

A12 Chelmsford to A120 widening scheme

TR010060

9.78 Applicant's Comments on Information received at Deadline 7

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A12 Chelmsford to A120 widening scheme

Development Consent Order 202[]

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1 Introduction

- 1.1.1 The Development Consent Order (DCO) application for the A12 Chelmsford to A120 widening scheme (the proposed scheme) was submitted by National Highways to the Secretary of State for Transport via the Planning Inspectorate on 15 August 2022 and accepted for Examination on 12 September 2022.
- 1.1.2 The purpose of this document is to set out the Applicant's comments on submissions made by Interested Parties at Deadline 7 of the Examination.

2 Applicant's Comments on Information received at Deadline 7

Essex County Council	REP7-049-001
Sub-Part	
<p>This section sets out Essex County Council (the Council)'s Deadline 7 position on matters associated with the Articles within the draft DCO (dDCO). To assist the Examining Authority (ExA), each sub-section provides an overall summary of the Council's position on specific matters of interest to the Council and subsequently made proposed changes in areas where we disagree with the Applicant.</p>	
Applicant's Response	
<p>The Applicant notes the Council's comments.</p>	
REP7-049-002	
Sub-Part	
<p>Article 14 – Construction and maintenance of new, altered or diverted streets and other structures The Council maintains its position as outlined in our Deadline 3 submission [REP3-035 Page 10] and Deadline 4 submission [REP5-033 Page 10], and reiterates that this liability would only be acceptable to the Council if (a) any de-trunking can only happen with the consent of the Secretary of State in consultation with the Council, and (b) there is a requirement for a de-trunking scheme that retains one carriageway for two-way traffic and converts the other carriageway for WCH purposes.</p> <p>Unless National Highways is prepared to agree to implement a scheme for de-trunking that broadly accords with the Council's drafting Requirement for De-trunking as stipulated in Requirement 19, the Council does not believe it should be required to take on the financial liability for the continued maintenance of the de-trunked sections of the A12 and is not currently minded to accept such a substantial liability under Art.14.</p>	

It is the Council's position that our draft requirement wording for de-trunking, as explained and set out in Section 2 Requirement 19- De-trunking, should be included in the DCO as made by the Secretary of State (SoS).

Council's proposed changes to the Applicant's DL6 dDCO Please see the Council's proposed drafting for requirement 19 in the following section of this submission.

Applicant's Response

The Applicant explained to Essex County Council in response to REP6-098-001 at Deadline 7 [REP7-045] that 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 that this drafting would need to be amended as a result of any of the discussions relating to de-trunking.

The Applicant has responded to the Council's request for revised wording to Requirement 19 in REP7-049-014.

Regarding maintenance liability, as noted in section 5 of the Technical Note on De-trunking Proposals [REP4-057] a meeting was held on 9 November 2021 with the Council where draft Heads of Terms were presented. The draft, which can be found in Appendix A of the Applicant's Technical Note on De-trunking Proposals [REP4-057] includes a section on the standard of the asset and includes a maintenance free period. The Applicant will of course continue to engage with the Council on this matter, and in the context of Requirement 19.

REP7-049-003
Sub-Part
Article 15 – Street Works The Council welcomes the inclusion of Article 15(7) in the Applicant's Deadline 6 dDCO [REP6-037] following the ExA's commentary [PD-015].
Applicant's Response
The Applicant acknowledges ECC's comment.
REP7-049-004
Sub-Part
<p>Article 16 – Speed Limits & Article 23 – Traffic Regulations In Appendix A of the Council's Deadline 6 submission [REP6-098], we listed 18 locations where we considered changes would be required, to ensure that speed limits complied with the Council's Speed Management Strategy (SMS). Discussions between the Applicant and Council resulted in the Council agreeing the proposed speed limit at eleven of these locations, which requires no changes to the Applicant's dDCO. However, this left nine remaining locations where the speed limit was not agreed.</p> <p>Subsequently, the Applicant has agreed to change the proposed speed limit at three of the nine locations. These changes need to be reflected in Schedule 3, Part 6 of the dDCO: i. Hatfield Peverel Link Road to J21 (change from 30mph to 40mph) ii. Realigned Kennel Access (change from 30mph to National Speed Limit) iii. B1024 Link Road (between Rivenhall End and Kelvedon) At the other six locations, the Applicant and Council remain in disagreement: i. Junction 21 Roundabouts ii. Braxted Road (south of junction with Henry Dixon Road) iii. B1024 Link Road (between Rivenhall End and Kelvedon) iv. De-trunked A12 between Rivenhall East West Roundabout and Rivenhall End East Roundabout v. De-trunked A12 between Feering and Marks Tey vi. London Road Roundabout (de-trunked A12 arm) The Council maintains that, at the locations above, either the speed limit should be increased, in line with DfT guidance (Circular 01/2013) and the Council's Speed Management Strategy (SMS), or the</p>

design should be amended to encourage natural adherence to the proposed speed limit. This is explained under 'Speed Limits' on pages 25 and 26 of REP6-098. However, the Applicant has not agreed to any changes at these locations: • At Junction 21 they have stated that they can amend the speed limit, but have made no formal commitment to this. • At Braxted Road and on the B1024 Link Road, they have stated that, in principle, they are happy to amend the cross section of the road to encourage natural adherence, but there is again no formal commitment to this. • On the de-trunked A12 in Rivenhall End, between Feering and Kelvedon and on the approach to London Road Roundabout, the Applicant maintains that speed limits of 40mph, 50mph and 30mph, respectively, are appropriate for the 2-lane dual carriageway. As the local highway authority, we maintain that, if no changes are made to the speed limits or highway design at these locations during detailed design, our views should be reported to, and considered by the Secretary of State. We therefore request that the six locations listed above should be specifically identified in Requirement 10, such that a report must be submitted to and approved by the Secretary of State which includes details of the consultation undertaken with the Council, if no changes are made to the DCO design at these locations during detailed design. Council's proposed changes to the Applicant's DL6 dDCO The Council proposes 3 amendments as follows:

1. Amend the speed limit at the following two locations in Schedule 3, Part 6:

~~## see original document for table ##~~

2. Insert the following item to Schedule 3, Part 6:

~~## see original document for table ##~~

Further amendments to Requirement 10 have been proposed by the Council as a result of our concerns with the Applicant's speed limit proposals relating to Article 16 – Speed Limits and Article 23 Traffic Regulations. This can be found in Section 2, Requirement 10 Detailed Design of this submission.

Applicant's Response

The Traffic Regulation Measures Speed Limits plans were updated at Deadline 7 [REP7-002], this addresses the majority of the issues raised by the Council.

In addition, a narrative associated with speed limits was provided at Appendix B to Applicant's Comments on Information received at Deadline 6 [REP7-45]. This document directly addresses all of the locations where Essex County Council considered that a change in speed limit and/or highway geometry would be required.

The Council highlighted six areas where disagreement remained, the latest position on these areas is as follows:

Junction 21 Roundabouts

The speed limit has been changed to the National Speed limit as shown on the Traffic Regulation Measures Speed Limits plans. [REP7-002]

Braxted Road (south of junction with Henry Dixon Road)

The Applicant will work with the Council to agree a suitable highway cross-section for the proposed speed limit.

B1024 Link Road (between Rivenhall End and Kelvedon)

The Applicant will work with the Council to agree a suitable highway cross-section for the proposed speed limit.

De-trunked A12 between Rivenhall East West Roundabout and Rivenhall End East Roundabout

The Applicant has, within Requirement 19, committed to provide written details to the Secretary of State following consultation with the relevant local highway authority and relevant planning authority demonstrating how the de-trunking proposals maintain a safe and reliable highway network.

De-trunked A12 between Feering and Marks Tey

The Applicant has, within Requirement 19, committed to provide written details to the Secretary of State following consultation with the relevant local highway authority and relevant planning authority demonstrating how the de-trunking proposals maintain a safe and reliable highway network.

London Road Roundabout (de-trunked A12 arm)

The Applicant has, within Requirement 19, committed to provide written details to the Secretary of State following consultation with the relevant local highway authority and relevant planning authority demonstrating how the de-trunking proposals maintain a safe and reliable highway network.

Technical working groups will continue through the detailed design phase of the proposed scheme, where roads to be operated by Essex County Council will be discussed and an appropriate cross section used. It is not in the Applicant's interests to design and build roads wider than is required.

REP7-049-005

Sub-Part

Article 18 – Street works Following the ExA's commentary ref no. DCO-PC10 [PD-015] on Art. 18, the Council understand it is still the view of the Applicant [AS-103] that the drafting of Art. 18(3) should not be included, whereas the Council's support the ExA's commentary to support its inclusion. The Council maintains that for works proposed to highways (other than on trunk roads), the relevant street authority should have a power of prior approval. Precedent has been set in a similar provision in the Silvertown Tunnel DCO as per explained in REP3-035, Page 10 and REP5-033, Page 12.

Council's proposed changes to the Applicant's DL6 dDCO Insert new paragraph (3) under Article 18 – Street Works as follows:

(3) The undertaker must not carry out works to any street under paragraph (1) for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent.

Applicant's Response

The Applicant's response is contained in reference DCO-PC10 in the Applicant's Response ExA dDCO - Additional Submission [AS-103]. The Applicant's concern is that it is already required to obtain a street works permit from ECC (article 13 of the dDCO) which will include conditions. It follows that the proposed Article 18(3) would be unnecessary and burdensome duplication – unless the street works permitting regime was disappplied in Article 3 of the dDCO and paragraphs (8) to (10) of Article 18 were also deleted. ECC has not suggested or agreed to this disapplication, or indicated whether it considers it would or would not be appropriate and appears therefore to be seeking duplicative control mechanisms, which is what the DCO regime was designed to avoid.

REP7-049-006
Sub-Part
<p>2. Draft DCO – Requirements This section sets out the Council's Deadline 7 position on matters associated with the Requirements within the draft DCO (dDCO). To assist the ExA, each sub-section provides an overall summary of the Council's position on specific matters of interest to the Council and our proposed changes in areas where we are in disagreement with the Applicant.</p>
Applicant's Response
The Applicant notes the Council's comments.
REP7-049-007
Sub-Part
<p>Requirement 2 – Time limits The Council drew the ExA's attention to the Applicant's draft Requirement 2 wording during Issue Specific Hearing (ISH5) as concerns mentioned in our Deadline 3 submission [REP3-035, Page 10 – 13] remain unaddressed. The Council explained that the Council's proposed wording would remove any residual doubt about the effect of sections 154 and 155 of the Planning Act 2008 and the time within which development must 'commence' (as defined) for the purpose of the pre-commencement requirements. At ISH5 the Applicant confirmed that its proposed wording in Requirement 2 would mean that, once development had 'begun' by the carrying out of 'pre-commencement works', there would be no time limit within which the development may 'commence' and within which pre-commencement requirements (such as requirements 3, 5, and 7) may be discharged. The Council considers that it would be unacceptable for the development to only 'commence' (say) 15 years after the coming into force of the DCO as the environmental and transport effects could then be quite different from those reported in the Environmental Statement and, in the meantime, there may be generalised blight for local residents. Council's proposed changes to the Applicant's DL6 dDCO The Council is aware that the Applicant mentioned during ISH5 that they will be addressing this point in their next version of dDCO however should this amendment not address the Council's original concerns, the Council request that Requirement 2 read as follows:</p>

2.–(1)The authorised development must not begin later than the expiration of 5 years beginning with the date on which this Order comes into force. (2) The authorised development must not commence later than the expiration of 5 years beginning with the date on which this Order comes into force.”

Applicant's Response

The Applicant's response on this matter is set out in its Written summary of the oral case made at Issue Specific Hearing 5 REP7-043. The Applicant has included a definition of 'begin' at Article 2 of the dDCO to make it clear that 'begin' for the purpose of Requirement 2 (Time Limits) has the same meaning as that provided by ss. 154 and 155 of the Planning Act 2008. That amendment was made in the version of the dDCO submitted by the Applicant at Deadline 7 [REP7-006].

However, as explained at ISH5, the Applicant does not agree that the development should be constrained in the manner proposed by ECC in its proposed drafting for Requirement 2(2).

The Applicant confirmed at ISH5 that it is possible under the current wording of Requirement 2 to "begin" the development by carrying out a material operation (as per the definition in s154 and s155 of the Planning Act 2008), but not commence it until several years later. As previously explained, whilst this would be unlikely to occur in practice, it would be a situation allowed under the dDCO, as it would be 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.

As such, the ability for the Applicant to "begin" the development in the manner described is consistent with the way planning consenting operates in England and Wales. The consequences identified by ECC that would flow from the definition of 'begin' have been accepted as appropriate for many years and ECC have not submitted anything that suggests the usual planning regime consequences should not apply to this consent, as they would to other major development consented under the 1990 Act.

The Applicant is therefore strongly of the view that the amendment to Requirement 2 sought by ECC is neither necessary nor appropriate.

REP7-049-008

Sub-Part

Requirement 10 – Detailed Design The Council refers to its detailed design comments made at Deadline 3 [REP3-035, Page 10], Deadline 5 [REP5-033, Page 14] and Deadline 6 [REP6-098, Page 19]. The Council's position remains that the ExA's proposed change ref no. DCO-PC16 [PD-015, Page 7] should be inserted into Requirement 10 Detailed Design.

Council's proposed changes to the Applicant's DL6 dDCO

The Council requests the insertion of new Requirement 10 (3) and Requirement 10(3), as per ExA's draft wording ref no. DCO-PC16, as follows: (3) - No part of the authorised development is to commence until, for that part, a report has been submitted to and approved by the Secretary of State, following consultation with the relevant local highway authority, demonstrating that— (a) the undertaker has engaged with the local highway authority, the local planning authority and other relevant stakeholders on refinements to detailed design for that part of the authorised development; (b) the undertaker has had regard to the local highway authority, the local planning authority and other relevant stakeholders' comments; and (c) any refinements to the detailed design for that part of the authorised development arising as a result of that engagement accord with the scheme design approach and design principles.

(4) - Furthermore, in relation to the following locations, the detailed design must take into account the views of the local highway authority: • Junction 19 roundabouts • Junction 21 Roundabouts • Braxted Road (south of junction with Henry Dixon Road) • B1024 Link Road (between Rivenhall End and Kelvedon) • De-trunked A12 between Rivenhall East West Roundabout and Rivenhall End East Roundabout • De-trunked A12 between Feering and Marks Tey • London Road Roundabout (de-trunked A12 arm) • Junction 25 Old Rectory roundabout.

Applicant's Response

For the reasons explained in the Applicant's Response to the Examining Authority's Commentary on the dDCO [AS-103] at DCO-PC16, the Applicant does not accept the proposal to add a new paragraph (3) on the basis that it is not necessary or appropriate and would delay the delivery of a Nationally Significant Infrastructure Project.

The proposed scheme's detailed design is already constrained by the provisions of Requirement 10 of the draft DCO such that further Secretary of State approval of the detailed design is not necessary.

Requirement 10, as currently drafted, provides numerous controls on the detailed design of the proposed thereby ensuring that the detailed design accords with:

- a) the preliminary scheme design shown on the works plans and the engineering drawings and sections;
- b) the principles set out in the environmental masterplan; and
- c) the scheme design principles, following the proposed change by the ExA suggested above and which has been accepted by the Applicant.

This ensures that the proposed scheme is designed in a manner that is consistent with the plans and measures that have already been the subject of scrutiny and consultation during the Examination. As such, it is only where the detailed design seeks to depart from those measures that the Applicant is required to seek approval from the Secretary of State. In that case, the Applicant is already required by the provisions of Requirement 10(1) to consult with the relevant local planning authority and relevant local highway authority on those proposed amendments.

