the works plans and being the construction of a reinforced cover slab for the existing fuel line due to the realignment of the B4438 Catherine-de-Barnes Lane (Work No. 11).

Work No. 67 – as shown on Sheet No. 5 of the works plans and being works to extend the existing culvert for the Hollywell Brook running underneath the M42 corridor north of Junction 6 to be extended approximately 8 metres to the west and 33 metres to the east respectively due to the works associated with the A45 Eastbound and the M42 Northbound free flow link road (Work No. 26) and the M42 Southbound to A45 Eastbound free flow link road (Work No.27) and the two lane diverge to the proposed East Way Roundabout (Work No. 28).

Work No. 68 – as shown on Sheet Nos. 2 and 3 of the works plans and being alterations to the existing Warwickshire Gaelic Athletic Association facilities known as Páirc na hÉireann, including the provision of reconfigured sports pitches.

Work No. 69 – as shown on Sheet Nos. 3 and 4 of the works plans and being the construction of a site compound situated on land to the south of the A45 corridor between Clock Interchange and the M42 Junction 6.

Work No. 70 – as shown on Sheet No. 2 of the works plans and being the construction of a temporary two lane single carriageway connecting Solihull Road to the new Junction 5A of the M42 (Work No. 6), to retain connectivity during demolition works to the existing Solihull Road Overbridge (Work No. 3).

Work No. 71 – as shown on Sheet No. 3 of the works plans and being the construction of a temporary two lane single carriageway to the east of the existing B4438 Catherine-de-Barnes Lane to retain connectivity during the construction of the realigned B4438 Catherine-de-Barnes Lane and associated structures (Work No. 13) including a temporary realignment of access to Shadowbrook Lane.

Work No. 72 – as shown on Sheet No. 3 of the works plans and being the construction of a temporary two lane single carriageway to the north of the proposed Catherine-de-Barnes North Overbridge (Work No. 16) to retain connectivity during the construction of the realigned Catherine-de-Barnes Lane and associated structures (Work No. 13).

Work No. 73 – as shown on Sheet Nos. 3 and 4 of the works plans and being the construction of a temporary two lane single carriageway to the east of the existing B4438 Catherine-de-Barnes Lane to enable the construction of the new mainline line road (Work No. 7) and maintain connectivity during the construction of the realigned Catherine-de-Barnes Lane and associated structures (Work No. 13).

Work No. 74 – as shown on Sheet No. 5 of the works plans and being the construction of a temporary realignment of the access to the National Exhibition Centre along South Way during the construction of the A45 Eastbound to M42 Northbound free flow link underpass (Work No. 26).

Work No.75 – as shown on Sheet No. 5 of the works plans and being the construction of a temporary realignment of the egress from the National Exhibition Centre on South Way during the construction of the A45 Eastbound to M42 Northbound free flow link underpass (Work No. 26).

Work No. 76 – as shown on Sheet No. 3 of the works plans and being the installation of a pumped system to mitigate for the loss of surface water catchment area to the Bickenhill Meadows SSSI – Shadowbrook Meadows unit. Works to feature collection drains and chambers, a pump station and a pressured pipeline to feed replacement water to an appropriate water feature in the vicinity of the SSSI.

For the purposes of or in connection with the construction of any of those works, further development within the Order limits which does not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement, consisting of—

- (a) alteration of the layout of any street permanently or temporarily, including but not limited to increasing or reducing the width of the carriageway of the street by increasing or

- reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footpath, footway, cycle track or verge; and reducing the width of the carriageway of the street;
- (b) works required for the strengthening, improvement, repair, maintenance, or reconstruction of any street;
 - (c) ramps, steps, means of access, private means of access, non-motorised user routes or links, footpaths, footways, bridleways, equestrian tracks, cycle tracks, open to all traffic, restricted byways, laybys and crossing facilities;
 - (d) embankments, cuttings, viaducts, bridges, aprons, abutments, shafts, foundations, retaining walls, drainage works, drainage treatment areas, ponds, lagoons, outfalls, ditches, pollution control devices, pumping stations, wing walls, firefighting system water tanks and associated plant and equipment, highway lighting, fencing and culverts;
 - (e) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; and tunnelling or boring under a street;
 - (f) works to place, alter, divert, relocate, protect, remove or maintain the position of apparatus (including statutory undertakers' apparatus), services, plant and other equipment in, under or above a street, or in other land, including mains, sewers, drains, pipes, lights, cables, cofferdams, fencing and other boundary treatments;
 - (g) works to alter the course of, or otherwise interfere with a watercourse;
 - (h) landscaping, re-grading, re-profiling, contouring, noise barriers, works associated with the provision of ecological and archaeological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
 - (i) works comprising settlement monitoring and mitigation measures for the benefit or protection of, or in relation to, any land, building or structure, including monitoring and safeguarding of existing infrastructure, utilities and services affected by the authorised development;
 - (j) works to place, alter, remove or maintain road furniture;
 - (k) site preparation works, site clearance (including fencing and other boundary treatments, vegetation removal, demolition of existing structures and the creation of alternative highways or footpaths); earthworks (including soil stripping and storage and site levelling);
 - (l) the felling of trees and hedgerows;
 - (m) establishment of site construction compounds and working sites, temporary structures, storage areas (including storage of excavated material and other materials), temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, office facilities, other ancillary accommodation, construction lighting, haulage roads and other buildings, machinery, apparatus, processing plant, works and conveniences;
 - (n) the provisions of other works including pavement works, kerbing and paved areas works, signing, signals, gantries, street lighting, road restraints, road markings works, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development; and
 - (o) such other works, working sites, storage areas, works of demolition or works of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the construction, operation or maintenance of the authorised development.

SCHEDULE 2 REQUIREMENTS

Article 3

PART 1 REQUIREMENTS

Interpretation

1. In this Schedule—

“Airport safeguarding zone” means land as shown on the safeguarding map issued for the purposes of the Town and Country Planning (Safeguarded Aerodromes, Technical Sites and Military Explosives Storage Areas) Direction 2002 and certified by the Civil Aviation Authority as the safeguarding map for Birmingham Airport;

“Birmingham Airport” means the civil aerodrome authorised to operate under certificate reference UK: EGBB – 001;

“Birmingham Airport Limited” means Company No. 02078273 of Diamond House, Birmingham Airport, Birmingham B26 3QJ;

“CEMP” means the construction environmental management plan;

“contaminated land” has the same meaning as that given in section 78A of the Environmental Protection Act 1990(a);

“Ecological Clerk of Works” has the meaning given in the OEMP;

“European protected species” has the same meaning as in regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017(b);

“HEMP” means the handover environmental management plan;

“the Manual of Contract Documents for Highway Works” means the document of that name published electronically by the strategic highway authorities for England, Scotland, Wales and Northern Ireland, or any equivalent replacement published for that document;

“nationally protected species” means any species protected under the Wildlife and Countryside Act 1981(c);

“OEMP” means the outline environmental management plan referred to in Schedule 13 (documents to be certified) certified by the Secretary of State as the outline environmental management plan for the purposes of this Order; and

“REAC” means the register of environmental actions and commitments set out in section 3 of the OEMP.

Time limits

2. The authorised development must commence no later than the expiration of 5 years beginning with the date that this Order comes into force.

(a) 1990 c. 43. Section 78A was inserted by section 57 of the Environment Act 1995 (c. 25) and amended by section 86(2) of the Water Act 2003 c. 37.

(b) S.I. 2017/1012.

(c) 1981 c. 69.

Detailed design

3.—(1) The authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the general arrangement plans, works plans and the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority and local highway authority on matters related to their functions and provided that the Secretary of State is satisfied that any amendments to the general arrangement plans, works plans and the engineering drawings and sections showing departures from the preliminary scheme design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) The Secretary of State must not approve any amended details under sub-paragraph (1) that exceed the maximum vertical limits of deviation shown on the works plans and on the engineering drawings and sections within the Airport safeguarding zone, unless the Secretary of State, following consultation with Birmingham Airport Limited, is satisfied that a deviation in excess of those limits would not adversely affect the safety of aircraft taking off or landing at, or flying in the vicinity of, Birmingham Airport or result in significant operational limitations being imposed on Birmingham Airport.

(3) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding works plans or engineering section drawings and the undertaker must make those amended details available in electronic form for inspection by members of the public.

Outline Environmental Management Plan

4.—(1) The authorised development must be carried out in accordance with the OEMP.

(2) The undertaker must make the CEMP and the HEMP produced in accordance with the OEMP available in an electronic form suitable for inspection by members of the public.

(3) The CEMP must be written in accordance with ISO14001 and must—

- (a) reflect the mitigation measures set out in the REAC;
- (b) contain a record of all sensitive environmental features that have the potential to be affected by the construction of the proposed development;
- (c) require adherence to any working hours set out in the REAC or, where no such hours are set, to working hours of 07:00–18:00 on Mondays to Fridays and 08:00–13:00 on Saturday except for—
 - (i) night-time closures for bridge and gantry demolition and installation;
 - (ii) night-time lifting operations;
 - (iii) site clearance of vegetation adjacent to live carriageways;
 - (iv) site clearance of signs, street furniture and lighting column adjacent to live carriageways;
 - (v) any oversize deliveries or deliveries where daytime working would be excessively disruptive to normal traffic operation;
 - (vi) junction and highway tie-in works;
 - (vii) installation of temporary and permanent line markings;
 - (viii) installation of detector loops within the M42 carriageway;
 - (ix) removal of overhead power lines;
 - (x) overnight traffic management measures;
 - (xi) any emergency works;
 - (xii) work associated with the diversion of existing utilities;
 - (xiii) works associated with traffic management and signal changes; and
 - (xiv) as otherwise agreed by the local authority in advance;

- (d) include the following management plans—
 - (i) Dust, Noise and Nuisance Management Plan;
 - (ii) Site Waste Management Plan;
 - (iii) Environmental Control Plan: Invasive Species;
 - (iv) Environmental Control Plan: General Ecology;
 - (v) Soil Management Plan;
 - (vi) Surface Water Management Plan;
 - (vii) Control Of Substances Hazardous to Health, Material, Waste Storage and Refuelling Plan;
 - (viii) Energy and Resource Use Management Plan;
 - (ix) Materials Management Plan;
 - (x) Contaminated Land Management Plan;
 - (xi) Archaeological Control Plan;
 - (xii) Pollution Prevention Plan;
 - (xiii) Bird Strike Management Plan;
 - (xiv) Crane Management Plan;
 - (xv) Biodiversity Management Plan; and
 - (xvi) Compound Management Plan.

(4) No part of the authorised development is to commence until a CEMP, substantially in accordance with the OEMP, has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority, Birmingham Airport Limited or Natural England to the extent that it relates to matters relevant to its function.

(5) The construction of the authorised development must be carried out in accordance with the approved CEMP.

(6) A HEMP must be developed and completed by the end of construction, commissioning and handover stage of the authorised development, in accordance with the process set out in the approved CEMP.

(7) The HEMP must address the matters set out in the approved CEMP that are relevant to the operation and maintenance of the authorised development, and must contain—

- (a) the environmental information needed for the future maintenance and operation of the authorised development;
- (b) the long-term commitments to aftercare, monitoring and maintenance activities relating to the environmental features and mitigation measures that will be required to ensure the continued long-term effectiveness of the environmental mitigation measures and the prevention of unexpected environmental impacts during the operation of the authorised development; and
- (c) a record of the consents, commitments and permissions resulting from liaison with statutory bodies.

(8) The authorised development must be operated and maintained in accordance with the HEMP.

Landscaping

5.—(1) No part of the authorised development is to commence until a landscaping scheme applicable to that part has been submitted to and approved in writing by the Secretary of State, following consultation with—

- (a) the relevant planning authority on matters related to its functions; and

(b) where that part of the authorised development is comprised in the Airport safeguarding zone, Birmingham Airport Limited on matters relevant to the safety of aircraft taking off or landing, or flying in the vicinity of, Birmingham Airport.

(2) The landscaping scheme must reflect the mitigation measures set out in the REAC and must be based on the proposed landscape planting strategy (figure 8.3) and the illustrative environmental masterplan (figure 8.8) annexed to the environmental statement (application document TR010027/APP/6.1).

(3) The landscaping scheme prepared under sub-paragraph (1) must include details of—

- (a) location, number, species mix, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) existing trees to be retained, with measures for their protection during the construction period;
- (d) proposed finished ground levels; and
- (e) implementation timetables for all landscaping works.

(4) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards.

(5) Any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the Secretary of State, following consultation with the relevant planning authority on matters related to its function, gives consent to a variation.

Contaminated land and groundwater

6.—(1) In the event that contaminated land, including groundwater, is found at any time when carrying out the authorised development which was not previously identified in the environmental statement, it must be reported as soon as reasonably practicable to the Secretary of State, the relevant planning authority and the Environment Agency, and the undertaker must complete a risk assessment of the contamination in consultation with the relevant planning authority and the Environment Agency.

(2) Where the undertaker determines that remediation of the contaminated land is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function and the Environment Agency.

(3) Remediation must be carried out in accordance with the approved scheme.

Protected species

7.—(1) In the event that any protected species which were not previously identified in the environmental statement or nesting birds are found at any time when carrying out the authorised development the undertaker must cease the relevant parts of the relevant works and report it immediately to the Ecological Clerk of Works (ECoW).

(2) The relevant parts of the relevant works must not recommence until a scheme of protection and mitigation measures (including their design and management) has been submitted to and approved in writing by the Secretary of State after consultation with Natural England.

(3) The written scheme must provide for the implementation of appropriate measures to avoid harm to breeding birds and their nests under the supervision of the ECoW.

(4) The undertaker must implement the written scheme prepared under sub-paragraph (2) immediately and construction in the area specified in the written scheme must not recommence until any necessary licences are obtained to enable mitigation measures to be implemented.

