

A12 Chelmsford to A120 widening scheme

TR010060

9.70 Written submission of oral case for Issue Specific Hearing 5

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A12 Chelmsford to A120 widening scheme
Development Consent Order 202[]

Written submission of oral case for Issue Specific Hearing 5

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1 Applicant's responses to Representations made at the Issue Specific Hearing 5 (ISH5) held on Tuesday 27 June 2023 at 10.00am.

1.1 Introduction

- 1.1.1 ISH5 for the A12 Chelmsford to A120 Widening Scheme (DCO) application was held virtually on Microsoft Teams on Tuesday 27 June 2023, commencing at 10.00am.
- 1.1.2 The Examining Authority (ExA) invited the Applicant to respond to matters raised at the Hearing but also in writing following ISH5.
- 1.1.3 This document summarises the responses made at ISH5 by the Applicant and also seeks to fully address the representations made by Affected Parties, Interested Parties and other parties attending.
- 1.1.4 The Applicant has responded to the topics raised by each of the attending parties in the sequence that the ExA invited them to speak and provides cross-references to the relevant application or examination documents in the text below.
- 1.1.5 Where it assists the Applicant's responses, the Applicant has appended additional documentation to this response document.

1.2 Post-hearing submissions in response to matters raised at ISH5

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
1.		Welcome, introductions, arrangements for Hearing	
2.		Change Application	
2.1		<p>Change Application</p> <p>The ExA asked the Applicant to outline the changes made to the Application following the acceptance of the Change Application, and provided an opportunity for Interested Parties to make comments or submissions on the changes now that the changes are formally in the Examination.</p>	<p>In summary, the accepted changes relate to:</p> <ol style="list-style-type: none"> 1) Junction 19 – Slip Road 2) Anglian Water Pumping Station 3) Replacement Land South of Witham 4) B1023 (Inworth Road) Flood Mitigation and Drainage 5) B1023 (Inworth Road) Roundabout Design 6) Junction 25 – Roundabout Design <p>All changes are fully described and set out in AS-083.</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
2.2	<i>Andrew Harding on behalf of Messing and Inworth Action Group (MIAG)</i>	<p>Mr Harding stated that MIAG welcomed the removal of the segregated left turn lane, but still had reservations about the remaining roundabout design.</p> <p>MIAG believe that removing the lane is insufficient to make the roundabout safe.</p>	<p>RTKC on behalf of the Applicant confirmed that the Applicant has previously responded in writing to this point at Deadline 6 [REP5-047-001] and in response to the Change Consultation responses [AS-075].</p>
2.3	<i>Councillor Katherine Evans on behalf of Feering Parish Council (FPC)</i>	<p>Councillor Evans asked the Applicant whether all of the properties around the Inworth Road junction will continue to have vehicular access.</p>	<p>Chris Alves-Greenland, on behalf of the Applicant, confirmed that all properties that currently have vehicular access will continue to benefit from this vehicular access.</p>
3.		Draft Development Consent Order	

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
3.1		<p>Draft Development Consent Order</p> <p>The ExA asked the Applicant to provide the following:</p> <ul style="list-style-type: none"> • Update on discussions and changes made since ISH4, focusing on those areas still subject to discussion. In particular, the Applicant was asked to provide an update on Schedule 2 requirements; • Position in relation to the disapplication of Flood Activity Permits; and 	<p>Emma Harling-Phillips, on behalf of the Applicant, confirmed that the Applicant proposes to add a definition into article 2 (interpretation) on when the development is taken to "begin", to clarify that the wording is fully in accordance with the definition as set out in s154 and s155 of the Planning Act 2008. The Applicant therefore proposes to insert the following wording in the next iteration of the draft DCO to be submitted to the Examination:</p> <p><i>For the purposes of section 154 and 155 of the 2008 Act, "begin" means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development.</i></p> <p>Michael Humphries KC referred to ECC's original submissions on this point at REP3-035 on pages 10-12. He noted that it was helpful to understand that "begin" was to be taken as having the same meaning within the Planning Act 2008. He explained that the issue identified by ECC is in relation to the use of the word "begin" in requirement 2 of the draft DCO, which provides:</p> <p><i>Time limits</i></p> <p><i>2. The authorised development must not begin later than the expiration of 5 years beginning with the date on which this Order comes into force.</i></p>

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			<p>Michael Humphries KC on behalf of ECC submitted that, per the definition in the Planning Act 2008, this means virtually any works will "begin" the development. He submitted that s154 will then mean the Order is implemented and will remain an extant consent, even if it has not yet "commenced", such that the requirements in Schedule 2 have not been discharged as they are pre-commencement requirements.</p> <p>It is ECC's case that "commence" does not have the same definition as "begin". He submitted that in its current form, the Order means that something minor like ecological surveys could "begin" the Scheme, but that the development works themselves could commence some 15/20 years later, for example.</p> <p>The Applicant confirmed, as requested by Michael Humphries KC on behalf of ECC, that it is possible under the current wording of requirement 2 to "begin" the development by carrying out a <u>material</u> operation (as per the definition in s154 and s155 of the Planning Act 2008), but not commence it until several years later. The Applicant confirmed that this would be unlikely in practice, but that it would be allowed, as it is in any other planning permission under the Town and Country Planning Act 1990 (1990 Act) regime; 'material operation' for the purposes of the 2008 Act, is defined pursuant to section 56(4) of the 1990 Act. The Applicant submitted that the ability for it to "begin" the</p>

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			<p>development is consistent with the way planning consenting operates in England and Wales.</p> <p>Michael Humphries KC highlighted that ECC proposed at REP3-035 on page 12 some alternative wording, whereby the Applicant had to both begin and commence development within 5 years. He acknowledged, on behalf of ECC, that ultimately it is for the ExA to determine the appropriateness of this wording for this major infrastructure project.</p> <p>Emma Harling-Phillips on behalf of the Applicant emphasised that this definition has been in place since the 1990 Act. She rejected Mr Humphries' assertion that related the 1990 Act to 'minor' development as the 1990 Act consents many forms of major developments that do not fall within the NSIP regime. The consequences identified that flow from the definition of 'begin' have been accepted as appropriate for many years. She confirmed that ECC have not submitted anything that suggests the usual planning regime consequences should not apply to this consent.</p>
3.2	<i>ExA</i>	The ExA asked the Applicant for an update on discussions between parties on article 3 following Deadline 6.	<p><u>Article 3 (Disapplication of legislative provisions)</u></p> <p>Emma Harling-Phillips on behalf of the Applicant explained that, as demonstrated within the various representations made to the Examination thus far by the Environment Agency (EA), the EA</p>

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		<p>The ExA requested an indication from the Applicant of what can realistically be addressed by the end of Examination, and that the Applicant signposts where wording may or may not be agreed, to assist the Panel with making their decisions and recommendations.</p>	<p>does not consent to the disapplication of certain consenting regimes, including Flood Risk Activity Permits.</p> <p>To reflect this lack of agreement, the Applicant has removed those consenting regimes from the disapplication provisions at article 3, so that the Applicant will require separate consent from the EA in relation to Flood Risk Activity Permits.</p> <p>Carol Bolt on behalf of the EA confirmed that the EA is not prepared to give consent to the disapplication of these regimes on the basis of the disagreements between the EA and the Applicant on main river crossings. She noted the deletion from the disapplication provisions in article 3 proposed by the Applicant and confirmed that the EA is content with this amendment.</p>
3.3	ExA	<p>The ExA asked the Applicant for an update on discussions between the parties on articles 14 and 15 following Deadline 6.</p> <p>The ExA requested an indication from the Applicant of what can realistically be addressed by the end of Examination, and that the Applicant signposts where wording may or may not be agreed, to</p>	<p><u>Article 14 (Construction and maintenance of new, altered or diverted streets and other structures) and Article 15 (Classification of roads, etc.)</u></p> <p>As explained in the Applicant's Response to the ExA's Commentary on the draft DCO [AS-103], it is the Applicant's view that article 14 simply sets out what happens when a highway is de-trunked (by reference to Section 265 of the Highways Act 1980). The Applicant, therefore, does not consider</p>

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		<p>assist the Panel with making their decisions and recommendations.</p> <p>The ExA confirmed that they are mostly interested in the discussions that have taken place between the Applicant and Essex County Council (ECC).</p>	<p>that this drafting would need to be amended as a result of any of the discussions relating to de-trunking.</p> <p>Emma Harling-Phillips on behalf of the Applicant confirmed that the Applicant's view remains that the main provision on de-trunking is at article 15 and confirmed that the Applicant amended the Deadline 6 draft DCO to include the wording proposed for article 15(7) by the ExA in its Commentary on the draft DCO.</p> <p>Michael Humphries KC on behalf of ECC reiterated that ECC is satisfied at the introduction of article 15(7). However, he pointed out that article 14 and article 15 are tied up with the requirement on de-trunking.</p> <p>Michael Humphries KC confirmed that, if the Applicant does not agree to a form of de-trunking requirement that ECC find satisfactory, then ECC will object under article 15(7).</p> <p>Emma Harling Phillips on behalf of the Applicant stated that the Applicant noted ECC's submissions. She confirmed that the Applicant is content with the position under the terms of article 15(7) and noted that if ECC were to object, it would be for the SoS to make a determination between the parties, which the Applicant views as the appropriate mechanism for any such dispute to be settled.</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
3.4	ExA	<p>The ExA asked the Applicant for an update on discussions between the parties on articles 16 and 23 following Deadline 6.</p> <p>The ExA requested an indication from the Applicant of what can realistically be addressed by the end of Examination, and that the Applicant signposts where wording may or may not be agreed, to assist the Panel with making their decisions and recommendations.</p> <p>The ExA confirmed that they are mostly interested in the discussions that have taken place between the Applicant and Essex County Council (ECC).</p>	<p><u>Article 16 (Speed limits)</u></p> <p>As explained in the Applicant's Response to the ExA's commentary on the draft DCO [AS-103], the Applicant was not aware that ECC had any objections to the wording in article 16.</p> <p>Emma Harling-Phillips, on behalf of the Applicant, explained that there are ongoing discussions between the parties covering speed limits, and the monitoring of speed limits, however it was understood that these discussions relate to requirements requested by ECC and the terms of Schedule 3 of the draft DCO, as opposed to the drafting of article 16 itself.</p> <p>Michael Humphries KC on behalf of ECC referred to Appendix 1 of REP6-098 as the document setting out ECC's speed limit proposals. He confirmed that ECC's objections are not focused on the wording of article 16, but instead on the speed limits that are given effect by article 16. He also confirmed that NH have agreed to some changes to the plans and to Schedule 3, Part 6. ECC will summarise these in their Deadline 7 response.</p> <p><u>Article 23 (Traffic Regulation)</u></p> <p>Under article 23, the Applicant can impose speed limits, but only by revoking, amending or suspending any order made under the 1984 Act. Emma Harling-Phillips on behalf of the Applicant emphasised that those orders cannot be made without the consent of ECC. She further confirmed that the Applicant was</p>

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			<p>not aware that ECC had any issue with that wording, nor have ECC proposed any amendments to be made to article 23.</p> <p>Michael Humphries KC on behalf of ECC confirmed that ECC's concerns regarding article 23 are parasitic on their concerns regarding the speed limits imposed by article 16. He noted these concerns can be found at REP3-035, REP5-033, and REP6-098. ECC will summarise these in their Deadline 7 response.</p> <p>The Applicant is grateful for Michael Humphries KC's confirmation that there are substantive discussions ongoing in relation to speed limits that do not concern the wording of articles 16 or 23.</p>
3.5	<i>ExA</i>	<p>The ExA asked the Applicant for an update on discussions between parties on article 26 following Deadline 6.</p> <p>The ExA noted that in the Applicant's SoCG with the National Farmers Union (NFU) at REP6-077, there is a reference to the Applicant reviewing some proposed wording suggested by NFU in</p>	<p>The Applicant's response on the issue raised by the NFU can be found within REP4-056, paragraph REP3-073-001. The wording of article 26 is precedent in the Model Provisions. It enables surveys outside of the Order limits so that the Applicant is not constrained to surveying within the Order limits. This is necessary because the matters it may need to survey will not be similarly confined to an arbitrary boundary 'on the ground'. This is particularly pertinent to the question of ecological species, for example, which may need to be surveyed outside of the Order limits where they are found to be foraging within them. Similar considerations might apply to the need to carry out noise or other surveys at a nearby building or to check the final outfall for</p>