The amendments proposed by the ExA, and supported by ECC, depart from precedent practice on highways DCOs, which do not require such steps to be taken and would cause significant delay and cost to the scheme, as well as imposing a large administrative burden on the Applicant and the Secretary of State.

The Applicant does not agree that it is appropriate to make the amendment at sub-paragraph (4) of Requirement 10 as proposed by ECC. The views of ECC, and the other local authorities within whose area the proposed scheme lies, have been sought on the design of the scheme via extensive consultation. This has been undertaken during the non-statutory and statutory consultations (as set out in the Consultation Report [APP-045], via on-going engagement and during the course of the Examination.

In addition, throughout the development of the proposed scheme robust engagement has taken place and will continue to take place with Essex County Council. Indeed, the Applicant has set up technical working groups (TWG) with the Council which cover detailed design matters such as road bridges, traffic signals, and drainage. To date over 15 TWGs have taken place with the next one planned shortly. The TWGs have been complemented by the creation of a technical queries and requests log shared with the Council to ensure the swift response resolution to technical queries.

Requirement 10 controls the detailed design of the proposed scheme, in the manner described above. Any amendment to the proposed scheme that would depart from the works plans, engineering drawings and sections, the principles of the environmental masterplan and the design principles is subject to consultation with the local planning and highway authorities.

As such, the Applicant is of the view that there is no basis for suggesting that ECC should be consulted on the detailed design of the proposed scheme in the locations listed in their Deadline 7 representation, and that no further amendments to Requirement 10 are required.

REP7-049-009

Sub-Part

New Requirement – Walking Cycling and Horse-riding Throughout the DCO process, the Council has consistently requested specific changes to the DCO design, to ensure that the walking, cycling and horse-riding (WCH) facilities accord with the DfT's LTN1/20 guidelines. The reasons for these changes are explained in the following sections of Council's Local Impact Report [REP2-055]: • 8.2.10 to 8.2.19 – Over-arching WCH principles • 8.3.8 to 8.3.15 – Junction 19 • 8.3.28 to 3.3.33 – Junction 21 to Junction 22 • 8.3.38 to 3.3.52 – Junction 23 to Junction 24 • 8.3.77 to 3.3.82 – Junction 24 to Junction 25 • 8.3.85 to 3.3.94 – Junction 25 At Deadline 6, the Applicant included a table in Appendix B of their Design Principles [REP6- 058], setting out the principles it proposed to follow in the design of Walking, Cycling and Horse-riding (WCH) infrastructure. In ISH5, the Applicant confirmed that they will be reinserting a Requirement to ensure that this table has sufficient status within the DCO.

We agree that there should be a standalone WCH Requirement within the DCO and have provided our proposed wording for the Requirement below.

We also welcome the inclusion of a table in Appendix B of the Design Principles document [REP6-058]. However, we maintain that the proposals within the current table are not sufficient to ensure that the design of the WCH infrastructure will accord fully with LTN1/20. The table in Appendix B is based on a WCH infrastructure specification developed by the Council but omits a number of key design elements we consider are necessary. As a result, the Council is seeking the following changes/additions to the Applicant's proposed specification, as follows: 1. The Council should be the approving authority for changes made to the WCH infrastructure during detailed design, as the local highway authority, rather than the Secretary of State. 2. The two key WCH overbridges at Paynes Lane and Marks Tey should have segregated walking and cycling lanes and be 5.5 wide, between parapets (rather than 4m). 3. A separation of 0.5m (the LTN1/20 desirable minimum) should be provided between the proposed cycle tracks and the carriageway on the new junction 19 A12 Overbridge (Boreham Bridge) and Wellington Road Overbridge replacement (there is currently no separation proposed). 4. The existing shared use walking/cycling facilities between Witham and Kelvedon and Feering and Marks Tey should be installed or upgraded to a minimum width of 3m. 5. The cycle crossing of the de-trunked A12 within Rivenhall End should be designed to operate with a single stage, or with 4m minimum external radii

turns if a single-stage cycle crossing cannot be reasonably accommodated. 6. A protected route for a footway/cycleway shall be provided, north-south from the southern extent of the red line boundary, passing through junction 24 under the A12, to the northern extent of the red line boundary. 7. All cycle tracks should be designed with at least the absolute minimum separation from carriageway recommended in LTN1/20 Table 6-1.

As we have no power to amend the content of the Applicant's Design Principles document, we have referred to our own WCH infrastructure specification matrix within our proposed wording for WCH.

A copy of the Council's proposed Walking Cycling and Horse-riding Infrastructure Specification Matrix is provided in Appendix A of this document.

Council's proposed changes to the Applicant's DL6 dDCO 1. Insert Schedule 2, Part 1 – Req (1) Interpretation, as follows: "Walking Cycling and Horse-riding Infrastructure Specification Matrix" means the document of that description listed in Schedule 12 (documents to be certified) and certified by the Secretary of State as the Walking Cycling and Horse-riding Infrastructure Specification Matrix for the purposes of this Order. 2. Re-insert a WCH Requirement within the dDCO Schedule 2 Requirement XX, as follows: Walking, cycling and horse-riding (1) No part of the authorised development is to commence until a scheme setting out written details of the provision for walkers, cyclists and horse-riders has been submitted to and approved in writing by the highway authority. (2) The written details under sub-paragraph (1) must: i. include the provision for WCH users at new and existing overbridges of the A12; ii. include the provision for WCH users at new and existing at-grade highway crossings and routes that are affected by the scheme; and iii. unless otherwise agreed in writing by the local highway authority, accord with the Walking Cycling and Horse-Riding Infrastructure Specification Matrix. (3) No part of the authorised development is to open for public use until the approved scheme has been implemented by the undertaker.

Applicant's Response

The Applicant provided an update to the WCH Requirements table in Appendix B of the Design Principles at Deadline 7 [REP7-017]. This update included the adoption of an additional seven key design elements proposed by Essex County Council, including 4m minimum internal radii at the entry and exit to ramps at Paynes Lane and Marks Tey bridges, and 5m minimum external radii at the entry and exit to ramps at Little Braxted Lane, Snivellers Lane, Potts Green and Gershwin Boulevard bridges, and the protection of the route for a footway/cycleway from the southern extent of the redline boundary through junction 24 to the northern extent of the redline boundary. The Applicant has now accepted all but three of the WCH commitments

requested by the Council. The commitments made by the Applicant can be found in Appendix B of the Design Principles [REP7-017].

The Applicant has previously explained to the Council that LTN 1/20 provides hierarchical guidance and the proposed WCH infrastructure proposed by the scheme is compliant with LTN 1/20. The additional measures that the Council is requesting, such as widening of Paynes Lane and Marks Tey bridges to provide segregation between walking and cycling facilities, and upgrading the existing shared use facilities between Witham and Kelvedon and Feering and Marks Tey, are considered an enhancement beyond what is required to accommodate the forecast future active transport growth in these areas.

The Applicant has re-inserted the WCH requirement into Schedule 2 of the draft DCO submitted at Deadline 7 as Requirement 20 [REP7-005]. However, the Applicant maintains that the Secretary of State and not ECC is the appropriate body to approve details under the requirements as set out in the Applicant's Response ExA dDCO [AS-103] and the Applicant's Written submission of oral case for Issue Specific Hearing 5 REP7-043. As such, the Applicant is strongly of the view that its wording for Requirement 20, as reflected in the Deadline 7 dDCO [REP7-005] should be included in the DCO.

REP7-049-010

Sub-Part

Requirement 14 – Boreham operation phase traffic mitigation measures The Council set out its views on the measures required to mitigate the impact of the DCO on the B1137 in its Local Impact Report [REP2-05], paras 8.3.17- 8.3.20 (pages 39-39). The measures proposed were justified in the Council's B1137 Main Road, Boreham Technical Note [REP3-034]. We are pleased to see many of the Council's recommended mitigation measures included in the Applicant's proposed text for Requirement 15. However, the Applicant still does not agree to include minor road narrowing at three key locations on Main Road. The Council maintains that the provision of average speed cameras should be in combination with other measures, to visually reinforce the need to travel at lower speeds. The proposed road narrowings are a key part of an overall package of measures and should be included within the requirement, hence we consider the Council's proposed wording for Requirement 15, below, to be appropriate. Council's proposed changes to the Applicant's DL6 dDCO Requirement 14 wording to be as follows: Boreham operation phase traffic mitigation measures (1) No part of the authorised development is to commence use until a scheme for

managing traffic on the B1137 between junction 19 and junction 21 of the A12 has been submitted to and approved in writing by the local highway authority. (2) The B1137 traffic management scheme must be agreed by the local highway authority and unless otherwise agreed include the following measures: i. an average speed camera system covering the stretch of the B1137 between the southern entry to Boreham Village and Hatfield Peverel; ii. a new signalised pedestrian crossing and associated road narrowing opposite the Co- op food store; iii. minor road narrowing (similar to the existing provision at the southern entry to Boreham village) at three new locations: a. the northern entry to Boreham village b. between the northern entry to Boreham village and Waltham Road c. In the vicinity of the pedestrian entrance to the recreation ground iv. place-making / safety signs at an additional three locations within Boreham village to increase awareness of the speed limit changes (3) No part of the authorised development is to open for public use until the approved scheme has been implemented and delivered by the undertaker.

Applicant's Response

The Applicant welcomes the Council's support of the mitigation measures along the B1137 that the Applicant has included in the proposed scheme. The Applicant has agreed to provide average speed cameras within Boreham as defined by the extent of the 30mph speed limit and between Boreham and Hatfield Peverel as defined by the extent of the 40mph speed limit, a new controlled pedestrian crossing on the B1137 in the vicinity of the Boreham Co-op and softer measures in the form of road safety posters in the vicinity of Orchard Cottages, Boreham Recreation Ground and outside of the Little Hedgehogs day nursery.

As explained in response to REP6-098-003 at Deadline 7 [REP7-045], the Applicant considered the inclusion of road narrowing at the locations specified by Essex County Council, however the Applicant does not believe that minor additional road narrowing is either appropriate or required on the B1137 in Boreham. This localised road narrowing presents an additional danger to cyclists as it can push cyclists who are riding on the road into the path of motor vehicles.

The Applicant maintains that the measures proposed in Requirement 14 are sufficient to reinforce the speed limit within Boreham and the Applicant is not proposing to adopt the revised wording for the requirement as proposed by the Council. The Applicant would reiterate that the Council's own expert witness at Issue Specific Hearing 3 confirmed that average speed cameras would be an effective measure in keeping people to speed limits [Ref 3.3, REP5-020].

As such, the Applicant is strongly of the view that its wording for Requirement 14, as reflected in the Deadline 7 dDCO [REP7-005] should be included in the DCO.

REP7-049-011

Sub-Part

Requirement 15 – Messing operation phase traffic mitigation measures The Council set out its views on the measures required to mitigate the impact of the DCO on Messing, Inworth and Oak Road, Tiptree in its Local Impact Report [REP2-05], paras 8.3.62- 8.3.74 (pages 46-49). The measures proposed were justified in the Council's Inworth, Messing & Tiptree Mitigation Options Technical Note [REP3-033].

The Applicant has only proposed to provide two of the measures the Council has identified, and these measures alone will be insufficient for adequately mitigating the impacts of the new junction on the local road network in the vicinity of the new junction. It is the Council's firm view that these mitigations should be in combination with each other to effectively reduce the impact of traffic flow changes in the vicinity of Messing, Inworth and Tiptree. In addition, to give surety that the mitigation measures are implemented before the opening of the A12 scheme, the Council maintains that the wording for this requirement should state that '...no part of the authorised development is to open for public use until the approved scheme has been implemented'. We consider the Council's proposed wording for Requirement 16, below, to be appropriate for inclusion in the DCO. Council's proposed changes to the Applicant's DL6 dDCO Requirement 15 wording to be as follows: Messing operation phase traffic mitigation measures (1) No part of the authorised development is to commence until a scheme for managing traffic on the approaches to junction 24 has been submitted to and approved in writing by the local highway authority. (2) 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. (3) The scheme in sub-paragraph (1) must include the following measures: i. 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 camera covering the southbound carriageway north of the Inworth Road roundabout; ii. 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; iii. widening of Hinds Bridge to provide a minimum carriageway width of 7.3m, with provision for pedestrians and cyclists;

iv. measures to improve provision for walking, cycling and horse riding users, as identified in the assessment under sub-paragraph (2); v. village entry treatments at the entrance to Messing village; vi. 'Unsuitable for HGVs' signage on Kelvedon Road and Harborough Hall Road; vii. narrowing of the entries to Oak Road (both the eastern and western ends), through tightening of entry radii and appropriate landscaping. viii. priority narrowing measures on Oak Road; and ix. improved signage at either end of Oak Road to guide through traffic to the B1022/B1023 junction. (4) No part of the authorised development is to open for public use until the approved scheme has been implemented by the undertaker.

Applicant's Response

The Applicant has responded to Essex County Council's technical note in REP3-033-001 [REP4-056] and further explained in response to ExQ2 [Q 2.17.1, REP4-055] and at Issue Specific Hearing 3 [Ref 3.17, REP5-020] the Applicant's position on interventions in the village of Messing. The Applicant also considered the impact of increased traffic in Messing when assessing the bypass of Inworth in the Junction 24, Inworth Road and Community Bypass Technical Report [APP-095].

The Applicant reiterates that changing the way traffic routes from that modelled and assessed in the Environmental Statement may lead to significant traffic and adverse noise affects for residents in Messing, Tiptree and Inworth. The Applicant does not wish to encourage additional traffic to route towards Oak Road and/or the existing double mini-roundabout in Tiptree to avoid these significant adverse impacts. Therefore, the Applicant does not agree to adopting the additional measures proposed by the Council in their draft wording for Requirement 15.

The Applicant's position on the widening of Hinds Bridge has been outlined in response to reference 3.24 at Issue Specific Hearing 3 [REP5-020]. The Applicant maintains that as the proposed scheme is reducing the number of HGVs using this route, the widening of the bridge and provision for pedestrians and cyclists is not the responsibility of the Applicant.

Regarding the provision of average and fixed speed cameras, pinch point widening and additional WCH provisions along the B1023; the Applicant has further explained in response to REP5-039-009 at Deadline 6 [REP6-090] why the Applicant is not proposing to include these additional measures requested by the Council. The proposed Inworth Road roundabout would act as a traffic calming feature to increase the likelihood of adherence to the proposed speed limit in both directions. The speed of

existing traffic in this location is already in good compliance with the limit and there is no evidence that additional traffic increases likely speed and/or risk associated with that speed. Therefore, while cameras may be considered beneficial by stakeholders, there is not a case to support their provision by the proposed scheme.

The Applicant has proposed pinch-point widening in Inworth to reduce the likelihood of wide vehicles overrunning onto pedestrian footways in the village where pedestrian use is high. It is not proposed for further existing pinch-point widening to be included in the proposed scheme south of the Perrywood Garden Centre because the likelihood of encountering pedestrians in this 50mph section without a footpath is less likely compared to within the village. The pedestrian footway in Tiptree is set-back from the carriageway in sections where the carriageway is narrow, further reducing the risk of vehicle overrunning onto pedestrian footways.

As such, the Applicant is strongly of the view that its wording for Requirement 15, as reflected in the Deadline 7 dDCO [REP7-005] should be included in the DCO.

REP7-049-012

Sub-Part

Requirement 16 – Operation phase local traffic monitoring The principle of traffic monitoring, with both pre-opening baseline and post opening surveys, together with a number of control sites to monitor background growth, has been accepted by the Applicant on other DCO schemes, as has the provision of reasonable and appropriate mitigation, should monitoring show that there is a significant adverse impact due to the scheme.