Surface and foul water drainage

8.—(1) No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, reflecting the mitigation measures set out in the REAC and drainage strategy report including means of pollution control, have been submitted and approved in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its function.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details, unless otherwise agreed in writing by the Secretary of State following consultation with—

- (a) the relevant planning authority on matters related to its function; and
- (b) where the part of the authorised development to which the approved details relate is within the Airport safeguarding zone, Birmingham Airport Limited.

(3) The Secretary of State may only agree to amendments to the approved details under sub-paragraph (2) if the Secretary of State is satisfied that—

- (a) the amendments would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement; or
- (b) in a case where Birmingham Airport Limited has been consulted under sub-paragraph (2)(b), the amendments would not adversely affect the safety of aircraft taking off or landing at, or flying in the vicinity of, Birmingham Airport.

Archaeological remains

9.—(1) No part of the authorised development is to commence until for that part a written scheme for the investigation of areas of potential archaeological interest has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.

(2) The authorised development must be carried out in accordance with the scheme referred to in sub-paragraph (1).

Traffic management

10.—(1) No part of the authorised development is to commence until a traffic management plan for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function and the Royal Mail.

(2) The authorised development must be constructed in accordance with the traffic management plan referred to in sub-paragraph (1).

Amendments to approved details

11. With respect to any requirement which requires the authorised development to be carried out in accordance with the details or schemes approved under this Schedule, the approved details or schemes are taken to include any amendments that may subsequently be approved in writing by the Secretary of State.

Fencing

12. Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with the Manual of Contract Documents for Highway Works except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development.

Bickenhill Meadows SSSI

13.—(1) No part of the authorised development that affects Bickenhill Meadows SSSI is to commence until a detailed Bickenhill Meadows SSSI Monitoring Management Plan has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and Natural England on matters related to its function.

(2) The detailed Bickenhill Meadows SSSI Monitoring Management Plan must set out—

- (a) the requirements for the overarching biological and hydrological monitoring programme,
- (b) details of the establishment and role of the SSSI Monitoring Steering Group, and
- (c) details of trigger points and action measures which must be taken in the event that the trigger points are met or exceeded.

(3) Monitoring of Bickenhill Meadows SSSI must be carried out in accordance with the detailed Bickenhill Meadows SSSI Monitoring Management Plan.

(4) Work No. 76 in Schedule 1 (authorised development) shall only be carried out if it has been determined, in accordance with the Bickenhill Meadows SSSI Monitoring Management Plan, that the passive solution to mitigate the loss of surface water catchment area has failed.

Altering the priority of the Catherine-de-Barnes Lane and St Peter’s Lane junction

14.—(1) Notwithstanding the details shown on any Certified Plan listed in Schedule 13 of this Order, no part of the realignment of Catherine-de-Barnes Lane is to commence until a scheme for the northern junction of St Peter’s Lane and Catherine-de-Barnes Lane has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.

(2) Unless otherwise agreed in writing by the Secretary of State, the scheme must change the vehicular junction priority from St Peter’s Lane to the realigned section of Catherine-de-Barnes Lane.

(3) The authorised development must be carried out in accordance with the scheme referred to in sub-paragraph (1).

Relocation of Work No. 35 underground storage tank and access

15.—(1) Notwithstanding the details shown on any Certified Plan listed in Schedule 13 of this Order, no part of the realignment of Catherine-de-Barnes Lane is to commence until an amended scheme for the underground storage tank and associated access (Work No.35) is submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function and the occupiers of those properties affected by the change.

(2) Unless otherwise agreed in writing by the Secretary of State, the amended scheme must provide for the relocation of the underground storage tank and access from the northern to the southern side of St Peter’s Lane.

(3) The authorised development must be carried out in accordance with the scheme referred to in sub-paragraph (1).

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

16.—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement (including consent, agreement or approval in

respect of part of a requirement) included in this Order the Secretary of State must give notice to the undertaker of the decision on the application within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the Secretary of State;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 14 (further information); or
- (c) such longer period as may be agreed between the parties.

(2) Subject to sub-paragraph (3), in the event that the Secretary of State does not determine an application within the period set out in sub-paragraph (1), the Secretary of State is taken to have granted all parts of the application (without any condition or qualification at the end of that period).

(3) Where—

- (a) an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement included in this Order;
- (b) the Secretary of State does not determine such application within the period set out in sub-paragraph (1); and
- (c) the application is accompanied by a report from a body required to be consulted under the requirement that considers it likely that the subject matter of the application would give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement,

the application is taken to have been refused by the Secretary of State at the end of that period.

Further information

17.—(1) In relation to any part of an application made under this Schedule, the Secretary of State has the right to request such further information from the undertaker as is necessary to enable the Secretary of State to consider the application.

(2) In the event that the Secretary of State considers such further information to be necessary the Secretary of State must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the Secretary of State does not give such notification within that 21 business day period the Secretary of State is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 13 (applications made under requirements) and in this paragraph.

(4) In this paragraph, “business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971.

Register of requirements

18.—(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in an electronic form suitable for inspection by members of the public a register of those requirements contained in Part 1 of this Schedule that provide for further approvals to be given by the Secretary of State.

(2) The register must set out in relation to each such requirement the status of the requirement, in terms of whether any approval to be given by the Secretary of State has been applied for or given, providing an electronic link to any document containing any approved details.

(3) The register must be maintained by the undertaker for a period of 3 years following completion of the authorised development.

Anticipatory steps towards compliance with any requirement

19. If before the coming into force of this Order the undertaker or any other person has taken any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

SCHEDULE 3

Article 12

STREETS SUBJECT TO STREET WORKS

(1) <i>Authority</i>	(2) <i>Street subject to street works</i>
Solihull Metropolitan Borough Council	A45 Coventry Road (Eastbound)
Solihull Metropolitan Borough Council	A45 Coventry Road (Westbound)
Solihull Metropolitan Borough Council	B4102 Solihull Road
Solihull Metropolitan Borough Council	B4438 Catherine-de-Barnes Lane
Solihull Metropolitan Borough Council	Friday Lane
Solihull Metropolitan Borough Council	B4102 Hampton Lane
Solihull Metropolitan Borough Council	Unnamed Road (Access for Four Winds/Birmingham Dogs Home/Solihull Music School)
Solihull Metropolitan Borough Council	Shadowbrook Lane
Solihull Metropolitan Borough Council	St Peters Lane
Solihull Metropolitan Borough Council	Clock Lane
Solihull Metropolitan Borough Council	Clock Interchange
Solihull Metropolitan Borough Council	B4438 Bickenhill Lane
Solihull Metropolitan Borough Council	Airport Way connector road
Solihull Metropolitan Borough Council	Unnamed Road (A45 Eastbound to Bickenhill Lane free flow link)
Solihull Metropolitan Borough Council	Entrance to Arden Hotel off the A45 Eastbound
Solihull Metropolitan Borough Council	M42 Junction 6 Interchange / Bickenhill Interchange
Solihull Metropolitan Borough Council	East Way
Solihull Metropolitan Borough Council	South Way
Solihull Metropolitan Borough Council	Middle Bickenhill Lane
Solihull Metropolitan Borough Council	Proposed new M42 Junction 5A Northbound off slip
Solihull Metropolitan Borough Council	Proposed new M42 Junction 5A Southbound on slip
Solihull Metropolitan Borough Council	Proposed new Junction 5A eastern roundabout
Solihull Metropolitan Borough Council	Proposed new Junction 5A Overbridge
Solihull Metropolitan Borough Council	Proposed new Junction 5A western roundabout
Solihull Metropolitan Borough Council	Proposed new Mainline Link Road
Solihull Metropolitan Borough Council	Realigned B4438 Catherine-de-Barnes Lane
Solihull Metropolitan Borough Council	Realigned Catherine-de-Barnes Lane
Solihull Metropolitan Borough Council	Proposed new Barber's Coppice roundabout
Solihull Metropolitan Borough Council	Proposed on slip to Mainline Link Road from Barber's Coppice Roundabout
Solihull Metropolitan Borough Council	Proposed new Bickenhill roundabout
Solihull Metropolitan Borough Council	Proposed off slip from Mainline Link Road to Bickenhill roundabout
Solihull Metropolitan Borough Council	Proposed new road from Mainline Link Road to Airport Way connector road
Solihull Metropolitan Borough Council	Proposed new free flow link from Mainline Link Road to A45 Westbound
Solihull Metropolitan Borough Council	Proposed new free flow link from A45 Eastbound to M42 Northbound
Solihull Metropolitan Borough Council	Proposed new free flow link from M42 Southbound to A45 Eastbound
Solihull Metropolitan Borough Council	Proposed new off slip from M42 Southbound to new

<i>(1)</i> <i>Authority</i>	<i>(2)</i> <i>Street subject to street works</i>
	East Way roundabout
Solihull Metropolitan Borough Council	Proposed new East Way roundabout
Solihull Metropolitan Borough Council	Proposed new local access road from Barber's Coppice roundabout

SCHEDULE 4

Article 15

CLASSIFICATION OF ROADS, ETC.

PART 1

SPECIAL ROADS

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
M42 Northbound	Between point 1/1 on Sheet 1 and point 7/1 on Sheet 7 of the classification of road plans.
M42 Southbound	Between point 7/2 on Sheet 7 and point 1/2 on Sheet 1 of the classification of road plans.
M42 Northbound off slip Junction 5A	Between points 2/1 and 2/6 on Sheet 2 of the classification of road plans.
M42 Southbound on slip Junction 5A	Between points 2/4 and 2/2 on Sheet 2 of the classification of road plans.
M42 Northbound off slip Junction 6	Between point 3/15 on Sheet 3 and point 5/2 on Sheet 5 of the classification of road plans.
M42 Northbound on slip Junction 6	Between points 5/19 and 5/21 on Sheet 5 of the classification of road plans.
M42 Southbound on slip Junction 6	Between point 5/3 on Sheet 5 and point 3/14 on Sheet 3 of the classification of road plans.
M42 Southbound off slip Junction 6	Between point 6/2 on Sheet 6 and point 5/14 on Sheet 5 of the classification of road plans.
A45 Eastbound to M42 Northbound Free Flow Link	Between point 5/1 on Sheet 5 and point 6/3 on Sheet 6 on the classification of road plans.
M42 Southbound off slip to proposed East Way Roundabout	Between point 6/1 on Sheet 6 and point 5/20 on Sheet 5 of the classification of road plans.
M42 Southbound off slip to A45 Eastbound on slip	Between points 5/15 and 5/13 on Sheet 5 of the classification of road plans.

PART 2

TRUNK ROADS

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
New Southern Junction 5A East Roundabout	Entire circulatory carriageway at point 2/8 on Sheet 2 of the classification of road plans.
New Southern Junction 5A West Roundabout	Entire circulatory carriageway at point 2/10 on Sheet 2 of the classification of road plans.
New Southern Junction 5A Overbridge	Overbridge at point 2/9 on Sheet 2 of the classification of road plans, providing a connection between points 2/8 and 2/10 on Sheet 2 of the classification of road plans.
New mainline link road Northbound	Between point 2/7 on Sheet 2 and point 4/2 on Sheet 4 of the classification of road plans.

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
New mainline link road Southbound	Between point 4/3 on Sheet 4 and point 2/11 on Sheet 2 of the classification of road plans.
New mainline link road Northbound on slip off Barber's Coppice Roundabout	Between point 2/12 on Sheet 2 and point 3/1 on Sheet 3 of the classification of road plans.
New mainline link road Southbound off slip to Bickenhill Roundabout	Between points 3/10 and 3/8 on Sheet 3 of the classification of road plans.
New mainline link road Northbound off slip to Airport Way connector road	Between point 3/13 on Sheet 3 and point 4/26 on Sheet 4 of the classification of road plans.
M42 Junction 6 Interchange	Entire circulatory carriageway at point 5/4 on Sheet 5 of the classification of road plans.
A45 Eastbound	Between points 5/12 and 5/9 on Sheet 5 of the classification of road plans.
A45 Westbound	Between points 5/8 and 5/6 on Sheet 5 of the classification of road plans.
A45 Westbound off slip M42 Junction 6	Between points 5/7 and 5/5 on Sheet 5 of the classification of road plans.
A45 Eastbound on slip M42 Junction 6	Between points 5/23 and 5/24 on Sheet 5 of the classification of road plans.
Coventry Road	Between points 5/25 and 5/5 on Sheet 5 of the classification of road plans.

PART 3 CLASSIFIED ROADS

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
B4102 Solihull Road	Between points 2/3 and 2/5 on Sheet 2 of the classification of road plans.
Barber's Coppice Roundabout	Entire roundabout at point 2/14 on Sheet 2 of the classification of road plans.
B4438 Catherine-de-Barnes Lane	Between points 2/15 and 2/13 on Sheet 2 of the classification of road plans.
B4438 Catherine-de-Barnes Lane	Between point 2/16 on Sheet 2 and point 3/4 on Sheet 3 of the classification of road plans.
Bickenhill Roundabout	Entire roundabout at point 3/9 on Sheet 3 of the classification of road plans.
Clock Interchange	Entire interchange at point 4/8 on Sheet 4 of the classification of road plans.
A45 Westbound	Between point 5/6 on Sheet 5 and point 4/24 on Sheet 4 of the classification of road plans.
B4102 Solihull Road	Between points 2/17 and 2/18 on Sheet 2 of the classification of road plans.
Friday Lane	Between points 2/24 and 2/25 on Sheet 2 of the classification of road plans.
B4102 Hampton Lane	Between points 2/23 and 2/22 on Sheet 2 of the classification of road plans.
B4438 Catherine-de-Barnes Lane	Between points 2/21 and 2/20 on Sheet 2 of the classification of road plans.
Catherine-de-Barnes Roundabout	Entire roundabout at point 2/19 on Sheet 2 of

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
	the classification of road plans.
Bickenhill Lane Roundabout	Entire roundabout at point 4/12 on Sheet 4 of the classification of road plans.
Bickenhill Lane Southbound	Between points 4/11 and 4/10 on Sheet 4 of the classification of road plans.
Bickenhill Lane Northbound	Between points 4/15 and 4/13 on Sheet 4 of the classification of road plans.
A45 Eastbound	Between point 4/22 on Sheet 4 and point 5/12 on Sheet 5 of the classification of road plans.
New mainline link road Northbound off slip to A45 Westbound Free Flow Link	Between points 4/1 and 4/23 on Sheet 4 of the classification of road plans.
A45 Westbound on slip	Between points 4/2 and 4/25 on Sheet 4 of the classification of road plans.
A45 Westbound off slip	Between points 4/5 and 4/6 on Sheet 4 of the classification of road plans.
A45 Eastbound on slip	Between points 4/9 and 4/7 on Sheet 4 of the classification of road plans.
A45 Eastbound off slip	Between points 4/18 and 4/16 on Sheet 4 of the classification of road plans.
A45 Eastbound free flow link to Bickenhill Lane	Between points 4/17 and 4/14 on Sheet 4 of the classification of road plans.
A45 Eastbound off slip	Between point 4/28 on Sheet 4 and point 5/22 on Sheet 5 of the classification of road plans
A45 Westbound on slip	Between point 5/2 on Sheet 4 and point 4/29 on Sheet 5 of the classification of road plans.

