



**Application by National Highways for M3 Junction 9 Improvement Scheme**  
**The Examining Authority's 3<sup>rd</sup> written questions and requests for information (ExQ3)**  
**Issued on 6 October 2023**

The following table sets out the Examining Authority's (ExA's) 3rd written questions and requests for information – ExQ3.

Questions are set out using an issues-based framework derived from the Initial Assessment of Principal Issues provided as Annexe C to the Rule 6 letter of 18 April 2023. Questions have been added to the framework of issues set out there as they have arisen from representations and to address the assessment of the application against relevant policies.

Column 2 of the table indicates which Interested Parties (IPs) and other persons each question is directed to. The ExA would be grateful if all persons named could answer all questions directed to them, providing a substantive response, or indicating that the question is not relevant to them for a reason. This does not prevent an answer being provided to a question by a person to whom it is not directed, should the question be relevant to their interests.

Each question has a unique reference number which starts with a number indicating an issue number, for example, 1 = General and Cross-topic Questions, 2 = Agriculture, Geology and Soils; the full list of topics is shown in the index on page 4. The second part of the unique reference is 3 (indicating that it is from ExQ3) and the third part of the reference is a unique number for the question. When you are answering a question, please start your answer by quoting the unique reference number.

If you are responding to a small number of questions, answers in a letter will suffice. If you are answering a larger number of questions, it will assist the ExA if you use a table based on this one to set out your responses. An editable version of this table in Microsoft Word is available on request from the case team: please contact [M3Junction9@planninginspectorate.gov.uk](mailto:M3Junction9@planninginspectorate.gov.uk) and include 'M3 Junction 9 Improvement Scheme' in the subject line of your email.

**Responses are due by Deadline 6 : 27 October 2023**



**Abbreviations used:**

|              |  |               |   |
|--------------|--|---------------|---|
| <b>CBDP</b>  | Carbon Budget Delivery Plan                      | <b>ISH</b>    | Issue Specific Hearing                          |
| <b>CNAP</b>  | Carbon Neutrality Action Plan                    | <b>LGV</b>    | Light Goods Vehicle                             |
| <b>DCO</b>   | Development Consent Order                        | <b>NE</b>     | Natural England                                 |
| <b>EA</b>    | Environment Agency                               | <b>NPS</b>    | National Policy Statement                       |
| <b>EFT</b>   | Emissions Factors Toolkit                        | <b>NPSNN</b>  | National Policy Statement for National Networks |
| <b>ES</b>    | Environmental Statement                          | <b>PA2008</b> | The Planning Act 2008                           |
| <b>ExA</b>   | Examining Authority                              | <b>PRoW</b>   | Public Right(s) of Way                          |
| <b>ExQ</b>   | Examining Authority's Questions                  | <b>RIES</b>   | Report On The Implications For European Sites   |
| <b>fiEMP</b> | First Iteration of Environmental Management Plan | <b>SDNP</b>   | South Downs National Park                       |
| <b>GhG</b>   | Greenhouse Gas                                   | <b>SDNPA</b>  | South Downs National Park Authority             |
| <b>HCC</b>   | Hampshire County Council                         | <b>SoCG</b>   | Statement of Common Ground                      |
| <b>HGV</b>   | Heavy Good Vehicles                              | <b>SoS</b>    | Secretary of State                              |
| <b>HRA</b>   | Habitats Regulations Assessment                  | <b>WCC</b>    | Winchester City Council                         |



### **The Examination Library**

References in these questions set out in square brackets (eg [APP-010]) are to documents catalogued in the Examination Library. The Examination Library can be obtained from the following link which will be updated as the examination progresses:

[Examination Library](#)

### **Relevant Representations**

References in these questions set out in square brackets and starting with RR (eg [RR-01]) are to Relevant Representations submitted. The Reference can be seen by the following link which will be updated as the examination progresses:

[Relevant Representations](#)

### **Citation of Questions**

Questions in this table should be cited as follows:

Q : issue reference: ExQ reference: question number. For example, Q1.3.1 – refers to question 1 in this table.



## Index

|     |   |    |
|-----|---|----|
| 1.  | General and Cross-topic Questions .....   | 5  |
| 2.  | Agriculture, Geology and Soils .....  | 6  |
| 3.  | Air Quality .....   | 7  |
| 4.  | Alternatives.....   | 8  |
| 5.  | Biodiversity, Ecology and Natural Environment<br>(including Habitats Regulations Assessment (HRA))..... | 11 |
| 6.  | Climate Change and Resilience .....   | 12 |
| 7.  | Compulsory Acquisition, Temporary Possession and<br>Other Land or Rights Considerations .....           | 18 |
| 8.  | Cumulative Impact .....   | 20 |
| 9.  | Draft Development Consent Order .....   | 21 |
| 10. | Flood Risk, Groundwater and Surface Water .....   | 22 |
| 11. | Historic Environment.....   | 23 |
| 12. | Landscape Impact and Visual Effects and Design.....   | 24 |
| 13. | Noise and Vibration.....  | 27 |
| 14. | Policy and Need.....  | 28 |
| 15. | Population and Human Health .....   | 29 |
| 16. | Traffic and Transport (Including Public Rights of Way) .....  | 30 |
| 17. | Waste and Material Resource .....   | 31 |

**ExQ3: 6 October 2023****Responses due by Deadline 6: 27 October 2023**

| <b>ExQ3</b>                                 | <b>Question to:</b>  | <b>Question:</b>   |
|---|--|--|
| <b>1. General and Cross-topic Questions</b> |  |  |
| Q1.3.1                                      | General<br><b>The Applicant</b>  | In ExQ 1.2.3 [PD-011] the ExA requested detailed engineering cross sections at 20m intervals along string CH-HML-E_M3SB between chainages 3000 and 4300. The cross sections were provided by the Applicant [REP5-003] however they omitted distance and level data as would be anticipated in detailed engineering sections. Please provide an update to the cross sections submitted at deadline 5 to include distance and level data in rows below the drawn sections. |
| Q1.3.2                                      | Mitigation<br><b>Hampshire County Council,<br/>Winchester City Council, South<br/>Downs National Park Authority</b>  | At Deadline 5, the Applicant provided further updates to the First Iteration of Environmental Management Plan (fiEMP) including to the appendices [REP5-019]. Please provide any comments in relation to these additions/updates.  |
| Q1.3.3                                      | Design Code<br><b>Hampshire County Council,<br/>Winchester City Council, South<br/>Downs National Park Authority</b> | At Deadline 5, the Applicant submitted a draft Design Principles Report [REP5-028] for the application and ongoing detailed design. Please provide any comments on this submission.  |