In the Council's Monitoring and Mitigation Plan Technical Note [REP6-100] we have clearly set out the monitoring we believe is required to identify the impact of the A12 scheme on the local highway network. We have provided the reason for each proposed monitoring site in Table 2.2 and explained how this data, combined with control data from ECC's own traffic monitoring programme could be used to specifically identify whether unanticipated post- opening changes in traffic flow, speed, and/or delay have been caused by the A12 scheme or other factors (Section 3 of REP6-100, pages 14-17).

As explained at ISH5, while the Applicant has agreed to traffic monitoring at the seven monitoring locations identified in the Council's Local Impact Report [REP2-055], since the LIR was submitted the Council's has formed the view that additional monitoring is necessary to properly and robustly monitor and assess the impact of the A12 widening on the local highway network, see Section 2.2 of REP6-100 where this is set out and our justification is provided.

The Applicant has explained that in their view it will not be possible to determine the extent to which the scheme is causing a particular change, given other contributory factors, and it is therefore not appropriate that they be required to mitigate any adverse effects observed through monitoring via a suitable mechanism included within Requirement 17. The Council believes strongly however that this approach is unreasonable, being akin to an argument that unless it can be 100% proven the scheme is causing an adverse effect the Applicant is not required to address it. The Council suggests this is not reasonable as, if the scheme can reasonably be concluded to be having a significant material adverse impact on the basis of the monitoring data collected (taking account of control data as necessary), it is reasonable to expect the Applicant to address this. The Council has

put forward how a suitable mechanism for agreeing post-opening mitigation could work in REP6-100, as an example, and there are precedents where agreement of such a mechanism has been required by other highway DCO schemes.

We consider the Council's proposed wording for Requirement 17, below, to be appropriate for inclusion in the DCO.

Council's proposed changes to the Applicant's DL6 dDCO Requirement 16 wording to be as follows: Operation phase local traffic monitoring and mitigation (1) No part of the authorised development is to commence until written details of an impact monitoring and mitigation scheme has been submitted to and approved in writing by the local highway authority. (2) The impact monitoring and mitigation scheme must include: i. a before and after survey to assess the changes in traffic; ii. the locations to be monitored and the methodology to be used to collect the required data; iii. the periods over which traffic is to be monitored; iv. the method of assessment of traffic data; v. control sites to monitor background growth; vi. the implementation of monitoring no less than 3 months before the implementation of traffic management on the existing A12; vii. agreement of baseline traffic levels; viii. the submission of survey data and interpretative report to the highway authority; and ix. a mechanism for the future agreement of mitigation measures. (3) The scheme approved under sub-paragraph (1) must be implemented by the undertaker. (4) The monitoring regime will include, but not be limited to, to the surveys listed in the following table:

~~##see original document for table##~~

Applicant's Response

The Applicant notes Essex County Council's position, which it has maintained at several deadlines. The Applicant has responded to the points raised at various submissions including most recently at Deadline 7 where in Appendix A of the Applicant's Comments on Information received at Deadline 6 [REP7-045] the Applicant provided a substantive response to the Council's 'Monitoring and Mitigation Plan Technical Note' [REP6-100] submission.

With regard to the type of traffic monitoring undertaken, the Council has proposed a list of survey types including continuous traffic counts using permanent traffic sensors, temporary Automatic Traffic Counts (ATCs), temporary video counts, queue/delay surveys and speed surveys. They also proposed details on the specification of these surveys, e.g. their timing and frequency.

The Applicant considers that the extent of the different survey types and methodologies proposed by the Council is disproportionate. Instead, the Applicant will collect traffic data using the following methodologies:

- Automatic Traffic Counts: 2-week surveys, undertaken once prior to construction, once within a year of scheme opening, and again before the expiry of the third year after scheme opening.
- Junction turning counts: a 2-day video survey undertaken during the same survey periods as the Automatic Traffic Counts. To be undertaken at two junctions: The Street / Maldon Road (Duke of Wellington) junction, and the junction between the B1023 and the proposed new junction 24.
- Traffic speed information would be provided by the Automatic Traffic Count surveys described above, and through GPS data collected by either Essex County Council or existing National Highways suppliers.

These surveys would provide sufficient information on traffic numbers, split of vehicle types and traffic speeds to understand the impact of the proposed scheme. They are in line with the survey types and methodologies that informed the development of the traffic model, and with the data collection methodologies described in Unit M1.2 of the Department for Transport's Transport Analysis Guidance. The Applicant does not consider that the additional survey requirements suggested by the Council (such as continuous traffic counts, multiple automatic traffic counts per year, queue surveys) would provide meaningful additional insight into the proposed scheme's impact.

In terms of the location of surveys, as noted in REP7-045, the Council's monitoring requests have increased considerably since it submitted its Local Impact Report, with the number of locations increasing from seven to 29 sites around the proposed scheme. The Applicant has agreed to the seven locations as confirmed in Requirement 16 of the dDCO, but does not consider the additional 22 locations to be required and therefore do not propose that they should be included within a DCO Requirement.

Indeed, the continued pursuit of a DCO requirement to monitor traffic using disproportionate survey methodologies and at an additional 22 locations presents a programme risk to the proposed scheme if the ExA is minded to recommend they be included and the Secretary of State agrees. The reason such a risk exists is to do with when monitoring would need to take place. There is a considerable lead-in time to plan, commission, prepare and undertake traffic surveys, plus constraints on when they can be undertaken (generally spring or autumn months, avoiding school holidays). A requirement for new types of surveys and surveys

in 22 additional locations, if confirmed in early 2024 by the Secretary of State, could have an impact to the planned start of works, considering that the Applicant's Requirement 16 as drafted commits the Applicant to doing baseline surveys prior to the development commencing.

With regard to part two of the Council's request that the scheme have a mechanism for future mitigation, the Applicant has responded to this in detail in section A.3 of Appendix A of the Applicant's Comments on Information received at Deadline 6 [REP7-045].

REP7-049-013

Sub-Part

Requirement 18 – Junction 21 The Council received the requested drawing HE551497-JAC-HGN-5_S1_J21-SK-C-0011_P01.pdf from the Applicant on 27 June 2023 showing the updated general arrangements at junction 21. Initial review indicates the drawing satisfies the Council's request and as stated at ISH5, the Council wishes that the drawing is referenced in requirement 18 to provide the clarity required. Council's proposed changes to the Applicant's DL6 dDCO Requirement 18 wording to be as follows: Junction 21 design

X.—(1) No part of the authorised development is to commence until an updated version of general arrangement drawing HE551497-JAC-HGN-5_S1_J21-SK-C-0011_P01.pdf showing the revised design of junction 21 has been submitted and approved in writing by the local highway authority.

(2) The updated drawing and revised design must include a two-lane exit from both the junction 21 northern roundabout to the A12 northbound slip road and from the junction 21 southern roundabout to the A12 southern slip road.

(3) The new junction must be constructed in accordance with the revised drawing referred to in sub-paragraph (1) from the point the authorised development is open for public use.

Applicant's Response
<p>Requirement 18 in the dDCO submitted at Deadline 7 [REP7-005], provides a commitment from the Applicant to provide a two-lane exit from both the junction 21 northern roundabout to the A12 northbound slip road and from the junction 21 southern roundabout to the A12 southern slip road.</p> <p>The Council requested that the Applicant provide a General Arrangement drawing showing the proposed design outlined above, and the Applicant issued this drawing to the Council on 27 June 2023. In the Deadline 7 submission of the Statement of Common Ground with the Council, this topic is now agreed [REP7-027].</p> <p>As explained in the Applicant's Written submission of oral case for Issue Specific Hearing 5 [REP7-043], 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>
REP7-049-014
Sub-Part
<p>Requirement 19 – De-trunking Throughout the consultation and examination process, the Council has consistently and repeatedly made representations to raise its concerns with the Applicant's de-trunking proposals and has set out in detail why these proposals are not deemed appropriate nor acceptable. This is a major area of concern to the Council and to that end the Council has sought to proactively support the Applicant in delivering a more appropriate scheme for the de-trunked sections of the A12.</p> <p>The Council has funded its own study to identify an alternative proposal for the de-trunked sections of A12, as set out in its Alternative De-Trunking Proposals Technical Note [REP3- 083]. The preferred alternative is clearly illustrated in Appendix B of REP3-83 and includes:</p>

• The conversion of one half the dual carriageway into an active travel corridor, which is not accessible to motorised traffic other than for access to local properties (where relevant) and maintenance purposes • In conjunction with the above re-greening of part of this carriageway through breaking up sections and covering with earth/topsoil with provision of suitable planting to increase and enhance biodiversity • Conversion of the remaining carriageway into a single carriageway road with one lane in each direction; and • Measures in addition to the above to encourage compliance with the speed limit on the single carriageway

The Council maintains that its de-trunking proposals are more appropriate than the Applicant's as they address the issues of non-compliance with existing policies, over provision of carriageway, excessive maintenance costs, inappropriate speed limits, anti- social driver behaviour and poor alignment with the County Councils place making agenda. In addition, they would see a step change in WCH provision and green infrastructure.

The Applicant has raised three main issues, when rejecting the Council's alternative de- trunking proposals, stating that: (i) they have not been included in the DCO, and to do so would delay the process significantly; (ii) they will add significant cost to the project; and (iii) they will lead to environmental effects that have not been assessed. However, the Council maintains that these issues should not be used as a reason to reject the Council's proposals.

To address the delay aspect there is a clause within the proposed requirement 19 wording which allows the applicant to implement and deliver the approved de-trunking scheme at its own expense within eighteen months of the first opening of the authorised development for public use or, with the written agreement of the local highway authority, shall provide sufficient funds for the local highway authority to implement and deliver the approved de- trunking scheme. The Council is not seeking that the details are agreed now or even before commencement of the scheme. This would therefore allow sufficient time to approve and implement the de-trunking outside of the main scheme implementation.

With respect to cost, the Applicant undertook an initial estimation of the costs for the Councils de-trunking alternative (£5 million). It is felt by the Council that this represents a small and justified increase in costs (circa 0.5%) when compared against the overall scheme cost for the A12 widening and the long-term and ongoing maintenance burden the Applicant's current

proposals would place on the Council. Given the potential benefits and enhancements to the scheme objectives this is felt to be proportionate to the concerns held.

Lastly with respect to the environmental impacts and the potential impacts not being considered within the environmental assessment undertaken to date, the Council suggests that the Applicant has provided no meaningful evidence to show this is the case. The Council is strongly of the view that the alternative proposals set out in [REP3-083] (including re-greening, improved provision for active modes and breaking up (rather than removal of) existing material are minor in nature relative to the main works and will quite clearly represent a significant overall environmental enhancement compared to the Applicant's proposals. In addition, the Council's proposal will help to realise more fully the traffic flows and speed limits as set in the Applicants appraisal of the de-trunked proposals presented in the DCO.

As a result of these factors, the Council strongly urges that the wording it has proposed for Requirement 19 be imposed by the Secretary of State.

Council's proposed changes to the Applicant's DL6 dDCO Requirement 19 wording to be as follows: De-trunking 19. - (1) No part of the authorised development is to open for public use until a written scheme for the de-trunking of the A12 between Witham and Rivenhall End (east) and also between Feering and Marks Tey has been submitted to and approved in writing by the local highway authority.

(2) The scheme approved under sub-paragraph (1) must include: a. the conversion of one carriageway into an active travel corridor, not accessible to motorised traffic other than for access to local properties and maintenance; b. re-greening of part of this carriageway through breaking up of sections and covering them with earth/top soil, and provision of suitable planting to increase biodiversity; c. conversion of the other carriageway into a single carriageway road, with one lane in each direction; and d. measures to encourage compliance with the speed limit on the single carriageway road. (3) The undertaker shall implement and deliver the approved de-trunking scheme at its own expense within 18 months of the first opening of the authorised development for public use or, with the written agreement of the local highway authority, shall provide sufficient funds for the local highway authority to implement and deliver the approved de-trunking scheme.

In a scenario where the Council's proposed drafting of Requirement 19 is not included in the DCO, the Council does not consider it should be mandated to maintain the de-trunked sections of the A12 and that the maintenance responsibility for these sections of road should be retained by National Highways. Notwithstanding this, if contrary to the Council's position the ExA be minded to recommend to the SoS that the Applicant's drafting of Requirement 19 on de-trunking be adopted, then the Council strongly urges that the Applicant's draft Requirement 19 wording relating to the de-trunking be amended as follows:

De-trunking 19. (1) The consent of the Secretary of State pursuant to Article 15(7) must not be sought until written details of the proposals for the roads to be de-trunked as identified in Part 14 of Schedule 3 has been submitted and approved in writing by the Secretary of State following consultation with the relevant highway authority and relevant planning authority, such scheme to include: (a) drawings and plans showing the proposals; (b) details of how the proposals maintain a safe and reliable highway network; (c) details of the provision made for non-car transport modes; (d) details of how existing accesses will retain access to the de-trunked road; (e) details of how existing utilities will be safeguarded; (f) the agreement of the local highway authority that any highway assets to be transferred to it are in a condition that meets its reasonable satisfaction; (g) details of proposed landscaping and planting; (h) details of drainage provision; and (i) a timetable for implementation of the proposals.

These amendments improve the drafting and the insertion of new sub-paragraph (f) would give the Council some comfort that some financial liabilities that might otherwise occur can potentially be mitigated. It should be emphasised, however, that these amendments do not meet the Council's objection, and the Council's strong preference is for its version of the Requirement to be included at the DCO.

Applicant's Response

The Applicant has continuously engaged with Essex County Council throughout the examination on the matter of de-trunking. The Applicant acknowledges the representations made by the Council regarding their alternative de-trunking proposal. The Applicant has reviewed the alternative proposal in the Technical Note on De-trunking Proposals [REP4-057] and provided additional responses to the Council in response to REP5-033 and REP5-034 at Deadline 6 [REP6-090] and REP6-098 at Deadline 7 [REP7-045]. The Applicant maintains that Essex County Council's proposed enhancements are not justified in policy terms and present significant and unnecessary costs, as well as disruption to frontage owners. Their inclusion in the proposed scheme would lead to significant additional costs and a lengthy delay to the provision of a modern trunk road between Chelmsford and Colchester and are not considered to represent a reasonable opportunity in accordance with the National Networks National Policy Statement (NNNPS), specifically paragraph 5.205.

With regard to the Council's concerns regarding inappropriate speed limits and anti-social driver behaviour, the Applicant's proposal to retain the dual carriageway provides a solution which has a higher inherent safety level compared to a single carriageway. That is because it separates opposing traffic flows and removes right-turns at accesses. The addition of appropriately sized roundabouts also provides safer turning manoeuvres and a measure of speed reduction effect.

Regarding cost, the Applicant cannot justify the additional expenditure to adopt the Council's proposed alternative when it has not been demonstrated to be required. The Applicant's de-trunking proposal has a layout that accords with the Road to Good Design and complies with Design Principles for National Infrastructure and the Essex Green Infrastructure Strategy by providing a safe and serviceable route for traffic and an improved walking/cycling route segregated from the carriageway and is compliant with the requirements of the NNNPS.

Regarding the potential environmental impacts of the alternative proposal, the Secretary of State is not in a position to consider the impact of the Council's proposal without an environmental assessment of it. As has been mentioned at several hearings, the Council has not undertaken this environmental assessment. The Applicant's proposal has, on the other hand, been subject to environmental assessment procedures.