PART 4
UNCLASSIFIED ROADS

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
Shadowbrook Lane	Between points 3/2 and 3/3 on Sheet 3 of the classification of road plans.
St Peters Lane (South)	Between points 3/6 and 3/5 on Sheet 3 of the classification of road plans.
St Peters Lane (North)	Between points 3/11 and 3/16 on Sheet 3 of the classification of road plans.
Catherine-de-Barnes Lane	Between point 3/16 on Sheet 3 and point 4/27 on Sheet 4 of the classification of road plans.
A45 Westbound off slip	Between points 4/4 and 4/21 on Sheet 4 of the classification of road plans.
A45 Eastbound on slip	Between points 4/20 and 4/19 on Sheet 4 of the classification of road plans.
Middle Bickenhill Lane	Between points 5/10 and 5/11 on Sheet 5 of the classification of road plans.
East Way	Between points 5/16 and 5/17 on Sheet 5 of the classification of road plans.
Access to Birmingham Dog's Home, Four Winds and Solihull Music School off Barber's	Between points 2/27 and 2/28 on Sheet 2 of the classification of road plans.

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
Coppice Roundabout	
East Way Roundabout	Entire roundabout at point 5/18 shown on Sheet 5 of the classification of road plans.
Catherine-de-Barnes Lane	Between points 3/7 and 3/12 on Sheet 3 of the classification of road plans.
Access off B4102 Solihull road	At point 2/29 on Sheet 3 of the classification of road plans for access to two residential properties known as Woodside and Mayfield.

PART 5 SPEED LIMITS

<i>(1)</i> <i>Road name, number and length</i>	<i>(2)</i> <i>Speed limit</i>
Proposed eastbound and westbound lanes of Solihull road, south of proposed M42 Junction 5A, comprising a length of 675 metres, shown as a dashed cyan line on Sheet 2 of the Traffic Regulation Measures, Speed Limits Plans.	50 miles per hour
Proposed east and west dumb-bell roundabouts (including connector road between roundabouts) for the proposed Junction 5A on the M42, comprising a length of 655 metres, shown as a dashed blue line on Sheet 2 of the Traffic Regulation Measures, Speed Limits Plans.	70 miles per hour
Proposed northbound dual carriageway mainline link road, comprising a length of 2400 metres, shown as a dashed blue line on Sheets 2, 3 and 4 of the Traffic Regulation Measures, Speed Limits Plans.	70 miles per hour
Proposed southbound dual carriageway mainline link road, comprising a length of 2400 metres, shown as a dashed blue line on Sheets 2, 3 and 4 of the Traffic Regulation Measures, Speed Limits Plans.	70 miles per hour
Part of the proposed northbound merge from Barber's Coppice roundabout to the northbound mainline link road up to the back of nosing, comprising a length of 355 metres, shown as a dashed green line on Sheet 2 of the Traffic Regulation Measures, Speed Limits Plans.	40 miles per hour
Part of the proposed northbound merge from the back of the nosing of the northbound mainline link road to the end of the merge, comprising a length of 335 metres, shown as a dashed blue line on Sheets 2 and 3 of the Traffic Regulation Measures, Speed Limits Plans.	70 miles per hour
Proposed Barber's Coppice roundabout, comprising a length of 190 metres, shown as a	40 miles per hour

<i>(1)</i> <i>Road name, number and length</i>	<i>(2)</i> <i>Speed limit</i>
dashed green line on Sheet 2 of the Traffic Regulation Measures, Speed Limits Plans.	
Proposed northbound and southbound lanes of realigned B4438 Catherine-de-Barnes Lane, south west of Barber's Coppice roundabout, comprising a length of 240 metres, shown as a dashed cyan line on Sheet 2 of the Traffic Regulation Measures, Speed Limits Plans.	50 miles per hour
Proposed east and westbound lanes and north and southbound lanes of the unclassified road, west and north west of Barber's Coppice roundabout, comprising a length of 150 metres, shown as dashed brown lines on Sheets 2 and 3 of the Traffic Regulation Measures, Speed Limits Plans.	30 miles per hour
Proposed northbound and southbound lanes of the realigned B4438 Catherine-de-Barnes Lane, north of Barber's Coppice roundabout and south of Bickenhill roundabout, comprising a length of 765 metres, shown as dashed green lines on Sheets 2 and 3 of the Traffic Regulation Measures, Speed Limits Plans.	40 miles per hour
Proposed eastbound and westbound lanes of the proposed Shadowbrook Lane comprising a length of 125 metres, shown as a dashed green line on Sheet 3 of the Traffic Regulation Measures, Speed Limits Plans.	40 miles per hour
Proposed Bickenhill roundabout, comprising a length of 140 metres, shown as a dashed brown line on Sheet 3 of the Traffic Regulation Measures, Speed Limits Plans.	30 miles per hour
Proposed eastbound and westbound lanes of St Peters Lane, east of Bickenhill roundabout, comprising a length of 50 metres, shown as a dashed brown line on Sheet 3 of the Traffic Regulation Measures, Speed Limits Plans.	30 miles per hour
Proposed southbound diverge from the southbound dual carriageway mainline link road to Bickenhill roundabout, comprising a length of 510 metres, shown as a dashed blue line on Sheet 3 of the Traffic Regulation Measures, Speed Limits Plans.	70 miles per hour
Proposed northbound and southbound lanes of the realigned Catherine-de-Barnes Lane, north of Bickenhill roundabout up to the junction with St Peters Lane north, comprising a length of 495 metres, shown as a dashed brown line on Sheet 3 of the Traffic Regulation Measures, Speed Limits Plans.	30 miles per hour
Proposed east and westbound lanes of St Peters Lane and north and southbound lanes of the Realigned Catherine-de-Barnes Lane, comprising a length of 290 metres, shown as dashed brown lines on Sheets 3 and 4 of the	30 miles per hour

<i>(1)</i> <i>Road name, number and length</i>	<i>(2)</i> <i>Speed limit</i>
Traffic Regulation Measures, Speed Limits Plans.	
Part of the proposed free flow link from the mainline link road to the Airport Way connector road, comprising a length of 490 metres, shown as dashed blue lines on Sheets 3 and 4 of the Traffic Regulation Measures, Speed Limits Plans.	70 miles per hour
Part of the proposed free flow link from the mainline link road to the Airport Way connector road, comprising a length of 150 metres, shown as a dashed green line on Sheet 4 of the Traffic Regulation Measures, Speed Limits Plans.	40 miles per hour
Part of the proposed segregated left turn lane from northbound mainline link to A45 westbound, comprising a length of 145 metres, shown as a dashed blue line on Sheet 4 of the Traffic Regulation Measures, Speed Limits Plans.	70 miles per hour
Part of the proposed segregated left turn lane from northbound mainline link to A45 westbound, comprising a length of 620 metres, shown as a dashed cyan line on Sheet 4 of the Traffic Regulation Measures, Speed Limits Plans.	50 miles per hour
Proposed A45 eastbound free flow link to Bickenhill Lane westbound, comprising a length of 390 metres, shown as a dashed green line on Sheet 4 of the Traffic Regulation Measures, Speed Limits Plans.	40 miles per hour
Realigned Bickenhill Lane northbound, comprising a length of 230 metres, shown as a dashed green line on Sheet 4 of the Traffic Regulation Measures, Speed Limits Plans.	40 miles per hour
Realigned Bickenhill Lane southbound, comprising a length of 230 metres, shown as a dashed green line on Sheet 4 of the Traffic Regulation Measures, Speed Limits Plans.	40 miles per hour
Proposed A45 eastbound to M42 northbound free flow link diverge up to the tip of the nosing along the M42 Junction 6 northbound on slip, comprising a length of 670 metres, shown as a dashed cyan line on Sheets 4 and 5 of the Traffic Regulation Measures, Speed Limits Plans.	50 miles per hour
Part of the proposed M42 southbound to A45 eastbound free flow link (merge), east of Junction 6, comprising a length of 465 metres, shown as a dashed black line on Sheet 5 of the Traffic Regulation Measures, Speed Limits Plans.	60 miles per hour
Proposed East Way Roundabout, including the eastern approaches/departures from the	30 miles per hour

<i>(1)</i> <i>Road name, number and length</i>	<i>(2)</i> <i>Speed limit</i>
roundabout, comprising a length of 320 metres, shown as a dashed brown line on Sheet 5 of the Traffic Regulation Measures, Speed Limits Plans.	
A realigned section of the Middle Bickenhill Lane from the proposed T-junction on the East Way to the Middle Bickenhill Lane, comprising a length of 135 metres, shown as a dashed brown line on Sheet 5 of the Traffic Regulation Measures, Speed Limits Plans.	30 miles per hour

PART 6

PUBLIC RIGHTS OF WAY

<i>(1)</i> <i>Public right of way</i>	<i>(2)</i> <i>Extent</i>
Public footpath	Between points 4/3 and 4/10 shown on Sheet 4 of the Streets, Rights of Way and Access Plans.
Footway/cycleway	Between points 4/10, 4/11 and 4/13 shown on Sheet 4 of the Streets, Rights of Way and Access Plans.
Public Right of Way and footway	Between points 3/16 and 3/21 and footway between points 3/19, 3/17 and 3/15 shown on the Streets, Rights of Way and Access Plans.
Public Right of Way and footway	Between points 3/14 and 3/21 and footway between points 3/19, 3/17 and 3/13 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Public Right of Way and footway/cycleway	Between points 3/5 and 3/20 and footway/cycleway between points 3/20 and 3/34 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Public Right of Way	Between points 3/2, 3/3 and 3/5 shown on Sheet 3 of the Streets, Right of Way and Access Plans.
Public Right of Way, footway and footway/cycleway	Between points 2/16 and 2/12 (footway/cycleway), between points 2/11 and 2/10, between points 2/5 and 2/6 (footway), between 2/10 and 2/5 (footway), between 2/5 and 2/6 (footway/cycleway) shown on Sheet 2 of the Streets, Rights of Way and Access Plans.
Footpath, footway/cycleway	Between points 2/4, 2/5 and 2/6 shown on Sheet 2 of the Streets, Rights of Way and Access Plans.
Footway/cycleway	Between points 2/12 and 3/3, between points 3/3 and 3/20, between points 3/20 and 3/7, between points 3/7 and 3/6, between points 3/6 and 3/8 and between points 3/9, 3/10 and 3/11 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.

<i>(1)</i> <i>Public right of way</i>	<i>(2)</i> <i>Extent</i>
Footway	Between points 3/11 and 3/17, 3/19 and 3/21 and 3/23 and 3/25 shown on Sheets 3 and 4 of the Streets, Rights of Way and Access Plans.
Footway/cycleway	Between points 4/6, 4/26 and 4/8 shown on Sheet 4 of the Streets, Rights of Way and Access Plans.
Footway/cycleway	Between points 4/4, 4/5 and 4/26 shown on Sheet 4 of the Streets, Rights of Way and Access Plans.
Footway	Between points 5/7 and 5/8 shown on Sheet 5 of the Streets, Rights of Way and Access Plans.

SCHEDULE 5

Article 16

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Street to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>
B4102 Solihull Road	Between points A16 and A17 shown on Sheet 2 of the Streets, Rights of Way and Access Plans.

SCHEDULE 6

Article 17

PERMANENT STOPPING UP OF STREETS, PUBLIC RIGHTS OF WAY AND PRIVATE MEANS OF ACCESS

PART 1

STREETS TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Street to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New street to be substituted or provided</i>
B4438 Catherine-de-Barnes Lane	Existing section of public road, to be stopped up between points A/1 and A/2 and between points A/3 and A/4 shown on Sheets 2 and 3 of the Streets, Rights of Way and Access Plans.	Realigned B4438 Catherine-de-Barnes Lane between points A/5 and A/6, between points A/7 and A/8 and between points A/8 and A/9 shown on Sheets 2 and 3 of the Streets, Rights of Way and Access Plans.
Shadowbrook Lane	Existing section of public road, to be stopped up between points A/10 and A/11 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	Shadowbrook Lane between points A/12 and A/13 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
St Peters Lane Northern Junction	Existing section of public road, to be stopped up between points A/4 and A/14 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	Realigned Catherine-de-Barnes Lane and St Peters Lane Northern Junction between points A/9 and A/15 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
M42 Junction 6 slip to East Way	Existing section of public road, to be stopped up between points A/23 and A/24 and between points A/25 and A/26 shown on Sheet 5 of the Streets, Rights of Way and Access Plans.	East Way between points A/27 and A/28 and M42 Junction 6 slip to East way between points A/29 and A/30 shown on Sheets 5 and 6 of the Streets, Rights of Way and Access Plans.