**ExQ3: 6 October 2023**

**Responses due by Deadline 6: 27 October 2023**

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**2. Agriculture, Geology and Soils**

There are no further questions from the ExA relating to Agriculture, Geology and Soils

| 3. Air Quality |   |   |
|----------------|---|---|
| Q3.3.1         | PM2.5<br><b>Winchester City Council</b> | The WCC response to Q3.2.1 [REP5-037] stated that, regarding monitoring of PM2.5, it would like to explore opportunities further with the Applicant. Please detail what opportunities you consider are available and how these would support to objective of the Council and the application. |

| 4. Alternatives |  |   |
|-----------------|--|---|
| Q4.3.1          | Modal Alternatives<br><b>The Applicant</b>     | <p>Winchester Action on Climate Crisis Deadline 5 [REP5-036] response to the Applicant's written summaries of oral case for Issue Specific Hearing 3 (ISH3) [REP4-036] submits at Section 3 that: <i>"Closer inspection of the tone and wording of the appendix reveals that the applicant is not providing any direct evidence that the alleged appraisal took place. The key use of a conditional auxiliary verb indicates that the applicant is not sure, and that the applicant is surmising (perhaps hoping) that something of the sort happened."</i></p> <p>Notwithstanding your response to Q4.2.14 [REP5-027], please indicate whether any substantial evidence of the extent or nature of the appraisal can be provided and, if not, set out your full reasons why it is reasonable to rely upon the assumption that the Department for Transport would have considered alternative modes.</p>  |
| Q4.3.2          | Modal Alternatives<br><b>The Applicant</b>     | <p>Winchester Action on Climate Crisis Deadline 5 [REP5-036] response to REP4-036 at section 4 seeks specified details on what the alleged appraisal(s) considered and how they moved to their conclusions. It is also submitted that there is a case for re-running any earlier appraisal to take account of new circumstances. Further criticism is set out in section 5.</p> <p>Please respond to this submission and indicate whether any or all of the details sought can be provided and, if not, why it is reasonable and proportionate for the Secretary of State (SoS) to rely upon the information provided to date on this topic to the Examination.</p>   |
| Q4.3.3          | Construction Compounds<br><b>The Applicant</b> | <p>In response to Q 4.2.3 [REP5-035] the SDNPA is of the opinion that further work could be done to reduce the overall size of the proposed compound. The measures referred to include a Workers Travel Plan with a park and ride system (to reduce the overall number of car parking spaces proposed within the compound), and providing alternative locations for some administration / other facilities that do not necessarily have to be located within the proposed compound. The Applicant's response to Q 4.2.2 (i) [REP5-026] suggests that an overriding consideration in the ES assessment of alternatives for the construction compound was plot size and no consideration was given to the provision of reduced compound area along the lines now proposed by the SDNPA.</p> <p>(i) Please confirm whether that was and does remain the case?<br/> (ii) Notwithstanding the responses to questions and information already provided on this topic, please indicate why you do not consider the SDNPA proposal to further reduce the overall size of the proposed compound to be reasonable and feasible.</p> |
| Q4.3.4          | Construction Compounds                         | <p>The SDNPA response to Q 4.2.12 [REP5-035] acknowledges the need for closer welfare facilities, but submits that if the main uses for a compound (admin, briefing, parking, material storage etc) is met by a site outside the SDNP, then the footprint of some welfare units (for example 2 x cabins) and an area for</p>  |



|               |  |  |
|---------------|--|--|
|               | <p><b>The Applicant, South Downs National Park Authority</b></p> | <p>mini-buses or other shared transport to set down and pick up would be much smaller. The Applicant's response to Q 4.2.10 advises that the extent of the area required if only welfare facilities were provided would be approximately 0.5Ha.</p> <p><b>The Applicant</b></p> <p>(i) Please explain why more limited provision for welfare and set-down/pick-up area so that all the parking spaces for visitors and workforce could be off-site with a park and ride system in operation would not meet the Applicant's needs in this respect?</p> <p>(ii) The Applicant's written summary of oral submissions for ISH1 [REP4-034] Table 1 indicates that to reduce the size of the compound 30 spaces would be used at a locally sourced rental area and sees no reason why this cannot be agreed post consent. Please explain why a larger proportion of the car parking requirement could not be accommodated in this way.</p> <p>(iii) Please also provide further explanation as to why you consider that the removal of other elements of the construction compound would not result in a material decrease of impacts on the SDNP and reflect the Nation Policy Statement for National Networks (NPSNN) advice in relation to such designated areas.</p> <p><b>SDNPA:</b></p> <p>(iv) Please set out your view as to the extent of any change in impact on the SDNP that would result with more limited provision for welfare and set-down/pick-up area and the removal of other elements of the construction compound from the SDNP.</p>                                  |
| <p>Q4.3.5</p> | <p>Construction Compounds</p> <p><b>The Applicant</b></p>        | <p>In response to Q 4.2.2 (ii) the Applicant indicates that great weight has been given to conserving landscape and scenic beauty in the SDNP, and it is considered that this area does not represent a core part of the SDNP where levels of tranquillity and openness would typically be higher. The response to Q 4.2.18 also refers to the area as not representing a core part of the SDNP.</p> <p>(i) Please comment on whether distinguishing between different parts of nationally designated areas in this way reflects and is consistent with NSPNN paragraph 5.150?</p> <p>(ii) Please also clarify the statement that "<i>greater weight was not afforded to the impact on the South Downs National Park from the construction compound in isolation given the context of the existing Junction the proposed Scheme and the construction activity proposed at this location.</i>" Does this mean that great weight was not afforded to the impact on this part of the SDNP and instead greater weight was given to other factors in the selection of the construction compound site, rather than seeking to minimise the impact on all aspects of the SDNP landscape including during the temporary construction period?</p> <p>(iii) NPSNN, paragraph 5.151, third bullet point states that consideration of such applications should include an assessment of "<i>any<sup>1</sup> detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated</i>". In the light of the SDNPA suggestions</p> |