The Applicant notes that within the Council's submission it has proposed some amendments to Requirement 19 as it was written in the draft DCO submitted at deadline 7 [REP7-005]. The Applicant is happy to incorporate all of the proposed changes, bar the insertion of "(f) the agreement of the local highway authority that any highway assets to be transferred to it are in a condition that meets its reasonable satisfaction;". The Applicant does not accept the addition of sub-paragraph (f) as proposed by ECC as it views this as an attempt by ECC to reintroduce approval of the detrunking proposals by the Council as opposed to the Secretary of State. For the reasons set out in the Applicant's Response ExA dDCO [AS-103] and the Applicant's Written submission of oral case for Issue Specific Hearing 5 REP7-043, the Applicant maintains that the Secretary of State and not ECC is the appropriate body to approve details under the requirements.

Lastly, with regard to the Council's comment about financial liability, the Applicant has provided a response to this in REP7-049-002.

As such, the Applicant maintains that the drafting proposed by ECC is inappropriate for inclusion in the dDCO.

REP7-049-015

Sub-Part

New Requirement - Pre- and post-construction surveys The Applicant has agreed to carry out pre and post condition surveys of the local highway roads as detailed in their Outline Construction Traffic Management Plan (OCTMP) [REP6-055 Section 4.4] and SoCG [REF6-069 Item 2.66] however any remedial works will be limited to damages caused by vehicles associated with their works. The Council welcomes the Applicant's commitment to carry surveys however does not agree with their limited liability for remediating damages to the local highways caused by the Applicant's construction works. The Applicant has a responsibility for mitigating against 'rat running' thereby is responsible for developing solutions (e.g. temporary signage) that mitigates the risk of inappropriate vehicles unintentionally diverting on unsuitable roads such as Little Braxted Lane and between Hatfield Grove and Bury Farm Estates. Similar issues has been made in other interested parties representation such the SoCG with Maldon District Council [REP6-068 item 2.6]

The exact details of their mitigation cannot be determined until the proposed Traffic Management Working Group has fully matured. Should the Applicant's measures be unsuccessful, the Council will be responsible for pursuing individuals for damages caused to our highway assets (green claim) and this has not always been successful due to the level of evidence required. Without this requirement, the Council's potential financial liabilities for these works will be much greater and a requirement would put the onerous on the Applicant's to mitigate this issue. The Council understand the Applicant's concerns that they should not be responsible for the general wear and tear of the local highway authority hence we believe it is only reasonable that a schedule of condition before the construction works, and a specification of the conditions to which it should be returned is agreed prior to the construction works commencing. Council's proposed changes to the Applicant's DL6 dDCO Insert new requirement in Schedule 2 requirements, Part 1 as follows: Pre and post construction surveys X.—(1) No part of the authorised development is to commence until for that part a pre- condition schedule of the affected local highways and a post-condition specification in which the affected local highway will be returned to , has been submitted to and approved in writing by the local highway authority.

(2) The local highway must be returned in accordance with the approved post-condition specification.

Applicant's Response

As ECC notes, the Applicant has already prepared, and amended at the request of stakeholders throughout the Examination period, a detailed Outline Construction Traffic Management Plan (OCTMP) [REP6-054]. The OCTMP has:

- Committed to pre and post construction condition surveys at 4.4
- Plans to avoid rat-running in Hatfield Perverel when Station Road is closed at 5.9
- Commits to repair damages caused by construction vehicles (for example damage to kerbs from a construction related vehicle entering a site) at 5.23.3
- Invites the local highway authority to the traffic management forums where any specific concerns relating to use of individual roads can be addressed at 3.2.

The Traffic Management Working group (OCTMP table 3.1) is already meeting on a monthly basis. Terms of reference for this group are shortly to be agreed by the attendees, which include Essex Highways.

It would appear that ECC are trying to conflate differing issues in their most recent request for a Requirement on Pre and Post condition surveys. These issues are addressed separately below.

Rat running

Little Braxted Road

The concern relating to unauthorised use of Little Braxted Lane (over 3 tonnes or wider than 2m) is an existing and ongoing matter for the local highway authority, one which the Applicant will temporarily inherit through the duration of the works, and one of which ECC, as the Highway Authority, is well aware. The Applicant, through its engagement with local councils and stakeholders, is equally aware of the concerns held locally and has addressed these through:

- Construction Phase

The Applicant has addressed this in the OCTMP at 2.7.

To minimise the risk of inappropriate vehicles unintentionally diverting along Little Braxted Lane during the construction phase, advanced signage will be strategically placed to deter such movements. During the detailed design of traffic management, additional measures such as advanced physical restrictions, lane marking and/or automatic warning systems, will be considered (subject to relevant approvals and/or Temporary Traffic Regulation Orders (TTROs)).

The Construction Traffic Management Plan (CTMP) will be developed ahead of construction and ECC as the local highway authority are a consultee to the CTMP (Requirement 9), and are a key attendee in the Traffic Management Forums as set out in Table 3.1 of the OCTMP. Therefore ECC will get further opportunity to comment on the detailed traffic management arrangements implemented to deliver the goal set out at 2.7.1 of the OCTMP.

- **Operational Phase**

The Applicant has agreed that in the detailed design it will work proactively with Essex Highways to design Little Braxted Lane (at its northern end) in a manner that deters HGV's and oversized vehicles from travelling southwards from the A12, as has been agreed at 2.55 of the Statement of Common Ground with ECC [REP7-027].

Therefore the proposed Requirement by ECC neither addresses the matter of rat-running along Little Braxted Lane nor is necessary as other secured commitments are already in place to address the matter.

Station Road and Bury Lane

From the initial construction phasing developed by the Applicant, avoiding rat-running, in particular to the train station in Hatfield Peverell via Bury Lane, has been at the fore of the construction planning. As such the controls described in 5.9.28 to 5.9.35 of the OCTMP to restrict the use of the 'Temporary vehicular, pedestrian and cyclist connection between the Hatfield Grove and Bury Farm Estates' (See OCTMP 5.9.27) have been developed, together with the provision of a temporary car park to prevent users from the south of the A12 rat running through Bury Lane to access the station car park when Station Road is closed, whilst aiming not to restrict too greatly the local residents.

Similarly avoiding traffic rat running through Boreham when the J20a northbound exit is closed as works commence on Bury Lane has driven the sequence whereby Station Road is closed first, then Bury Lane and then Wellington bridge to complete the bridge re-construction. This is described in 5.9.4 and 5.9.5 of the OCTMP.

Therefore the proposed Requirement by ECC neither addresses the matter of rat-running along Station Road or Bury Lane in Hatfield Peverell nor is necessary as other secured commitments are already in place to address the matter.

During use of the Strategic diversion

Early proposals relating to the measures that will be taken when operating the strategic diversion route are described in the OCTMP at 4.3. This includes at 4.3.7:

'Strategically placed signage to stop 'rat running' through communities within the vicinity of the strategic diversion route and if necessary partial closures of roads would be considered to encourage road users to follow the strategic diversion route'.

These proposals would be developed in the traffic management forums to which ECC is an invitee and included in the CTMP which is subject to consultation with ECC as the local highway authority.

Therefore the proposed Requirement by ECC neither addresses the matter of rat running during the strategic diversion nor is necessary as other secured commitments are already in place to address the matter including, amongst many other measures, appropriate signage to deter rat running.

Condition Surveys

Where the Applicant temporarily occupies or alters the highway

Where the Applicant temporarily alters the highway, or indeed occupies it through a traffic management scheme, the Applicant agrees that it should be responsible for returning the carriageway and the rest of the asset back in the condition that it was accepted. The Applicant believes therefore that pre and post occupation surveys are beneficial to both parties. The Applicant has therefore agreed to pre and post construction surveys as recorded in the SoCG [REP7-027] at 2.65 and in the OCTMP at 5.23.

However, the Applicant does not believe a further Requirement is necessary. The DCO as drafted, the agreed need for a Detailed Local Operating Agreement (DLOA)(as agreed in the SoCG with ECC at 2.64) and the agreement for pre and post construction surveys already in the OCTMP provide the necessary protections ECC are requesting within the Order Limits.

- Articles 14 (1) and 14(2) require highways that are constructed or altered to be completed to the reasonable standard of the local highway authority. Article 17 (2) requires that the undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.
- The DLOA would include agreement on which party would be responsible for the different aspects of operating and maintain the highways when occupied by the Undertaker. This would include who is responsible for repairing damage caused by road traffic incidents and who would be responsible for pursuing any claims against road users who cause damage to the highway asset.

Outside of the Order Limits, the Applicant would need to apply for a permit from Essex Highways, which would require, amongst other matters such as programme, the same matters to be addressed as the ECC proposed Requirement does.

The proposed Requirement is therefore unnecessary and superfluous.

Where the Applicant simply uses the highway

Use of the wider highway network by construction traffic and traffic on diversion

The Applicant agrees with ECC that the Undertaker cannot be responsible for general wear and tear on roads for which Essex Highways is the highway authority. Upkeep of the highway and any deterioration to the highway asset, simply caused by general wear and tear associated with vehicles using that highway, is the responsibility of the highway authority. This would include construction traffic and traffic on diversion.

Damages to highway assets

As the ECC proposed Requirement is drafted, if applied to routes used for diversions when say the A12 is closed, the Undertaker would become responsible for any damage caused to the ECC road network no matter what the cause and by whom.

The Applicant does not accept or understand ECC's view that

'should the Applicant's measures be unsuccessful, the Council will be responsible for pursuing individuals for damages caused to our highway assets (green claim) and this has not always been successful due to the level of evidence required. Without this requirement, the Council's potential financial liabilities for these works will be much greater'.

The Council already has this responsibility. Overall, the additional vehicles using the ECC highways, either construction traffic or traffic on diversion, would be a relatively small percentage of the overall traffic using those roads 24 hours a day, 7 days a week, 365 days a year. It would be wholly disproportionate to expect that the Applicant should accept this responsibility for the duration of the works. It would be wholly impractical to expect a pre and post condition survey to be carried for each and every time a closure is implemented and removed before and after traffic is on diversion.

It is therefore the Applicant's view that the proposed ECC Requirement is both disproportionate and unworkable.

REP7-049-016

Sub-Part

New Requirement - Power for ECC to inspect works that affect its local highway network during construction Referring to the points raised in the Council's Deadline 6 submission [REP6-098 Page 26], in order for the Council to meet its duties under the Highways Act 1980 for works on the local highway roads, we need to carry out inspections at various stages, review test results, or test the materials themselves to confirm that the highway works have been satisfactorily completed. During ISH5, the Council and the Applicant are in general agreement with the principle of this request, and the Council is aware that the Applicant is identifying a suitable mechanism to secure this agreement as mentioned during ISH5 however, as of July 3, 2023, the Council has not seen this commitment. Therefore, in the absence of an alternative mechanism, the Council's position remains and will be proposing these changes to the Applicant's dDCO.

Council's proposed changes to the Applicant's DL6 dDCO Insert new requirement in Schedule 2 requirements, Part 1 as follows:
Inspection of works affecting the local highway network

(1) Any officer of the local highway authority duly appointed for the purpose may at all reasonable times, subject to any necessary and reasonable health and safety restrictions imposed by the undertaker, enter upon and inspect any part of the authorised development which— (a) is in, over, under or adjacent to any local highway, or (b) may affect any local highway or any property of the local highway authority, during the carrying out of the Works, and the undertaker must give to such officer all reasonable facilities for such inspection.

(2) The testing of materials used in any Works affecting local highways must be carried out at the expense of the undertaker in accordance with the Manual of Contract Documents for Highway Works Appendix 1/5 (Specification for Highway Works). The local highway authority must receive copies of all test certificates and results which have been requested by it in writing as soon as reasonably practicable. Notwithstanding the foregoing, the local highway authority has full power to test all or any materials used or proposed to be used in any work to the local highway at its own expense and the undertaker must provide such information and materials as is reasonably necessary to facilitate such testing.

(3) The undertaker must not alter, disturb or in any way interfere with any property of the local highway authority on or under any local highway, or the access thereto (except to the extent authorised under the powers conferred by this Order), without the prior written consent of the local highway authority.

<p>Applicant's Response</p>
<p>The Applicant agrees that ECC should be able to inspect the works relating to its existing assets or those new assets that it will inherit.</p> <p>The Applicant has confirmed this in the Statement of Common Ground (SoCG). The Applicant has similarly confirmed in the SoCG that it would share all such data for the ongoing management of the assets, such as BIM models, Operation and Maintenance Manuals, Health and Safety File, including the testing results.</p> <p>The Applicant's contract with its Principal Contractor will require that materials are tested to MCHW 1/5. This is standard for National Highways contracts, so any such Requirement would be superfluous.</p> <p>The Applicant does not see the need for this to be an additional requirement as it is all standard practice, embedded in the construction contract or legal requirement.</p> <p>However, to give ECC further comfort, the Applicant has written to ECC offering this commitment. The Applicant hopes that ECC will be able to confirm to the ExA ahead of Deadline 8 that this requirement does not need to be included in the DCO.</p>
<p>REP7-049-017</p>
<p>Sub-Part</p>
<p>New Requirement – Road Safety Audit The Council maintains its position as outlined in our Deadline 6 submission [REP6-098 Page 29] and can report that discussion with the Applicant has been positive since ISH5. Our position is similar and welcomes the Applicant's acceptance of the Council participating in the Road Safety Audit process, as defined by GG119, in the Design Manual for Roads and Bridges.</p>

The Council is aware that the Applicant is identifying a suitable mechanism to secure this agreement as mentioned during ISH5 however, as of July 3, 2023, the Council has not seen this commitment. Therefore, in the absence of an alternative mechanism, the Council's position remains and will be proposing these changes to the Applicant's dDCO.

Council's proposed changes to the Applicant's DL6 dDCO Insert new requirement in Schedule 2 requirements, Part 1 as follows:
Road Safety Audit

(1) The undertaker must procure that an appropriately qualified safety auditor undertakes road safety audit stages 3 and 4 on the Works including any Works to local highways in accordance with the Design Manual for Roads and Bridges ("DMRB") Volume 5 Section 2 Part

2 (GG 119) or any replacement or modification of that standard and must provide copies of the reports of such audits to the local highway authority.

(2) The local highway authority must be invited to participate in the stage 2, 3 and 4 road safety audits conducted under subparagraph (1).

(3) Where the report of the stage 3 road safety audit identifies any recommended works to the local highway, the undertaker must use reasonable endeavours to agree with the local highway authority which works or alternative proposals require to be implemented, provided that no works may be implemented which would give rise to any new or materially different environmental effects in comparison with those identified in the Environmental Statement.

(4) Where the report of the stage 4 road safety audit identifies any recommended works to the local highway, the undertaker must use reasonable endeavours to agree with the local highway authority which works or alternative proposals require to be implemented.

(5) Any works which the undertaker considers are required to be carried out to the local highway in accordance with the report of the stage 3 or stage 4 road safety audit, which works may not give rise to any new or materially different environmental effects in comparison with those identified in the Environmental Statement, must be undertaken by and at the expense of the undertaker to the reasonable satisfaction of the local highway authority.

(6) The undertaker must use reasonable endeavours to agree with the local highway authority a programme for any works to be carried out under sub-paragraph (5), which programme must include timing of any closures of any part of the highway, traffic management arrangements, signage and diversion routes where required.

(7) The carrying out of works under sub-paragraph (5) are to be taken to be works carried under this Order.

(8) Where, agreement cannot be reached under this paragraph, the terms of the Detailed Local Operating Agreement will be resolved by arbitration under article 62 (arbitration).

Applicant's Response

The Applicant has discussed this matter with the local authority and its position is outlined in its Statement of Common Ground with Essex County Council [REP7-027]. The Applicant believes the position documented in the SOCG should provide the Council with the necessary reassurances it seeks and notes this matter has now been agreed within the SOCG references 2.67 and 2.68. As such, the Applicant is of the view that no such requirement needs to be included in the dDCO.