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		<p>relation to the definition of the land adjacent to order limits.</p> <p>The ExA asked the Applicant for an update on this proposed wording.</p>	<p>a drain which runs within and then outside of the Order limits. Including a specific radius within article 26 would therefore be likely to prevent the Applicant from undertaking the necessary surveys.</p> <p>This is noted as an ongoing area of disagreement between the Applicant and the NFU in the SoCG between the parties [Application Reference TR010060/EXAM/8.21].</p>
3.6	ExA	<p>The ExA asked the Applicant for an update on discussions between the parties on articles 46 and 47 following Deadline 6.</p> <p>The ExA referred to Maldon District Council's (MDC) submission REP6-102, where MDC explain that they are awaiting specific arboricultural advice regarding the powers afforded to the Applicant in relation to trees and hedgerows.</p> <p>The ExA asked MDC whether they had received this advice, and whether they intend to suggest any</p>	<p>Matthew Wilmslow on behalf of MDC confirmed that MDC is in the process of receiving this advice and intend to submit it in writing following the close of ISH5. He confirmed that there are suggestions in the draft advice that MDC has received indicating that some provisions do not go far enough to meet standards, in particular with respect to root protection areas.</p> <p><i>The ExA requested that MDC provide the Applicant with clear sight of this advice as soon as possible.</i></p> <p>The Applicant is grateful to MDC for providing this advice in advance of Deadline 7 and has provided a detailed response in its 9.72 Applicant's Comments on Information Received at Deadline 6 [Applicant Reference TR010060/EXAM/9.72] answer to AS-114.</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
		changes to those articles as a result of that advice.	
3.7	<i>Michael Humphries KC on behalf of Essex County Council (ECC)</i>	Michael Humphries KC reiterated ECC's support for the amendments that the ExA suggested to article 18(3) in the ExA's Commentary on the draft DCO.	The Applicant responded to the ExA's suggested amendments to article 18 in the Applicant's Response to the ExA's Commentary on the draft DCO [AS-103] at DCO-PC10.
3.8	<i>ExA</i>	<p>The ExA noted that the previous requirement 14 has, at Deadline 6, been deleted and replaced with a table that sits within the design principles. ECC made a number of suggestions to that table in their Deadline 6 commentary on the draft DCO [PD-015].</p> <p>The ExA asked ECC for a brief explanation of those suggestions, and asked the Applicant to provide</p>	<p>Emma Harling-Phillips on behalf of the Applicant confirmed that the Applicant had deleted the previous walking, cycling and horse-riding (WCH) requirement (requirement 14) and included the table in the design principles at the request of ECC.</p> <p>The Applicant understands that ECC would like additional comfort on the face of the Order that the design must accord with the WCH infrastructure specification matrix provided as Appendix B to the design principles.</p> <p>Emma Harling-Phillips on behalf of the Applicant confirmed that the Applicant is happy to provide ECC with this comfort by</p>

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		<p>an update on where discussions are.</p>	<p>inserting a WCH requirement specifically stating that the detailed design will accord with the WCH infrastructure specification matrix in Appendix B of the design principles and that the authorised development will be constructed in accordance with that design. That revised wording has been provided in the draft DCO submitted by the Applicant at Deadline 7. Ms Harling-Phillips confirmed that detailed discussions about what those design specifications will be are ongoing between National Highways and ECC, and that discussions have been effective thus far.</p> <p>Michael Humphries KC on behalf of ECC confirmed that, should these design specifications not be agreed, ECC propose that the requirement to be inserted into Schedule 2 refers to a walking, cycling and infrastructure specification matrix. He clarified that this should be a separate document, equivalent to the design principles Appendix B but that would sit outside of the design principles, that ECC will produce, setting out what they believe to be the appropriate specifications. ECC will submit this matrix, along with the accompanying wording required to define this in requirement 1 of Schedule 2, at Deadline 7. He emphasised that ECC would prefer that Appendix B be agreed but acknowledged the time constraints left before Examination closes.</p>

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			Emma Harling-Phillips on behalf of the Applicant confirmed that the Applicant will look at ECC's wording when submitted at Deadline 7 and seek to reach agreement if possible.
3.9	<i>ExA</i>	The ExA noted they suggested an amendment to requirement 10 (detailed design) within the ExA's Commentary on the draft DCO that the Applicant has not taken forward at Deadline 6. However, the ExA have seen the Applicant's response at [AS-103], so clarified that requirement 10 will not be explored any further during this ISH5.	No response required.
3.10	<i>ExA</i>	The ExA asked the Applicant for an update on discussions between parties on the wording of requirements 14 (Boreham operation phase traffic mitigation measures) and 15 (Messing operation phase traffic mitigation measures) following Deadline 6.	Emma Harling-Phillips on behalf of the Applicant summarised current discussions as being focused on resolving two issues: 1) Regarding the substance of the measures to be provided pursuant to the two requirements; and 2) Regarding whom is to be the approving body under the requirements – ECC or the Secretary of State (SoS).

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
			<p data-bbox="1115 424 1973 491"><u>Requirement 14 (Boreham operation phase traffic mitigation measures)</u></p> <p data-bbox="1115 515 2029 692">The Applicant confirmed that the elements of substance are not yet agreed. The issues relate to the narrowing proposed by ECC on Main Road. The Applicant's position on this matter is set out at DCO-PC18 of the Applicant's Response to the ExA's Commentary on the draft DCO [AS-103].</p> <p data-bbox="1115 708 2029 1142">ECC maintains that narrowing is required to be included as part of the mitigation measures listed. However, the Applicant does not consider that widening is required. As noted by the Council's expert witness at ISH 3 on 26 April 2023 average speed cameras are considered an effective measure for keeping people to speed limits. Whilst road safety posters will help reinforce the safety benefits of reduced speed to drivers, and the proposed pedestrian crossing will help permeability of Main Road, the Applicant is of the view that localised road narrowing can increase conflict between motorised vehicles and on-carriageway cyclists and in the context of average speed cameras has limited benefit.</p> <p data-bbox="1115 1222 1962 1289"><u>Requirement 15 (Messing operation phase traffic mitigation measures)</u></p>

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			<p>ECC maintain that they should be the approving body. Michael Humphries KC highlighted that under some NH DCOs, the Secretary of State did not think it appropriate for the SoS to be the approving body. ECC maintain that their evidence shows that the A12 Scheme presents a circumstance where ECC as the highway authority should be the body that approves the detail.</p> <p>The Applicant remains forcefully of the opinion that it should be the SoS. The Applicant has set out in detail a number of critical reasons supporting its view in the Applicant's Response to the ExA's Commentary on the draft DCO at [AS-103], in response to DCO-PC18, as summarised below:</p> <ol style="list-style-type: none"> 1. The SoS is the appropriate discharging authority given the scheme's national network status and in line with the tested and accepted approach for national network DCOs. The fact that there are isolated instances of certain requirements within a few National Highways DCOs where the LPA is the approving body, does not mean that the precedented approach should be diverged from in this case. Those were case-specific matters where it was deemed appropriate, which do not apply to the current Scheme. 2. The SoS's internal team is highly experienced on dealing with the circumstances that apply to nationally significant infrastructure.

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			<p>3. The request by ECC to share responsibilities would result in a double approval process which would unnecessarily lengthen the time taken to delivery nationally critical infrastructure.</p> <p>4. Having different discharging bodies for different elements of the scheme creates a risk of conflict and is impractical. The various elements of the scheme are intrinsically linked and the separation suggested is artificial.</p> <p>5. Two discharging bodies would undermine the objective of the DCO regime as a whole, which was designed to streamline consenting and help preventing conflicts between discharging bodies.</p> <p>6. Given the disagreements that persist between the Applicant and ECC on some fundamental elements of the Scheme, it is appropriate that the discharging body should be the decision-maker on the Scheme overall i.e. the SoS. The SoS will have the benefit of consultation responses on the requirements and therefore the local authorities are able to input into, and influence, the SoS's decision.</p> <p>Michael Humphries KC confirmed that on both requirements NH and ECC have different approaches to what the mitigation measures should comprise and noted that the parties have not reached agreement. He commended the ExA to the draft requirements as set out in REP6-098 on pages 10-12 on Boreham and pages 12-13 on Messing. ECC maintain that these</p>

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			<p>submissions provide appropriate forms of wording for the two requirements.</p> <p>The Applicant confirmed that the elements of substance are not yet agreed. The Applicant's position on this matter is set out at DCO-PC19 of the Applicant's Response to the ExA's Commentary on the draft DCO [AS-103].</p> <p>ECC wishes to see additional measures added to the requirement as follows, which the Applicant maintains are not necessary for the reasons stated in ref 3.17 of the Written Submission of Oral Case for Issue Specific Hearing 3: [REP5-020] unless otherwise expanded upon below:</p> <p>a) The Scheme must include an assessment of improvements to the B1023 or another suitable corridor for walking, cycling and horse-riding users, to help off-set the impacts of increased traffic on this route. – <i>The Applicant has considered improvements to walking, cycling and horse-riding as part of the Walking, Cycling, Horse-riding Assessment Report process and maintains it has provided significant enhancements to assets for non-motorised users. These enhancements are described in ref 27 of the Applicant's Written Submission of Oral Case for Issue Specific Hearing 1 [REP3-012].</i></p> <p>b) An average speed camera system covering the B1023 between Inworth Road roundabout and the existing 30mph terminal on the northern approach to Tiptree, and a fixed speed</p>

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			<p>camera covering the southbound carriageway north of the Inworth Road roundabout.</p> <p>c) The widening of pinch points between Perrywood Garden Centre and the B1022 to a minimum carriageway width of 6.1m in line with the approach to other pinch point widening proposals.</p> <p>d) Measures to improve provision for walking, cycling and horse-riding users, as identified in the assessment under subparagraph (2) - <i>As stated in its response to a), the Applicant maintains that suitable enhancement measures have been provided as part of the Proposed Scheme.</i></p> <p>e) Narrowing of the entries to Oak Road (both the eastern and western ends, through tightening of entry radii and appropriate landscaping.</p> <p>f) Priority narrowing measures on Oak Road.</p> <p>Andrew Harding on behalf of MIAG confirmed MIAG's support for ECC's suggested mitigations.</p>
3.11	ExA	The ExA asked the Applicant for an update on discussions between the parties on the wording of requirement 16 (operation phase	As noted in its Response to the ExA's Commentary on the draft DCO [AS-103] at DCO-PC20, the Applicant agrees in principle with the provision of monitoring. However, it is not in agreement with ECC on the consequences that flow from that monitoring.

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		<p>local traffic monitoring) following Deadline 6.</p>	<p>The Applicant has set out in previous submissions, all of which are listed in DCO-PC20 of its Response to the ExA's Commentary on the draft DCO [AS-103], that it is not possible to apportion "blame" to the proposed Scheme. Whilst the Applicant notes the most recent mechanism proposed by ECC in its representation at Deadline 6 [REP6-100], it remains of the view that the mechanism proposed would not provide certainty that the proposed Scheme was responsible for the observed changes.</p> <p>ECC maintained that, having carried out the monitoring of the effects of the proposed Scheme, there needs to be provision that ensures the Applicant is responsible for mitigating any unforeseen effects in the transport assessment. Michael Humphries KC reiterated that ECC have referred to precedent for their position on the A14, A303, and Silvertown Tunnel schemes, where similar requirements have required mitigation, or at least, required mechanisms to agree mitigation. ECC believe that it is reasonable that the Applicant should have to mitigate the adverse effects of the Scheme.</p> <p>Reuben Taylor KC on behalf of the Applicant emphasised that the difficulty with the Applicant being required to mitigate the effects of the proposed scheme is that, despite the document ECC provided, there is no methodology whatsoever to enable one to know that, when a traffic level rises for example, that it is</p>