**ExQ3: 6 October 2023**

**Responses due by Deadline 6: 27 October 2023**

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|        |  | <p>for further mitigation and reductions in the size of the compound area, please summarise why you do not agree that the detrimental effect on the landscape could be moderated further in the way they suggest.</p> <p>_____</p> <p><sup>1</sup> ExA's Emphasis</p>   |
| Q4.3.6 | <p>Construction Compounds<br/><b>The Applicant</b></p> | <p>In response to Q 4.2.7 (iii) the Applicant states that Badger Farm does not provide a practical, suitable, and obvious alternative. The reasons given include workforce welfare, material storage, and the additional trips and travel time for operational staff, if they were located at Badger Farm.</p> <p>(i) Please provide further details in support of reason '(iv) Operational Staff', to explain their role and "the need for a work station to produce key documentation". Does the need to be readily available on site apply to all operational staff at all times during working hours?</p> <p>(ii) In relation to material storage, please confirm that Badger Farm could physically meet this need and serve as the principal material reception area to facilitate the distribution of materials to their required locations across the project, but the concern is that if Badger Farm was used for material storage, then this would require an additional movement of the material on the public road network. In addition, please explain how in practice Area A would operate to ensure that a large amount of material distribution is undertaken off the public road network.</p> |
| Q4.3.7 | <p>Construction Compounds<br/><b>The Applicant</b></p> | <p>In response to Q 4.2.8 (iii) the Applicant indicates that workforce and operational staff would require three Return Journeys per day consisting of a return journey to and from the worksite at the start and end of each shift, a return journey mid-morning and another one at lunchtime to welfare for food and toilet breaks. Further trips may also be required for some people who require more frequent toilet breaks. However, the SDNPA suggests that a more limited compound area could provide for welfare facilities which would avoid the mid-morning and lunchtime trips to welfare for food and toilet breaks. That would only leave the return journey to and from the worksite at the start and end of each shift. Please comment on the feasibility of that approach and whether it would represent a reasonable option that could result in a further reduction of the compound area within the SDNP?</p>  |
| Q4.3.8 | <p>Construction Compounds<br/><b>The Applicant</b></p> | <p>Please provide further details of the calculation of the carbon emission comparison figures for Area A and Badger Farm given in response to Q 4.2.11 (iii).</p>  |

**ExQ3: 6 October 2023**

**Responses due by Deadline 6: 27 October 2023**

| <b>5. Biodiversity, Ecology and Natural Environment (including Habitats Regulations Assessment (HRA))</b> |                                |   |
|---|--------------------------------|---|
| Q5.3.1  | RIES<br><b>Natural England</b> | On 6 October 2023, The ExA published its Report on The Implications For European Sites (RIES) which contains questions for Natural England. Please review the RIES and reply to those points raised using this ExQ reference. |

| 6. Climate Change and Resilience |   |   |
|----------------------------------|---|---|
| Q6.3.1                           | Carbon Plan(s)<br><b>The Applicant, Winchester City Council</b> | <p>The WCC Deadline 5 submission [REP5-037] seeks the provision of a single document outlining all Climate mitigation alongside an assessment of how the scheme would function as part of the Applicant's wider Net Zero Plans. The Applicant has declined to provide such a standalone document on the basis, amongst other things, that this would be a duplication of information already available within the application documents and also rejects the inclusion of a related requirement in the Draft DCO to secure this. The ExA notes that mitigation measures are currently spread across different documents, and there would seem to be merit in the provision of a single document to avoid a paper chase for those seeking to understand and enforce such climate mitigation.</p> <p><b>Applicant:</b></p> <p>(i) Please reconsider the provision of a comprehensive single document to include all Climate mitigation measures to be secured by means of a separate requirement to aid understanding and ensure enforceability.</p> <p>(ii) Please explain further what flows from the inclusion of the scheme in the National Highways Net Zero Highways Plan and the relevance, if any, of that inclusion to the provision of mitigation?</p> <p>(iii) Please explain why you are not in a position to quantify figures in relation to that at this stage of the Examination?</p> <p><b>WCC:</b></p> <p>(iv) Please provide a draft Requirement to enforce the measures that you seek and set out any additional mitigation measures that you believe should be included with justification.</p> |
| Q6.3.2                           | Mitigation<br><b>The Applicant</b>                              | <p>The WCC response to Q 6.2.8 [REP5-037] lists additional mitigation measures that are sought including: the creation of a Carbon Fund, consideration of lower speed limits through the zone to lower traffic emissions, consideration of additional design elements to support the Government's Net Zero Growth for Transport such as a compound to be 'design ready' for a hydrogen fuelling hub or EV charging zone for HGVs/coaches/cars post construction, a contribution towards cycle routes in the area, tree planting or the purchase of Carbon Credits that would cover the increase in emissions generated by the scheme. These are also referred to in the WCC response to Q 6.2.10.</p> <p>(i) Please indicate whether any of these matters are anticipated to be resolved and agreed before the close of the Examination. If not, please indicate why it is not considered necessary to provide the additional mitigation sought.</p> <p>(ii) Having regard to NPSNN, paragraph 5.19, please explain why in the absence of such provision it could be ensured that, in relation to design and construction, the carbon footprint would not be unnecessarily high.</p>  |