REP7-049-018

Sub-Part

New Requirement – Details of consultation Throughout the examination, the Council has maintained its position that the local highway authority should be the approving body for requirements that directly impact the local highway network. This position is explained in detail in our Deadline 3 submission [REP3-035, Pages 8 and 12], as well as our Deadline 5 submissions [REP5-033, Page 14 and REP5-034, Page 12] because essentially, the Council will bear the ultimate responsibility for the local roads. The Council acknowledges the concerns raised by the Applicant in their response [REP6-092, Pages 107-109] to our Deadline 5 submission. However, their comments fail to address the fundamental reasons behind the Council's request for a change in the requirements. The Applicant insists that the current wording of the requirements already necessitates consultation with the local highway authority or relevant planning authority before seeking approval from the SoS. Nonetheless, this process lacks transparency and detail, as it does not impose a requirement on the Applicant to conduct a comprehensive consultation and provide a fair report to the SoS. This becomes problematic, especially in cases where the Applicant rejects specific requests for amendments from the relevant planning authority. The current wording does not oblige the Applicant to inform the relevant planning authority of the reasons for rejecting their request. Consequently, the relevant planning authority will remain unaware of whether their concerns have been fully evaluated by the SoS. This issue was examined in the A303 Sparkford to Ilchester Dualling Development Consent Order (DCO) examination, and the ExA's considerations can be found in the A303 DCO's Final Recommendation Report, specifically in Paragraphs 16.6.14 to 16.6.22. Council's proposed changes to the Applicant's DL6 dDCO Should the ExA be minded not to make the Council the approver for requirements which have a direct impact on the local highway network. The Council requests that suggested wording taken from A303 Sparkford to Ilchester Dualling Development DCO Schedule 2 (Requirements) Part 1, Requirement 2 Details of Consultation is inserted into the DCO. Details of consultation (1) With respect to any requirement which requires details to be submitted to the Secretary of State for approval under this Schedule after consultation by the undertaker with another party, the details submitted must be accompanied by— a) a report setting out the consultation undertaken by the undertaker to inform the details submitted and the undertaker's response to that consultation; and b) copies of all consultation responses received. (2) At the time of submission to the Secretary of State for approval, the undertaker must provide a copy of the report referred to under sub-paragraph (1) to the relevant consultees referred to in the requirement in relation to which approval is being sought from the Secretary of State. (3) The undertaker must ensure that any consultation responses which request alterations to the details proposed by the undertaker are addressed in the details submitted to the Secretary of State for approval under this Schedule, however the undertaker must amend the details

proposed in response to consultation only where it is appropriate, reasonable and feasible to do so, taking into account considerations including, but not limited to, cost and engineering practicality. (4) Where the requests made in consultation responses are not incorporated in the details submitted to the Secretary of State for approval, the undertaker must state in the report referred to under sub-paragraph (1) the reasons why any requests made in consultation responses have not been included in the submitted details. At the same time as sending that report to the Secretary of State for approval the undertaker must send a copy of that report by electronic transmission to any consultee who made representations on that matter.

Applicant's Response

The Applicant is content to add a requirement to the dDCO setting out the form of consultation to be undertaken when requirements are being discharged. Indeed, this reflects the process that the Applicant's internal team already carries out when discharging requirements across its DCO schemes.

The Applicant proposes that a requirement be inserted in the following terms, and has included this wording in the dDCO submitted at Deadline 8.

Details of consultation

(1) With respect to any requirement which requires details to be submitted to the Secretary of State for approval under this Schedule following consultation with another party, the details submitted must be accompanied by:

- a) a summary report setting out the consultation undertaken by the undertaker to inform the details submitted and the undertaker's response to that consultation; and
- b) copies of all consultation responses received.

(2) At the time of submission to the Secretary of State for approval, the undertaker must provide a copy of the summary report referred to under sub-paragraph (1) to the relevant consultees referred to in the requirement in relation to which approval is being sought from the Secretary of State.

(3) The undertaker must ensure that any consultation responses are reflected in the details submitted to the Secretary of State for approval under this Schedule, but only where it is appropriate, reasonable and feasible to do so, taking into account considerations including, but not limited to, cost and engineering practicality.

(4) Where the consultation responses are not reflected in the details submitted to the Secretary of State for approval, the undertaker must state in the summary report referred to under sub-paragraph (1), the reasons why the consultation responses have not been reflected in the submitted details. At the same time as sending that report to the Secretary of State for approval the undertaker must send a copy of that report by electronic transmission to any consultee who made representations on that matter.

In addition, the Applicant proposes that a further requirement is added to the dDCO to clarify the process for the receipt of consultation responses, to ensure that the necessary information is received to enable the report referred to in the requirement to be submitted to the Secretary of State and to ensure that the delivery of the proposed scheme is not unnecessarily delay. This draft requirement is also currently proposed in the dDCO for the Lower Thames Crossing.

Timing of consultation

(1) Where any paragraph in this Schedule requires the undertaker to consult with any authority or statutory body, the undertaker must, subject to sub-paragraph (2), provide that authority or statutory body with not less than 28 days from the provision of any documents being consulted upon for any response to the consultation;

(2) The undertaker may consent, such consent not to be unreasonably withheld, to an extension of period in sub-paragraph (1)(a) so that an authority or statutory body has not less than 42 days from provision of any documents being consulted upon to provide a response to the consultation following a request made by an authority or statutory body no later than 21 days from receipt of any documents being consulted upon.

<p>(3) Where sub-paragraph (2) applies an authority or statutory body must provide a response to the consultation as soon as reasonably practicable.</p>
<p>REP7-049-019</p>
<p>Sub-Part</p>
<p>3. Land use The Council accepts the Applicant's proposed amendments to the footpath arrangements around Coleman's fisheries to create a new path running along the south side of the A12 on the access track, linking footpaths Witham 101 and Witham 103.</p> <p>The Council maintains its position as outlined in REP5-033 on the location of the Gershwin Boulevard bridge, however there should be access provided to both the southern section of footpath 95 Witham on foot and Howbridge Hall Lane by bicycle.</p>
<p>Applicant's Response</p>
<p>The Applicant welcomes Essex County Council's acceptance of the proposed amendments to the footpath arrangements around Coleman's fisheries.</p> <p>The Applicant notes the Council's position on the location of Gershwin Boulevard bridge. Whilst the Applicant acknowledges potential further enhancement of the network that could be brought about by a connection from the southern ramp of the bridge to Howbridge Hall road, this has the potential for introducing a new conflict point for non-motorised users along Maldon Road and the Applicant is not proposing to dedicate a connecting route as part of the proposed scheme.</p>

REP7-049-020

Sub-Part

4. Targeted Consultation – Junction 19 and Junction 25 The Council has examined the proposed changes to the designs of Junctions 19 and 25 which were put forward by Applicant in their targeted consultation exercise. In our Deadline 6 submission [REP6-098, pages 24 and 25], we identified particular concerns with regard to the positioning of internal stoplines and the potential impact of queued vehicles within the junctions and requested further modelling to enable us to examine these impacts in more detail.

The information requested at Deadline 6 was provided by the Applicant on Monday 26 June, with the clarification that the signal timings were modelled in VISSIM using Fixed Time control, whereas, in reality, the junctions are likely to use more advanced signal techniques such as MOVA which uses real-time flow data via loops to optimise timings. We have therefore examined the supplied information, taking into account the clarification given.

Based on the information provided for the part-signalised Marks Tey Roundabout (Junction 25), the maximum average queue lengths at some of the internal stoplines suggest that some disruption to the operation of the junction could occur in the peak hours. However, it is not possible to estimate how frequent such disruption would be. Similarly the information provided for Junction 19 shows average maximum queues in the AM and PM peaks which could potentially block back to adjacent arms of the roundabouts and/or over-run transition points within the roundabouts, which would prevent drivers from switching into the correct lanes for certain movements.

It is accepted that MOVA should be able to detect queues in locations where storage is inadequate and make some adjustments. However, the ability of MOVA to do so without causing issues elsewhere in the junction cannot be demonstrated at present. As a result, it is not possible for the Council to be content that these further optimisations would not lead to significant effects on the connecting local highway networks, particularly if the optimisation at detailed design stage indicates a need to take action to manage slip road queues in respect of potential collision risks on the SRN mainline.

The Council proposes, therefore, that the Junction 19 dumbbell roundabouts and the part- signalised Marks Tey Roundabout at Junction 25 should be added to the list of specific locations requiring further consultation within Requirement 10. This would ensure that the Council is involved with the detailed design work and testing which will be required to confirm that the “real world” impacts from queuing and internal delays within the proposed junction design does not lead to unacceptable consequences for the local highway network.

Council’s proposed changes to the Applicant’s DL6 dDCO Please see the Council’s proposed drafting for requirement 10 in the following section of this submission.

Applicant’s Response

The Applicant notes the Council’s concerns. The development of the traffic signal design is ongoing and, as has been the case throughout the development of the proposed scheme, robust engagement will continue to take place with Essex County Council. Indeed, the Applicant has set up technical working groups (TWG) with the Council, which cover detailed design matters such as road bridges, traffic signals, and drainage. To date over 15 TWGs have taken place with the next one planned shortly. The TWGs have been complemented by the creation of a 'technical queries and requests log' shared with the Council to ensure the swift response and resolution of technical queries.

The Applicant has responded to the Council’s proposed drafting of Requirement 10 in REP7-049-008.

REP7-049-021

Sub-Part

Appendix A - WCHISM Walking Cycling and Horse-riding Infrastructure Specification Matrix

~~## See original document for table ##~~

Applicant's Response

The Applicant has provided a response to Essex County Council's requests regarding the WCH commitments in REP7-049-009. The Applicant has now accepted all but three of the commitments proposed by the Council. The commitments made by the Applicant can be found in Appendix B of the Design Principles [REP7-017].

Essex County Council	REP7-050-001
Sub-Part	
<p>Introduction On behalf of Essex County Council as the Council's lead member for Nationally Significant Infrastructure Projects, I'd like to thank the Examining Authority for conducting the examination in an open and impartial manner over the last six months. The proposed widening of the A12 between junctions 19 and 25 is an important project that will have a significant impact on Essex residents, businesses and visitors alike, and it is important to the Council as host authority that the benefits of the project are maximised and any potential adverse effects are avoided and/or mitigated as far as possible.</p> <p>I would like to take the opportunity at Deadline 7 of the examination to highlight some of the key outstanding issues for the Council, building on the representations made by Council officers and representatives throughout the examination process.</p> <p>Key Issues 1. The Council remains supportive of the A12 widening given the strategic need and to encourage and stimulate economic growth in this important part of the County and East of England. However, the Council remains concerned and has consistently stated that the impacts on local roads, for which we, as local highway authority are responsible, need to be addressed in order for the NSIP proposals to be deemed acceptable.</p>	
Applicant's Response	
<p>The Applicant notes the opening comment intended for the Examining Authority.</p> <p>The Applicant thanks the Interested Party for its support and agrees with the comments regarding the strategic need and economic growth benefits that the proposed scheme brings.</p>	

The Applicant is aware through the submissions the Council has made, as well as through the extensive engagement that has taken place that the Council does have matters it would like the proposed scheme to address. To that end the Applicant, where it is appropriate within the scope of the proposed scheme, has provided several requirements within the draft DCO.

REP7-050-002

Sub-Part

2. The Council has consistently demonstrated its commitment to the maintenance and management of our local road networks. We have diligently fulfilled our duties in ensuring the safe and efficient flow of traffic across our county. Given that the Applicant is proposing that two large sections of the A12 will be de-trunked it is vitally important that these assets be handed over to ECC in such a state that it does not represent an immediate and significant additional burden for which the Council is not budgeted to maintain.

3. Therefore, our biggest concern is the proposed treatment of the de-trunked sections, which will be handed over to the Council as part of the implementation of the DCO. The main issues are briefly summarised below:

a. Maintenance burden. As noted above passing over the old de-trunked sections of the A12 in their current form would represent an unfair and unreasonable burden on the Council. Quite simply the considerable ongoing maintenance required for an asset of this nature would have a material detrimental impact on the Council's ability to maintain our highway network. It is my firm belief that this responsibility should not rest solely on the shoulders of the Council, and as the scheme promoter the onus should be on National Highways to develop a solution that works for both parties.

b. Over provision: The de-trunked sections represent complete overprovision when you compare the capacity of the road with the likely flows that will use it.

c. Due to the de-trunked sections being very lightly trafficked it will give rise to opportunities for speeding and antisocial driving behaviour, as has been seen elsewhere for example the stretch of the former A12 through Copdock which was de-trunked previously. We support the concerns raised by Essex Police regarding road safety on these stretches.

d. Place making and environmental impact are key priorities for the Council. Consequently, the Council completed its own study to provide a solution to the de-trunked sections, as little detail was available from the Applicant. This solution offers a much better outcome for the environment and will enhance the sense of place compared to a dual carriageway road with minimal traffic.

e. Active and sustainable travel provision is another key priority for the Council. In conjunction with the previously raised issues, the provision on the de-trunked sections falls short of meeting the standards set out in national guidance in the form of LTN 1/20.

Applicant's Response

The Applicant has continuously engaged with Essex County Council on the matter of de-trunking throughout the examination. The Applicant's proposed retention of the existing carriageway provides:

- Resilience for the overall highway network;
- A safe alternative route for slow-moving vehicles (that will no longer be permitted to use the A12) which does not impede the movement of other vehicles;
- Retention of central reserve and vehicle restraint, thus reducing the likelihood of collisions between opposing vehicles to an extremely rare event, such as an HGV breach of the vehicle restraint system;
- A high quality route for emergency access;
- Provides capacity for future public transport changes should there be demand for such; and
- An improved walking/cycling route segregated from the carriageway.

Maintenance burden

As noted in the Applicant's Technical Note on De-trunking Proposals [REP4-057], the Applicant presented draft Heads of Terms to the Council at a meeting on 9 November 2021. The draft Heads of Terms which can be found in Appendix A of the technical note includes a section on the standard of the asset which would link to a maintenance free period. The Applicant will continue to engage with the Council on this matter, and in the context of Requirement 19 of the draft DCO [REP7-005].

Overprovision

The Applicant does not agree that retaining the dual carriageway is an overprovision. The dual carriageway provides a solution which has a higher inherent safety level compared to a single carriageway. That is because it separates opposing traffic flows and removes right-turns at accesses. The addition of appropriately sized roundabouts also provides safer turning manoeuvres and provides a traffic calming measure.. The proposed scheme thus delivers sections of the de-trunked A12 which will be safe and serviceable in operational safety terms, and conversion to a single carriageway is not justified.

Speeding and anti-social behaviour

As described above, the appropriately sized roundabouts at Rivenhall End West, Rivenhall End East, Easthorpe Road and Wishingwell Farm act as a traffic calming measure to reduce the likelihood of speeding and anti-social behaviour along the de-trunked sections of the A12.

Place making and alternative solution

The Applicant reviewed the alternative proposal presented by the Council in the Technical Note of De-trunking Proposals submitted at Deadline 4 [REP4-057]. The Applicant has further explained its position in relation to the Council's proposals in response to REP5-033 and REP5-034 at Deadline 6 [REP6-090] and REP6-098 at Deadline 7 [REP7-045]. The Applicant maintains that the proposed scheme design, including the de-trunked sections, has a layout that accords with the Road to Good Design but also complies with Design Principles for National Infrastructure and the Essex Green Infrastructure Strategy.