PART 2

STREETS TO BE STOPPED UP AND FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Streets to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>
B4438 Catherine-de-Barnes Lane to Clock Interchange	Existing section of public road, to be stopped up between points A/18 and A/19 shown on Sheet 4 of the Streets, Rights of Way and Access Plans.
M42 Junction 6 slip to Middle Bickenhill Lane	Existing section of public road, to be stopped up between points A/20 and A/21 shown on Sheet 5 of the Streets, Rights of Way and Access Plans.

PART 3

PUBLIC RIGHTS OF WAY TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Public right of way to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New public right of way to be substituted or provided</i>
Public Right of Way M106 North of Bickenhill	Public Right of Way M106 to be stopped up between points 4/3 and 4/22 shown on Sheet 4 of the Streets, Rights of Way and Access Plans.	Public Right of Way to be realigned via points 4/3 and 4/10 shown on Sheet 4 of the Streets, Rights of Way and Access Plans.
Public Right of Way at Clock Interchange	Public Right of Way to be stopped up between points 4/22 and 4/14 on the eastern side of Clock Interchange and between points 4/24 and 4/25 on the western side of Clock Interchange shown on Sheet 4 of the Streets, Rights of Way and Access Plans.	Public Right of Way to be provided via points 4/3 and 4/10, with a new Public Right of Way to be provided via 4/11 and 4/13 to go to point 4/14 shown on Sheet 4 of the Streets, Rights of Way and Access Plans.
Public Right of Way M109 West of the existing B4438 Catherine-de-Barnes Lane	Public Right of Way M109 to be stopped up between points 3/16 and 3/15 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	Public Right of Way to be realigned via points 3/16, 3/21, 3/19, 3/17 and 3/15 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Public Right of Way M112 West of the exiting B4438 Catherine-de-Barnes Lane	Public Right of Way M112 to be stopped up between points 3/14 and 3/13 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	Public Right of Way to be realigned via points 3/14, 3/21, 3/19, 3/17 and 3/13 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Public Right of Way M113 West of the existing B4438 Catherine-de-Barnes Lane	Public Right of Way M113 to be stopped up between points 3/5 and 3/34 shown on Sheet 3	Public Right of Way to be realigned via points 3/5, 3/20 and 3/34 shown on Sheet 3 of

<i>(1)</i> <i>Public right of way to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New public right of way to be substituted or provided</i>
	of the Streets, Rights of Way and Access Plans.	the Streets, Rights of Way and Access Plans.
Public Right of Way M113a West of the existing B4438 Catherine-de-Barnes Lane	Public Right of Way M113a to be stopped up in its entirety between points 3/2 and 3/4 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	Public Right of Way to be provided via points 3/2, 3/5 and 3/4 shown on Sheet 3 of the Streets, Right of Way and Access Plans.
Public Right of Way M122 East of the existing B4438 Catherine-de-Barnes Lane	Public Right of Way M122 to be stopped up between points 2/16 and 2/6 shown on Sheet 2 of the Streets, Rights of Way and Access Plans.	Public right of way to be aligned via points 2/16, 2/12, 2/11, 2/10, 2/5 and to 2/6 shown on Sheet 2 of the Streets, Rights of Way and Access Plans.
Public Right of Way M123 north east of Catherine-de-Barnes	Existing section of Public Right of Way M123 to be stopped up between points 2/4 and 2/6 shown on Sheet 2 of the Streets, Rights of Way and Access Plans.	A new pedestrian footpath is provided between points 2/4, 2/5 and 2/6 shown on Sheet 2 of the Streets, Rights of Way and Access Plans.
Public Right of Way along the existing B4438 Catherine-de-Barnes Lane	Public Right of Way along the length of the existing B4438 Catherine-de-Barnes Lane between points 2/15 and 3/1 shown on Sheets 2 and 3 of the Streets, Rights of Way and Access Plans to be stopped up.	A new public right of way to be provided via points 2/12 and 3/3 shown on Sheets 2 and 3 of the Streets, Rights of Way and Access Plans.
Public Right of Way adjacent to Catherine-de-Barnes Lane (B4438)	Existing section of public right of way to be stopped up between points 3/11 and 3/25 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	A new public right of way is provided between points 3/11 and 3/17, 3/19 and 3/21 and 3/23 and 3/25 shown on Sheets 3 and 4 of the Streets, Rights of Way and Access Plans.
St Peters Lane north	Existing section of the public right of way between 3/18 and 3/24 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	A new public right of way is provided between points 3/18 and 3/17, 3/19 and 3/21 and 3/23 and 3/25 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Public Right of Way along Airport Way connector road	Existing section of public right of way, to be stopped up between points 4/6 and 4/8 and between points 4/7 and 4/8 shown on Sheet 4 of the Streets, Rights of Way and Access Plans.	A new public right of way is provided between points 4/6, 4/26 and 4/8 shown on Sheet 4 of the Streets, Rights of Way and Access Plans.
Public Right of Way west of Clock Interchange	Existing section of public footway, to be stopped up between points 4/4 and 4/9 shown on Sheet 4 of the Streets, Rights of Way and Access Plans.	East west connectivity between the A45 Coventry road and Airport way connector road to be provided between points 4/4, 4/5, 4/26, 4/8 and 4/9 shown on Sheet 4 of the Streets, Rights of Way

<i>(1)</i> <i>Public right of way to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New public right of way to be substituted or provided</i>
		and Access Plans.
Public Right of Way east of M42 Junction 6	Existing section of public Right of Way to be stopped up between points 5/7 and 5/8 shown on Sheet 5 of the Streets, Rights of Way and Access Plans.	A new Public Right of Way provided between points 5/7 and 5/8 shown on Sheet 5 of the Streets, Rights of Way and Access Plans.

PART 4

PUBLIC RIGHTS OF WAY TO BE STOPPED UP AND FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Public right of way to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>
Public Right of Way west and north west of M42 Junction 6	Existing section of public footway, to be stopped up between points 4/12 and 5/1 shown on Sheets 4 and 5 of the Streets, Rights of Way and Access Plans.
Public Right of Way east of M42 Junction 6	Existing section of public footway, to be stopped up between points 5/4 and 5/2, and between points 5/2 and 5/6 shown on Sheet 5 of the Streets, Rights of Way and Access Plans.

PART 5

PRIVATE MEANS OF ACCESS TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Private means of access to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New private means of access to be substituted or provided</i>
Field Access (gate) off the existing B4438 Catherine-de-Barnes Lane providing access to land South of the residential property 'Heath End House'.	Field Access to be stopped up at point 3/56 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	Access to this field to be maintained by relocated access at 3/57 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Private Means of Access (gate) to land associated with the Warwickshire Gaelic Athletic Association facility off the existing B4438 of Catherine-de-Barnes Lane.	Private Means of Access to Warwickshire Gaelic Athletic Association facility to be stopped up at point 3/29 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	Access to the Warwickshire Gaelic Athletic Association facility to be maintained via Private Means of Access points 3/54 and 3/35 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Field Access (gate) off the existing B4438 Catherine-de-Barnes Lane for land South of the Airport Way connector	Field Access gate at point 4/19 to be stopped up shown on Sheet 4 of the Streets, Rights of Way and Access Plans.	Access to the land to be provided via point 3/20 on Sheet 3 of the Streets, Rights of Way and Access Plans.

<i>(1)</i> <i>Private means of access to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New private means of access to be substituted or provided</i>
road and East of the New Link road.		
Field Access (gate) off Solihull Road providing access to scheduled ancient woodland.	Field Access at point 2/18 to be stopped up shown on Sheet 2 of the Streets, Rights of Way and Access Plans.	A new Field Access is to be provided at point 2/19 shown on Sheet 2 of the Streets, Rights of Way and Access Plans.
Field Access (gate) off the existing B4438 Catherine-de-Barnes Lane providing access to the East of Birmingham Dogs Home.	Field Access at point 2/20 to be stopped up shown on Sheet 2 of the Streets, Rights of Way and Access Plans.	A new Field Access is to be provided at point 2/21 shown on Sheet 2 of the Streets, Rights of Way and Access Plans.
Field Access (gate) off the existing B4438 Catherine-de-Barnes Lane providing access to land East off the residential property 'Four Winds'.	Field Access at point 2/16 to be stopped up shown on Sheet 2 of the Streets, Rights of Way and Access Plans.	A new Field Access is to be provided at point 3/57 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Field Access (gate) off the existing B4438 Catherine-de-Barnes Lane providing access to land to the south of the Warwickshire Gaelic Athletic Association facility.	Field Access off B4438 Catherine-de-Barnes at point 3/39 to be stopped up shown on Sheet 3 of the Streets, Right of Way and Access Plans.	Access to existing field gate is to be provided at point 3/59 off realigned Catherine-de-Barnes Lane shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Private Means of Access (No.1) off the existing B4438 Catherine-de-Barnes Lane to the Warwickshire Gaelic Athletic Association facility.	Private Means of Access off B4438 Catherine-de-Barnes at point 3/54 to be stopped up shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	A new Private Means of Access is to be provided at point 3/54 from new Private Means of Access 3/1 off realigned Catherine-de-Barnes Lane shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Private Means of Access (No.2) off the existing B4438 Catherine-de-Barnes Lane to the Warwickshire Gaelic Athletic Association facility.	Private Means of Access off B4438 Catherine-de-Barnes at point 3/34 to be stopped up shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	A new Private Means of Access is to be provided at point 3/35 from new Private Means of Access 3/1 off Catherine-de-Barnes Lane shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Field Access (gate) (No.2) off the existing B4438 Catherine-de-Barnes Lane providing access to land opposite Bracey's Garden Centre to the west of Catherine-de-Barnes Lane.	Field Access at point 3/40 to be stopped up shown on Sheet 3 of the Streets, Right of Way and Access Plans.	A new Field Access is to be provided at point 3/41 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Field access (gate) off the existing B4438 Catherine-de-Barnes Lane providing access to land West of Bickenhill Roundabout.	Field Access at point 3/45 to be stopped up shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	A new Field Access is to be provided at point 3/46 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Field Access off the existing B4438 Catherine-de-Barnes	Field Access at point 3/47 to be stopped up shown on Sheet	A new Field Access is to be provided at point 3/48 shown

<i>(1)</i> <i>Private means of access to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New private means of access to be substituted or provided</i>
Lane, south of Haven Caravan Park, providing access to land adjacent to the Bickenhill Meadows SSSI First Castle Meadow unit.	3 of the Streets, Rights of Way and Access Plans.	on Sheet 3 of the Streets, Rights of Way and Access Plans and a new Field Access for the existing landowner to be provided at point 3.37 for essential mitigation.
Field Access (gate) off the existing B4438 Catherine-de-Barnes Lane 10m south of the access into the Haven Caravan Park to land previously used by Birmingham Exiles Rugby Union Football Club.	Private Means of Access at point 3/51 to be stopped up shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	A new Field Access is to be provided off new Private Means of Access at point 3/52 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Private Means of Access off the existing B4438 Catherine-de-Barnes Lane providing access to 'The Haven Caravan Park'.	Private Means of Access at point 3/55 to be stopped up shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	A new Private Means of Access is to be provided at point 3/22 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Field Access (gate) off St Peters Lane providing access to land South of Clock Interchange and East of the mainline link road.	Field Access at point 3/53 to be stopped up shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	A new Field Access to land is to be provided at point 3/20 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Field Access (gate) off the A45 Coventry road to the East of the Arden Hotel.	Field Access at point 4/20 to be stopped up shown on Sheet 4 of the Streets, Rights of Way and Access Plans.	A new Field Access is to be provided at point 4/21 shown on Sheet 4 of the Streets, Rights of Way and Access Plans.

PART 6

PRIVATE MEANS OF ACCESS TO BE STOPPED UP AND FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Private means of access to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>
Private Means of Access off the existing B4438 Catherine-de-Barnes Lane to the residential property 'Heath End House'.	Private Means of Access to Heath End House to be stopped up at point 3/28 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Private Means of Access (gate) off Shadowbrook Lane to the residential property 'Heath End House'.	Private Means of Access to Heath End House to be stopped up at point 3/31 shown on Sheet 3 of the Streets, Rights of Way and Access Plans. Access to land to be maintained via existing Private Means of Access at point 3/32 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Private Means of Access off the A45 to Cadent Gas local gas Governor.	Private Means of Access to Cadent Gas local gas Governor to be stopped up at point 5/13 shown on Sheet 5 of the Streets, Rights of Way and Access Plans. This is based on current

<i>(1)</i> <i>Private means of access to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>
	assumption that the gas Governor can be decommissioned and no new access is required.
Private Means of Access off the M42 Junction 6 slip road to Middle Bickenhill Lane.	Private Means of Access off M42 Junction 6 slip road to Middle Bickenhill Lane at point 5/16 to be stopped up shown on Sheet 5 of the Streets, Rights of Way and Access Plans. Access to this commercial property to be maintained via existing Private Means of Access points 5/17 and 5/18 shown on Sheet 5 of the Streets, Rights of Way and Access Plans.
Field Access (gate) (No. 1) off the existing B4438 Catherine-de-Barnes Lane providing access to land opposite Bracey's Garden Centre to the west of Catherine-de-Barnes Lane.	Field Access at point 3/36 to be stopped up shown on Sheet 3 of the Streets, Right of Way and Access Plans.