**ExQ3: 6 October 2023**

**Responses due by Deadline 6: 27 October 2023**

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| Q6.3.3 | Assessment<br><b>Winchester City Council</b>                   | The WCC response to Q 6.2.9 (i) [REP5-037] indicates that the council has assessed the emissions to be significant based, amongst other things, on the guidance produced by IEMA. The document 'Assessing Greenhouse Gas Emissions and Evaluating their Significance'. Please provide further details of that assessment.  |
| Q6.3.4 | Carbon Budget<br><b>The Applicant</b>                          | The WCC response to Q 6.2.9 (iii) [REP5-037] in relation to NPSNN, paragraph 5.18, refers to the recommendation R2023-148 of the Climate Change Committee's (CCC) 2023 Report to Parliament as being evidence that the CCC is concerned about the impact of national road schemes in generating future road traffic growth and demonstrates the impact of this and other schemes has in pushing the UK over its Carbon Budgets.<br><br>(i) Please summarise your position in relation to the CCC 2023 Report and any associated implications for the ability of Government to meet its carbon reduction targets. (ii) Please comment on whether the CCC 2023 Report lends support to the provision of the additional mitigation sought by WCC? |
| Q6.3.5 | Carbon Budget<br><b>The Applicant, Winchester City Council</b> | The WCC response to Q 6.2.10 (ii) [REP5-037] in relation to the provision of Carbon Offsetting funds provides figures for both construction and operation derived from the UK ETS (UK Emissions Trading Scheme).<br><b>WCC:</b><br>(i) For the avoidance of doubt please confirm that these figures represent the level of Carbon Offsetting funds now sought and explain how you anticipate that could be secured and utilised?<br><b>Applicant:</b><br>(ii) Please comment on the level of offsetting funds sought by WCC and explain why it is not considered necessary to make such provision in this case, given the background of NPSNN paragraph 5.19.  |
| Q6.3.6 | Assessment<br><b>The Applicant</b>                             | The WCC response to Q 6.2.12 [REP5-037] clarifies its position in relation to the relevance of local carbon budgets to this application including the Tyndall Carbon Budget Report for Winchester recommendations.<br><br>The Applicant's response to Q 6.2.12 is noted. However, please comment further on the value of using the Tyndall Centre budgets for contextualisation, and on the need for the carbon impact of the scheme to be assessed against the framework of local carbon budgets to see the whole picture, both for Winchester and Hampshire areas and also on the WCC submission that the Applicant should provide a comparison of emissions from the scheme to the south-east area emissions.                               |
| Q6.3.7 | Climate Change<br><b>The Applicant</b>                         | The ES Chapter 14 Rev2 [REP2-027] paragraph 14.19.8 states that: " <i>Technological changes, including the increased uptake of Electric Vehicles, the banning of the sale of petrol and diesel cars by 2030, and the decarbonisation of the National Grid, is anticipated to continue to reduce the GHG emissions associated with the Scheme over time</i> ". WCC [REP5-037] notes the recent Government announcement (20 September 2023) which delays the sale restrictions on petrol and diesel vehicles and the transition  |

**ExQ3: 6 October 2023**

**Responses due by Deadline 6: 27 October 2023**

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|               |   | <p>to electric vehicles. The SDNPA response to Q 6.2.3 [REP5-035] states that the figures for Greenhouse Gas Emissions (GhG) emissions are only likely to increase with the Government's recent decision to push back the ban on the sale of new petrol and diesel cars from 2030 to 2035. The Climate Emergency Policy and Planning Deadline 5 submission [REP5-031] refers to recent updates on the policy and legal framework including the Prime Minister's speech on Net Zero on 20th September 2023. The Winchester Friends of the Earth Deadline 5 response to Q 6.2.17 [REP5-040] also makes reference to this.</p> <p>Please provide an update and general assessment of any implications resulting from the Prime Minister's recent announcement and associated policy changes for the assessment of the carbon emissions arising from the construction and operation of the scheme?</p>   |
| <p>Q6.3.8</p> | <p>Climate Change<br/><b>The Applicant</b></p>                              | <p>The Climate Emergency Planning and Policy Deadline 5 submission [REP5-031] states that emissions were calculated using the Emissions Factors Toolkit (Eft), version 112 for construction emissions and operation emissions [REP2-027, paragraph 14.5.25] and that this no longer provides a worst case calculation for the emissions from the project in the 5th and 6th carbon budgets and beyond. It is submitted that following the Prime Minister's policy change, the emissions need recalculating with a revised version of the Eft toolkit. Furthermore, the additional emissions from the Prime Minister's policy change will have an impact on the BCR.</p> <p>Please indicate whether it is agreed that the calculation of emissions and the BCR need to be revisited as a result of this policy change and if so, please provide those calculations. If not, please explain why it is not regarded as necessary to do so.</p>  |
| <p>Q6.3.9</p> | <p>Carbon Action Plan<br/><b>The Applicant, Winchester City Council</b></p> | <p>The WCC Deadline 5 submission [REP5-037] refers to the Carbon Neutrality Action Plan (CNAP) which the Applicant has discounted as motorway emissions are excluded from the Council's Action Plan. WCC states that the reason for this exclusion is because motorway emissions are beyond the scope of the Council's control and motorways are national infrastructure which require a national response. WCC submits that the NSIP process is part of that national response referred to in the CNAP and disagrees that the overall aims of the CNAP should be discounted. That position is also supported by the Winchester Friends of the Earth response to Q 6.2.4 [REP5-040].</p> <p><b>Applicant</b></p> <p>Given WCC's explanation of the reason for the exclusion of motorway emissions from the CNAP, please indicate whether you agree that the CNAP and its aims are an important and relevant consideration in this case? If not, please provide reasons.</p> <p><b>WCC</b></p> <p>Please set out what WCC regards as the implications of the M3/J9 scheme for the achievement of its decarbonisation strategy and the offsetting that would be required to make up any shortfall.</p> |