Active and sustainable travel provision

The scheme includes provision which will reduce severance and which includes entirely appropriate WCH facilities. The included enhancements to the WCH network in this area are:

- In Rivenhall End, a new 3m wide shared use cycle track is proposed to the north of the de-trunked A12, connecting with the existing cycle tracks and the proposed Snivellers Lane Bridge. A new crossing of the de-trunked A12 is also proposed to connect with Oak Road (south) to address severance issues.
- In Feering, a new 3m wide shared use cycle track is also proposed to connect the existing cycle track to the north of the de-trunked A12 to Prested Hall Overbridge.
- In Marks Tey, new cycle tracks and footways are proposed at junction 25, including the Marks Tey Bridge replacement and crossing points at London Road roundabout, Coggeshall Road and Old Rectory Junction.
- The Applicant's proposal also provides capacity for future public transport changes should there be demand for such. Given that the proposed scheme retains non-motorised user shared walking and cycling provision adjacent to the de-trunked A12 and improves the experience for non-motorised users undertaking journeys between Witham, Rivenhall End, Kelvedon, Feering and Marks Tey, the Applicant considers that the policy tests in the NNNPS and draft NNNPS are met.

REP7-050-003

Sub-Part

4. Aside from de-trunking, the Council retains a number of other areas of concern, and these represent the areas which the Council wishes to see changed in the DCO: a. It is widely recognised that there are multiple topics requiring further discussions during detailed design. Therefore, we consider it fundamental for the Applicant to openly consult with us and give due regard to any comments made during this process. b. While progress has been made regarding Article 16 on speed limits, there are still six locations where we disagree, and this is a concern for us because we will have the ultimate responsibility for the operation of these local roads. c. Adherence to the LTN 1/20 guidance is one of the Council's priorities. There are still a number of WCH (Walking, Cycling, and Horse-Riding) locations where we believe more should be done to ensure that the DCO aligns with the guidelines. d. The Council remains concerned about the potential impacts of the new junction 24 arrangement on the villages of Messing, Inworth and Tiptree, and continues to believe that further mitigation measures in addition to those to which the Applicant has agreed to date are required. This is an important issue for local people who are understandably concerned about the impacts of this junction and the mitigation currently proposed simply doesn't go far enough. e. A mechanism for agreeing on future mitigation is an essential part of any monitoring and evaluation plan and the two must therefore be considered together. f.

On a more general point, more should be done by the Applicant to promote the switch to electric vehicles, and this scheme presents a good opportunity to increase charging infrastructure near the A12. I would urge National Highways to give this some thought as part of the next stage of design development.

5. Notwithstanding the above the Council acknowledges that positive progress has been made in addressing a number of concerns expressed by the Council and would like to thank the Applicant for their hard work and collaborative approach in these areas of concern which include: a. Introduction of B1137 Main Road Boreham mitigation measures in the form of average speed safety cameras (however we have yet to agree the inclusion of minor road narrowing at specific locations). b. Inclusion of a two-lane exit from both the junction 21 northern roundabout to the A12 northbound slip road and from the junction 21 southern roundabout to the A12 southern slip c. Developing a Walking Cycling Horse-riding Infrastructure Specification Matrix (WCHISM). d. Agreeing to entering into a Detailed Local Operating Agreement with the Council in respect of the scheme's construction. e. Agreeing to the Council's participation in the Road Safety Audit process.

Applicant's Response

The Applicant is continuing to engage with Essex County Council regarding their concerns as documented in the Statement of Common Ground with the Council [REP7-027]. To address the concerns outlined in this written representation from Cllr Wagland:

- a) The Applicant looks forward to ongoing engagement with the Council, and indeed technical working groups (TWG) have already been established with the Council, which cover detailed design matters such as road bridges, traffic signals and drainage. To date over 15 TWGs have taken place with the next one planned shortly. The TWGs have been complemented by the creation of a technical queries and requests log shared with the Council to ensure the swift resolution to technical queries.
- b) The Applicant has continued to engage with Essex County Council on the proposed speed limits and has provided a narrative associated with speed limits in Appendix B to Applicant's Comments on Information received at Deadline 6 [REP7-45] and in response to REP7-049-004 in this document. The Applicant and the Interested Party remain in disagreement over three of the proposed speed limits which explicitly relate to the nature of the de-trunked A12. The Applicant has, within Requirement 19, committed to provide written details to the Secretary of State following consultation

with the relevant local highway authority and relevant planning authority demonstrating how the de-trunking proposals maintain a safe and reliable highway network.

- c) The Applicant has explained to the Council that LTN 1/20 is a hierarchical guidance and the WCH provisions proposed by the Applicant are in compliance with this guidance. 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.
- d) The Applicant has explained its position on mitigation measures in the villages of Messing, Inworth and Tiptree in response to ExQ2 [Q 2.17.1, REP4-055] and at Issue Specific Hearing 3 [Ref 3.17, REP5-020]. The Applicant has included the provision of new village gateways and appropriate signage in Requirement 15 of the draft DCO [REP7-005]. The Applicant reiterates that changing the way traffic routes from that modelled and assessed in the Environmental Statement may lead to significant traffic and adverse noise affects for residents in Messing, Tiptree and Inworth. The Applicant does not wish to encourage additional traffic to route towards Oak Road and/or the existing double mini-roundabout in Tiptree to avoid these significant adverse impacts. Therefore, the Applicant does not agree to adopting the additional measures proposed by the Council.
- e) The Applicant responded to this point in Appendix A of the Applicant's Comments on Information received at Deadline 6 [REP7-045]. In summary, the Applicant accepts that while it is possible to monitor and analyse the traffic impact of the proposed A12 scheme, there is a level of uncertainty around the extent to which the proposed scheme is responsible for observed changes. While this level of uncertainty is acceptable for a monitoring report that focuses on trying to understand the impacts of the scheme, it does not allow definitive "blame" to be placed on the A12 scheme and therefore responsibility for funding or delivering mitigation.

In addition, given that the proposed scheme results in an overall reduction of traffic on Essex's local road network, any suggestion that the Applicant should, in principle, be expected to monitor and bear all impacts on the local road network arising from the proposed scheme would involve a significant and problematic extension of National Highways' role in delivering improvements to the strategic road network, through both the RIS process and under the terms of National Highways' Licence, which authorises National Highways in respect of the strategic road network only.

<p>f) The Applicant responded to the request for electrical vehicle charging infrastructure in response to the Council's Local Impact Report [Paragraph 8.3.34-8.3.42, REP3-021]. The request from Essex County Council to include provision for renewable energy facilities, future vehicle rapid charging stations and ground mounted solar farms and/or wind farms are not within the scope of the DCO design, and the extent of this intervention is not proportionate and reasonable in accordance with NNNPS Paragraph 5.215.</p> <p>5. The Applicant welcomes the Council's support of the proposed changes the Applicant has implemented to address the Council's concerns and agrees that there are many aspects of the proposed scheme where collaborative agreement has been made.</p>
<p>REP7-050-004</p>
<p>Sub-Part</p>
<p>Summary In summary, the proposal for the de-trunked sections continues to represent the biggest area of disagreement, as highlighted throughout the examination. The Council strongly believes that the Applicant's de-trunking proposals are not appropriate and do not align with the principles of the existing and emerging National Policy Statement for National Networks (NPSNN), which a Nationally Significant Infrastructure Project must comply with.</p> <p>Moving forward, the Council would like to see much more detail in the DCO regarding the provision of a more suitable scheme for the de-trunked sections, along the lines of what has been proposed by our officers in various representations. Our proposed wording of Requirement 19 would go a significant way towards addressing our outstanding concerns on de-trunking as it will help us to ensure an acceptable arrangement is delivered.</p> <p>The Council looks forward to continued collaboration with National Highways on this and other outstanding issues, and is committed to providing the Examining Authority with any further information that they may require from us.</p>

Councillor Lesley Wagland OBE Special Lead Member for Key Infrastructure Projects Deputy to the Cabinet Councillor for Brentwood Rural Division Essex County Council

Applicant's Response

The Applicant acknowledges the Interested Party's position and maintains that the de-trunking proposal in the DCO application provides a safe and serviceable solution and the retention of the existing carriageway provides resilience for the overall highway network.

The Applicant notes that within the Council's submission [REP7-049] it has proposed some amendments to Requirement 19 as it was written in the draft DCO submitted at Deadline 7 [REP7-005]. The Applicant is happy to incorporate all of the proposed changes, bar the insertion of "(f) the agreement of the local highway authority that any highway assets to be transferred to it are in a condition that meets its reasonable satisfaction;". The Applicant has consistently maintained that the Secretary of State is the appropriate body to approve matters required under the requirements, for the reasons explained in the Applicants Response to the ExA's dDCO [AS-103] and its Written submission of oral case for Issue Specific Hearing 5 [REP7-043]. The Applicant views ECC's proposed wording at (f) to be an attempt to approve the de-trunking proposals, in circumstances where the requirement makes it clear that that is within the purview of the Secretary of State, following consultation with ECC.

The Applicant also looks forward to continued engagement with Essex County Council on these matters.

Maldon District Council	REP7-051-001
Sub-Part	
Appendix D - Any further information requested by the ExA	
A12 Chelmsford to A120 Widening Scheme	
1. Blue Mills Nature Reserve - Arboricultural Advice	
1.1 Maldon District Council sought independent arboricultural advice regarding the treatment of the female Black Poplar tree located to the north of the Nature Reserve that has the potential to be impacted by the relocation of the Cadent gas main. It was requested by the ExA that this advice was provided to the Examiners and National Highways before Deadline 7. A letter was emailed to National Highways and copied into the Examiners on the 28 June 2023 outlining the advice and the concerns they have regarding the calculation of the Root Protection Area afforded to the Black Poplar, which National Highways assessed to be a veteran tree in its Supplementary Arboricultural Survey Report [REP3-008].	
Applicant's Response	
The Applicant acknowledges the letter provided on 28 June, which has since been registered within the Examination Library, reference AS-114.	
The Applicant has provided a response to this letter within it's Deadline 7 submissions, see page 156 of the Applicant's Comments on Information Received at Deadline 6 [REP7-045].	

In light of Maldon District Council's submission, the Applicant has also updated the REAC [REP7-015] commitment BI50 to address the Arboriculturist's concerns relating to the Cadent Gas diversion and potential impacts on protected woodland, the Blue Mills LWS, the black poplar and other holt and transitional veteran trees (T2045 and T2078). This commitment has been agreed and will be reflected in the signed Statement of Common Ground with Maldon District Council submitted at Deadline 8 (Applicant reference TR010060/EXAM/8.11 rev 5).

Maldon District Council	REP7-052-001
Sub-Part	
<p>Appendix B - Comments on draft Statements of Common Ground & Statement of Commonality</p> <p>The following paragraph numbers, headings and references relate to those in the 12 June 2023 version of the SoCG between the Applicant, National Highways and Maldon District Council (MDC). At paragraphs 3.1 and 3.7 the heading text in brackets has been added by MDC for clarity of Issue.</p>	
Applicant's Response	
<p>The Applicant notes the comments made by Maldon District Council. Please refer to the subparts below for responses on the specific issues raised.</p>	
REP7-052-002	
Sub-Part	
<p>Table 4.3 -Issues 'under discussion'</p> <p>2.9 Cadent Gas Main (Tree and Vegetation Loss)</p> <p>No further comment has been made by National Highways since 24 April 2023. The Council have been awaiting arboricultural advice regarding the protections that should be afforded to the Black Poplar and issued a letter on the 28 June 2023 outlining that advice and willingness to move the matter into agreement at the very least by Deadline 8 if further assurances can be provided.</p>	

Applicant's Response
<p>The Applicant notes the comments from the Interested Party. A full response to the letter issued by the Interested Party on 28 June 2023, has been provided in Applicant's Comments on Information received at Deadline 6 [REP7-045].</p> <p>This response addresses the points made in section 2.9 of the Statement of Common Ground with Maldon District Council [REP7-026].</p> <p>A full and final version of the Statement of Common Ground with Maldon District Council will be provided at Deadline 8 where this matter has moved from under discussion to agreed.</p>
REP7-052-003
Sub-Part
<p>Table 4.4 -Issues 'in disagreement'</p> <p>Since the submission of the SoCG at deadline 6 the issues listed below (2. 2-2.4) have moved into the 'in disagreement' table. At a SoCG meeting held with National Highways on the 21 June 2023 it was suggested by National Highways that some of the topics and their issues relating to the Principal Issue of Traffic and Transport within the 'in disagreement' table could be amalgamated as it was considered by them that the issues listed below in relation to the Duke of Wellington mini-roundabout, Maldon Road and the Duke of Wellington Bridge were similar. MDC disagrees with this view as each issue has its own discrete element of 'issue' within a particular 'topic' area. Therefore, MDC does not agree these topics and issues should be compounded for the appearance of the number of topics/issues 'in disagreement' and summary tables in their content. This view is echoed by MDC at ISH5 when the Applicant, at Agenda Item 4, referenced the 'issues in disagreement' as being 3 'issues' when in reality there are 7 separate 'issues' relating to Traffic and Transport topic areas in the Project's proposals. Please refer to Appendix A, Deadline 7 Written Submissions.</p>

2.2 Junction 21 / Local Road Network - Duke of Wellington mini roundabout

The Applicant has not addressed MDC's concerns (in support of ECC's same concerns) that the traffic modelling predicts a road user will turn right at the Maldon Road junction with the Duke of Wellington mini roundabout to the new Junction 21 whether travelling north bound or south bound. This is all because the Project closes Junction 20a (left turn at Maldon Road junction with the Duke of Wellington mini roundabout). Traffic modelling is scientific and cannot forecast driver behaviour or represent local knowledge.

2.3 Local road network / Omission of Maldon Link Road/Hatfield Peverel Bypass

No further comment has been added by National Highways at deadline 6 but MDC wishes to re-emphasise that they were not made aware at Pre-application Stage of the 'serious challenges to feasibility, including significant, carbon, land, environmental construction and cost impacts' when the options were tested for a Maldon Link Road before the DCO was submitted.

2.4 Duke of Wellington mini-roundabout / Design of mini-roundabout

The specifics of this disagreement is based on the ability of an existing mini roundabout (painted circle on the tarmac) to safely and efficiently deal with traffic flows to and from the SRN on the LRN. The current Level of Service D is representative of traffic flows in 2019. This is why MDC, in support of ECC as the Highway Authority, insist on monitoring of this junction at commencement of the Project.

2.5 Duke of Wellington Bridge / 2-way traffic and operation of Duke of Wellington mini- roundabout

MDC's response to NH deadline 6 - 'Appendix OFH1A - Explanation of Traffic Model Changes of Applicant's Response to Open Floor Hearing 1 in the Applicant's Response to Open Floor Hearing 1 [REP 1-009], details any changes made to the traffic model from Statutory Consultation'. MDC has consistently stated from the Applicant's own statements that the upgrade of the Duke of Wellington bridge to 2-way traffic will impact on the operation of the Duke of Wellington mini roundabout with 'changing traffic patterns' and 'increased queues lengths' at the Maldon Road junction. The Project requires all traffic to turn right over the 2-way Duke of Wellington bridge whether they are travelling north bound or south bound. MDC insists the integration of the Duke of Wellington mini roundabout with the upgraded 2- way Duke of Wellington bridge is an important consideration of the Project and should be detailed in the DCO.