PART 7

ALTERATIONS TO PRIVATE MEANS OF ACCESS

<i>(1)</i> <i>Private means of access to be altered</i>	<i>(2)</i> <i>Extent of alteration</i>
Private Means of Access (gate) off the existing B4438 Catherine-de-Barnes Lane providing access to the residential property 'Four Winds'.	Private Means of Access at point 3/58 to be stopped up shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Field Access (gate) off the existing B4438 Catherine-de-Barnes Lane for access to the north of the residential property 'Four Winds'.	Field Access off B4438 Catherine-de-Barnes Lane at point 3/2 to be stopped up shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Private Means of Access to residential property 'Four Winds'.	Private Means of Access to be stopped up at point 2/13 on Sheet 2 of the Streets, Rights of Way and Access Plans.
Private Means of Access off Shadowbrook Lane to residential property 'Oak Tree Lodge'.	Private Means of Access at point 3/30 to be altered to suit the realignment of Shadowbrook Lane shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Private Means of Access off the existing B4438 Catherine-de-Barnes Lane to the residential property 'The Dale'.	Private Means of Access at point 3/33 to be altered to suit the realignment of the B4438 Catherine-de-Barnes Lane shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Private Means of Access off the existing B4438 Catherine-de-Barnes Lane to Bracey's Nursery Garden Centre.	Private Means of Access at point 3/26 to be altered to suit the realignment of the B4438 Catherine-de-Barnes Lane shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Private Means of Access off St Peters Lane to Bracey's Nursery Garden Centre.	Private Means of Access at point 3/42 to be altered to suit the realignment of St Peters Lane shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Field Access (gate) off St Peters Lane to land East of Bracey's Nursery Garden Centre.	Field Access at point 3/43 to be altered to suit the realignment of St Peters Lane shown on Sheet 3 of the Streets, Rights of Way and Access Plans.

<i>(1)</i> <i>Private means of access to be altered</i>	<i>(2)</i> <i>Extent of alteration</i>
Private Means of Access off St Peters Lane to the residential property 'Providence Cottage'.	Private Means of Access at point 3/44 to be altered to suit the realignment of St Peters Lane shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Field Access (gate) off the existing B4438 Catherine-de-Barnes identified at point 3/50 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	Field Access off Catherine-de-Barnes Lane at point 3/50 to be altered to suit the realignment of the Catherine-de-Barnes Lane shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Field Access to land between the Airport Way connector road and the A45 westbound slip road from Clock Interchange.	Field Access at point 4/17 to be realigned to point 4/18 due to the introduction of new free flow link from the new mainline link road to the A45 westbound shown on Sheet 4 of the Streets, Rights of Way and Access Plans.
Private Means of Access (gate) providing access to land on the North East Quadrant of the M42 Junction 6 South of East Way.	Private Means of Access at point 5/14 off East Way to be altered to suit a connection to the proposed East Way Roundabout shown on Sheet 5 of the Streets, Rights of Way and Access Plans.
Private Means of Access (gate) to land East of Middle Bickenhill Lane and North of the A45 Coventry road.	Private Means of Access at point 5/15 off Middle Bickenhill Lane to be altered to suit the Middle Bickenhill Lane being converted to two way traffic flow shown on Sheet 5 of the Streets, Rights of Way and Access Plans.
Private Means of Access (gate) to land north of Birmingham Dogs' Home.	Private Means of Access to be altered between points 2/15 and 3/4 shown on Sheets 2 and 3 of the Streets, Rights of Way and Access Plans.

SCHEDULE 7

Article 19

CLEARWAYS, PROHIBITIONS AND RESTRICTIONS

PART 1

TRAFFIC REGULATION MEASURES (CLEARWAYS AND PROHIBITIONS)

<i>(1)</i> <i>Road name, number and length</i>	<i>(2)</i> <i>Measures</i>
Proposed east and west dumbbell roundabouts (including connector road between roundabouts) for the proposed Junction 5A on the M42, comprising a length of 655 metres, shown as a dashed blue line on Sheet 2 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	Red Route Clearway (to include verges and hard strips)
Proposed northbound dual carriageway mainline link road, comprising a length of 2400 metres, shown as a dashed blue line on Sheet 2, 3 and 4 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	Red Route Clearway (to include verges and hard strips)
Proposed southbound dual carriageway mainline link road, comprising a length of 2400 metres shown as a dashed blue line on Sheet 2, 3 and 4 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	Red Route Clearway (to include verges and hard strips)
Proposed northbound merge from Barber’s Coppice roundabout to the northbound mainline link road, comprising a length of 690 metres, shown as a dashed blue line on Sheets 2 and 3 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	Red Route Clearway (to include verges and hard strips)
Proposed southbound diverge from the southbound dual carriageway mainline link road to Bickenhill roundabout, comprising a length of 510 metres, shown as a dashed blue line on Sheet 3 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	Red Route Clearway (to include verges and hard strips)
The proposed Free Flow Link from the northbound dual carriageway mainline link road to the Airport Way connector road, comprising a length of 640 metres, shown as a dashed blue line on Sheet 3 and 4 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	Red Route Clearway (to include verges and hard strips)
Part of proposed segregated left turn lane to A45 Westbound, comprising a length of 180 metres, shown as a dashed blue line on Sheet 4 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	Red Route Clearway (to include verges and hard strips)
Part of proposed segregated left turn lane to A45 Westbound, comprising a length of 585	Red Route Clearway (to include verges and hard strips)

<i>(1)</i> <i>Road name, number and length</i>	<i>(2)</i> <i>Measures</i>
metres, shown as a dashed magenta line on Sheet 4 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	
Proposed A45 eastbound Free Flow Link to Bickenhill Lane westbound, comprising a length of 390 metres, shown as a dashed orange line on Sheet 4 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	Red Route
Realigned Bickenhill Lane northbound, comprising a length of 230 metres shown as a dashed orange line on Sheet 4 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	Red Route
Realigned Bickenhill Lane southbound, comprising a length of 230 metres shown as a dashed orange line on Sheet 4 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	Red Route
A45 Eastbound to M42 northbound Free Flow Link, comprising a length of 210 metres, shown as a dashed magenta line on Sheets 4 and 5 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	Red Route Clearway (to include verges and hard strips)
Junction 5A Western Roundabout.	Prohibition of entry from the western Roundabout of Junction 5A (Work No. 6) to the northbound diverge off the M42 (Work No. 4), as shown on Sheet 2 of the Traffic Regulation Measures (Clearways & Weight Limits) Plans
Bickenhill Roundabout	Prohibition of entry from Bickenhill Roundabout (Work No. 14) to the southbound diverge off the mainline link road (Work No. 7), as shown on Sheet 3 of the Traffic Regulation Measures (Clearways & Weight Limits) Plans
M42 Northbound to A45 Westbound	Prohibition of entry onto the free flow link from the M42 northbound to the A45 Westbound, as shown on Sheet 5 of Traffic Regulation Measures (Clearways & Weight Limits) Plans
East Way Roundabout	Prohibition of entry from the relocated East Way Roundabout (Work No. 30(b)) to the southbound diverge off M42 (Work No. 28), as shown on Sheet 5 of Traffic Regulation Measures (Clearways & Weight Limits) Plans

PART 2

TRAFFIC REGULATION MEASURES (WEIGHT RESTRICTIONS)

<i>(1)</i> <i>Road name, number and length</i>	<i>(2)</i> <i>Measures</i>
Eastern Link from Bickenhill roundabout to the existing St Peters Lane south, comprising a length of 50 metres, shown as a dashed green line on Sheet 3 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	7.5 tonne weight restriction (except for access)
A section of St Peter's Lane east of Catherine-de-Barnes Lane north Overbridge, comprising a length of 55m, shown as a dashed green line on Sheet 3 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	7.5 tonne weight restriction (except for access)

SCHEDULE 8

Article 27(2)

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

(1) <i>Plot Reference Number shown on Land Plans</i>	(2) <i>Purpose for which rights over land may be acquired</i>
Land Plans – Sheet 2	
2/2c, 2/3c	To construct, operate, access and maintain a diversion to an existing local high pressure gas main (Work No. 55).
2/3o, 2/10c, 2/29, 2/30	To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with Work No. 3).
2/3u, 2/3ah	To construct, operate, access and maintain diversion to an existing local high pressure gas main (Work No. 56) and an existing aqueduct pipeline (Work No. 62). To construct, operate, access and maintain a reinforced cover slab for an existing fuel pipeline (Work No. 66) and to maintain access to the pipeline.
2/3aa	To access land to be used for the construction, operation and maintenance of drainage attenuation and treatment systems (Work No. 33). To construct, operate, access and maintain diversions to an existing local high pressure gas main (Work No. 56) and an existing aqueduct pipeline (Work No. 62).
Land Plans – Sheet 3	
3/4b	To access land to be used for the construction, operation and maintenance of drainage attenuation and treatment systems (Work No. 33). To construct, operate, access and maintain diversions to an existing local high pressure gas main (Work No. 56) and an existing aqueduct pipeline (Work No. 62).
3/4f	To access land to be used for the construction, operation and maintenance of drainage attenuation and treatment systems (Work No. 33).
3/22a, 3/22b	To access land to be used in connection with the provision, maintenance and retention of mitigation within Bickenhill Meadows SSSI - Shadowbrook Meadows unit (Work No.76).
3/23, 3/73d, 3/73f	To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with the authorised development).
3/25	To access land to be used for the provision, maintenance and retention of mitigation in connection with Bickenhill Meadows site of special scientific interest (works associated with the authorised development). To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with the authorised development).
3/87a	To construct, operate, access and maintain diversions to an existing local high pressure gas main (Work No. 57) and existing electric lines, cables, equipment and apparatus (Works Nos. 64 and 65).

<i>(1)</i> <i>Plot Reference Number shown on Land Plans</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>
Land Plans – Sheet 4	
4/1c, 4/1bf, 4/3b, 4/3c, 4/3s, 4/3x, 4/3ai, 4/3aj, 4/6n, 4/6p, 4/9, 4/10, 4/158, 4/159	To construct, operate, access and maintain a diversion to an existing medium pressure gas main (Work No. 59). To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with the authorised development).
4/1d, 4/25a	To access land to be used for the construction, maintenance and retention of environmental mitigation at the existing Clock Interchange (works associated with Work No. 20).
4/1f	To access to and over land to be used for the construction, operation and maintenance of a realignment to the existing single carriageway A45 Eastbound to Bickenhill Lane free flow link road (Work No. 22). To take access to and over land to be used for the construction, operation and maintenance of alterations to the existing Bickenhill Lane carriageway (Works Nos. 23 and 24). To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with the authorised development).
4/1g	To take access to and over land to be used for the construction, operation and maintenance of improvements to the existing Clock Interchange (Work No. 20). To take access to and over land to be used for the construction, operation and maintenance of a realignment to the existing single carriageway A45 Eastbound to Bickenhill Lane free flow link road (Work No. 22). To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with the authorised development).
4/1h, 4/1m, 4/1q, 4/1s, 4/1t, 4/1u, 4/1v, 4/1w, 4/1x, 4/1am, 4/1ap, 4/1as, 4/1bb, 4/3e, 4/3f, 4/3g, 4/3h, 4/3j, 4/3k, 4/3m, 4/3ab, 4/3ae, 4/4g, 4/4n, 4/4v, 4/4x, 4/6b, 4/6e, 4/6f, 4/6g, 4/6h, 4/7a, 4/11a, 4/25b, 4/25d, 4/25e, 4/25g, 4/25i, , 4/25l, 4/25m, 4/25s, 4/62, 4/66, 4/69, 4/71, 4/73, 4/76, 4/80, 4/89, 4/91, 4/93, 4/94, 4/99, 4/102, 4/106, 4/109, 4/147, 4/150, 4/151, 4/152, 4/153, 4/155	To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with the authorised development).
4/1k	To construct, operate, access and maintain a diversion to an existing medium pressure gas main (Work No. 60).
4/25o, 4/25j, 4/25p, 4/25n	To access land to be used for the construction, operation and maintenance of a pedestrian overbridge (Work No. 39 and the installation of a new gantry (Work No. 2)).
4/1n, 4/1r, 4/82	To access land to be used for the construction, operation and maintenance of a pedestrian overbridge (Work No. 39). To construct, operate, access and maintain a diversion to an existing medium pressure gas main (Work No. 60). To construct, operate, access and maintain diversions to

<i>(1)</i> <i>Plot Reference Number shown on Land Plans</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>
	existing utilities apparatus and equipment (works associated with the authorised development).
4/lz	To take access to and over land to be used for the construction, operation and maintenance of improvements to the existing Clock Interchange (Work No. 20). To take access to and over land to be used for the construction, operation and maintenance of a realignment to the existing single carriageway A45 Eastbound to Bickenhill Lane free flow link road (Work No. 22).
4/1ab, 4/1ac	To take access to and over land to be used for the construction, operation and maintenance of a realignment to the existing single carriageway A45 Eastbound to Bickenhill Lane free flow link road (Work No. 22).
4/1aq, 4/1bc	To construct, operate, access and maintain a realignment to a private means of access due to the construction of a new free flow link road at Work No. 21 (works associated with the authorised development).
4/1az, 4/1ba	To construct, operate, access and maintain a diversion to an existing aqueduct pipeline (Work No. 63).
4/2a, 4/3af	To construct, operate, access and maintain diversions to an existing local high pressure gas main (Work No. 57) and existing electric lines, cables, equipment and apparatus (Works Nos. 64 and 65).
4/3d	To take access to and over land to be used for the construction, maintenance and retention of environmental mitigation at the existing Clock Interchange (works associated with Work No. 20). To take access to and over land to be used for the construction, operation and maintenance of a realignment to the existing single carriageway A45 Eastbound to Bickenhill Lane free flow link road (Work No. 22). To take access to and over land to be used for the construction, operation and maintenance of alterations to the existing Bickenhill Lane carriageway (Works Nos. 23 and 24). To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with the authorised development).
4/3i, 4/3l	To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with Works Nos. 2 and 20).
4/3o, 4/3p	To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with Work No. 2).
4/3y	To access land to be used for the construction, maintenance and retention of environmental mitigation at the existing Clock Interchange (works associated with Work No. 20). To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with Work No. 21).
4/3ah, 4/4k, 4/4u, 4/4w, 4/25q, 4/25u, 4/149, 4/160	To construct, operate, access and maintain a diversion to an existing aqueduct pipeline (Work No. 63). To construct, operate, access and maintain diversions to

<i>(1)</i> <i>Plot Reference Number shown on Land Plans</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>
	existing utilities apparatus and equipment (works associated with the authorised development).
4/6a, 4/156	To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with Work No. 21). To construct, operate, access and maintain a diversion to an existing medium pressure gas main (Work No. 59). To construct, operate, access and maintain a diversion to an existing aqueduct pipeline (Work No. 63). To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with the authorised development).
4/6d	To access land to be used for the construction, operation and maintenance of a pedestrian overbridge (Work No. 39). To construct, operate, access and maintain a diversion to an existing medium pressure gas main (Work No. 60). To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (Works Nos. 56, 64 and 65).
4/25f	To construct, operate, access and maintain a gantry forming part of Work No. 2a To construct, operate, access and maintain diversions to an existing local high pressure gas main (Work No. 57) and existing electric lines, cables, equipment and apparatus (Works Nos. 64 and 65).
4/59	To construct, operate, access and maintain a realignment to a private means of access due to the construction of a new free flow link road at Work No. 21 (works associated with the authorised development). To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with authorised development).
Land Plans – Sheet 5	
5/1b, 5/29h,	To construct, operate, access and maintain diversions to an existing local high pressure gas main (Work No. 57) and existing electric lines, cables, equipment and apparatus (Works Nos. 64 and 65).
5/29c, 5/2h and 5/29u	Required for access to and construction of a new free flow single carriageway (Work No.26). To construct, operate, access and maintain diversions to an existing local high pressure gas main (Work No. 57) and existing electric lines, cables, equipment and apparatus (Works Nos. 64 and 65).
5/7	To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with the authorised development).