**ExQ3: 6 October 2023**

**Responses due by Deadline 6: 27 October 2023**

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| Q6.3.10 | Carbon Action Plan<br><b>Winchester City Council</b>        | The WCC response to Q 6.2.4 [REP5-037] states that the revised CNAP 2023-2030 which was adopted by the WCC Cabinet on 13 September 2023 sets out targets for reducing transport emissions that would be impacted by the additional traffic flows generated by the scheme.<br>Please explain further why you make that assertion and the extent of any anticipated impact?  |
| Q6.3.11 | Assessment<br><b>The Applicant, Winchester City Council</b> | The WCC Deadline 5 submission [REP5-037] indicates that following the explanation provided by the Applicant at the recent meeting between the parties, it is clear that the data provided in the Applicant's ES Appendix 14.3 – Greenhouse Gas Benchmarking [APP-148] does not provide a true comparison due to the differences in the study areas, and WCC is therefore unable to compare emissions with other schemes.<br><b>Applicant:</b><br>(i) Please indicate whether it is agreed that the data provided does not present any useful information to compare the emissions with other schemes. If that is the case, why do you say that it is not necessary to provide such a comparison. If it is not agreed, please explain what you consider to be the value of the data provided in terms of giving an emissions comparison to other schemes.<br><b>WCC:</b><br>(ii) Please explain why you regard it as necessary, in the light of NPSNN and other relevant policies, for such a comparison to be provided as part of the application. |
| Q6.3.12 | Assessment<br><b>The Applicant</b>                          | The Climate Emergency Planning and Policy Deadline 5 submission [REP5-031] indicates that the Friends of the Earth, ClientEarth and Good Law Project, have been given permission to go to a full Judicial Review hearing in the High Court for the second time in under two year because of " <i>the Government's failure to include a proper assessment of the delivery risks associated with the policies and proposals in the Carbon Budget Delivery Plan</i> ".<br>Please comment on this latest update and whether this changes your position on the relevance and implications of these proceedings for the current application.   |
| Q6.3.13 | Assessment<br><b>The Applicant</b>                          | The Climate Emergency Planning and Policy Deadline 5 submission [REP5-031] Section 3.2, paragraph 19, submits that significant material weight should be given to the CCC 2023 Progress Report by the SoS in reaching a reasoned conclusion on the M3J9 with respect to section 104 PA2008 and that: " <i>It would be wrong, and challengeable, for the SoS to dismiss the CCC's advice in its report as less than significant material weight</i> ".<br>Please comment on the thrust of this submission and the weight that should be attributed to the CCC Progress Report in this case.   |
| Q6.3.14 | Assessment<br><b>The Applicant</b>                          | The Climate Emergency Planning and Policy Deadline 5 submission [REP5-031] Section 4 states that it is not clear if heavy good vehicles ("HGVs") and light goods vehicles ("LGVs") are being treated in the Variable Demand Model as being subject to any variable demand, or whether they are fixed and that  |

ExQ3: 6 October 2023

Responses due by Deadline 6: 27 October 2023

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|         |   | <p>this makes it impossible to determine what the variable demand effects on LGVs and HGV are, and whether they are being correctly modelled.</p> <p>Please clarify the position as to how the variable demand effects on LGVs and HGVs have been considered and modelled.</p>   |
| Q6.3.15 | <p>Assessment<br/><b>The Applicant</b></p>    | <p>The Climate Emergency Planning and Policy Deadline 5 submission [REP5-031] Section 5 considers the application of the IEMA guidance. It submits, at paragraph 37, that it is not currently possible to reach a reasoned conclusion on the significance assessment because the Applicant has not provided the contextualisation of genuinely considering if the anticipated additional GhG emissions could fit within the CBDP sectoral residual emissions, when it is properly risk assessed or a reasoned conclusion as to why if the GhG emissions do not fit, this could possibly be acceptable in the wider context of delivering the whole CBDP.</p> <p>(i) Please comment on this criticism of the application of the IEMA guidance.</p> <p>(ii) Please comment on the need for an explicit evaluation of the M3/J9 scheme with the risks to those sectors as assessed by the CCC in its Progress Report and by the CBDP Risk Tables held by the Government and for the SoS to consider if the risk-assessed residual emissions provide, or do not provide, emissions space to construct and operate the M3J9.</p> <p>(iii) Please comment on the need for the SoS in reaching a decision on this application to address the question of delivery on sectoral reduction strategies mentioned in paragraph 38 of the Deadline 5 submission [REP5-031] and whether the IEMA guidance has been followed in this respect.</p> |
| Q6.3.16 | <p>Assessment<br/><b>The Applicant</b></p>    | <p>The Climate Emergency Planning and Policy Deadline 5 submission [REP5-031] paragraph 76 submits that the Applicant has not followed the IEMA guidance in that its <i>“contextualisation against the CBDP” is flawed and it has not made any contextualisation using sectoral reduction strategies (recommended by IEMA), or using “Existing and emerging national and local policy or regulation”</i> which would involve considering the risk to policy delivery (recommended by IEMA). Please comment on both these criticisms in the light of the IEMA guidance.</p>   |
| Q6.3.17 | <p>Carbon Budget<br/><b>The Applicant</b></p> | <p>The Climate Emergency Planning and Policy Deadline 5 submission [REP5-031] Section 6, paragraph 40, in relation to the Applicant’s Deadline 4 submission, Appendix A Carbon Budget Delivery Plan (CBDP) [REP4-037], is critical of the assumptions made by the contextualisation in that Appendix, namely, that the CBDP will be delivered in full and that the ‘Industry’ residual emissions and the ‘Domestic Transport’ residual emissions will be delivered in full.</p> <p>Please explain further why you consider that it is reasonable to continue to rely upon those assumptions in the light of all the evidence available today.</p>  |
| Q6.3.18 | <p>Assessment<br/><b>The Applicant</b></p>    | <p>The Climate Emergency Planning and Policy Deadline 5 submission [REP5-031] Section 6 – Comments on REP4-037 paragraphs 48, 49 and 50 comments on the relevance of the information</p>   |