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			<p>the proposed scheme causing that particular problem. ECC have been unable to identify a mechanism for attributing causation of changes to the proposed Scheme. If that could be done, the Applicant could mitigate its effects, but it does not have that certainty due to the presence of other developments and the ongoing nature of other causes of change. The schemes referred to by ECC all have their own specific circumstances which are not directly comparable to the proposed scheme, particularly given the quantity of growth anticipated in the Local Plan.</p> <p>Michael Humphries on behalf of ECC rejected the submission that REP6-100 does not allow for the identification of issues and attribution of causes. He submitted that this is the point of continuous monitoring at various sites – to see how traffic is diverted and deflected. He noted the methodology is not dissimilar to the Applicant's traffic modelling for the Scheme. ECC submit that with actual data, the before and after position can be compared on an ongoing basis to see whether the reality matches the models. Michael Humphries KC submitted that what is being proposed is both precedented and reasonable and highlighted that the technical note at [REP6-100] sets out ECC's reasoning. ECC emphasised that, as a highway authority itself, it has significant experience in these matters, and have set out how that can be done.</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
3.12	<i>Councillor Katherine Evans on behalf of Feering Parish Council</i>	<p>Councillor Katherine Evans on behalf of Feering Parish Council expressed her concern that the Applicant has not included monitoring locations in Feering, as suggested by ECC, within requirement 16.</p> <p>The ExA confirmed that they were going to ask the same question about why the Applicant had chosen not to include these other locations as suggested by ECC in [REP5-100].</p>	<p>Emma Harling-Phillips on behalf of the Applicant confirmed that the monitoring locations included in the drafting are those that were identified within ECC's Local Impact Report [REP2-055]. Since then, other parties have added additional locations.</p> <p>The Applicant believes that those locations submitted in the draft DCO at Deadline 6 are the appropriate locations for monitoring to take place and that additional monitoring locations are not justified.</p> <p>Councillor Evans disagreed with the Applicant's contention of leaving out the Feering locations. She referred to the NNNPS to evidence that local plans should be taken into account. She asserted that there has been a reluctance to take local plans into account, particularly the strategic growth location at Feering. She described the Applicant as having no willingness to undertake changes, nor to take into account those adopted in the Braintree Local Plan.</p> <p>Emma Harling-Phillips on behalf of the Applicant submitted that it is not the case that the Applicant has ignored local plans. Local planning policy has been fully considered, in line with the requirements of the Planning Act 2008, as demonstrated in the application documents, including the [APP-249], [APP-250] and [APP-252].</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
			<p>Billy Parr on behalf of ECC submitted that, since the LIR was submitted at Deadline 2 detailing initial monitoring locations, there have been lots of discussions about further impacts of the proposed Scheme, further engagement with stakeholders like Feering Parish Council, and further discussions about proposed speed limits. As a result of these developments, ECC submit that additional locations should be considered, as detailed in REP6-100. Mr Parr noted that if the proposed wording of requirement 16 reflects the amendments as suggested in REP6-100, then this would allow for those additional locations to be agreed and considered.</p> <p>The Applicant will continue ongoing discussions with regards to additional monitoring locations offline. However, the Applicant believes that those locations submitted in the draft DCO at Deadline 6 are the appropriate locations for monitoring to take place and that additional monitoring locations are not justified.</p>
3.13	<i>Jackie Longman on behalf of Maldon District Council (MDC)</i>	<p>Maldon District Council expressed their support for ECC's monitoring of sites during both the construction and post-operation phases.</p> <p>Jackie Longman on behalf of MDC submitted that monitoring is not purely to apportion blame, or to</p>	<p>The Applicant confirmed that it does not disagree with the inclusion of monitoring itself and has included it in its proposed drafting at requirement 16 of the draft DCO submitted at Deadline 6 [REP6-037]. Emma Harling-Phillips on behalf of the Applicant explained that it is the consequences of monitoring that remain in dispute with ECC as outlined above.</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
		<p>look at the impacts of future growth. She provided the Duke of Wellington roundabout as an example to explain that the modelling is uncertain. She noted that the modelling expects all new traffic from the new bridge linking there, and the new junction at Maldon Road, to join Junction 21. She emphasised that monitoring assesses the reality of the modelling, and that it is fair and reasonable to have it.</p>	
3.14	<i>ExA</i>	<p>The ExA asked both ECC and the Applicant for an update on discussions between parties on the wording of requirement 18 (junction 21) and requirement 19 (detrunking) following Deadline 6.</p>	<p><u>Requirement 18</u></p> <p>The Applicant's Response</p> <p>The Applicant is not aware that ECC has any concerns regarding the wording proposed for requirement 18, which was included in the Deadline 6 draft DCO [REP-6-037].</p> <p>ECC's Response</p> <p>ECC requested an updated general arrangement plan for Junction 21. Michael Humphries KC on behalf of ECC noted that this was sent through by the Applicant on Tuesday 28 June.</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
			<p>ECC requested the Applicant reference this plan in the requirement.</p> <p>The Applicant is of the view that reference to the General Arrangement plan is not required in this requirement as the works are appropriately described in sub-paragraph 3.</p> <p><u>Requirement 19</u></p> <p>ECC's Response</p> <p>Michael Humphries KC on behalf of ECC confirmed that de-trunking is the single most important issue for ECC. As recorded in ECC's response to Agenda Item 3.3 of this ISH5, ECC object to to de-trunking as they are not prepared to take on liability for what is agreed to be an overprovision on a road where it is not required.</p> <p>ECC set out why they think de-trunking should include reducing the roads to single carriageways with walking, cycling and horse-riding provisions in the redundant carriageways. The Applicant has not accepted this. Whilst ECC welcome the provision of the detrunking, the current proposals do not meet their expectations and has consequences that not acceptable to ECC.</p> <p>The Applicant's Response</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
			<p>As the Applicant explained at DCO-PC23 of its Response to the ExA's Commentary on the draft DCO [AS-103], the Applicant has accepted the inclusion of a de-trunking requirement in the draft DCO on the basis that it is in the format proposed by the Applicant, as noted in the ExA's Commentary on the draft DCO. The Applicant does not accept that ECC's wording is acceptable for the reasons explained in previous submissions to the Examination, a full list of which was provided at DCO-PC23 of its Response to the ExA's Commentary on the draft DCO [AS-103].</p> <p>The Applicant maintains that ECC has not demonstrated why its proposals are necessary, nor has ECC provided any environmental assessment of its proposals in order for them to be considered by the ExA and the SoS. As such, the Applicant maintains that the drafting proposed by ECC is inappropriate for inclusion in the draft DCO.</p>
3.14	<i>Michael Humphrey KC on behalf of Essex County Council (ECC)</i>	Michael Humphrey KC on behalf of Essex County Council (ECC) highlighted that at REP6-098 from page 27 onwards ECC identified a number of new requirements:	See individual responses below.