**MODIFICATION OF COMPENSATION AND COMPULSORY
PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS
AND IMPOSITION OF RESTRICTIVE COVENANTS**

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply in respect of compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 9 to the M42 Junction 6 Development Consent Order 202[] (“the 202[] Order”));
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 9 to the 202[] Order) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”.

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

Application of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 29 (modifications of Part 1 of the 1965 Act)) to the acquisition of land under article 24 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 27 (compulsory acquisition of rights and restrictive covenants)—

- (a) with the modifications specified in paragraph 5; and

(a) 1973 c. 26.

(b) with such other modifications as may be necessary.

5.—(1) The modification referred to in paragraph 4(a) are as follows.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restrictive covenant imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restrictive covenant is or is to be enforceable.

(3) For section 7 (measure of compensation) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the restrictive covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 24), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(b) (powers of entry; further notices of entry), 11B(c) (counter-notice requiring possession to be taken on specified date), 12(d) (penalty for unauthorised entry) and 13(e) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) Section 20(f) (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

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- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No.1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.
 - (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
 - (c) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016 (c. 22).
 - (d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
 - (e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
 - (f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 29(4) is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A of the 1965 Act substitute—

“SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 30 (application of the 1981 Act) of the M42 Junction 6 Development Consent Order 202[](a) in respect of the land to which the notice to treat relates.

(2) But see article 31(3) (acquisition of subsoil and airspace only) of the M42 Junction 6 Development Consent Order 202[] which excludes the acquisition of subsoil or airspace only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The acquiring authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the acquiring authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

8. If the acquiring authority does not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

(a) S.I. 201[]/[].

9. If the acquiring authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the proposed use of the right or covenant, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 10

Article 33

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) <i>Plot reference Number shown on Land Plans</i>	(2) <i>Purpose for which temporary possession may be taken</i>	(3) <i>Relevant part of the authorised development</i>
Land Plans – Sheet 2		
2/3z, 2/58a, 2/58b, 2/59	Required for provision of a temporary construction compound.	Works Nos. 3 ,6 and 70
2/52	Temporary possession associated with the Solihull Road Overbridge and temporary alignments to ensure Solihull road remains open.	Work Nos. 3 and 70
2/2a	Required for the provision of temporary access to facilitate the construction works	Work Nos. 1 and 5
2/2c	Required for construction of a diversion to an existing local high pressure gas main; and to provide temporary access to land associated with the provision of environmental mitigation.	Work No. 55
2/3a	Required for construction of a new M42 off slip road and the demolition of an existing sheet pile wall.	Work No. 4
2/3c	Required for storage of earthworks and for the construction of a diversion to an existing local high pressure gas main.	Works Nos. 3 and 55
2/3d	Required for construction of a new M42 off slip road and the demolition of an existing sheet pile wall and to provide temporary access to land associated with environmental mitigation.	Work No. 4
2/3g, 2/3h, 2/3i, 2/3j, 2/3p, 2/3r, 2/22	Required to provide temporary access to land associated with the provision of environmental mitigation.	Work Nos. 3, 4 and 5
2/3o, 2/10c, 2/29, 2/30	Required for construction of diversions to existing utilities apparatus and equipment.	Work No. 3
2/3u, 2/3ah	Required for construction of diversions to an existing local high pressure gas main and an existing aqueduct pipeline; and for construction of a reinforced cover slab for an existing fuel pipeline.	Works Nos. 56, 62 and 66
2/3w	Required for construction of a temporary two lane single carriageway; and for the stockpiling of construction materials.	Work No. 70
2/3aa	Required for access to drainage attenuation and treatment systems; for construction of diversions to an existing local high pressure gas main and an existing aqueduct pipeline; and for the stockpiling of construction materials.	Works No. 33, 56 and 62
2/3ab	Required for construction of a temporary merge onto the M42 for construction	All Works

<i>(1)</i> <i>Plot reference Number</i> <i>shown on Land Plans</i>	<i>(2)</i> <i>Purpose for which temporary possession</i> <i>may be taken</i>	<i>(3)</i> <i>Relevant part of the</i> <i>authorised development</i>
	vehicles; and for the stockpiling of construction materials.	
2/10a, 2/10b, 2/11	Required for lining and signing works.	All Works
2/62a	Required for construction of realigned B4438 Catherine- de- Barnes Lane.	Work No. 11
2/65	Required for construction of a temporary southbound diverge for construction traffic.	All Works
2/76a	Required for temporary access to land associated with alteration works to the existing Warwickshire Gaelic Athletic Association facilities.	Work No. 68
Land Plans – Sheet 3		
3/3d, 3/51a, 3/57, 3/58a	Required for the stockpiling of construction materials.	All Works
3/4b	Required for access to drainage attenuation and treatment systems; for construction of diversions to an existing local high pressure gas main and an existing aqueduct pipeline; and for the stockpiling of construction materials.	Works No. 33, 56 and 62
3/4f	Required for access to drainage attenuation and treatment systems; and for the stockpiling of construction materials.	Work No. 33
3/15a, 3/15c,3/15e	Required for temporary access to land associated with alteration works to the existing Warwickshire Gaelic Athletic Association facilities.	Work No. 68
3/22a, 3/22b	To access land to be used in connection with the provision, maintenance and retention of mitigation within Bickenhill Meadows SSSI – Shadowbrook Meadows unit	Work No. 76
3/32b, 3/32c	To access land in connection with the monitoring of the Bickenhill Meadows SSSI – Shadowbrook Meadows unit.	All Works
3/23, 3/73f	Required for construction of diversions to existing utilities apparatus and equipment.	All Works
3/73d	Required for construction of diversions to existing utilities apparatus and equipment. Required for the provision of a temporary construction compound.	Work No. 69 All Works
3/25	Required for access to land associated with the provision of environmental mitigation within the Bickenhill Meadows SSSI – Shadowbrook Meadows unit. For construction of diversions to existing utilities apparatus and equipment.	Work No.76 All Works
3/30	Required for access to construct a diversion to a private means of access.	Work No.17
3/87a, 3/87b	Required for access and construction of diversions to an existing local high pressure gas main and existing electric lines, cables,	Works Nos. 57, 64 and 65

(1) <i>Plot reference Number shown on Land Plans</i>	(2) <i>Purpose for which temporary possession may be taken</i>	(3) <i>Relevant part of the authorised development</i>
equipment and apparatus.		
Land Plans – Sheet 4		
4/1a, 4/1i, 4/1ad, 4/1af, 4/1ag, 4/1ah, 4/1ai, 4/1ak, 4/1al, 4/3r, 4/146	Required for signage installation.	All Works
4/1c, 4/1bf, 4/3b, 4/3c, 4/3ai, 4/3aj, 4/3s, 4/3x, 4/6n, 4/6p, 4/10	Required for construction of a new free flow link road; and for the construction of a footway/cycleway; and for the construction of a diversion to an existing medium pressure gas main; and for construction of diversions to existing utilities apparatus and equipment.	Works Nos. 21, 45 and 59
4/1d	Required for construction of improvements to the existing Clock Interchange; and for access to environmental mitigation to be constructed, maintained and retained at the existing Clock Interchange.	Work No. 20
4/1f	Required for construction of a realignment to the existing single carriageway A45 Eastbound to Bickenhill Lane free flow link road; and for alterations to the existing Bickenhill Lane carriageway; and for construction of diversions to existing utilities apparatus and equipment.	Works Nos. 22, 23 and 24
4/1g	Required for access to and over land to be used for construction of improvements to the existing Clock Interchange; and for access to and over land to be used for the construction of a realignment to the existing single carriageway A45 Eastbound to Bickenhill Lane free flow link road; and for construction of diversions to existing utilities apparatus and equipment.	Works Nos. 20 and 22
4/1h, 4/3ab	Required for access to construct a new free flow link road; and for construction of a diversion to an existing medium pressure gas main; and for construction of diversions to existing utilities apparatus and equipment.	Works Nos. 2, 21 and 59
4/1k	Required for the realignment of Public Right of Way M106; and for access and construction of a diversion to an existing medium pressure gas main.	Works Nos. 53 and 60
4/1m, 4/1s, 4/1x, 4/1ap, 4/1bb, 4/3f, 4/3g, 4/62, 4/71, 4/147	Required for lining and signing works; and for construction of diversions to existing utilities apparatus and equipment.	Works No. 19
4/1n	Required for lining and signing works; and for access and construction of a diversion to a medium pressure gas main; and for construction of diversions to existing utilities apparatus and equipment.	Works Nos. 19 and 60
4/1p, 4/25c	Required for access to monitor existing	Work No.20

<i>(1)</i> <i>Plot reference Number shown on Land Plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
	drainage attenuation features.	
4/1q, 4/3h, 4/3k, 4/3m	Required for access to and over land to be used for construction of improvements to the existing Clock Interchange; and for construction of diversions to existing utilities apparatus and equipment.	Work No. 20
4/1r	Required for access to construct a pedestrian overbridge; and for construction of a diversion to a medium pressure gas main.	Works Nos. 39 and 60
4/1t, 4/1u	Required for signage installation and the construction of diversions to existing utilities apparatus and equipment.	Work No.2
4/1v, 4/1am, 4/3j, 4/3ae, 4/4n, 4/4v, 4/4x, 4/25b, 4/25d, 4/25s, 4/73, 4/76, 4/151, 4/152, 4/153	Required for access and construction of diversions to existing utilities apparatus and equipment.	All Works
4/1w, 4/3e; 4/3o, 4/3p, 4/6e, 4/6f, 4/6g, 4/6h, 4/25e, 4/25g, 4/25l, 4/25n, 4/66, 4/89, 4/91, 4/93, 4/94, 4/99, 4/102, 4/106, 4/109, 4/150, 4/155	Required for lining and signing works; and for access and construction of diversions to existing utilities apparatus and equipment.	Work No. 2
4/1z	Required for access to and over land to be used for construction of improvements to the existing Clock Interchange; and for access to and over land to be used for the construction of a realignment to the existing single carriageway A45 Eastbound to Bickenhill Lane free flow link road.	Works Nos. 20 and 22
4/1aa, 4/1ab, 4/1ac, 4/1ax, 4/3ad	Required for temporary access to construct a realignment of the existing single carriageway A45 Eastbound to Bickenhill Lane free flow link road.	Work No. 22
4/1ao, 4/7b	Required for temporary access to construct alterations to the existing Bickenhill Lane carriageway; and for drainage.	Work No. 24
4/1aq, 4/1bc	Required for access and construction of a realignment to an existing private means of access; and for access and construction of environmental mitigation; and for monitoring of attenuation devices.	Work No. 21
4/1as	Required for lining and signing works; and for construction of diversions to existing utilities apparatus and equipment.	Work No. 2
4/1az, 4/1ba	Required for access and construction of a diversion to an existing aqueduct pipeline.	Work No. 63
4/2a, 4/2b, 4/2c, 4/2d, 4/3af,	Required for access and construction of diversions to an existing local high pressure gas main and existing electric lines, cables,	Works Nos. 57, 64 and 65

<i>(1) Plot reference Number shown on Land Plans</i>	<i>(2) Purpose for which temporary possession may be taken</i>	<i>(3) Relevant part of the authorised development</i>
	equipment and apparatus.	
4/25f	Required for access and construction of improvements to the eastbound and westbound carriageway of the A45; and for access and construction of diversions to an existing local high pressure gas main and existing electric lines, cables, equipment and apparatus.	Works Nos. 2, 57, 64 and 65
4/3d	Required for construction of improvements to the existing Clock Interchange; and for access to environmental mitigation to be constructed, maintained and retained at the existing Clock Interchange; and for construction of a realignment to the existing single carriageway A45 Eastbound to Bickenhill Lane free flow link road; and for alterations to the existing Bickenhill Lane carriageway; and for construction of diversions to existing utilities apparatus and equipment.	Works Nos. 20, 22, 23 and 24
4/3i, 4/3l	Required for access and construction of diversions to existing utilities apparatus and equipment.	Work Nos. 2 and 20
4/3n	Required for temporary access to construct improvements to the existing Clock Interchange.	Work No. 20
4/3u, 4/3v, 4/3ag	Required for access to construct a new free flow single carriageway with hard shoulder; and for access and construction of diversions to an existing local high pressure gas main and existing electric lines, cables, equipment and apparatus.	Works Nos. 26, 57, 64 and 65
4/3y	Required for access and construction of improvements to the existing Clock Interchange; and for construction of a new free flow link road; and for construction of diversions to existing utilities apparatus and equipment; and for access to environmental mitigation to be constructed, maintained and retained at the existing Clock Interchange.	Works Nos. 20 and 21
4/3ah, 4/4u, 4/25q, 4/25u, 4/160	Required for access to and construction of a diversion to an existing aqueduct pipeline; and for access to and construction of diversions to existing utilities apparatus and equipment.	Work No. 63
4/4g, 4/4k	Required for provision of a temporary construction compound, [to include, but not limited to, site offices, welfare facilities, parking provisions, storage of plant and materials, and the treatment of site generated waste]; and for the realignment of Public Right of Way M106; and for construction of diversions to existing	Works Nos. 53 and 69