**ExQ3: 6 October 2023**

**Responses due by Deadline 6: 27 October 2023**

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|  |  | <p>provided in earlier submissions to the SoS decision making process for the scheme in the light of s105(4),(5) and (6) PA2008. Notwithstanding the Applicant's response to Q 6.2.17:</p> <p>(i) Please respond to the submissions made that the latest evidence, and risk analysis of the CBDP, is required to be able to make a reasoned conclusion on whether approving the scheme would lead to the UK being in breach of its international obligations (s.104(4)); in breach of any statutory duty (s.104(5)); or be unlawful (s.104(6)).</p> <p>(ii) Please indicate giving reasons whether it is agreed that a failure to address whether the emissions from the scheme fits reasonably within the relevant sectoral reduction strategies in the CBDP would amount to a breach of statutory duty under s.104(5), or alternatively that a failure to give an adequately 'reasoned conclusion' under regulation 21 of the EIA Regulations, including in respect of the up-to-date position and/or a breach of the public law duty to give reasons.</p> |
|--|--|--|

| 7. Compulsory Acquisition, Temporary Possession and Other Land or Rights Considerations |  |  |
|---|--|--|
| Q7.3.1  | <p>Whether there is a compelling case in the public interest for the Compulsory Acquisition of the land, rights and powers that are sought by the draft DCO.</p> <p><b>The Applicant</b></p> | <p>The Applicant's response to Q 7.2.1 (ii) [REP5-026] makes reference to the case <i>Alliance Spring Co Ltd and others v First Secretary of State</i> [2005] EWHC 18 (Admin) to support the proposition that it is not necessary to consider each case of interference with Convention rights individually once the view has been properly taken that all the land proposed is required to enable the Scheme to be put into effect. The ExA notes that this case involved compulsory purchase rather than compulsory acquisition and that planning permission had already been granted for that scheme pursuant to a planning application under the 1990 Act.</p> <p>Please direct the ExA to the particular paragraphs within that judgment that are relied upon in response to Q 7.2.1 and comment on the applicability of that case to the consideration of compulsory acquisition under the PA2008.</p>                                       |
| Q7.3.2  | <p>Whether there is a compelling case in the public interest for the Compulsory Acquisition of the land, rights and powers that are sought by the draft DCO.</p> <p><b>The Applicant</b></p> | <p>The Applicant's response to Q 7.2.1 [REP5-026] makes reference to the CA Guidance in relation to compliance with s.122 PA2008. The Ex notes that the CA Guidance paragraphs 12 and 13 set out the considerations for the SoS to be satisfied that there is a compelling case in the public interest for the land to be acquired compulsorily including that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired.</p> <p>Please direct the ExA to the relevant paragraph of the CA Guidance that is relied upon in the response and explain further how paragraphs 12 to 14 of that guidance have been complied with in terms of providing the SoS with the necessary information to assess whether there is a compelling case in the public interest to authorise the CA powers sought.</p> |
| Q7.3.3  | <p>Whether there is a compelling case in the public interest for the Compulsory Acquisition of the land, rights and powers that are sought by the draft DCO.</p> <p><b>The Applicant</b></p> | <p>The CA Guidance paragraph 14 states that: "<i>In determining where the balance of public interest lies, the Secretary of State will weigh up the public benefits that a scheme will bring against any private loss to those affected by compulsory acquisition.</i>" The ExA notes the Applicant's response that the compelling case is not required to be '<i>balanced</i>' against individual plots. However, in order to assist the SoS in the assessment of whether there would be a compelling case in the public interest in the first place, please explain further how the paragraph 13 requirement for "<i>clear evidence that the public benefit will outweigh the private loss</i>" and the paragraph 14 guidance have been approached and responded to?</p>   |
| Q7.3.4  | <p>Whether there is a compelling case in the public interest for the Compulsory Acquisition of the land, rights and powers that are sought by the draft DCO.</p>                             | <p>The ExA's Q 7.2.1 (iii) [REP5-026] was directed at the Applicant's Review of the land use and ownership of land that has been referred to and was understood to have been carried out. Please clarify whether or not that is the case and if it has been carried out, please provide the further details requested.</p>   |

**ExQ3: 6 October 2023****Responses due by Deadline 6: 27 October 2023**

|        | <b>The Applicant</b>   |   |
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| Q7.3.5 | Other consents and agreements<br><b>The Applicant, Natural England</b>   | The Applicant's response to Q 7.2.14 [REP5-026] in relation to the progress of discussions with Natural England (NE) including on the shadow licence applications indicates that on 15 September following further review NE provided some additional comments, and as such the Applicant is now reconsulting. Please provide an update on the progress of discussions with NE including in relation to shadow licence applications and indicate when a 'Letter of No Impediment' from NE in relation to draft Protected Species licences can be expected to be submitted to the Examination? |
| Q7.3.6 | The acquisition of Statutory Undertakers' land and removal of apparatus – s127 and 138 PA2008.<br><b>The Applicant</b> | The Applicant in response to Q7.2.13 [REP5-026] has provided Appendix F - Interface with statutory undertakers. From that appendix, the ExA notes that Protective Provisions are in the process of being negotiated with SGN and Southern Water Services Ltd. Please confirm that it is still anticipated that bespoke protective provisions will be agreed with these parties before the end of the Examination.   |

**8. Cumulative Impact**

There are no further questions from the ExA relating to Cumulative Impact

| 9. Draft Development Consent Order |  |  |
|------------------------------------|--|--|
| Q9.3.1                             | Hampshire County Council 'Side Agreement'<br><b>Hampshire County Council</b> | In the HCC response to a number of questions from the ExA in ExQ2 [REP5-033], it was stated that a 'Side Agreement' was proposed between the Applicant and HCC which is being reviewed and would cover a number of issues that HCC had raised before and during the examination. Please provide an update on this agreement giving details of when it is likely to be finalised and agreed. Please highlight and confirm if any previous proposed changes to the Draft DCO that were sought will still be relevant: <ul style="list-style-type: none"> <li>(i) following an approval of the Side Agreement.</li> <li>(ii) In the eventuality that the Side Agreement is not agreed.</li> </ul> |
| Q9.3.2                             | Hampshire County Council 'Side Agreement'<br><b>The Applicant</b>            | In the HCC response to a number of questions from the ExA in ExQ2 [REP5-033], it was stated that a 'Side Agreement' was proposed between the Applicant and HCC which is being reviewed and would cover a number of issues that HCC had raised before and during the examination. Please provide an update on this agreement giving details of when it is likely to be finalised and agreed.  |

| 10. Flood Risk, Groundwater and Surface Water |  |  |
|---|--|--|
| Q10.3.1                                       | Infiltration Rates<br><b>The Applicant, Hampshire County Council</b> | In their response to Q10.2.1 [REP5-033], HCC stated that based on the recent infiltration investigations ' <i>there is potential for changes to the design such that it may not be possible to deliver it in accordance with the submitted documentation</i> '. Please explain what the latest position is regarding this and what changes may be necessary and when it is expected that this will be resolved. Please also indicate if this will result in further information or changes being presented to the examination. |