Since Deadline 5 the issues below have remained within the 'in disagreement' table with little change:

3.1 Maldon Road / Options for Maldon Link Road

As detailed at MDC's deadline 6:

MDC maintains a Hatfield Peverel Bypass/Maldon Link Road would relieve the Duke of Wellington mini roundabout, on the LRN, of its capacity issues and poor level of service for all transport modes to connect to the SRN. Most of the traffic causing the overcapacity issues and the modes of transport navigating the mini roundabout, originate from the Maldon District as detailed in the Applicant's Transport Assessment [APP-253-APP-260]. There remains a level of uncertainty if the Duke of Wellington mini roundabout can maintain its poor level of service in the short term. It is uncertain if the Applicant's predictions and assumptions within the Transport Assessment modelling will influence driver behaviour to turn right only at the Maldon Road junction with the Duke of Wellington mini roundabout. The Applicant is supportive of a Hatfield Peverel Bypass/Maldon Link Road and has designed Junction 21 to facilitate its connection in the future. MDC maintains the Maldon Link Road should be part of the Project.

National Highways have responded at Deadline 6 with:

As also noted in the Applicant's response to ExQ2 2.17.3 in the Deadline 4 Submission - Applicant's Responses to ExQ2 - Rev 2 [REP4-055], the uncertainties discussed are common to all traffic model forecasts as highlighted in the Department for Transport's Transport Analysis Guidance Unit M4. While acknowledging the inherent uncertainty within forecasting the future, the Applicant's core traffic model represents the 'most likely' predictions of future traffic levels'.

MDC does not feel the National Highways deadline 6 response is adequate. On the one hand, NH states in 'acknowledging the inherent uncertainty within forecasting the future' but relies on this forecasting wholeheartedly as the most likely predictions for not pursuing their options for a Maldon Link Road within the Project.

3.2 Junction 20b / Duke of Wellington mini roundabout

As detailed at MDC's deadline 6:

Junction 20b is closing both on and off slips. The Preliminary Design Stage (June 2021) designed the new Junction 21 with a northern arm and southern arm. The southern arm was removed at Supplemental Design Stage (November 2021) as a Category 1 change. This caused the significant design change to the Duke of Wellington Bridge becoming 2-way to take all traffic modes on a northern arm only to the new Junction 21. MDC maintains, with such a significant change to the design of Junction 21, that impacts on access to and from the SRN via the Duke of Wellington mini roundabout, should have been considered before the DCO was submitted. The Applicant has recognised the pattern of traffic flows will change with increased traffic across the new 2-way Duke of Wellington Bridge and increased queue lengths at the Maldon Road junction with the Duke of Wellington mini roundabout. MDC maintains that the poor level of service at the Duke of Wellington mini roundabout cannot be maintained especially with the Applicant's reliance on driver behaviour and 'encouraging' driver behaviour to turn right whether journeying northbound or southbound on the SRN.

National Highways have responded at Deadline 6 with:

'As also noted in the Applicant's response to ExQ2 2.17.3 in the Deadline 4 Submission - Applicant's Responses to ExQ2 - Rev 2 [REP4-055], the uncertainties discussed are common to all traffic model forecasts as highlighted in the Department for Transport's Transport Analysis Guidance Unit M4. While acknowledging the inherent uncertainty within forecasting the future, the Applicant's core traffic model represents the 'most likely' predictions of future traffic levels.'

MDC does not feel the National Highways deadline 6 response is adequate. On the one hand, NH states in 'acknowledging the inherent uncertainty within forecasting the future' but relies on this forecasting wholeheartedly as the most likely predictions that all traffic will turn right at the Maldon Road junction whether travelling north bound or south bound. There is nothing proposed in the Project to prohibit a left turn.

3.3 LRN traffic modelling / Level of service at Duke of Wellington mini roundabout

MDC acknowledges NH has not responded further at deadline 6. MDC maintains it's deadline 6 submission:

'MDC maintains the traffic modelling does not account for accelerated housing growth since 2019. The 722 jobs forecasted for employment growth only considers 'additional car trips associated with these additional jobs' whereas HGVs and LG Vs account for 12% of the modelled traffic at the Maldon Road junction with the Duke of Wellington mini roundabout. MDC has referenced in written submissions the types of employment sites where HGVs, LG Vs, vans and cars are typical modes of transport to support employment land uses (MDC LIR [REP2-068]). HGVs and LGVs take up more space in a queue than a car. It was witnessed by the Ex A at the ASI at the Duke of Wellington mini roundabout, that HGVs and LGVs cannot easily navigate the mini roundabout or pass each other, causing further delays through oncoming traffic giving way to them. 'The traffic modelling does not account for increases in HGV's, LGV's or vans (only car trips associated with employment growth). HGV's, LGV's and vans take up more space in a queue (as stated by NH queues at Maldon Road junction to increase) and cannot easily navigate the Duke of Wellington mini roundabout, i.e., a painted circle on the tarmac and pass each other at the same time.

3.7 Cadent Gas Main (Biodiversity)

It is noted NH had nothing further to add at deadline 6. MDC reiterates the two female Black Poplars at Blue Mills Nature Reserve are considered by Essex Wildlife Trust to be the only female Black poplars remaining in Essex and are considered as potential a veteran tree by NH own surveys. MDC welcomes the treatment of the Blue Mills Nature Reserve as if it were a designated Local Wildlife Site (LoWS). However, MDC still considers further discussion is required regarding the limitations of the Black Poplar trees in relation to provisions of works to protected trees within the DCO.

As previously noted, the powers of the DCO would allow for root pruning of protected trees. MDC have sought further information from its Arboriculturist as to the impacts of the Cadent Gas Main construction on the Black Poplar tree and its future health and have provided this in a separate document to both NH and the ExA. Statement of Commonality

The Statement of Commonality (SoC) issued by the Applicant aims to capture all the topics raised by the host authorities, consultees and interested parties with which the Applicant has a SoCG. A table has been produced highlighting the topics of concern for each authority/organisation. As previously stated at deadline 6, it is noted that air quality has not been shown to be of concern to MDC, however whilst there is no separate air quality section within MDC's SoCG, concerns regarding air quality feature throughout MDC's SoCG in relation to the traffic and transport Principal Issue, as well representations into the Examining Authority.

Whilst the SoC is brief, simply listing the topics of interest for each party, it shows areas of joint concern on Environmental Matters between MDC and ECC under the Principal Issue of Traffic and Transport. Another area of concern is the consequence of the Cadent Gas Main construction, under Environmental Matters, on the ecological value of Blue Mills Nature Reserve and biodiversity.

A draft SoCG was shared with MDC on 12 June 2023. A meeting was organised with MDC to go through the draft SoCG on 21 June 2023. The key issue remaining under discussion at this stage is:

- Cadent Gas Main (tree and vegetation loss)

The issues 'in disagreement' are:

- Cadent Gas Main (biodiversity) • Junction 21 - LRN to Duke of Wellington mini roundabout • LRN Maldon Link Road - Omission of Maldon Link Road • Duke of Wellington mini roundabout - Design of mini roundabout • Duke of Wellington bridge - 2-way traffic and operation of Duke of Wellington mini roundabout • Maldon Road - Option for Maldon Link Road • Junction 20b - Duke of Wellington mini roundabout

Applicant's Response

The Applicant notes the comments made by the Interested Party regarding the amalgamation of topics within the Statement of Common Ground. As discussed in the meeting on 21 June 2023, although the Interested Party has specific concerns which are outlined below, these are mainly regarding a Maldon Link Road and Cadent Gas Main.

Regarding the specific points raised on the SoCG, the Applicant has responded in turn below:

2.2 Junction 21/Local Road Network – Duke of Wellington mini-roundabout

The Applicant has explained the uncertainty within forecasting future traffic in response to ExQ2 2.17.3 in the Deadline 4 Submission - Applicant's Responses to ExQ2 - Rev 2 [REP4-055], The Applicant has also explained to the council in response to REP5-041-003 [REP6-090] that the Applicant has committed to the installation of average speed cameras, a new controlled pedestrian crossing on the B1137, and softer measures including road safety posters in Requirement 14 of the draft DCO [REP7-005]. These measures would help to discourage drivers from travelling through Boreham village to access junction 19.

2.3 Local Road Network/Omission of Maldon Link Road/Hatfield Peverel Bypass

The Applicant has had numerous meetings since 2017 with the Interested Party, as shown in Table 2.1 of the Record of Engagement in the Statement of Common Ground [REP7-026], regarding junction 21 and the consideration of a potential

Maldon Link Road. The Applicant produced the Maldon Road and Hatfield Peverel Bypass Technical Report [APP-094] to report on the investigations into alternatives for a Maldon Link Road.

2.4 Duke of Wellington mini-roundabout/Design of mini-roundabout

The Applicant has previously responded to these points in response to REP5-044 at Deadline 6 [REP6-090], including details of Requirement 16 which commits to traffic monitoring at The Street/Maldon Road (Duke of Wellington) junction.

2.5 Duke of Wellington/2-way traffic and operation of Duke of Wellington mini-roundabout

The Applicant has responded to this point in response to REP5-042-002 at Deadline 6 [REP6-090].

3.1 Maldon Road/Options for Maldon Link Road

As stated in 2.2 above, the Applicant reaffirms the position given to ExQ2 2.17.3 in the Deadline 4 Submission – Applicant's Responses to ExQ2 – Rev 2 [REP4-055].

3.2 Junction 20b/Duke of Wellington mini-roundabout

As stated in 2.2 above, the Applicant reaffirms the response given to ExQ2 2.17.3 in the Deadline 4 Submission – Applicant's Responses to ExQ2 – Rev 2 [REP4-055], and REP5-041-003 [REP6-090] regarding Requirement 14 of the draft DCO [REP7-005].

3.3 LRN traffic modelling/Level of Service at Duke of Wellington mini-roundabout

The Applicant previously responded to this in response 13 within the Applicant's Written Submission of Oral Case for Issue Specific Hearing 1 [REP3-012].

3.7 Cadent Gas Main (biodiversity)

The Applicant responded to this at Deadline 7 in Applicant's Comments on Information received at Deadline 6 [REP7-045], in REP6-102-001.

As stated in the Maldon District Council Statement of Common Ground [REP7-026], the Applicant agreed to keep issue 2.9 under discussion until agreement could be reached at Deadline 8 to assist the Examining Authority. This was to allow Maldon District Council to review a detailed response from the Applicant at Deadline 7 before making a final decision on the issue.

In regard to the Statement of Commonality, the Applicant notes the Interested Party's comments and can confirm that a version of the Statement of Commonality was submitted at Deadline 7 [REP7-032]. Since then MDC has agreed point 2.9 Cadent Gas Main Root Protection area in the SoCG. As a result the Statement of Commonality and List of Matters Under Discussions will be revised and submitted at Deadline 8.

Maldon District Council**REP7-053-001****Sub-Part**

Q3.13.1 ExQ3: The Department of Transport has recently announced forthcoming guidance on 'Accounting for COVID19 in transport modelling', with an expected release date of May 2023. At the time of drafting this question, the new guidance had yet to be published, however it is likely that it will be available before the close of the Examination. Therefore, please can the Applicant identify what the implications are for the application. NH ExQ3 Comment: The Department for Transport (DfT)'s latest guidance on incorporating Covid-19 impacts into model forecasts was released in May 2023 and is included in its Transport Analysis Guidance Unit M4. In parallel with the application for Development Consent, the Applicant holds regular meetings with the Department for Transport as part of the governance process around the scheme's funding approval. Following discussion around this new guidance in its May 2023 meeting with the Department, the Applicant has proposed an approach as to how to address it. This involves analysis of the traffic changes since Covid-19, and how that compares to assumptions within the traffic model. Although it would not result in any changes to the traffic model at this late stage of scheme development, the aim is to provide insights into the effects of Covid-19 on traffic flows and highlight any disparities with modelled assumptions. This methodology strikes a balance between the constraints imposed by the scheme's advanced stage and the necessity to account for the impacts of Covid-19. This is in line with the new guidance which acknowledges that making changes to traffic models can be impractical within a project's timeline but encourages project teams to provide clear explanations and justifications for the limitations imposed by the advanced project stage. A clear documentation and justification of the chosen approach will ensure transparency and accountability in the decision-making process. The Applicant will aim to provide a copy of this analysis at Deadline 7. MDC Comment: MDC awaits the copy of this analysis

Applicant's Response

The Applicant has produced a technical note explaining the results of a sensitivity test on the traffic model based on the DfT Covid –19 Traffic data.

The technical note titled “the impact of Covid on traffic model forecasts” with the document reference [Applicant Reference TR010060/EXAM/9.83] will be submitted as part of Deadline 8 as requested by the Examining Authority at ISH5.

The technical note indicates that current observed traffic conditions are not significantly different from what would have been expected if Covid had not occurred, this implies that the traffic models still provide a good prediction of future traffic levels despite the impact of Covid in slowing traffic growth.

Maldon District Council	REP7-054-001
Sub-Part	
<p>Dear Sirs, RE: 20033123 - PROCEDURAL DEADLINE 7 SUBMISSION I write on behalf of Maldon District Council (MDC) with regards to Deadline 7 and the Examining Authority's request for the above. The authority submits the following appendices as responses to the deadline; submitted as separate Appendices to assist with uploading to the online portal: Appendix A - Written Submissions on Oral Representations made at Issue Specific Hearing 5 Appendix B - Comments on draft Statements of Common Ground & Statement of Commonality Appendix C - Comments on responses to EXQ3 Appendix D - Any further information requested by the ExA</p> <p>The Council trusts this information is to your satisfaction.</p> <p>Yours sincerely, Paul Dodson Director of Strategy & Resources</p>	
Applicant's Response	
<p>The Applicant acknowledges the documents submitted and has responded to each appendix in the following sections of this document:</p> <ul style="list-style-type: none"> • Appendix A - Written Submissions on Oral Representations made at Issue Specific Hearing 5 – REP7-055-001 to REP7-055-009 • Appendix B - Comments on draft Statements of Common Ground & Statement of Commonality – REP7-052-001 and REP7-052-002 • Appendix C - Comments on responses to EXQ3 - REP7-053-001 • Appendix D - Any further information requested by the ExA – REP7-051-001 	

Maldon District Council	REP7-055-001
Sub-Part	
Maldon District Council (MDC) Appendix A - Written Submissions on Oral Representations made at Issue Specific Hearings	
MDC Speakers – Matthew Winslow, Jackie Longman, Annie Keen	
Issue Specific Hearing 5 Draft Development Consent Order and Environmental Matters 27 June 2023	
<p>1 Draft Development Consent Order - Agenda Item 3 1.1 In respects of Article 46 - Felling & Lopping of Trees and Rural Hedgerows & 47 – Trees subject to Tree Preservation Orders, the ExA referred to MDC's Deadline 6 Representation (REP6-102) that it was waiting for arboricultural advice in connection with these articles. At the Hearing, Matthew Winslow for MDC responded that the Council was in the process of receiving the arboricultural advice and that it was MDC's intention to submit that in writing to the ExA and Applicant after ISH5. He indicated that within the draft advice was suggestions that NH approach does not go far enough in respects of Root Protection Areas. The ExA requested that MDC send to NH as soon as possible given the approaching conclusion of the Examination.</p>	
Applicant's Response	
The Applicant notes the Interested Party's comments. Please refer to the response to MDC's Appendix D - Any further information requested by the ExA in REP7-051-001 of this document.	