<i>(1) Plot reference Number shown on Land Plans</i>	<i>(2) Purpose for which temporary possession may be taken</i>	<i>(3) Relevant part of the authorised development</i>
	utilities apparatus and equipment.	
4/4w	Required for provision of a temporary construction compound, [to include, but not limited to, site offices, welfare facilities, parking provisions, storage of plant and materials, and the treatment of site generated waste]; and for access and construction of a diversion to an existing aqueduct pipeline; and for the realignment of Public Right of Way M106; and for construction of diversions to existing utilities apparatus and equipment.	Works Nos. 53, 63 and 69
4/6a	Required for construction of a new free flow link road; and for the construction of a footway/cycleway; and for the construction of a diversion to an existing medium pressure gas main; and for construction of a diversion to an existing aqueduct pipeline; and for construction of diversions to existing utilities apparatus and equipment.	Works Nos. 21, 45, 59 and 63
4/6b	Required for access and construction of diversions to existing electric lines, cables, equipment and apparatus; and for access and construction of an extension to an existing culvert.	Works Nos. 57, 64 and 65
4/6d	Required for construction of a pedestrian overbridge; and for access and construction of a diversion to an existing medium pressure gas main; and for access and construction of an extension to an existing culvert; and for the construction of diversions to existing electric lines, cables, equipment and apparatus.	Works Nos. 39, 57, 60, 64 and 65
4/7a	Required for alterations to the existing Bickenhill Lane carriageway; and for the construction of diversions to existing electric lines, cables, equipment and apparatus.	Works Nos. 23 and 24
4/9	Required for lining and signing works; and for access and construction of a diversion to a medium pressure gas main; and for access and construction of diversions to existing utilities apparatus and equipment.	Works Nos. 2 and 59
4/11b	Required for access to construct a pedestrian overbridge across the A45.	Work No. 39
4/25a, 4/69, 4/80	Required for access and construction of improvements to the existing Clock Interchange; and for construction of diversions to existing utilities apparatus and equipment; and for access to environmental mitigation to be constructed, maintained and retained at the existing Clock Interchange.	Work No. 20
4/11a, 4/25i, 4/25m	Required for access and construction of a	Work No. 2

<i>(1)</i> <i>Plot reference Number</i> <i>shown on Land Plans</i>	<i>(2)</i> <i>Purpose for which temporary possession</i> <i>may be taken</i>	<i>(3)</i> <i>Relevant part of the</i> <i>authorised development</i>
	cantilever gantry; and for lining and signing; and for access and construction of diversions to existing utilities apparatus and equipment.	
4/25j, 4/25o and 4/25p	Required for construction of a cantilever gantry and demolition of a portal gantry; and for access and construction of a pedestrian overbridge; and for lining and signing works; and for access and construction of diversions to existing utilities equipment and apparatus.	Works Nos. 2 and 39
4/59	Required for lining and signing; and for access to and construction of a new free flow link road; and for access to and construction of a realignment to a private means of access.	Works Nos. 2 and 21
4/82	Required for lining and signing works; and for access to and construction of a pedestrian overbridge; and for access to and construction of a diversion to an existing medium pressure gas main; and access to and construction of diversions to existing utilities apparatus and equipment.	Works Nos. 2, 39 and 60
4/149	Required for lining and signing works; and for access to and construction of a diversion to an aqueduct pipeline; and for access to and construction of diversions to existing utilities apparatus and equipment.	Works Nos. 2 and 63
4/156	Required for lining and signing works; and for access to and construction of a new free flow link; and for access to and construction of a footway/cycleway; and for access to and construction of a diversion to a medium pressure gas main; and for access to and construction of diversions to existing utilities apparatus and equipment.	Works Nos. 2, 21, 45, 59 and 63
4/158, 4/159	Required lining and signing in connection with Airport Way connector road; and for access to and construction of a free flow link road; and for access to and construction of a diversion to a medium pressure gas main; and for access to and construction of diversions to existing utilities apparatus and equipment.	Works Nos. 21 and 59
Land Plans – Sheet 5		
5/1a, 5/1b	Required for access to and construction of diversions to an existing local high pressure gas main and existing electric lines, cables, equipment and apparatus.	Works Nos. 57, 64 and 65
5/7	Required for lining and signing works; and for access and construction of diversions to existing utilities apparatus and equipment.	Work No. 2
5/29b, 5/29c, 5/29h,	Required for access to construct a new free	Works Nos. 26, 57, 64

<i>(1) Plot reference Number shown on Land Plans</i>	<i>(2) Purpose for which temporary possession may be taken</i>	<i>(3) Relevant part of the authorised development</i>
5/29t, 5/29u and 5/29y	flow single carriageway with hard shoulder; and for access and construction of diversions to an existing local high pressure gas main and existing electric lines, cables, equipment and apparatus.	and 65
5/29p, 5/29r	Required for removal of existing East Way Roundabout.	Work No. 30(a)
5/62	Required for lining and signing works.	Work No. 31
Land Plans – Sheet 6		
6/2c	Required for access to and construction of a new free flow single carriageway.	Work No. 26

SCHEDULE 11

Article 39

FELLING OR LOPPING OF TREES AND REMOVAL OF HEDGEROWS

PART 1

TREES IN CONSERVATION AREA

The tree plan references in the table below are taken from Appendix 8.2 Arboricultural Survey [APP-128/Volume 6] of the Environmental Statement.

<i>(1)</i> <i>Tree plan reference</i>	<i>(2)</i> <i>Within Conservation Area</i>
G6	Bickenhill
G8	Bickenhill
G60	Bickenhill

PART 2

HEDGEROWS TO BE REMOVED OR MANAGED

The hedgerow identifications in the table below are taken from Appendix 9.3 Hedgerow Report [APP-131/Volume 6] of the Environmental Statement.

<i>(1)</i> <i>Hedgerow identification</i>	<i>(2)</i> <i>Important hedgerow</i>	<i>(3)</i> <i>Reason for importance</i>
H1		
H2		
H3		
H4		
H5		
H6		
H9		
H10		
H11		
H12	Yes	Ecological and Historical
H13		
H14		
H15		
H16	Yes	Ecological and Historical
H17		
H18		
H19	Yes	Ecological
H20	Yes	Ecological
H21		
H22		
H23	Yes	Ecological

<i>(1)</i> <i>Hedgerow identification</i>	<i>(2)</i> <i>Important hedgerow</i>	<i>(3)</i> <i>Reason for importance</i>
H24	Yes	Ecological
H25	Yes	Ecological and Historical
H26	Yes	Ecological
H27		
H28	Yes	Ecological
H29	Yes	Ecological
H30		
H32		
H33		
H34	Yes	Ecological
H35	Yes	Ecological and Historical
H36		
H37		
H38	Yes	Ecological
H39	Yes	Ecological
H40	Yes	Ecological
H41		
H42	Yes	Ecological and Historical
H43	Yes	Ecological
H44	Yes	Ecological
H45	Yes	Ecological
H47		
H48		
H49		
H50		
H51		
H52	Yes	Ecological and Historical
H53		
H54		
H55		
H56		
H57		
H60		
H62		
H63		
H65		
H66		
H67		
H71		
H73		
H74		
H75		
H76		
H77		
H78		
H79		
H80		
H81		
H82		

<i>(1)</i> <i>Hedgerow identification</i>	<i>(2)</i> <i>Important hedgerow</i>	<i>(3)</i> <i>Reason for importance</i>
H83		
H84	Yes	Historical
H85		
H86		
H88		
H89		
H90		
H93		
H94	Yes	Ecological
H96	Yes	Ecological
H98	Yes	Ecological
H99		
H101		
H102		
H104		
H105	Yes	Ecological
H106	Yes	Ecological
H107	Yes	Ecological
H108		
H109		
H110		
H111		
H112		
H114		
H115		
H116		
H117		
H118		
H119	Yes	Ecological
H120		
H121		
H122		
H123		
H124		
H125		
H126		
H127		
H128		
H130		
H131		
H132		
H133		
H134		
H135	Yes	Ecological
H136		
H137		

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1.—(1) For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and the utility undertaker concerned, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of Order), any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between the utility undertaker concerned and the transferee or grantee (as the case may be).

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to the utility undertaker concerned (but see paragraph 11(3)(b)).

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(b) for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991(c); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreement to adopt sewers, drains or sewage disposal works at a future date) of that Act(d),

and includes a sludge main, disposal main (within the meaning of section 219 (general inspection) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

(a) 1989 c. 29.

(b) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

(c) 1991 c. 56.

(d) Section 102(4) was amended by section 96(1)(c) of the Water Act 2003 (c. 37). Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003 and section 42(3) of the Flood and Water Management Act 2010 (c. 29) and section 11(1) and (2) of, and paragraphs 2 and 91 of Schedule 7 to the Water Act 2014 (c. 21).

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
 - (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
 - (c) a water undertaker within the meaning of the Water Industry Act 1991; and
 - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

On street apparatus

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus in stopped up streets

4.—(1) Where any street is stopped up under article 17 (permanent stopping up and restriction of use of streets and private means of access), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 16 (temporary stopping up and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 22 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

6. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed the utility undertaker must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 48, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

9.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker, in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

Expenses and costs

10.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 48 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker, by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents, or
- (b) any part of the authorised development carried out by a utility undertaker in the exercise of any of functions conferred by this Order pursuant to a transfer or grant under article 8 (consent to transfer benefit of Order).

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Co-operation

12. Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

13. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

14. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

15. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(b);

“electronic communications code network” means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the undertaker is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 72) of that code; and

“operator” means the operator of an electronic communications code network.

16. The exercise of the powers conferred by article 35 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

17.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 48 (arbitration).

(5) This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or

(b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(a) 2003 c. 21.

(b) See section 106.

(6) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY UNDERTAKER

Application

18.—(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the promoter and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the promoter and National Grid, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but see paragraph 28(3)(b)).

Interpretation

19. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid, together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution or supply, and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“commence” and “commencement” in paragraphs 26 and 28 of this Part of this Schedule include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment; “deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” have effect as if National Grid’s apparatus was “authorised development” and as if the term “maintain” includes use;

“National Grid” means National Grid Electricity Transmission Plc or any successor as licence holder within the meaning of Part 1 of the Electricity Act 1989;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“promoter” means the undertaker as defined in article 2(1) of this Order;

“specified works” means any of the authorised development which—

- (a) will or may be situated within 15 metres measured in any direction of any apparatus the removal of which has not been required by the promoter under paragraph 24(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the promoter under paragraph 24(2) or otherwise.

20. Except for paragraphs 21, 26, 27 and 28, this Part of this Schedule does not apply to apparatus in respect of which the relations between the promoter and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in stopped up streets

21.—(1) Where any street is stopped up under article 17 (permanent stopping up, restriction of use and construction of streets, public rights of way and private means of access), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the promoter must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street, but nothing in this paragraph affects any right of the promoter or National Grid to require the removal of that apparatus under paragraph 24 or the power of the promoter, subject to compliance with this sub-paragraph, to carry out works under paragraph 26.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 16 (temporary stopping up and restriction of use of streets), National Grid is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

22. The promoter, in the case of the powers conferred by article 22 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid (such consent not to be unreasonably withheld).

Acquisition of land

23.—(1) Regardless of any provision in this Order or anything shown on the land plans, the promoter may not possess temporarily or acquire any interest in land or apparatus, or override any easement or other interest in land, of National Grid otherwise than by agreement.

(2) As a condition of an agreement under sub-paragraph (1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between National Grid and the promoter) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the promoter in respect of any apparatus laid or erected in land belonging to or secured by the promoter, the promoter must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the promoter acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the promoter to procure and/or secure the consent and entering into of such deeds and variations

by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The promoter and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus, including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus, and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by National Grid under paragraph 26 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

24.—(1) If, in the exercise of the powers conferred by this Order, the promoter acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule, and any right of National Grid to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the promoter requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the promoter must, subject to sub-paragraph (3), afford to National Grid to its reasonable satisfaction (taking into account paragraph 25(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of, or secured by, the promoter; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the promoter, or the promoter is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the promoter, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of or land secured by the promoter under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the promoter.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the promoter to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

25.—(1) Where, in accordance with the provisions of this Part of this Schedule, the promoter affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the promoter and National Grid and must be no less favourable on the whole to National

Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid, such agreement not to be unreasonably withheld.

(2) If the facilities and rights to be afforded by the promoter in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the promoter to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of electricity undertaker

26.—(1) Not less than 56 days before the commencement of any specified works the promoter must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) The plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any specified works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to 26 tonnes in weight.

(4) The promoter must not commence any specified works until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6);
- (b) must not be unreasonably withheld.

(6) National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Specified works must be executed in accordance with—

- (a) the plan submitted under sub-paragraph (1), as approved or as amended from time to time by agreement between the promoter and National Grid; and
- (b) such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the promoter as part of the plan approved pursuant to this paragraph, such protective works (whether of a temporary or permanent nature) must be carried out to National Grid's satisfaction prior to the commencement of any specified works for which the protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the promoter, reasonably requires the removal of any apparatus and gives written notice to the promoter of that requirement, paragraphs 19 to 20 and 23 to 25 apply as if the removal of the apparatus had been required by the promoter under paragraph 24(2).

(10) Nothing in this paragraph precludes the promoter from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(11) The promoter is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraph (6) insofar as is reasonably practicable in the circumstances.