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
		<p>Detailed Local Operating Agreement (DLOA)</p> <p>ECC understand, in relation that a DLOA will be included in the Applicant's OCTMP [REP6-055]. ECCs submitted that, provided the DLOA is so included, ECC won't pursue a separate requirement on that point.</p>	<p>The Applicant's response at Deadline 6 is provided in REP6-090 subsection REP5-033-027.</p> <p>The Applicant can confirm that the Outline Construction Traffic Management Plan (OCTMP) was updated with the inclusion of the DLOA at section 5.22 of the OCTMP at Deadline 6 [REP6-054]. ECC have agreed this matter in the SoCG [Applicant Reference TR010060/EXAM/8.12].</p> <p>As such, the Applicant is of the view that this has been addressed and that no requirement is needed.</p>
		<p>Pre- and post-construction surveys of local diversion routes during construction to allow a proper assessment on impacts on diversion routes.</p> <p>ECC understand that discussions are still ongoing in relation to this, but if that doesn't reach agreement then ECC commend to the ExA their draft wording on pages 27 and 28 of REP6-098.</p>	<p>The Applicant provided a response on this matter at Deadline 6 in REP6-090 subsection REP5-033-029. Additional powers requested by ECC have not been included so as not to constrain the delivery of the Scheme works, as the Applicant does not accept that it should be prevented from commencing construction until approval has been received from ECC. For the reasons explained above, the SoS is the appropriate approving body under the Scheme, and not ECC.</p> <p>The Applicant has provided further detail in its response to REP6-098-010 at Deadline 7 in Applicant's Comments on Information Received at Deadline 6 [Applicant Reference TR010060/EXAM/9.72].</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
			<p>As explained in that response, the Applicant has agreed to carry out pre- and post-construction condition surveys of local highway authority roads where they are proposed for use as construction traffic routes or diversion routes. National Highways will not be responsible for any remedial actions identified and deemed required prior to commencement of the works.</p> <p>The Applicant will be responsible for remedial actions should vehicles associated with the works be directly responsible for damage local to those works, as an example, damage to kerbs where turning in/out of a site entrance.</p> <p>These commitments have been made in the OCTMP (Chapters 4.4 and 5.23) [REP6-054].</p> <p>Whilst the Applicant is not in principle opposed to the concept of pre- and post-construction surveys, the Applicant does not consider that it is possible for a post-construction survey to properly attribute causation to any damage which may have arisen to the local highway network during the period of the works when open and in general use by "ordinary" traffic, construction traffic and/or traffic on diversion. It cannot therefore accept the requirement proposed by ECC which provides that if</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
			<p>there is damage to a highway asset and it is attributable to construction traffic then the Applicant must deliver a scheme to remediate the damaged asset.</p> <p>The Applicant will not agree to be responsible for general wear and tear to a highway (where it is not the highway authority) or any increased rate of deterioration due to increased use of that highway, be that for construction traffic, traffic on a diverted route or any other scheme related purpose. The local highway authority is under a statutory duty under Section 41 of the Highways Act 1980 to maintain the highway and Section 329(1) makes it clear that this duty includes "repair". The standard of that duty is set out in the common law: such a state as to be safe and fit for ordinary traffic (<i>Burgess v Northwich Local Board</i> (1880) 6 Q.B.D. 264. The use of the highway by construction traffic falls into the category of "ordinary traffic". The local highway authority receives funding to allow it to comply with that duty and may not abrogate that duty to a third party. If a highway becomes out of repair following use by ordinary traffic, then the local highway authority is under a duty to repair it and any member of the public can enforce that duty under Section 56 of the Act.</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
			<p>Further clarity has been provided in the chapters of the OCTMP that address this (Chapters 4.4 and 5.23) [REP6-054].</p> <p>The Applicant will not agree to be responsible for any damage associated with a road traffic incident or similar on the local highway, be that relating to a construction vehicle or personnel, or persons using the highway as a diversion route required as a result of the proposed works. The management of any such incident, repairs, and recovery of any associated losses from insured parties must remain the responsibility of the local highway authority (unless otherwise agreed in the DLOA) as is the case for any other highway.</p> <p>Should the Applicant occupy ECC highway, then this would be subject to the usual permitting procedures (street works permits) already mandated by and operated by ECC, which would cover all the matters requested by ECC in their proposed requirement.</p> <p>Therefore, any requirement in the DCO would be both duplicative and unnecessary.</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
			<p>Where the Applicant seeks to use its powers under article 19 to prohibit the use of a local road and use it as a temporary working site it would need the consent of the street authority who may attach reasonable conditions to such consent. ECC as street authority would therefore be in a position to require condition surveys and to secure the repair of any damage caused by the Applicant during the period of its occupation.</p> <p>As such, save to the extent of the provisions already included in the OCTMP, the Applicant does not believe that the proposed requirement is either necessary or appropriate.</p>
		<p>Power for ECC to inspect works that affect its local highway network during construction.</p> <p>ECC noted that this has not been included in the Applicant's Deadline 6 draft DCO. Discussions are positive but ECC await formal commitment from the Applicant on that. In the absence of formal agreement, ECC confirmed that the draft wording on pages 28 and 29</p>	<p>The Applicant provided a response on this matter at Deadline 6 in REP6-090 subsection REP5-033-029.</p> <p>The Applicant has provided further detail in its response to REP6-098-011 at Deadline 7 in Applicant's Comments on Information Received at Deadline 6 [Applicant Reference TR010060/EXAM/9.72].</p> <p>As explained in that response, the Applicant confirms that during construction officers appointed by ECC may, subject to any health and safety restrictions and principal contractor requirements, inspect any part of the authorised development,</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
		<p>of REP6-098 are their position and ECC commend that to the ExA.</p>	<p>which is in, over, under or adjacent to any local highway or that may affect any local highway or any other property of the local highway authority. The Applicant will provide such an officer all reasonable facilities for such inspection.</p> <p>The Applicant will test materials used in any new local highways at its own expense and in accordance with the Manual of Contract Documents for Highway Works Appendix 1/5 (Specification for Highway Works</p> <p>The Applicant will make available, on request, the results of such testing.</p> <p>The local highway authority may also test at its own expense the materials used or proposed to be used in any works to the local highway. In addition, the Applicant will provide relevant building information modelling (BIM) models, construction design and management records, operation and maintenance manuals, and other data relating to the ongoing operation and maintenance of local highways which are to be handed to the local authority post construction.</p> <p>The Applicant has written separately to ECC to confirm these arrangements and therefore does not believe that the additional requirement is required.</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
		<p>Road Safety Audit (RSA)</p> <p>ECC confirmed that they are still waiting for a formal position on this from the Applicant. They asked that the Applicant provide this urgently. In the absence of agreement on this point, ECC commend to the ExA the draft wording on pages 29 and 30 of REP6-098.</p>	<p>The Applicant welcomes the opportunity for ECC to be involved in the RSA process and at Stages 2 and 3 audits and for an ECC representative to attend each audit. Two ECC representatives may be able to attend subject to the maximum of six people at a site visit in accordance with Road Safety Audit requirements in GG 119. The total of six includes the two members of the Applicant's appointed audit team; a Police representative; and the two highway authorities' maintenance representatives.</p> <p>The audit brief and supporting documents would be supplied in advance, and the representative would be invited to submit queries and potential safety issues to the RSA team in advance of the site visit and to meet the RSA team on site to discuss arising issues and reporting, including appropriate recommendations. Concerns raised by the ECC representative at each stage would be included in the RSA report.</p> <p>The Stage 4 audit (undertaken once 12 months of post-completion collision data is available) follows a different process, and does not necessarily involve a site visit, but on a scheme of this size, it is almost certain to be part of the audit. In any event the input of ECC is welcomed, as the Applicants recognises that ECC will have valuable information relating to the operational experience of the amended highway network.</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
			<p>The RSA Team have final discretion of whether an issue is reported as a 'Problem' as defined in GG119. However, all concerns raised by parties to the audit will be recorded in the RSA report, either as Problems, or as 'road safety concerns reported to the RSA team' depending on the final view of the appointed RSA team named in the RSA Brief. This reporting of all concerns raised will include all issues raised by ECC at all future stages (Stage 2, 3 and 4), and police and maintaining organisation representative views at the Stage 3 (post-construction) audit. Under GG119, it is the Overseeing Organisation's duty to respond to all issues in the road safety audit report. Where the RSA Report makes recommendations to amend elements of the local road network, the Applicant would consult with ECC regarding the proposed changes to agree an acceptable solution. The implementation of any changes resulting from the RSA, within the proposed scheme's area of intervention and not constituting betterment, is the responsibility of the Applicant, both in relation to the cost of the works and any required evaluation of the environmental impact.</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
	<i>Katherine Evans on behalf of the Essex Local Access Forum (ELAF)</i>	Katherine could not find the text in requirement 14 on enhanced cycleway and footway provisions on Main Road. She asked the Applicant for clarification as to whether that provision was off-carriageway or on-carriageway.	The Applicant is not proposing enhanced cycleway/footway provisions on Main Road as this is outside the project's scope, however, the proposed improvements include a total of 30km of new and/or improved WCH facilities, six road bridges with walking and cycling provision, five of which would be new or upgraded provision, five road bridges with walking provision and five new WCH bridges with one improved walking and cycling bridge. Overall, there would be 20km of additional WCH provision. The proposed scheme is also bringing over 3.5km of existing facilities up to compliance with current guidance such as LTN1/20. Further improvements to walking and cycling facilities should be raised by the Interested Party to ECC.
3.15	ExA	<p>The ExA asked the Applicant for an update on the progress on protective provisions, in particular those relating to -</p> <ul style="list-style-type: none"> o Network Rail o Anglian Water o Cadent Gas 	<p>Stephen Dagg on behalf of the Applicant provided an update on the protective provisions as detailed below. Please refer to Agenda Item 7 for an update on the EA.</p> <p><u>Network Rail</u></p> <p>Network Rail submitted a set of protective provisions at Deadline 6 [REP6-108].</p> <p>The Applicant has reviewed this document and, as a result, will be submitting some consequential amendments to the draft DCO at Deadline 7.</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
			<p>The Applicant has provided a written response in the Applicant's Comments on Information Received at Deadline 6 [Applicant Reference TR010060/EXAM/9.72] to Network Rail's Deadline 6 submission [REP6-108] at Deadline 7 which sets out which amendments are not agreed and the Applicant's reasons for not accepting these amendments.</p> <p>Broadly speaking the areas of difference between the parties relate to the steps which the Applicant must take if the use or operation of the authorised development causes electromagnetic interference, and safeguards for the Applicant where it becomes liable to pay costs and the type of losses which should be covered.</p> <p>In the event that agreement is not reached by the end of the Examination the Secretary of State will need to adjudicate on whether to accept the Applicant 's or Network Rail's drafting.</p> <p><u>Anglian Water</u></p> <p>There is one issue outstanding with Anglian Water in relation to the protective provisions, namely the "stand-off distances" to be set out in paragraph 27(7) of Part 3 of Schedule 11.</p> <p>In essence the distance in paragraph 27(7) determines how close works under the DCO must be before the undertaker must submit a plan of the works to Anglian Water to allow them to consider what, if any, requirements should be placed on the</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
			<p>works to protect their apparatus and access to it, or allowing them to remove the apparatus.</p> <p>The stand-off distances included in the Applicant's draft DCO reflects previous precedent in the A47 Blofield, Tuddenham, Thickthorn and Wansford orders. They also reflect the "easement distances" in Anglian Water's "Cross Sector Infrastructure Access Statement" (March 2019). The table at page 6 of that document sets out distances for land where no development is proposed and enhanced distances for "land marked for development or land use changes within the next 20 years in the local plan".</p> <p>It then states "Any work undertaken outside our standard easement widths along pipelines may proceed without reference" to Anglian Water.</p> <p>The distances contained in the protective provisions in National Highways' draft DCO align with the enhanced distances (although the protective provisions give a distance from the median line (on one side of the pipe), whereas the Cross Sector Infrastructure Access Statement give the total distance (on both sides of the pipe).</p> <p>Anglian Water has stated (REP5-023) that the distances in the draft DCO are not sufficient because of (they state):</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
			<p><i>"a number of shortcomings that have arisen through experiences in addressing our own maintenance and repairs to our assets and from previous nationally significant infrastructure projects that interfaced with our assets".</i></p> <p>Anglian Water has not set out what those shortcomings are or specific details of scenarios where this has caused them problems. The Applicant does not therefore consider that sufficient justification has yet been provided for it to accept this departure from the A47 protective provisions.</p> <p>Anglian Water's proposed stand-off distances present a significant increase in distances from those proposed by the Applicant and would therefore be likely to pose a significant increase in the administrative burden on the Applicant in terms of the extent of consultation and the works which may be caught by requirements which may be imposed by Anglian Water under the terms of the protective provisions. It therefore has the potential to have significant effects on programme.</p> <p>If further justification and examples can be provided then the Applicant will consider this further, and whether the amendments proposed may be justified, or if other solutions may be more appropriate.</p> <p>In the event that agreement is not reached by the end of the Examination the Secretary of State will need to adjudicate on</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
			<p>whether to accept the Applicant's or Anglian Water's proposed distances.</p> <p><u>Cadent Gas</u></p> <p>The Applicant understands that protective provisions with Cadent are in an agreed form. They reflect the protective provisions included in the A47 Blofield and A47 Thickthorn orders.</p> <p>It is understood that Cadent has one outstanding issue, which relating to liability at Benton Golf Club. This issue has only recently arisen negotiations are currently proceeding between the parties.</p>
4.		Statements of Common Ground	
4.1		<p>Statements of Common Ground</p> <p>The ExA will ask the Applicant to provide an update on their progress and the likely position of each one by the end of the Examination. They asked that the Applicant focuses on those with outstanding issues, and whether the ExA can</p>	<p>Nuno Fernandes on behalf of National Highways provided an update on the status of the 18 Statements of Common Ground (SoCG). The Applicant has held meetings with the Interested Parties to reach a final version of the SoCG and aims to have all 18 SoCG signed by Deadline 7. A summary of the items agreed (and not agreed) will be provided within the Statement of Commonality. The Applicant, as requested by the Examining Authority, will also submit a List of Matters not Agreed with a</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
		<p>expect to have signed versions by Deadline 7.</p> <p>The ExA noted that they are unable to attribute much weight to agreements that are not completed by the end of Examination.</p>	<p>short explanation as to where discussions have reached on matters disagreed or under discussion.</p> <p>Nuno Fernandes on behalf of the Applicant summarised the current position on each SoCG as detailed below:</p> <p>Local Authorities</p> <p><u>Colchester City Council</u> [TR010060/EXAM/8.9]</p> <p>The final SoCG will be signed with all matters agreed.</p> <p><u>Chelmsford Borough Council</u> [TR010060/EXAM/8.10]</p> <p>The final SoCG will be signed with the following:</p> <p><i>Matters not agreed</i></p> <ul style="list-style-type: none"> • Cultural Heritage • Junction 19 • Main Road, Boreham • Construction sequence • Noise and vibration • Paynes Lane bridge design • Draft DCO Requirement on design <p>The most recent meeting was held on 29 June 2023 where some of the disagreed items were amended to include the words “concerns outstanding” to demonstrate that this is a matter</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
			<p>where outstanding concerns will be addressed within detailed design.</p> <p><u>Essex County Council</u> [TR010060/EXAM/8.12]</p> <p>A signed SoCG was submitted at Deadline 6 [REP6-069].</p> <p>Considerable progress has been made over the past few weeks. Various matters remain under discussion, and the issues not agreed have formed some of the key items that have arisen during Examination. A lot of progress has been made recently compared to Deadline 6 and the Applicant expects a revised version to be signed by both parties at Deadline 7.</p> <p><u>Maldon District Council</u> [TR100/EXAM/8.11]</p> <p>A draft SoCG is signed with the following:</p> <p><i>Matters under discussion</i></p> <ul style="list-style-type: none"> • Cadent Gas Main and potential impact on tree roots in Blue Mills Local Nature Reserve. <p>Maldon District Council and the Applicant hope to find a solution to this matter before close of Examination and therefore will provide the final SoCG at Deadline 8.</p> <p><i>Matters not agreed</i></p> <ul style="list-style-type: none"> • Junction 21

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
			<ul style="list-style-type: none"> • Maldon Link Road • Duke of Wellington mini roundabout in terms of design and the traffic modelling and mitigation provided for BNG to be mitigated local to the impact rather than project wide. <p><u>Braintree District Council</u> [TR010060/EXAM/8.11] The final SoCG is signed with the following:</p> <p><i>Matters agreed in principle</i></p> <ul style="list-style-type: none"> • Replacement Land <p><i>Matters not agreed</i></p> <ul style="list-style-type: none"> • De-trunking in Rivenhall End <p>Prescribed Consultees</p> <p><u>Natural England</u> [TR010060/EXAM/8.1] The final SoCG is signed with the following:</p> <p><i>Matters under discussion</i></p> <ul style="list-style-type: none"> • Soil Mitigation - needing the Second Iteration EMP and Soil Handling Management Plan <p><u>Environment Agency</u> [TR010060/EXAM/8.2] The final SoCG is signed with the following:</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
			<p><i>Matters agreed</i></p> <ul style="list-style-type: none"> • Ordinary watercourse 15 • Environmental permits <p><i>Matters not agreed</i></p> <ul style="list-style-type: none"> • Culverts under main rivers • Brain Bridge culvert extension • Mammal crossing • Aquatic ecology • BNG calculations <p><u>Historic England</u> [TR010060/EXAM/8.3]</p> <p>The final SoCG has the following:</p> <p><i>Matters under discussion</i></p> <p>Impact on Scheduled Monuments outside the Order limits Palaeolithic assessment and archaeology and Designated/non-designated heritage assets</p> <p><i>Matters not agreed</i></p> <p>Together with the impacts and proposed mitigation... The medieval moat at Marks Tey Hall</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
			<p>The neolithic long mortuary enclosure at Rivenhall End.</p> <p>This has previously been covered in:</p> <ul style="list-style-type: none"> • Applicant's Comments on Written Representations (REP2-060-006 and 007); • Applicant's Responses to ExQ2 (REP4-055-2.11.3 and 2.11.4), and • Applicant's Responses to ExQ3 (REP6-089-Q3.7.1). <p><u>The Crown Estate Commissioners</u> [TR010060/EXAM/8.7]</p> <p>The final SoCG includes the following:</p> <p><i>Matters under discussion</i></p> <ul style="list-style-type: none"> • Outline planning application for LPP21 allocation • London Road Junction Design • Land take • Drainage • Landscaping <p><u>Boreham Parish Council</u> [TR010060/EXAM/8.16]</p> <p>The final SoCG is signed with the following:</p> <p><i>Matters agreed</i></p> <ul style="list-style-type: none"> • Main Road interventions • Paynes Lane

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
			<ul style="list-style-type: none"> • Traffic modelling • Air quality <p><i>Matters not agreed</i></p> <ul style="list-style-type: none"> • The closure of Junction 20a • Noise reduction surfacing on both sides of the carriageway • Noise on Main Road <p>Boreham Conservation Society has fed into the SoCG with Boreham Parish Council. There is no separate SoCG with Boreham Conservation Society.</p> <p><u>Witham Town Council</u> [TR010060/EXAM/8.19]</p> <p>The final SoCG is signed with all matters now agreed, including Replacement Land.</p> <p><u>Hatfield Peverel Parish Council</u> [TR010060/EXAM/8.20]</p> <p>The final SoCG is signed with the following:</p> <p><i>Matters under discussion</i></p> <ul style="list-style-type: none"> • The construction of Station Road Bridge • Air Quality (traffic flows and PM2.5) <p><i>Matters not agreed</i></p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
			<ul style="list-style-type: none"> • Traffic on Church Road <p><u>Essex Police</u> [TR010060/EXAM/8.1]</p> <p>The final SoCG is signed with all matters agreed except for the following:</p> <p>Matters under discussion</p> <ul style="list-style-type: none"> • The provision of a traffic management office to support the Police's role with the project. <p>Statutory Undertakers</p> <p><u>Essex Waterways Limited</u> on behalf of Chelmer and Blackwater Navigation Limited [TR010060/EXAM/8.4]</p> <p>The final SoCG includes the following:</p> <p><i>Matters under discussion</i></p> <ul style="list-style-type: none"> • Land take • Use of the towpath by the public • Discharge of surface water during construction • Disapplication of byelaws • Detailed design and construction method statement (EWL) • Outfalls <p><u>Network Rail Infrastructure Limited</u> [TR010060/EXAM/8.5]</p>