**11. Historic Environment**

There are no further questions from the ExA relating to the Historic Environment

| 12. Landscape Impact and Visual Effects and Design |  |   |
|--|--|---|
| Q12.3.1  | Design<br><b>The Applicant, Winchester City Council</b>            | <p>WCC response to Q 9.2.19 [REP5-037] states that based upon an initial review, the Design Code does not contain specific details of the design measures but includes rather generic principles duplicated from other documents. The document also appears to exclude specific details for the non-motorised routes. This latter point is also referred to in the WCC response to Q 12.2.14.</p> <p><b>Applicant:</b></p> <p>(i) Please explain why specifications including width and surfacing of Public Right(s) of Way (PRoW) routes to improve access to the National Park have not been included in the Draft Design Code?</p> <p><b>WCC:</b></p> <p>(ii) Please provide a further update once you have had the opportunity to review the document in more detail and provide any suggested drafting amendments to the Draft Design Code and/or Requirement 12 that are considered to be necessary at Deadline 6.</p> <p>(iii) Please explain why you consider that it is necessary for the specific details sought to be included at this stage?</p>                    |
| Q12.3.2  | Landscape Assessment<br><b>The Applicant</b>                       | <p>The SDNPA response to Q 12.2.2 [REP5-035] confirms its position that significant adverse effects on the SDNP would remain at year 15. Further details are set out in the Appendix C additional response from Michelle Bolger Expert Landscape Consultancy, on behalf of the SDNPA. In relation to that Appendix C:</p> <p>(i) Given the more recent age and finer grain of the SDLCA compared to the HILCA, should accordance with the SDLCA assessment not represent the preferred and most relevant approach?</p> <p>(ii) In the light of the SDLCA and the conditions on the ground, is it agreed that the proposed woodland planting would fail to respect the existing character and would result in a permanent change to the existing character of the landscape.</p> <p>(iii) Please comment further on the extent and degree of any long-term harm that would be caused to the existing character of the SDNP due to changes in topography required for the highways infrastructure in the SDNP generally and in area around Attenuation basin 5 in particular.</p> |
| Q12.3.3  | Landscape Assessment<br><b>South Downs National Park Authority</b> | <p>The SDNPA Appendix C [REP5-035] is critical of the proposed woodland planting 'to provide visual screening of the highway.' Please clarify your position in relation to the mitigation proposed for this location as set out in paragraph 10 of Appendix C. Is there any alternative form of mitigation as opposed to woodland planting in this location that is sought or is it agreed that woodland planting represents the best option in that sense despite your position as to the residual permanent harm?</p>   |



ExQ3: 6 October 2023

Responses due by Deadline 6: 27 October 2023

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| Q12.3.4 | Landscape Assessment<br><b>The Applicant</b>  | <p>The Appendix C additional response from Michelle Bolger Expert Landscape Consultancy on behalf of the SDNPA expresses concern that VP 3 and 7 revised visualisations do not fully represent how the change in the landscape would be viewed on the ground.</p> <p>(i) Please respond to the criticism made of these visualisations and any long-term effects on the existing natural hill slope that would result from the proposed reprofiling and new planting in this location.</p> <p>(ii) Please also explain further what is meant by “<i>the overwhelming make up of the rights to be acquired</i>” in response to Q 7.2.1 (ii).</p>  |
| Q12.3.5 | Landscape Assessment<br><b>The Applicant</b>  | <p>The Applicant’s response to Q 12.2.2 [REP5-026] maintains the view that reported effects on the SDNP would remain as non-significant in the long term once the mitigation measures have successfully established. This judgement is given on the basis that the mitigation measures re-provide vegetation features lost during the construction period, and that the scheme would be no more perceptible in the landscape than the baseline condition which includes the existing highway network. However, the SDNPA concerns relate not only to the form of the proposed landscaping but more fundamentally the changes in topography and hillside profiles. Please therefore explain further how the impact of these changes could be overcome “<i>on the basis that the mitigation measures re-provide vegetation features lost during the construction period</i>”.</p> |
| Q12.3.6 | Landscape Assessment<br><b>South Downs National Park Authority</b>                  | <p>The SDNPA response to Q 12.2.3 [REP5-035] in relation to the potential mitigation for the Construction Compound makes reference to the installation of ‘living hoarding’, such as that developed by Biotecture. Please clarify your view as to the extent to which the installation of such a feature would overcome your concerns and how you anticipate that this could be secured by the Draft DCO.</p>   |
| Q12.3.7 | Advance Planting<br><b>South Downs National Park Authority</b>                      | <p>In relation to advance planting the latest revision of the Draft DCO submitted at Deadline 5 [REP5-005] Requirement 5 (3) (a) includes reference to the timing of any proposed planting including advanced planting. Has any progress been made in relation to the other concerns relating to advance planting as set out in the SDNPA response to Q 12.2.5.</p>   |
| Q12.3.8 | Construction Compounds<br><b>The Applicant, South Downs National Park Authority</b> | <p>The SDNPA response to Q 12.2.6 [REP5-035] identifies in principle concerns in relation to the siting of the construction compound. Should Site A remain the position of the compound, then the response indicates that SDNPA would like to see the Draft DCO amended to include height limits and prevent the use of double storey units. The latest revision of the Draft DCO includes a new Requirement 15 which provides for height restrictions for any static unit providing welfare or other facilities within the temporary construction site compound.</p> <p><b>SDNPA:</b></p> <p>(i) Without prejudice to the matters of principle in relation to the siting of the construction compound, are any further drafting changes to the new Requirement 15 sought?</p>  |