(12) In sub-paragraph (11) "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Expenses

27.—(1) Subject to the following provisions of this paragraph, the promoter must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any specified works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 24(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the promoter or, in default of agreement, is not determined by arbitration in accordance with paragraph 32 to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

28.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works or in consequence of the construction, maintenance or failure of any of the authorised works by or on behalf of the promoter or in consequence of any act or default of the promoter (or any person employed or authorised by him) in the course of carrying out such works, including without limitation any works carried out by the promoter under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the promoter will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the promoter or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the promoter from liability under the provisions of sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the promoter in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any part of the authorised development carried out by National Grid in the exercise of any functions conferred by this Order pursuant to a transfer or grant under article 8 (consent to transfer benefit of Order).

(4) National Grid must give the promoter reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the promoter and considering their representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the promoter in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the promoter National Grid must provide an explanation of how the claim has been minimised, where relevant.

Enactments and agreements

29. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the promoter and National Grid in respect of any apparatus laid or erected in land belonging to the promoter on the date on which this Order is made.

Co-operation

30.—(1) Where in consequence of the proposed construction of any part of the authorised development, the promoter or National Grid requires the removal of apparatus under paragraph 24(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 26, the promoter must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid must use its best endeavours to co-operate with the promoter for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the promoter or the taking of action by the promoter, it must not be unreasonably withheld or delayed.

Access

31. If in consequence of the agreement reached in accordance with paragraph 23(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the promoter must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

32. Any difference or dispute arising between the promoter and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the promoter and National Grid, be determined by arbitration in accordance with article 47 (arbitration).

Notices

33. Notwithstanding article 45 (service of notices), any plans submitted to National Grid by the promoter pursuant to paragraph 26(1) must be sent to National Grid Plant Protection at plantprotection@nationalgrid.com or such other address as National Grid may from time to time appoint instead for that purpose and notify to the promoter in writing.

PART 4

FOR THE PROTECTION OF HIGH SPEED TWO (HS2) LIMITED

34. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the company.

35. In this Part of this Schedule—

“the Act limits” has the same meaning as in section 68(2) of the HS2 Act;

“the company” means; High Speed Two (HS2) Limited (company number 06791686) whose registered office is at Two Snowhill, Snow Hill Queensway, Birmingham, England, B4 6GA (HS2)) and any associated company of High Speed Two (HS2) Limited which holds property for railway purposes and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 (meaning of “subsidiary” etc.) of the Companies Act 2006) the holding company of High Speed Two (HS2) Limited, a subsidiary of High Speed Two (HS2) Limited or another subsidiary of the holding company of High Speed Two (HS2) Limited;

“company’s engineer” means the company’s Head of Construction, Engineering and Delivery or such other engineer appointed by the company (and notified to the undertaker) for the purposes of this Order;

“the HS2 Act” means the High Speed Rail (London – West Midlands) Act 2017;

“the HS2 works” means the high speed railway link to be built pursuant to the HS2 Act;

“the HS2 land” means so much of the land within the Order limits which also falls within the Act limits;

“specified work” means so much of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, the HS2 land.

Regulation of powers

36.—(1) The undertaker must before commencing construction of any specified work supply to the company proper and sufficient plans of that work for the reasonable approval of the company’s engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the company’s engineer or settled by arbitration.

(2) The approval of the company’s engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and may be made subject to such conditions as are reasonably necessary to

mitigate the impact of the specified works on the construction, commissioning, maintenance, operation or safety of the HS2 works.

(3) Without limiting the scope of sub-paragraph (2), if by the end of the period of 28 days beginning with the date on which plans are supplied to the company under sub-paragraph (1), the company's engineer has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon the company's engineer written notice requiring the company's engineer to intimate approval or disapproval within a further period of 28 days.

(4) If by the end of the period of 28 days beginning with the date upon which the company's engineer receives notice under sub-paragraph (3), the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

37.—(1) Any specified work must, when commenced, be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 36 unless otherwise agreed in writing between the company and the undertaker;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the company's engineer; and
- (c) in such manner as to cause as little damage as is possible to the HS2 Land.

(2) If any such damage is caused by the carrying out of, or in consequence of the construction of, a specified work, the company may inspect the damage and either—

- (a) direct that the undertaker, regardless of any approval described in paragraph 36(1), make good such damage and pay to the company all reasonable expenses to which the company may be put and compensation for any costs or losses which it may sustain by reason of any such damage; or
- (b) except in relation to HS2 land vested in the undertaker, elect to make good such damage itself and recover from the undertaker all reasonable expenses to which the company may be put and compensation for any costs or losses which it may sustain by reason of any such damage.

(3) Nothing in this Part of this Schedule imposes—

- (a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of the company or its servants, contractors or agents; or
- (b) any liability on the company with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

38. The undertaker must—

- (a) at all times afford reasonable facilities to the company's engineer for access to a specified work during its construction; and
- (b) supply the company's engineer with all such information as the company's engineer may reasonably require with regard to a specified work or the method of constructing it.

39. The undertaker must repay to the company all fees, costs, charges and expenses reasonably and properly incurred by the company in respect of the approval by the company's engineer of plans submitted by the undertaker and the supervision by the company's engineer of the construction of a specified work.

40.—(1) Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not permanently or temporarily acquire HS2 land or any rights on, across, under or over HS2 land otherwise than by written agreement with the company.

(2) The undertaker must not exercise the powers conferred by article 23 (authority to survey and investigate the land) in respect of any HS2 land otherwise than by written agreement with the company.

(3) The provisions of this paragraph do not apply to any HS2 land that is vested in the undertaker.

Co-operation

41.—(1) On a monthly basis, or such other period as may be agreed, from the date this Order is made until completion of the specified works, the undertaker will provide the company with a programme of works, such programme to include—

- (a) the intended date of commencement of the specified work;
- (b) the anticipated duration of the construction of the specified work; and
- (c) an updated (insofar as is reasonably practicable) suite of drawings and plans for the specified work and in the absence of any such plans an estimated date of when the plans will be ready for the company to review.

(2) On a monthly basis, or such other period as may be agreed, from the date this Order is made until completion of the specified works, the company will provide the undertaker with a programme of works for the HS2 works, such programme to include—

- (a) the intended date of commencement of any works within the Order limits;
- (b) the anticipated duration of the construction of such works; and
- (c) an updated (insofar as is reasonably practicable) suite of drawings and plans for such works and in the absence of any such plans an estimated date of when the plans will be ready for the undertaker to review.

(3) The company must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the company under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

(4) The undertaker must at all times afford reasonable facilities and access to the company and its agents for the purpose of the company carrying out any works to facilitate the HS2 works and must supply the company with such information as it may reasonably require with regard to such works or the method of constructing them.

Indemnity

42.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of the specified works the company becomes liable or incurs any increased liability to pay any amount to any third party, the undertaker will indemnify the company for any expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the company, by reason or in consequence of the company becoming liable or its liability increasing to any third party as aforesaid other than arising from any default of the company.

(2) The fact that any act or thing may have been done by the company on behalf of the undertaker or in accordance with a plan approved by the company or in accordance with any requirement of the company or under its supervision will not, unless sub-paragraph (3) applies, excuse the undertaker from liability under the provisions of sub-paragraph (1) unless the company fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any expenses, loss, demands, proceedings, damages, claims, penalty or costs to the extent that it is attributable to the neglect or default of the company, its officers, servants, contractors or agents;
- (b) any part of the authorised development carried out by the company in the exercise of any functions conferred by this Order pursuant to a transfer or grant under article 8 (consent to transfer benefit of Order).

(4) The company must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) The company must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) The company must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within the company's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of the company's control and if reasonably requested to do so by the undertaker the company must provide an explanation of how the claim has been minimised, where relevant.

PART 5 FOR THE PROTECTION OF CADENT GAS LIMITED

Application

43. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

Interpretation

44. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“Cadent” means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“commence” and “commencement” include any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground condition, the receipt and erection of construction plant and equipment, and non-intrusive investigations for the purpose of assessing ground conditions;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“facilities and rights” for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Cadent's approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” have effect as if Cadent’s existing apparatus was authorised development and as if the term maintain includes protect and use;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“rights” includes restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

“specified works” means any of the authorised development or activities (including maintenance) undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 49(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 49(2) or otherwise.

On Street apparatus

45.—(1) This Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act, except for—

- (a) paragraphs 46, 51, 52 and 53; and
- (b) where sub-paragraph (2) applies, paragraphs 49 and 50.

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

Apparatus of Cadent in stopped up streets

46.—(1) Where any street is stopped up under article 17 (permanent stopping up, restriction of use and construction of streets, public rights of way and private means of access), if Cadent has any apparatus in the street or accessed via that street Cadent is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Cadent, or procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street or highway, but nothing in this paragraph shall affect any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 49.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 16, Cadent will be at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as it would have been entitled to do immediately before such temporary stopping up or diversion in respect of any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

47. The undertaker must exercise the powers conferred by article 22 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent (such consent not to be unreasonably withheld).

Acquisition of land

48.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any interest in land or appropriate, acquire, extinguish or override any easement or other interest in land of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out or maintenance of any part of the authorised development (or in such other timeframe as may be agreed between Cadent and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Cadent or affect the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure or secure the consent to and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development or maintenance thereof.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus, including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by Cadent under paragraph 51 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement or other interest of Cadent in such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 49 do not apply, the undertaker must, unless Cadent agrees otherwise—

- (a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

Removal of apparatus

49.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 48, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed

in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account paragraph 50(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus; and
- (b) subsequently for the maintenance of that apparatus.

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and the undertaker.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

50.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed then the terms and conditions to which those facilities and rights are subject in the matter may be referred to arbitration in accordance with paragraph 57 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of Cadent

51.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;

- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
 - (d) the position of all apparatus;
 - (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
 - (f) any intended maintenance regimes.
- (3) The undertaker must not commence any specified works until Cadent has given written approval of the plan so submitted.
- (4) Any approval of Cadent given under sub-paragraph (3)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5); and
 - (b) must not be unreasonably withheld or delayed and Cadent must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).
- (5) Cadent may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (6) Specified works must only be executed in accordance with—
- (a) the plan submitted under sub-paragraph (1), as approved or as amended from time to time by agreement between the undertaker and Cadent; and
 - (b) all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.
- (7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent’s satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.
- (8) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 43 to 45 and 48 to 50 apply as if the removal of the apparatus had been required by the undertaker under paragraph 49(2).
- (9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.
- (10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development (including such an event attributable to its maintenance)—
- (a) the undertaker must implement an appropriate ground mitigation scheme; and
 - (b) Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 52.
- (11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances.
- (12) In this paragraph, “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Expenses

52.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand, all charges, costs and expenses reasonably anticipated or reasonably incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 49(3) if it elects to do so; or
 - (ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to sub-paragraph 51(6).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 57 to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Cadent in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

53.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised development (including works carried out under article 22 (protective work to buildings)) by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from Cadent, the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs properly incurred by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and
- (b) any part of the authorised development carried out by Cadent in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 8;
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

Enactments and agreements

54. Except where this Part of this Schedule provides otherwise, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

55.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or Cadent requires the removal of apparatus under paragraph 49(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 51, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent’s undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent’s consent, agreement or approval is required in relation to plans, documents or other information submitted by Cadent or the taking of action by Cadent, it must not be unreasonably withheld or delayed.

Access

56. If in consequence of any agreement reached in accordance with paragraph 48(1) or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

57. Save for differences or disputes arising under sub-paragraphs 49(2) and 49(4) any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 47 (arbitration).

Notices

58. Notwithstanding article 45 (service of notices) any plans submitted to Cadent by the undertaker pursuant to paragraph 51(1) must be sent via email to plantprotection@cadentgas.com as well as via post to Plant Protection Limited, Cadent Gas Limited, Brick Kiln Street, Hinckley, Leicestershire, LE10 0NA or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

SCHEDULE 13

Article 44

CERTIFICATION OF PLANS AND DOCUMENTS, ETC.

The reference to a document in the table with a numbered regulation is a reference to the regulation as numbered in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a)

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Document Reference</i>	<i>(3)</i> <i>Version</i>
Book of Reference – Regulation 5(2)(d)	TR010027/APP/4.3(a)	2
Classification of Road Plans – Regulation 5(2)(o)	TR010027/APP/2.7(a)	2
Environmental Statement – Regulation 5(2)(a)	TR010027/APP/6.1, with updated Climate Chapter 15 (a)	1
Outline Environmental Management Plan	TR010027/APP/6.11(a)	A
Location Plan – Regulation 5(2)(o)	TR010027/APP/2.1	1
General Arrangement Plans – Regulation 5(2)(o)	TR010027/APP/2.4(a)	2
Land Plans – Regulation 5(2)(i) and 5(4)	TR010027/APP/2.2(a)	2
Work Plans – Regulation 5(2)(j) and 5(4)	TR010027/APP/2.3(a)	2
Streets, Rights of Way and Access Plans – Regulation 5(2)(k) and 5(4)	TR010027/APP/2.5(a)	2
Engineering Drawings and Sections – Regulations 5(2)(o), 5(4) and 6(2)	TR010027/APP/2.8(a)	2
Crown Land Plans – Regulation 5(2)(n) and 5(4)	TR010027/APP/2.9(a)	2

(a) S.I. 2009/2264.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Highways England to undertake works to Junction 6 of the M42 and to carry out all associated works and to construct a new 2.4 kilometre dual carriageway connecting a new Junction 5A of the M42 with the existing Clock Interchange. Junction 6 lies on the eastern edge of Birmingham, approximately 15 kilometres from the city centre, the nearest town being Solihull in the West Midlands.

The Order permits Highways England to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also includes provisions in connection with the maintenance of the authorised development.

A copy of the plans, engineering drawings and sections, the book of reference, the environmental statement and the OEMP mentioned in this Order and certified in accordance with article 43 (certification of plans and documents, etc.) of this Order may be inspected free of charge during normal working hours at Highways England, 2 Colmore Square, Birmingham B4 6BN.