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			<p>The final SoCG is signed with the following:</p> <p><i>Matters under discussion</i></p> <ul style="list-style-type: none"> • Business/technical clearance • Future maintenance and access for both parties • Developing engineering solutions acceptable to both parties • Detailed design progress, particularly with works between Network Rail and National Highways land. <p>Through these discussions, increased comfort has been given to Network Rail to satisfy them on those technical and land acquisition issues.</p> <p><u>Anglian Water</u> [TR010060/EXAM/8.21]</p> <p>The final SoCG is signed with the following:</p> <p><i>Matters under discussion</i></p> <ul style="list-style-type: none"> • Protective provisions • Rivenhall • Braxted Road <p><u>Cadent Gas Limited</u> [TR010060/EXAM/8.13]</p> <p>The final SoCG is signed with the following:</p> <p><i>Matters under discussion</i></p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
			<ul style="list-style-type: none"> • Protective provisions • Right to retain apparatus, land and associated rights • The detailed design for medium and high-pressure gas mains <p>Interested Parties</p> <p><u>Brice Aggregates Limited</u> [TR010060/EXAM/8.8]</p> <p>The final SoCG is signed with the following:</p> <p><i>Matters under discussion</i></p> <ul style="list-style-type: none"> • Detailed design of the Applicant's proposals on Brice's land - progress is being made on this as fast as possible <p><u>National Farmers Union (NFU)</u> - [TR010060/EXAM/8.21]</p> <p>The final SoCG is signed with the following:</p> <p><i>Matters agreed</i></p> <ul style="list-style-type: none"> • Balance ponds • Soil monitoring <p><i>Matters under discussion</i></p> <ul style="list-style-type: none"> • Voluntary agreements • Prohibition of agricultural vehicles

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4.2	<i>ExA</i>	The ExA asked whether there would be an SOCG submitted Messing and Inworth Action Group at Deadline 7.	The Applicant confirmed that an update has been provided in the Statement of Commonality.
4.3	<i>Andrew Harding on behalf of Messing and Inworth Action Group (MIAG)</i>	<p>Andrew Harding on behalf of Messing and Inworth Action Group (MIAG) questioned why the Applicant had mentioned commonality and submitted that there is no commonality between the Applicant and MIAG, as confirmed by Richard Guyatt on behalf of the Applicant in email correspondence at [AS-065].</p> <p>MIAG are still awaiting from the Applicant an explanation of the issues raised prior to the abandoned meeting dated 25 May 2023.</p>	<p>Reuben Taylor KC on behalf of the Applicant noted that the ExA will be aware, from documentation provided in emails at AS-065, of the nature of the correspondence between the Applicant and MIAG that Mr Harding referred to, and the wider relationship that exists between the parties.</p> <p>The Applicant has done all that it can reasonably do to set up meetings with MIAG; it has put in significant resource and time into organising meetings, which have not been held, for various reasons. The Applicant believes that the ExA can come to its own conclusions as to why the meetings did not take place.</p> <p>Reuben Taylor KC, on behalf of the Applicant, noted that sometimes in these processes parties cannot agree, and that this is one of those times. The Applicant confirmed that an update has been provided in the Statement of Commonality.</p>

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4.4	<i>ExA</i>	The ExA asked the Applicant to provide an update on the SoCG with Network Rail following REP6-108.	Andrew Goodwin on behalf of the Applicant confirmed that there are a number of matters with Network Rail that the Applicant is trying to move into an agreed position. There are a few matters that the Applicant thought were well progressed that Network Rail have further queries on. The Applicant has kept these matters within the SoCG as "under discussion" to allow the Applicant to submit an agreed SoCG at Deadline 7.
5.		Land Use	
5.1		<p>The ExA confirmed that they recently undertook a site inspection of Gershwin Boulevard Bridge, the details of which are available at EV-002-A.</p> <p>The ExA provided the opportunity for the ExA, Essex County Council, and any other Interested Party, to provide an update on discussions on discussions of land use, focusing principally on the following:</p>	<p><u>Gershwin Boulevard Bridge</u></p> <p>The Applicant acknowledges the concerns raised by Interested Parties throughout the Examination process relating to the location of the bridge and the potential visual and ecological impacts and has considered each concern in detail to look for ways to improve the proposed Scheme where possible. The Applicant appreciates that the Panel have recently visited Olivers Drive on their unattended site visit of 16th June 2023.</p> <p>The Applicant has considered the position of the proposed Gershwin Boulevard Bridge, most recently in its Deadline 6</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
		<ul style="list-style-type: none"> • Proposed Gershwin Boulevard Bridge; and • Proposed footpath at Coleman's Fisheries. 	<p>submission of the Gershwin Boulevard Issue Summary Note [REP6-094].</p> <p>The Applicant has assessed the alternative proposed and found that the alternative proposal does not resolve the concerns raised by some of the Interested Parties and does not reduce the visual impact, it simply relocates the impacts on the receptors to a different area. Due to the substantial balancing pond between Gershwin Boulevard and these receptors, this impact would be more difficult to mitigate.</p>
5.2	<i>Keith Lomax</i>	<p>Keith Lomax disputed the points on Gershwin Boulevard Bridge made by Chris Alves-Greenland on behalf of the Applicant, in particular, with respect to the diversion of the footpath.</p> <p>My Lomax confirmed that the plans show there is a track along north side of the environmental reclaim area south of the A12; he submitted that this track could easily be used to link Gershwin Boulevard Bridge to additional space required. He noted that this would make the diversion ~200m rather than ~600m.</p>	<p>The Applicant is firmly of the position that the most appropriate location for the bridge is that presented in the DCO application. This provides minimal diversion to the existing Footpath 121_95 across the A12 and provides onwards connections north into Witham or south towards Footpath 121_96 and James Cooke Woods and east to Blue Mills Hill and the Blackwater Rail Trail and beyond. The Applicant's proposed Replacement Land increases public space in the vicinity of the bridge from 0.35ha lost to the bridge footprint to 2.1ha of new green space. The proposed Gershwin Boulevard Bridge provides connections to this open space and facilitates onwards journeys to Witham River Walk, the Blackwater Rail Trail via Blue Mills Hill, Whetmead Nature Reserve and onwards to Little Braxted Lane.</p>

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		<p>Keith Lomax asserted that the Applicant does not want to make changes. He submitted that the Applicant's consultation was inaccurate, as residents were not aware that they should check detailed plans that show a bridge will be built in their back gardens. He stated that there was nothing to indicate to people there was anything to look at in consultations.</p>	<p>In summary, the Applicant does not believe the alternative proposal should be taken forward because:</p> <ul style="list-style-type: none"> • it does not create a route to the proposed Replacement Land south of the A12 and the wider rights of way network; • the land required to deliver the bridge in the alternative location is outside of the current permanent land take required and would change the Special Category Land and Replacement Land proposed and we would need to provide justification to provide that title; and • it further increases the diversion of the public right of way in the range of 550m to 600m by relocating the crossing approximately 300m west of its current position.
5.3	<p><i>Michael Humphries KC on behalf of Essex County Council (ECC)</i></p>	<p>ECC confirmed that they have no preference on the location of Gershwin Boulevard Bridge.</p> <p>Michael Humphreys KC, on behalf of ECC, confirmed that ECC had already set out their view that there needs to be a link from the bridge to Howbridge Hall Lane to the west of the proposed location of the bridge. He emphasised that ECC regard that as important to linking various routes.</p>	<p><u>Coleman's Fisheries</u></p> <p>Regarding Colemans Fisheries, the Applicant can confirm that in light of comments and consultation with ECC, Essex Local Access Forum (ELAF), and the landowners, the Applicant has removed the proposed footpath connection from the severed Footpath 121_103 to Little Braxted Lane behind the fishing ponds. The Applicant is now proposing to connect Footpath 121_103 to Footpath 121_101 via the proposed maintenance access tracks on the southern side of the A12.</p> <p>Footpath 121_101 crosses under the A12 via the Brain Bridge and continues to Maldon Road. This new connection would</p>

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		<i>The ExA noted that Braintree made the same point.</i>	provide an enhanced public right of way for users in Witham, with the proposed Little Braxted Lane bridge acting as the diversion route for the legally closed crossing of the A12. The proposed footpath would sit on the alignment of the private means of access (PMA) shown on the revised Streets, Rights of Way, and Access Plans [REP6-014] submitted at Deadline 6, starting on sheet 8 with 8/C continuing over 9/B on sheet 9, and on land proposed to be retained by the Applicant. This new proposed alignment will provide an improved facility by reusing the existing footpath network and connecting footpaths on a north south direction. This footpath would also enable circular walks between Whetmead Local Nature Reserve and Little Braxted Road and provide a woodland walk along the A12 to the community of Witham. This footpath would accord with paragraph 5.184 of the National Network National Policy Statement (NNNPS) and paragraph 100 of the National Planning Policy Framework (NPPF) as it would improve access to the countryside and connect two existing Public Rights of Way.
5.4	<i>Michael Humphries KC on behalf of Essex County Council (ECC)</i>	Michael Humphries on behalf of ECC confirmed that their understanding is that the Applicant is looking to provide the footpath connection at Coleman's Fisheries south around the fisheries. ECC would be content with that.	
5.5	<i>Katherine Evans on behalf of Essex Local Access Forum (ELAF)</i>	Katherine Evans confirmed that ELAF had indicated at Deadline 6 that they were content with what ECC proposed, and the Applicant has since agreed to this proposal.	
5.6	<i>ExA</i>	The ExA asked The Applicant to submit a plan at Deadline 7 showing the proposed footpath route around Coleman's Fisheries.	Chris Alves-Greenland, on behalf of the Applicant, displayed sheet 8 of the revised Streets, Rights of Way and Access Plans [REP6-014] submitted at Deadline 6, which shows this proposed footpath.

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6.		Gas pipeline diversion	
6.1		<p>The ExA asked the Applicant to provide an update on discussions with Cadent Gas regarding the diverted gas pipeline. They were particularly interested in REAC commitment BI50 and wanted an update on discussions regarding:</p> <ol style="list-style-type: none"> 1) No drilling under the river; and 2) Avoiding tree roots. <p>The ExA asked for clarification about whether REAC commitment BI50 is the commitment that the Applicant said the ExA could expect at Deadline 5.</p>	<p>The Applicant confirmed that whilst they had hoped to be able to make the REAC commitment at Deadline 5, discussions regarding this and some of the technical matters were still ongoing at Deadline 5. By Deadline 6, the additional REAC commitment BI50 was included [REP6-052] and that this commitment, alongside BI48, are assessed to be adequate to give the required reassurances that the pipeline will be installed using no-dig techniques, where the line and depth would be selected to minimise impacts to the woodland protected by Tree Preservation Order 07/42, the proposed Blue Mills Local Wildlife Site, the black poplar and the otter holt, and transitional veteran trees T2045 and T2078 as identified in the Supplementary Arboricultural Survey Report [REP3-008]. Figure 1 from the REAC, showing the extent of TPO 07/22, has been included within Appendix A of this document for ease of reference.</p> <p><u>Design</u></p> <p>Technical discussions are ongoing with Cadent who are progressing well with the detailed design for pipelines needing diversion.</p>

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			<p>With regards to Work No. U69, Cadent's detailed design is ongoing with input from the project team. The Applicant has been able to submit a new REAC commitment at Deadline 6 – BI50 [REP6-052], aiming to provide the assurance sought by Interested Parties.</p> <p>The Cadent gas pipeline, Work No. U69, would be installed using no-dig techniques underneath the River Blackwater and the woodland subject to Tree Preservation Order 07/22 at Blue Mills proposed LWS (see Figure 1 – Woodland TPO at Blue Mills proposed LWS). The line and depth would be selected to minimise impacts to the woodland protected by the Tree Preservation Order, the proposed Blue Mills Local Wildlife Site, the black poplar and otter holt at grid reference TL 83264 1361, and transitional veteran trees T2045 and T2078 as identified in the Supplementary Arboricultural Survey Report [REP3-008].</p> <p>This is in addition to REAC commitment BI48 [REP6-052].</p>
6.2	ExA	The ExA noted that within the REAC, commitment LV15 uses the wording "trenchless technique", whereas commitment BI50 uses "no dig". The ExA asked the Applicant to clarify whether these are the same thing, and if so,	Andrew Goodwin on behalf of the Applicant clarified that both terms are non-technical generic terms for the same thing i.e. it will not be open-cut installation.