**ExQ3: 6 October 2023**

**Responses due by Deadline 6: 27 October 2023**

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|          |   | <p><b>Applicant:</b></p> <p>(ii) Please explain why the new Requirement 15 includes a height restriction of 4m for the static units rather than 3.5m and why the height restriction does not extend to all on-site storage and plant?</p> <p>(iii) In relation to Appendix D – Indicative construction layout, please indicate the proposed location of the entrance from A272; whether that would require any vegetation removal and where the office unit mentioned in Appendix C, paragraph 1.3.17 of your Deadline 4 submission [REP4-034] would be located.</p> |
| Q12.3.9  | Maintenance<br><b>The Applicant</b>                       | The SDNPA response to Q 6.2.23 [REP5-035] and Appendix B to their Deadline 5 submissions highlights its concerns regarding management and monitoring of the proposed planting including the chalk grassland. To overcome this concern a change is proposed to LV22 of the fiEMP to provide for more intensive monitoring during the establishment period and that period should be for 5 rather than 2 years and twice yearly inspections in the following three years. Please indicate if this change is agreed and, if not, please set out full reasons.           |
| Q12.3.10 | Maintenance<br><b>South Downs National Park Authority</b> | The SPNDA has expressed concerns about the potential for landscape planting and establishment failures and has suggested an extended maintenance period due to this. Please provide and further evidence and examples of failures relating to other schemes, including in relation to the establishment of chalk grassland.  |

**ExQ3: 6 October 2023**

**Responses due by Deadline 6: 27 October 2023**

**13. Noise and Vibration**

There are no further questions from the ExA relating to Noise and Vibration

| 14. Policy and Need |   |  |
|---------------------|---|--|
| Q14.3.1             | NSPNN<br><b>Winchester City Council</b> | WCC does not appear to have provided a response to Q14.2.8 [PD-011]. The ExA acknowledges that there may have been confusion as to whom this was addressed. This states: <i>“The SoCG between the Applicant and WCC [REP4-030] at 2.1 indicates that the WCC agrees that the five strategic objectives of the scheme including reducing delays at the Winchester junction, as well as the M3, A33 and A44, supporting economic growth and improving walking, cycle, and horse routes align with the City of Winchester Movement Strategy (2019) key priorities. The ExA notes the WCC’s outstanding concerns and potential conflicts with Local Plan policies in relation to climate change issues. Please clarify the position of WCC in relation to the acceptability of the principle of the scheme and whether it would be consistent with the overall aims of the Local Plan.”</i> Please provide a response, or direct the ExA to where an answer has already been given in submissions. |
| Q14.3.2             | NSPNN<br><b>The Applicant</b>           | SDNPA’s response to Q 14.2.13 and 14.2.14 [REP5-035] highlights its submissions to the effect that the presence of the SDNP was not at the forefront of the initial design process or in the site selection process for the Construction Compound. The SDNPA position is that if it had been, different design choices could / should have been made which could have lessened the impact on the SDNP. Please indicate whether it is agreed that the SDNP presence was not a consideration at the forefront of those initial processes. If not, please explain how the initial design process and also the site selection process for the Construction Compound have had regard to both the purpose 5(1) of the National Parks and Access to Countryside Act 1949 and the policy aims of NPSNN paragraph 5.153.  |

**ExQ3: 6 October 2023**

**Responses due by Deadline 6: 27 October 2023**

**15. Population and Human Health**

There are no further questions from the ExA relating to Population and Human Health

| 16. Traffic and Transport (Including Public Rights of Way) |                                |  |
|--|--------------------------------|--|
| Q16.3.1  | Safety<br><b>The Applicant</b> | <p>The ExA has asked a number of questions in ExQ1 [PD-008], ExQ2 [PD-011] and at ISH2 regarding the assessment and calculation of accident data and the resulting input into the economic appraisal. The ExA has not been able to find sufficient evidence or clarity to support the assessment of safety savings outside of the application boundary.</p> <p>The Case for the Scheme [REP1-020] paragraph 3.5.1 states that one of the schemes 5 strategic objectives is to <i>'Improve the safety for all road users and reduce the annual collision frequency and severity ratio on the M3 Junction 9'</i>. Table 3.1 continues and states <i>'The study area, identified in Figure 8.2 of the Transport Assessment Report (Document Reference 7.13), will experience a decrease in the total number of collisions and casualties with the Scheme. <b>The greatest benefits are experienced as a consequence of the reduced traffic demand through the junction gyratory</b>'</i>. Paragraph 5.5.27 of the Combined Modelling and Appraisal Report [REP1-025] continues and states that the reduction in accidents is <i>'due to the <b>improved infrastructure</b><sup>1</sup> implemented as part of the scheme, replacing existing elements of road network with safety issues</i><sup>1</sup>.</p> <p>This gives an emphasis that the primary safety objective and benefit from the scheme is a result of physical improvements, which are within the application boundary. However, the various replies to questions, including Q16.2.10, suggest that of the £22.9m of safety savings detailed in the Combined Modelling and Appraisal Report [REP1-025], £3.6m would be seen within the application boundary and the remainder out with the application boundary. It is accepted that there are wider safety impacts from changes in traffic flow however the ExA continues to seek further clarification and explanation of how the proposal achieves 85% of its safety cost benefit outside of the application boundary where no physical changes are being proposed and where there is no assessment of how these links and junctions will be managed and perform over the 60 year assessment period.</p> <p><sup>1</sup> ExA's Emphasis</p> |
| Q16.3.2  | Safety<br><b>The Applicant</b> | <p>Further to Q16.3.1, please provide a version of the BCR calculations which show the safety savings only within the application boundary and a subsequent version that includes safety savings outside of the application boundary as 'wider safety savings'. It is accepted that there are already 2 versions of BCR ratio due to 'wider economic factors', therefore all permutations of the BCR ratio should be presented.</p>  |

**17. Waste and Material Resource**

There are no further questions from the ExA relating to Waste and Material Resource