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		whether they need to use identical wording.	
6.3	<i>Annie Keen on behalf of Maldon District Council (MDC)</i>	<p>Annie Keen on behalf of Maldon District Council emphasised that MDC remain concerned about the protection afforded to the roots of Black Poplar in the Blue Mills Nature Reserve.</p> <p>MDC asked the Applicant to provide the distance of the root protection are being given to these Black Poplar roots to ensure that it comes to no harm during the gas pipeline's rerouting operation.</p>	<p>As stated in paragraph 2.10.3 of the Supplementary Arboricultural Report [REP3-008] the potential veteran Black Poplar (T2077) qualifies as a veteran tree under a veteran tree assessment (as specified by the Woodland Trust) and for this reason, an additional root protection area (RPA) has been applied to this feature, as per the methodology in the Arboricultural Impact Assessment submitted as Appendix 8.4 in the Environmental Statement [APP-122] and Natural England and Forestry Commission standing advice.</p> <p>As stated in paragraph A.4.6 of Annex A.4 of Appendix 8.4 Arboricultural Impact Assessment [APP-122], features identified on-site that are either verified veterans/ancients, or potential ancient/veteran features that are likely to attain this status following verification, have had their indicative RPAs based on the governmental 'standing advice' for ancient and veteran trees in England. Governmental standing advice recommends a minimum 15m buffer zone from ancient woodland and larger distances for ancient and veteran trees which is:</p> <ul style="list-style-type: none"> • Calculated as a minimum of 15 times larger than the diameter of the tree; or

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			<ul style="list-style-type: none"> • 5m from the edge of the tree's canopy if greater than the above value. <p>The Applicant has noted that the Supplementary Arboricultural Report [REP3-008] contained an error in which the RPA was calculated as per the standard BS5837:2012 methodology. This will be corrected and updated via the Errata before the end of Examination.</p> <p>As stated on page 34 of Appendix F of the Supplementary Arboricultural Survey Report [REP3-008], the diameter of the tree (DBH) is 1360mm. Therefore, the RPA of the potential black poplar will be amended to 20.4m.</p>
6.4	<i>Mark Cathcart, Owner of Blue Mills Nature Reserve</i>	<p>Mark Cathcart stated that it was not clear to him what the route was of the gas pipeline diversion. He asked the Applicant:</p> <ol style="list-style-type: none"> 1) Whether the route had been determined yet; and 2) Whether there is a commitment that under Mr Cathcart's entire stretch of land the works done will be tunnelling, not trenching. 	<p>Andrew Goodwin on behalf of the Applicant confirmed that the route remains to be finally determined.</p> <p>The Applicant has agreed to REAC BI50, which was included at Deadline 6, committing that a no-dig trenchless technique will be used under the woodland protected by the TPO. The extent of the TPO is shown on Figure 1 of the REAC [REP6-052], included within Appendix A of this document for ease of reference.</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
6.5	<i>Mark Cathcart (Owner of Blue Mills Nature Reserve)</i>	Mark Cathcart asked the Applicant for further clarification regarding the REAC BI50.	<p>In an email to the Applicant dated 16 May 2022, Maldon District Council have confirmed that the boundary of the proposed Blue Mills Local Wildlife Site has been amended since the draft citation was originally submitted to Examination within Appendix K of their Local Impact Report [REP2-068] to encompass a wider area.</p> <p>The Applicant has submitted Figure 1 within Appendix B of the Applicant's Comments on Information Received at Deadline 5 [REP6-090] which shows the extent of the proposed LWS within the Order Limits based on the updated citation. This figure has been reproduced within Appendix B of this document for ease of reference. The amended boundary encompasses additional areas of woodland to the north of the previously proposed boundary by Maldon District Council as shown on the original citation within their Local Impact Report [REP2-068].</p> <p>The Examining Authority may find it useful to compare this to the extent of the TPO woodland which is shown on Figure 1 of the REAC [REP6-052] (reproduced within Appendix A of this document for ease of reference). The area of the TPO is smaller than the proposed LWS.</p>

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			<p>This is of relevance because at Deadline 6 the Applicant submitted a new REAC commitment, reference BI50, which commits to using no-dig techniques underneath the River Blackwater and the woodland subject to Tree Preservation Order 07/22 at Blue Mills proposed LWS.</p> <p>Commitment BI50 states,</p> <p><i>'The Cadent gas pipeline, Work No. U69, would be installed using no-dig techniques underneath the River Blackwater and the woodland subject to Tree Preservation Order 07/22 at Blue Mills proposed LWS (see Figure 1 – Woodland TPO at Blue Mills proposed LWS). The line and depth would be selected to minimise impacts to the woodland protected by the Tree Preservation Order, the proposed Blue Mills Local Wildlife Site, the black poplar and otter holt at grid reference TL 83264 1361, and transitional veteran trees T2045 and T2078 as identified in the Supplementary Arboricultural Survey Report [REP3-008].'</i></p> <p>This is in addition to REAC commitment BI48 which states,</p> <p><i>'The arboricultural survey confirmed that the mature black poplar within the Order Limits at Blue Mills proposed LWS qualified as a potential veteran tree. The results of the arboricultural survey will be used to inform an appropriate control, whereby a combination of route and construction methodology would be</i></p>

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			<p><i>designed to minimise the impacts on the black poplar and other sensitive features in this area'.</i></p> <p>Whilst commitment BI50 does not cover the full extent of the proposed LWS it does ensure that impacts are minimised on the area closest to the River Blackwater through use of no-dig techniques as opposed to open cut methods. It should be noted that the terms 'no-dig' and 'trenchless' are interchangeable in the context of the gas main diversion.</p> <p>Effects on the part of Blue Mills proposed LWS which sits outside of TPO 07/22 would continue to be mitigated through REAC commitments [REP6-052] detailed by the Applicant within previous submissions. In particular:</p> <ul style="list-style-type: none"> • Commitment LV13 – Routes of final utility diversions and the gas main diversion and methods of construction to be refined to retain as much existing vegetation as practicable, in particular mature vegetation and woodland. • Commitment LV15 – Working width for the installation of the gas main diversion would be reduced as far as reasonably practicable through woodland and where the gas main diversion crosses through hedgerow field boundaries. All main river crossing(s) would be installed using trenchless techniques, such as horizontal drilling.

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			<p>Directional drilling would be considered where practicable.</p> <ul style="list-style-type: none"> • Commitment LV14 – Replanting along the easement of the gas main diversion would be carried out in accordance with utility company’s guidance and best practice standards. Where woodland vegetation is lost and trees cannot be replaced in situ due to the restrictions of utility easements, native shrub planting would be used in line with the relevant utility company’s guidance. Where tree lines and tree belts are lost and cannot be replaced due to the restrictions of utility easements, native hedgerow planting would be used in line with the relevant utility company’s guidance. • Commitment BI3 (amended by the Applicant at Deadline 6 to include Blue Mills proposed LWS) – Exclusion zones would be marked around Brockwell Meadows Local Wildlife Site (LWS) which is adjacent to the Order Limits, and around retained parts of Whetmead Local Nature Reserve LNR) / LWS, Riverview Meadows LWS and Blue mills proposed LWS in accordance with the Retained and Removed Vegetation Plans [TR010060/APP/2.14]. <p>The response to question 7.0.3, of page 121 of the Applicant’s Response to the Examining Authorities First Round of Written</p>

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			<p>Questions [REP2-025], was authored prior to commitment BI50 (for no-dig techniques under TPO 07/22 which overlaps a large proportion of the proposed Blue Mills LWS). The response stated that on a worse-case basis (i.e., with an open cut trench, but with implementation of mitigation secured by the REAC), the residual significance of effect of a negligible adverse impact on a county receptor (Blue Mills proposed LWS) is neutral. Commitment BI50 would further reduce the potential for effects on the proposed LWS.</p> <p>The closing summary to be submitted by the Applicant will provide a summary of the overall position with respect to all ecological receptors potentially affected by the gas main so that the Examining Authority is clear on the justification that there are no significant effects on any ecological receptors as a result of the construction of the gas main. This text will update that provided in the Applicant's response to 7.0.3, taking into account the further REAC commitments secured during Examination.</p>
6.6		Mark Cathcart understood that this only applies to the TPO area, meaning that the reed bed of Blue Mills Nature Reserve is not covered.	Please refer to Figure 1 of the Supplementary Botanical Report [REP2-027], reproduced within Appendix C of this document for ease of reference. The area of habitat surveyed included only land within the ownership of Mr Cathcart, within the Order Limits and a 30m buffer of the Order Limits. The adjacent landowner

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		<p>Mark Cathcart submitted that the nature reports from Costain which currently form part of the Applicant's DCO documents refers to the reed bed as a "nettle bed". Mark Cathcart confirmed that he is happy to evidence that it is reed bed by submitting photographic evidence into Examination.</p> <p>He asked the Applicant:</p> <p>1) Whether the reference to "nettle bed" going to be corrected at Deadline 7; and</p> <p>2) Whether the commitment contained in BI50 for no-dig trenchless works applicable to the entire stretch of land belonging to Blue Mills Nature Reserve (and therefore, includes the reed bed) or is it only applicable to the TPO area.</p>	<p>did not permit access to the remainder of Blue Mills proposed LWS.</p> <p>Seven habitat types were recorded within the survey area, as detailed within Table 1 of the report [REP2-027]:</p> <ul style="list-style-type: none"> • F2f other swamp • F2d aquatic marginal vegetation • W1d wet woodland • W1g7 other broadleaved woodland types • W1g6 line of trees • G3c other neutral grassland • U1e built linear features <p>Table 1 on page 18 and 19 of the Supplementary Botanical Report [REP2-027] provides a description of the habitat parcels recorded on site. Row 1 of the table, describes an area of 'f2f other swamp' habitat 'dominated by nettles with frequent recordings of greater pond sedge' it also states, 'the habitat has a wet ditch nearby to the south which transitions into a reedbed populated by common reed.'</p> <p>Row 2 of the same table, describes an area of 'f2d aquatic marginal vegetation' and states 'dominant common nettle formed the majority of the herbaceous vegetative diversity within this habitat with occasional wild angelica, purple loosestrife and</p>

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			<p>great willowherb along the length of the edge of the pathway and riparian habitat.'</p> <p>Habitats recorded during the survey were classified in accordance with the UK Habitats Classification Methodology (UK Habitat Classification Working Group, 2018) which provides criteria for habitat types. Reedbeds (f2e) are defined at wetlands dominated by stands of common reed <i>Phragmites australis</i>. As stated in the guidance for reedbeds (f2e), 'reedbeds may be differentiated from aquatic marginal vegetation (f2d) by the presence of a wider range of species'. The guidance for aquatic marginal vegetation (f2d) states these may include valerian <i>Valeriana officinalis</i>, great willowherb <i>Epilobium hirsutum</i>, meadowsweet <i>Filipendula ulmaria</i>, hemlock water dropwort <i>Oenanthe crocata</i>, marsh woundwort <i>Stachys palustris</i> and purple loostrike <i>Lythrum salicaria</i>. Whilst, as stated in the guidance for 'other swamps (f2f)' reed canary grass is likely to be present along with other species such as great willowherb <i>Epilobium hirsutum</i>, nettle <i>Urtica dioica</i>, common couch <i>Elytrigia repens</i> and Yorkshire fog <i>Holcus lanatus</i>.</p> <p>None of the habitat parcels within the survey area would qualify as reedbed (f2e) as they were too diverse in other species and were not dominated by common reed. The Applicant does not</p>

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			<p>plan to amend any of the habitat codes within the Supplementary Botanical Report [REP2-027].</p> <p>Subsequent to ISH5 Mr Cathcart shared two photographs of Blue Mills in an email to Andrew Goodwin dated 29 June 2023. The Applicant has reviewed the photographs and believes that the areas shown are towards the southern part of the 'other swamp (f2f)' habitat recorded during the surveys, and that nettles were more dominant in the northern part of the 'other swamp (f2f)', adjacent to the wet woodland. The Applicant does not dispute that in the photographs provided by Mr Cathcart greater pond sedge is the more dominant species. However, the Applicant understands that as shown on Photographs 7 and 8 on pages 33 and 34 of the Supplementary Botanical Report [REP2-027], there is a transition of habitats from wet woodland to areas which have higher concentrations of nettles and bind weed mixed in with greater pond sedge, which then transition to areas dominated by greater pond sedge as shown in the photographs provided by Mr Cathcart.</p> <p>Regardless of whether nettle or greater pond sedge is the more dominant species, the habitat still qualifies as 'other swamp habitat (f2f)'. It should also be noted that as shown in Figure 1 of the Supplementary Botanical Report [REP2-027], the area of 'f2f</p>

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			<p>other swamp habitat' is south of the Order Limits and would not be affected by the gas main diversion.</p> <p>The Applicant also confirms that surveyors did note an area of habitat to the south of the survey area and the Order Limits, which would qualify as reedbed (f2e), as referenced within row 1 of Table 1, and the description for Photograph 8 on page 34 of the Supplementary Botanical Report [REP2-027]. The area of reedbed (f2e) is south of the Order Limits and would not be affected by the gas main diversion.</p> <p>All of the habitats shown on Figure 1 of the Supplementary Botanical Report [REP2-027] are within the area of TPO 07/22 as shown of Figure 1 of the REAC [REP6-052]. Therefore, mitigation is secured through REAC commitment BI50 [REP6-052].</p>
6.7	<i>Mark Cathcart (Owner of Blue Mills Nature Reserve)</i>	<p>Mark Cathcart asked the Applicant for further clarification on the following points:</p> <p>1) Please confirm that currently, there exists a possibility of trenching across the Blue Mills</p>	<p>1) As stated above, and as shown of Figure 1 of the Supplementary Botanical Report [REP2-027] there is no reedbed within the Order Limits. The habitats shown on this figure are within the extent of TPO 07/22, therefore, mitigation is secured through REAC commitment BI50 [REP6-052].</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
		<p>Nature Reserve within the DCO arena that constitutes reed bed;</p> <p>2) Please confirm what would the access be to allow the Applicant to trench across the reed bed, as Mr Cathcart confirmed this will require trees to be cut down;</p> <p>3) If the Applicant were to trench across the reed bed, what provisions would be taken to protect the reed bed and the wet woodland?</p> <p>Mark Cathcart emphasised the rarity of wet woodland and reed beds. He confirmed that the value of wet woodland is its rarity, and it is under threat. Inland reedbed is very rare and essential for the animals that benefit from it. He further emphasised that it is very hard to redevelop both of these natural elements elsewhere from where they naturally develop.</p>	<p>2) Access arrangements would need to be within and along the Order Limits and would be subject to the controls set out within the REAC and plans such as the Removed and Retained Vegetation Plans [REP6-032]. Access arrangements, both for the construction and operational phases of the gas pipeline, are being considered as part of the detailed design to include both engineering and environmental factors when finalising the detailed route of the pipeline within the corridor.</p> <p>3) The Applicant can confirm there is no reedbed within the Order Limits. The wet woodland is within the extent of TPO 07/22, and so mitigation is secured through REAC commitment BI50 [REP6-052].</p> <p>As stated in Table 9.22 of Chapter 9: Biodiversity [APP-076], priority habitats including wet woodland are assessed by the Applicant (in line with DMRB LA108) as being of National value. Reedbed is not specifically listed within Table 9.22 as none was recorded within the Order Limits, however as a priority habitat it would also be assessed as being of National value.</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
		The ExA encouraged Mr Cathcart to submit his submissions in writing.	
7.		Main river crossing	
7.1	<i>ExA</i>	<p>Main river crossings</p> <p>The ExA asked the Environment Agency (EA) to provide an update on the position in relation to the Applicant's proposed use of culverts.</p> <p>The ExA noted that, as set out in REP5-031, the EA disagrees with the Water Framework Assessment, whereas the SoCG identifies the Water Framework Assessment as "under discussion".</p>	<p><u>Environment Agency's response</u></p> <p>The EA believe there are a number of risks involved that are not covered. The EA are unhappy that eels and other fish cannot travel upstream, and James Carr on behalf of the EA confirmed that the EA remains concerned about the use of culverts as they do not have the habitat that fish require.</p> <p>James Carr submitted, on behalf of the EA, that if fish cannot move through a location then that will trigger the Water Framework Directive across the whole catchment.</p> <p>The EA confirmed that they will review the Applicant's previously submitted technical note [REP6-095] prior to Deadline 7.</p>
7.2	<i>ExA</i>	The ExA asked whether the Applicant was able to provide a derogation test on a without prejudice basis in the case that the	Reuben Taylor KC on behalf of the Applicant confirmed that the Applicant had provided a full assessment of the proposed Scheme's compliance with the Water Framework Directive [APP-159]. He further submitted that the EA has not provided

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
		ExA choose to recommend the EA's position?	<p>any alternative assessment that demonstrates the contrary. The ExA have to weigh up the evidence to come to a determination between the parties and therefore which position to recommend. However, were the ExA to favour the EA's position, the Applicant will provide a Water Framework Directive Derogation case on a without prejudice basis, despite the Applicant's primary position that the scheme is compliant with the Water Framework Directive.</p> <p>The Applicant has agreed to submit a derogation case at the request of the ExA without prejudice to its primary position that one is not required. However, producing a derogation case is a significant and time-consuming undertaking. In addition, the Applicant would usually expect to engage with the EA on the question of whether the alterations or modifications to water bodies necessitated by derogation would be capable of being reported in the relevant River Basin Management Plan (RBMP) (Test (b) of the derogation requirements). Given the short period of time which remains before the close of the Examination, it may not be possible to engage fully with the EA on this point in advance of the close of the Examination, or for the EA to inform the submission of the without prejudice derogation case. However, the Applicant will attempt to prepare the without prejudice derogation case, engage the EA on this, and submit the without prejudice derogation case to the ExA by Deadline 8.</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
7.3	ExA	<p>The ExA asked the Applicant where discussions had reached, and what the ExA can expect at Deadline 7.</p>	<p>A meeting took place between the Applicant and the EA on Monday 26 June 2023. Matters are being discussed but the position of the parties is entrenched in relation to culverting. The Applicant's position is set out in REP6-095. The EA have not provided a detailed response to this technical note yet, however James Carr suggested at item 7.1 that this will be submitted at Deadline 7.</p> <p>Reuben Taylor KC confirmed on behalf of the Applicant that it does not appear that any agreement will be reached. The Applicant will make full submissions on culverts in its closing submissions.</p> <p>Carol Bolt on behalf of the EA noted that the Applicant said in its response to Item 4.1 of this ISH5 agenda, that the SoCG records main river crossing as "under discussion" but the EA's position is that they do not think it will be agreed in the remaining time left of the Examination. The EA remain of the opinion that clear span bridges are infinitely preferable and are unclear why the Applicant has stuck to their position on culverts.</p> <p>Carol Bolt disputed the Applicant's assertion that there is lack of evidence or assessment on the part of the EA, as the EA have the expert opinion of Mr Carr, who has referred the ExA to a significant body of literature indicating culverting is a "bad thing".</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
			<p>The EA intend to respond in detail to the Applicant's technical note in a position statement at Deadline 7.</p> <p>The EA noted that they were not sent this technical note [REP6-095] directly and saw it for the first time when it was uploaded to the PINS website following Deadline 6.</p> <p>Reuben Taylor KC on behalf of the Applicant also explained that there exists a fundamental disagreement on the policy approach between the Applicant and the EA. The Applicant's case is founded firmly within the policy test detailed within the NNNPS at paragraph 5.25, that no <u>significant</u> harm should be caused (emphasis added). The Applicant has conducted a careful assessment of the consequences, concluding that no significant harm arises, thus it is the Applicant's case that the mitigation hierarchy (requiring an avoidance of <u>significant</u> harm) is not engaged.</p> <p>Reuben Taylor KC on behalf of the Applicant submitted that the EA's approach is inconsistent with the NNNPS, and inconsistent with their own internal policy. He also highlighted that the EA's internal policy has never been subject to external consultation. The Applicant's position is consistent with the relevant policy and is entirely justified. The Applicant will return to this in detail in its closing submissions.</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH5	Applicant's Response at the ISH5
			Carol Bolt on behalf of the EA disagreed with Reuben Taylor KC's submissions.
8.		Review of issues and actions arising	N/A
9		AOB	<i>None provided by any party</i>

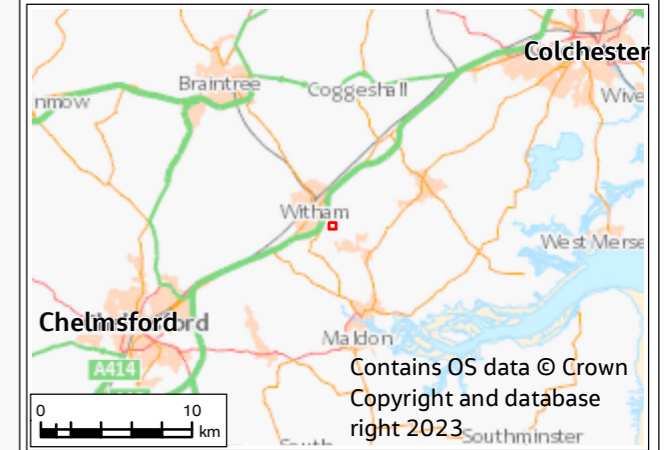
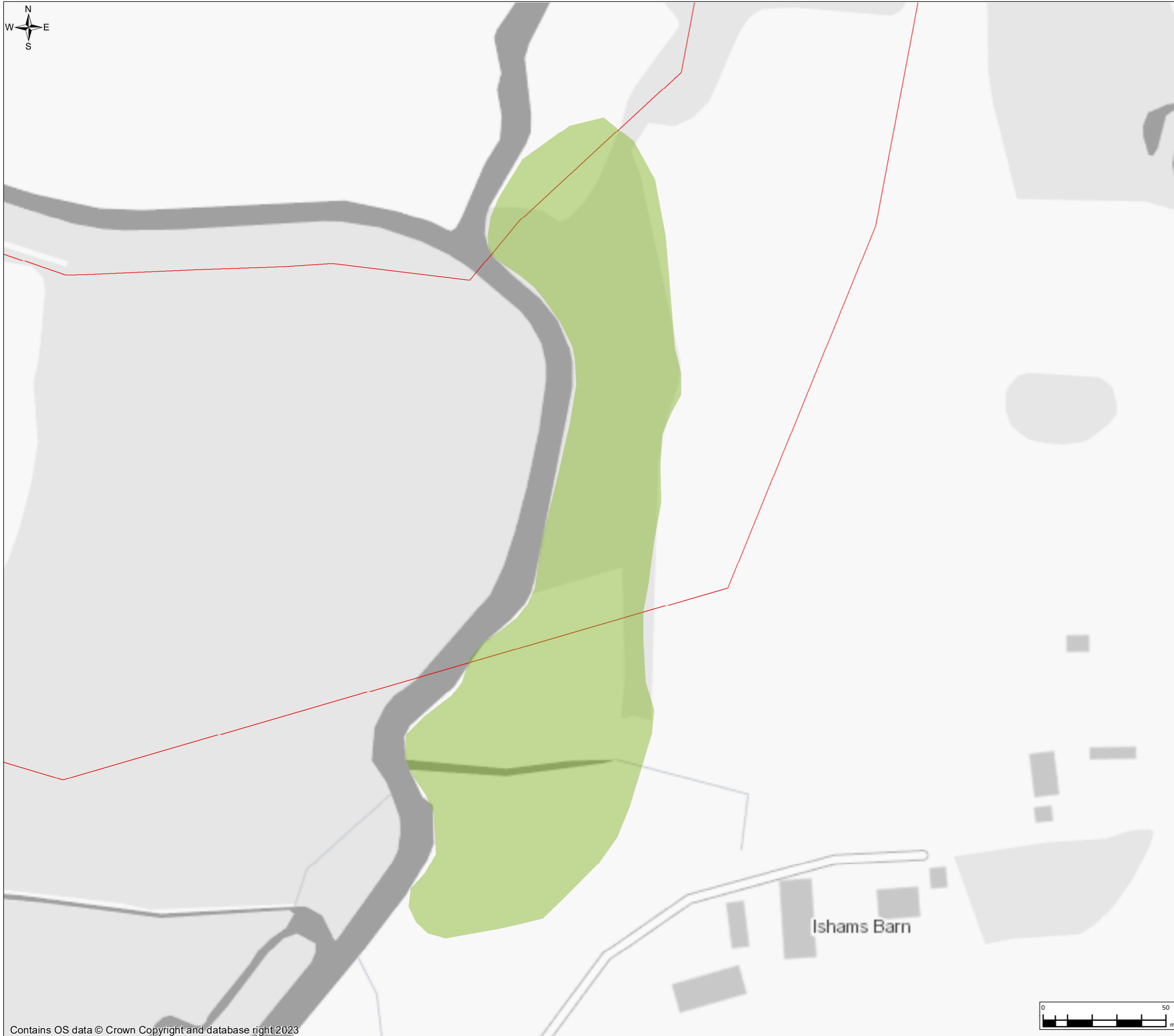
Appendix A - Figure 1 Woodland TPO at Blue Mills, reproduced from the Register of Environmental Actions and Commitments (REAC) [REP6-052]



FIGURE 1

Legend

- Order Limits
- Woodland TPO 07/22 and boundary for REAC commitment BI50



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Rev.	Rev. Date	Purpose of revision	Drawn	Check'd	Rev'd	Appr'd

Client

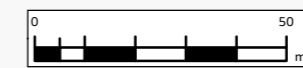
Project
**REGIONAL DELIVERY PARTNERSHIP
 A12 CHELMSFORD TO A120 WIDENING SCHEME**

Drawing Title
WOODLAND TPO AT BLUE MILLS

Drawing Status
S4 – SUITABLE FOR STAGE APPROVAL

Scale @ A3	1:1500	DO NOT SCALE
Jacobs No.	B36601D4	
Client No.	HE551497	Rev P01

Drawing Number
HE55 1497-JAC-EBD-5_SCHME-SK-LE-0010





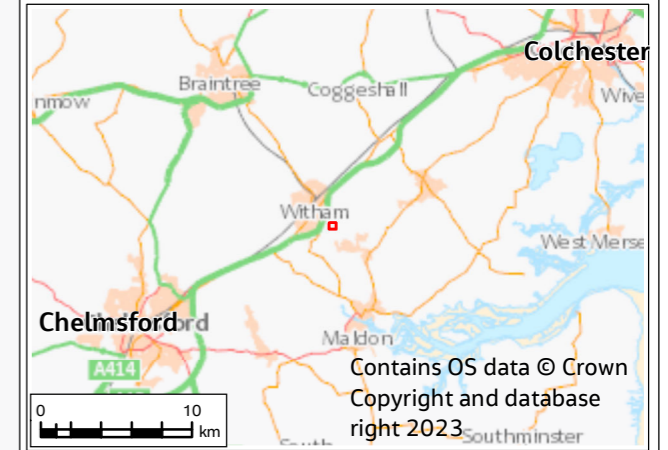
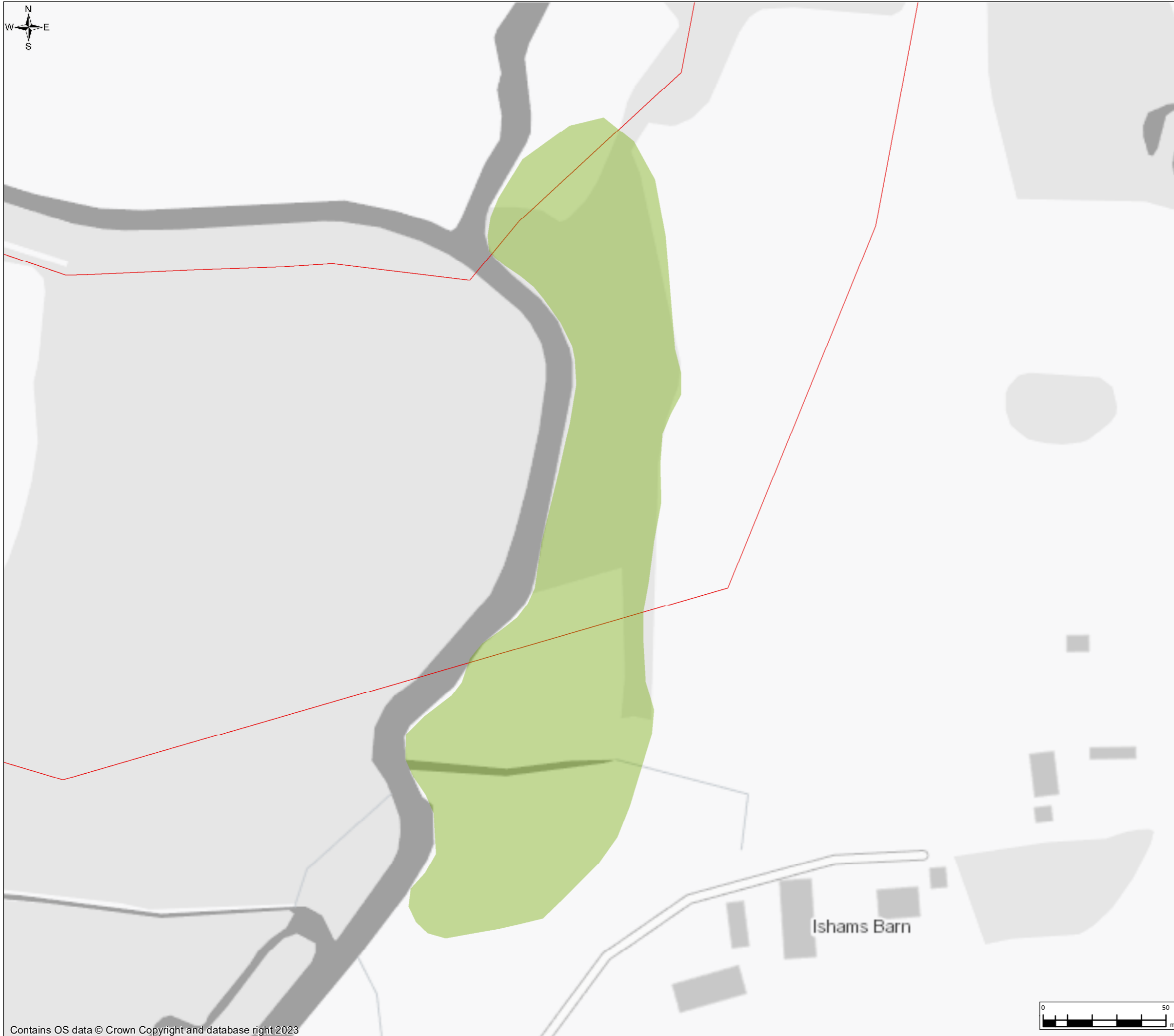
Appendix B - Figure 1 Blue Mills Proposed Local Wildlife Site, showing the extent of the proposed LWS within the Order Limits based on the updated citation, reproduced from Appendix B of the Applicant's Comments on Information Received at Deadline 5 [REP6-090]



FIGURE 1

Legend

-  Order Limits
-  Woodland TPO 07/22 and boundary for REAC commitment BI50



P01	12/6/2023	FINAL	JC	LW	AJ	SL
Rev.	Rev. Date	Purpose of revision	Drawn	Check'd	Rev'd	Appr'd



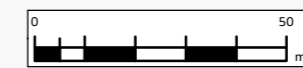
Project
**REGIONAL DELIVERY PARTNERSHIP
 A12 CHELMSFORD TO A120 WIDENING SCHEME**

Drawing Title
WOODLAND TPO AT BLUE MILLS

Drawing Status
S4 – SUITABLE FOR STAGE APPROVAL

Scale @ A3	1:1500	DO NOT SCALE
Jacobs No.	B36601D4	
Client No.	HE551497	Rev P01

Drawing Number
HE55 1497-JAC-EBD-5_SCHME-SK-LE-0010



Appendix C - Figure 1 UK Habitat Classification, reproduced from Appendix A of the Supplementary Botanical Survey Report [REP2-027]

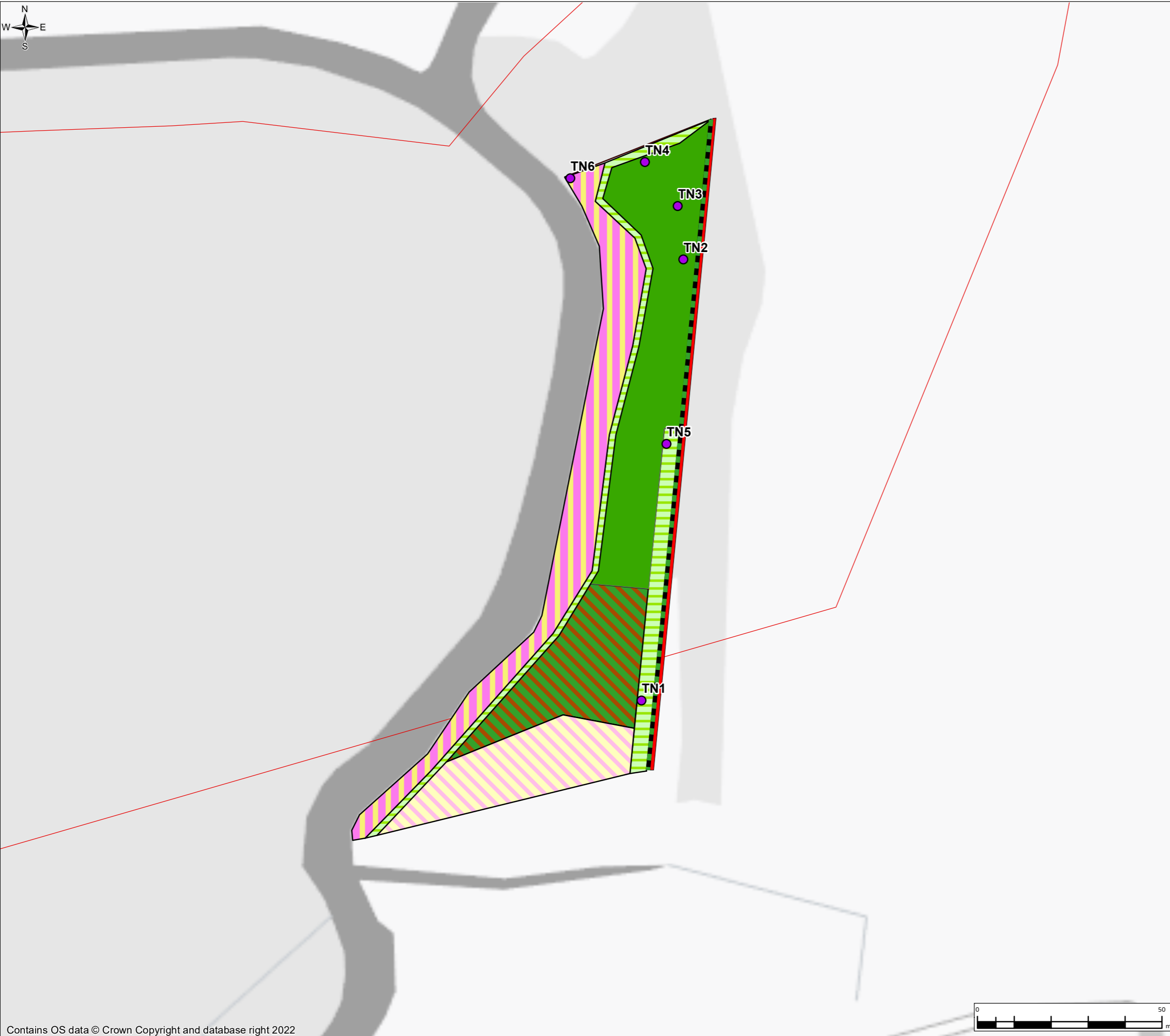
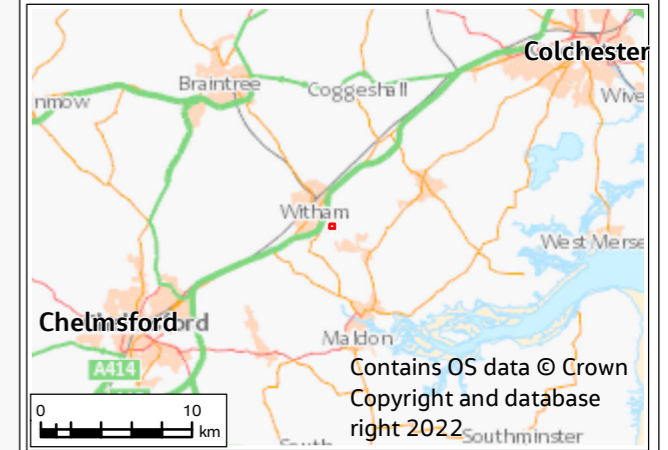


FIGURE 1

- Legend**
- Order Limits
 - Habitat type (UK Hab)**
 - w1g6 - Line of trees
 - f2d - Aquatic marginal vegetation
 - f2f - Other swamp with scattered trees
 - g3c - Other neutral grassland
 - u1e - Built linear features
 - w1d - Wet woodland
 - w1g7 - Other broadleaved woodland types



P1.0	20/01/2023	FINAL	JC	KL	AJ	SL
Rev.	Rev. Date	Purpose of revision	Drawn	Check'd	Rev'd	Appr'd



Project
**REGIONAL DELIVERY PARTNERSHIP
 A12 CHELMSFORD TO A120 WIDENING SCHEME**

Drawing Title
**BOTANICAL SURVEY REPORT – UK HABITAT
 CLASSIFICATION**

Drawing Status
S4 – SUITABLE FOR STAGE APPROVAL

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Jacobs No.	B36601D4	
Client No.	HE551497	Rev P1.0

Drawing Number
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