REP7-055-002
Sub-Part
<p>1.2 In respects of Articles concerning highways and traffic management, MDC has consistently raised concern throughout the Examination and in Written Submissions [most recently set out in REP6-102], that Maldon District residents, businesses and visitors are disadvantaged by the Project's closure of Junction 20a and the existing poor Level of Service D (LoS D) at the Maldon Road junction with the Duke of Wellington mini roundabout on the LRN to connect to the new Junction 21, whether travelling northbound or southbound on the SRN.</p> <p>1.3 For ease of reference to earlier Written Submissions, the Maldon Road junction with the Duke of Wellington mini roundabout is the closest of only two roads on the LRN (B1019 to Junctions 20a and 20b and A414 to Junction 18) that connect the Maldon District to the SRN for all modes of transport (HGVs, LGVs, vans, cars and motorcycles). The B1019 Maldon Road junction at the Duke of Wellington mini roundabout is 4 miles from the district's main strategic housing and employment growth allocations at Maldon and Heybridge. In contrast, the A12/A414 Junction18 is 8 miles from Maldon and Heybridge.</p>
Applicant's Response
<p>The Applicant notes the Council's comments on the Maldon Road junction with the Duke of Wellington mini-roundabout and maintains the position outlined in response to REP5-044 at Deadline 6 [REP6-090] and REP6-102 at Deadline 7 [REP7-045]. The comments regarding the A12/A414 have been addressed in response to REP5-041-003 at Deadline 6 [REP6-090].</p>
REP7-055-003
Sub-Part
<p>1.4 MDC supports ECC's draft text on the dDCO [REP6-097] Section 3 Updated Requirement Matrix, page 8, referencing 'Monitoring' (Requirement 17) for an 'Impact Monitoring and Mitigation Scheme' as set out at (1). MDC supports ECC's Monitoring and Mitigation Technical Note [REP6-100], Table 2.1 that identifies 29 monitoring sites including Site 2 – Maldon</p>

Road junction with the Duke of Wellington mini roundabout. The 'rationale' for monitoring at Site 2 supports MDC's 'local concerns' and the 'uncertainties' in the Transport Assessment where forecasting cannot predict 'driver behaviour' and challenging if the current poor level of service (LoS D) can be maintained in the short term with Junction 20a closing and 87% [data from REP6-109, page 1, '2. J21/Dow junction of B1137 and B1019 in Hatfield Peverel – Southbound access to A12, (g), Boreham Conservation Society] of traffic at the Maldon Road junction with the Duke of Wellington mini roundabout predicted by the Applicant in their Transport Assessment to turn right to the new Junction 21, whether travelling southbound or northbound on the SRN.

1.5 At the Hearing, Jackie Longman for MDC, responded to the exchange regarding Requirement 17 Monitoring between one of the Applicant's barristers from Womble Bond & Dickenson stating the Applicant "was not in agreement with the consequences of the operational monitoring" and "the ability to apportion "blame" [visual quotation marks] for what the monitoring may show" and ECC's barrister responding that: "Transport Assessment realities should be mitigated by National Highways". MDC cites the above exchange as representative of the Project's lack of integration of the LRN with the SRN at the Maldon Road junction with the Duke of Wellington mini roundabout as set out in MDC's previous and ongoing Written Submissions. More importantly, that this fundamental disagreement at local and national levels will ultimately (and in reality) impact the road user who does not distinguish between the LRN and SRN and merely needs to and seeks to get from A- B efficiently.

Applicant's Response

The Applicant has agreed to provide Requirement 16 which is in the draft DCO submitted at Deadline 8 [Applicant reference TR010060/APP/3.1 rev 9] and provides monitoring at various locations. This includes monitoring of Maldon Road and The Street junction.

As noted in Issue Specific Hearing 5, the Applicant does not agree with Essex County Council on the consequences that flow out of traffic monitoring. The Applicant has responded to this in detail in section A.3 of Appendix A of Applicant's Comments on Information received at Deadline 6 [REP7-045].

REP7-055-004

Sub-Part

1.6 MDC maintains its position that the Project disadvantages Maldon District residents, businesses and visitors by closing Junctions 20a and 20b and, as a result of those closures, MDC challenges the Applicant's reliance on the prediction in the transport modelling that road users will turn right (when they will still have the ability to turn left towards Junction 19 on the B1137/Main Road through Boreham village) at the Maldon Road junction with the Duke of Wellington mini roundabout to the new Junction 21 whether travelling southbound or northbound on the SRN. This is a huge assumption to make, which will have unmitigated consequences.

Applicant's Response

The Applicant disagrees with MDC that the A12 scheme will disadvantage residents, businesses and visitors by closing Junction 20a and 20b. Maldon District Council adopted Local Plan 2014 to 2029 states:

"2.71 Physical space surrounding the B1019 / B1137 junction at Hatfield Peverel has restricted the identification of a viable immediate solution to relieve congestion by Essex Highways.

A new junction connecting the B1019 to the A12 would provide the most effective solution, however this would come at a significant cost. Maldon District Council will seek to work with Braintree District Council, Essex County Council and Highways England to identify funding opportunities for the completion of this scheme alongside the South East Local Enterprise Partnership, and Central Government."

The above highlights the fact that the operation of Maldon Road and The Street is an existing issue on the local road network and not one created by the proposed scheme. It is unclear what steps the Council has taken to secure such funding. However,

as the Applicant will outline below, the proposed scheme makes a Maldon Link Road eminently more deliverable than it would be without the proposed scheme.

The proposed A12 scheme will reduce congestion on the A12, improve journey times for users, including those using it from Maldon District, it will improve the safety of the road and ensure it can handle, and indeed support, economic growth in the area. Furthermore, as mentioned in several responses provided previously, and as noted in the response to section 1.9 of the Interested Party's Appendix A submission, the Applicant has through its design and Requirement 18 made the Maldon Link Road eminently more deliverable than would be without the proposed scheme. The Applicant therefore would reiterate that it does not agree that "the Project disadvantages Maldon District Residents, businesses and visitors".

Regarding the closure of junctions 20a and 20b these junctions are substandard and could never be retained in their current form. The decision to close junction 20a in particular has been covered at length during examination and the Applicant position can be found in Appendix B of the Applicant's Response to Relevant Representations [REP1-002] which was submitted at Deadline 1. It is of course also worth noting that had the proposed scheme retained the current junction arrangements as the Council is suggesting it should, the proposed scheme would not have included the proposed junction 21 and in turn the Applicant would not have been able to provide the support for a Maldon Link Road that it has through Requirement 18.

REP7-055-005

Sub-Part

1.7 MDC strongly supports ECC's position at ISH5 concerning 'mitigation for the Transport Assessment realities' and in ECC's draft text in the dDCO [REP6-097] Section 3 Updated Requirement Matrix, page 8, 'Key difference at Deadline 6' where ECC maintain that: a workable plan is possible and that if there is a change to predicted flows [at the Maldon Road junction with the Duke of Wellington mini roundabout] then there should be "a mechanism for future agreement on mitigation measures".

Applicant's Response

As noted in Issue Specific Hearing 5, the Applicant does not agree with Essex County Council that it is appropriate to agree “a mechanism for future agreement on mitigation measures” following traffic monitoring.

The Applicant has responded to this in detail in section A.3 of Appendix A of Applicant's Comments on Information received at Deadline 6 [REP7-045].

The Applicant accepts that while it is possible to monitor and analyse the impact of the proposed scheme, there is a level of uncertainty around the extent to which the proposed scheme is responsible for observed changes. While this level of uncertainty is acceptable for a monitoring report that focuses on trying to understand the impacts of the scheme, it does not allow definitive “blame” to be placed on the A12 scheme for traffic changes and therefore responsibility for funding or delivering mitigation.

In addition, given that the proposed scheme results in an overall reduction of traffic on Essex's local road network, any suggestion that the Applicant should in principle be expected to monitor and bear all impacts on the local road network arising from the scheme would involve a significant and problematic extension of National Highways' role in delivering improvements to the strategic road network, through both the RIS process and under the terms of National Highways' Licence, which authorises National Highways in respect of the SRN only. The Applicant considers it inappropriate to hold a fund for undefined mitigation schemes to be delivered from 2033 at the earliest.

REP7-055-006

Sub-Part

1.8 MDC also strongly supports ECC's position raised at ISH5 concerning Proposed New Requirement 18 Junction 21 and detailed in ECC's drafting on the dDCO [REP-097] Section 4 Commentary on updated draft Requirement Matrix, page 23 where ECC 'seeks to secure the design elements National Highways has indicated it intends to include within the new junction 21 as per the Applicant's letter of intent dated 24 April 2023 [AS-060]. The requirement, including a general arrangement drawing, is requested to provide the Council assurance that the new junction will be designed in such a way that it can accommodate provision of a new link road to Maldon Road should this be delivered as a separate project at a later date.'

Applicant's Response

The Applicant has, at Statement of Common Ground meetings with the Interested Party, kept them up to date with discussions that have taken place with the Local Highways Authority regarding junction 21. At the meeting that took place with the council on 21 June 2022, the Applicant confirmed it was preparing a General Arrangement drawing for Essex County and this would be shared with the District Council as well. The Applicant provided this drawing to Maldon District Council via email on 29 June 2023, prior to deadline 7.

The Applicant welcomes the council's support for the action the Applicant has taken on this specific matter, although recognising that the council ultimately believes the Applicant should deliver the entire link road.

REP7-055-007**Sub-Part**

1.9 MDC contends that in consideration of Agenda Item 4 below, had the issues debated at ISH5 in paragraph 1.4 above regarding Requirement 17 Monitoring and the new Requirement 18 (Junction 21) been progressed, some of MDC's 'issues in disagreement' as a final position for the SoCG, might have progressed to being resolved and in agreement. In this regard, the Applicant has left MDC's and ECC's very real concerns raised very early on in the Project's development through Preliminary Discussions and Preliminary Design stage about the closure of J20a and J20b and the poor LoS D at the Maldon Road junction with the Duke of Wellington mini-roundabout 'out to dry' and quite frankly ignored.

Applicant's Response

The Applicant entirely disagrees with the council's depiction of events. The Applicant has been very clear that the Maldon Link Road, while wanted by the District Council, is not for the Applicant to deliver. Nevertheless, the Applicant has through its design and Requirement 18 made the Maldon Link Road eminently more deliverable than would be without the proposed scheme so the Applicant is unclear on the "hung out to dry" statement made by the council. Indeed the Applicant would highlight the extent of the support the Applicant has provided to assist with the delivery of a future Maldon Link Road.

With regard to monitoring, the Applicant has included Requirement 16 which provides monitoring at the seven locations identified by Essex County Council in its Local Impact Report. This includes The Street/Maldon Road junction. However, as outlined in Appendix A of the Applicant's Comments on Information received at Deadline 6 [REP7-045], and noted above, the Applicant strongly disagrees that a requirement covering mitigation would be either workable or appropriate.

REP7-055-008

Sub-Part

2 Statement of Common Ground - Agenda Item 4 2.1 MDC note the ExA's reference to signed Statements of Common Ground (SoCG) given weight by PINs and unsigned SoCG given 'little weight' by PINs. As a post ISH5 update, MDC have agreed to have a signed SoCG with NH, at the latest, by Deadline 8, giving NH enough time to respond to the matters in correspondence sent to them in a letter (Ref: MDC/A12/PINS/28/06/23) dated 28 June 2023 which set out arboricultural concerns at Blue Mills Nature Reserve. This letter was cc'd into the Examining Authority at the request of Mr Hunter who had asked MDC to expedite the information before Deadline 7, due to the end of the Examination approaching.

2.2 The Applicant (via Mr Nuno Fernandez) referenced MDC as having outstanding 'issues in disagreement' in its Statement of Common Ground with National Highways concerning the Duke of Wellington mini roundabout, Junction 21 and Maldon Link Road. Whilst there was no discussion around these issues, MDC feel it is important to outline there are however 7 separate 'issues in disagreement' (below and numbered as appearing in SoCG between National Highways and MDC) and explain their discrete elements and why they are not amalgamated to the Applicant's identification of only 3 'issues in disagreement' at ISH5 (Appendix B of Deadline 7 Submissions will clarify further):

3.1 Maldon Road/Options for Maldon Link Road National Highways worked up options with ECC for a Maldon Link Road linking to the new Junction 21 at Pre-application Stage. It appeared to be recognised by the local and national highway and transport authorities that the operation of the Duke of Wellington mini roundabout's poor LoS D on the LRN was an inadequate juncture (being a painted circle on tarmac) for all modes of transport to turn right and pass each other from Maldon Road to the new northern arm to connect to the Project's upgraded J21 on the SRN and vice-versa from J21 on the northern arm to access Maldon Road over the new 2-way Duke of Wellington bridge.

3.2 Junction 20b / Duke of Wellington (DoW) mini roundabout National Highways have confirmed that their Transport Modelling does not forecast driver behaviour and local knowledge. The modelling is scientific therefore and not the reality. The ASI showed the Examining Authority (photographic evidence provided in [REP3-051], pages 4 and 5) that HGVs and LGVs already cannot

pass each other over the mini roundabout. Awaiting ExQ3 response from Applicant (Deadline 7) if the 2019 Transport Modelling data should have been updated after Covid in line with DfT guidance.

3.3 LRN traffic modelling/Level of Service at DoW mini roundabout What prohibits the road user turning left to access Junction 19 via Boreham village (with J20a closing). How do HGVs pass each other at the mini roundabout without one having to give way, causing queue lengths to increase and traffic patterns to change that could ultimately and negatively affect the stated Level of Service D?

2.2 J21 / LRN - DoW mini roundabout The Project closes J20a. Traffic modelling predicts the road user will turn right at the Maldon Road junction with DoW m/r to J21 whether travelling northbound or southbound. Traffic modelling cannot forecast driver behaviour and is not representative of local knowledge

2.3 LRN/Omission of Maldon Link Road/Hatfield Peverel Bypass MDC was not made aware at Pre-Application Stage of the 'serious challenges to feasibility, including significant carbon, land, environmental construction and cost impacts' when the options were tested for a Maldon link road before the DCO was submitted.

2.4 DoW mini roundabout / design of mini roundabout National Highways must recognise this is a mini roundabout on the LRN (although it is in the Project's red line boundary) and not a roundabout. Junctions 20a and 20b that are currently accessible from the DoW mini roundabout are closing due to safety concerns. The Project upgrades the DoW bridge to 2-way traffic connecting to the northern arm to the new Junction 21 but the mini roundabout is a fixed element (painted circle on tarmac) on a residential street in a village. Notwithstanding its 'current' poor level of service D, is it a safe junction for 2 HGVs or LGVs to pass each other?

2.5 Duke of Wellington Bridge / 2-way traffic and operation of DoW mini roundabout The upgrade of the Duke of Wellington Bridge to 2-way traffic will impact on the operation of the DoW mini roundabout with 'changing traffic patterns' and 'increased queue lengths' stated from the traffic modelling. Notwithstanding Reality vs Science (traffic modelling to turn right over the

bridge vs size of vehicles) the plans submitted do not show the integration of the LRN with the SRN at this juncture [REP6-004], Permanent Works Plan, Sheet 6 of 21. The integration of the DoW mini roundabout with the upgraded DoW bridge to 2-way traffic is an important consideration of the Project. MDC feels this should be designed-in now and as part of the dDCO. .

Applicant's Response

2.1

The Applicant acknowledges Maldon District Council's comments on the Statement of Common Ground. The Applicant can confirm that the final Maldon District Council SoCG is signed as explained above in this document [REP7-051-001].

2.2

The Applicant acknowledges Maldon District Council's comments on matters disagreed in the SoCG [TR010060/EXAM/8.11]. The Applicant summarised the concerns into three main issues for brevity. The SoCG includes all seven items laid out with Maldon District Council's and the Applicant's positions recorded. Below, the Applicant sets out its position on each of these items. The Applicant also refers to the response to REP7-052 in this document which provides further detail on the SoCG responses.

3.1 Maldon Road/Options for Maldon Link Road

Refer response to REP7-052-003.

3.2 Junction 20b/Duke of Wellington mini-roundabout

The Applicant has produced a technical note on the impacts of Covid-19 on traffic modelling in line with Department for Transport guidance. Refer to "The impact of Covid on traffic model forecasts Technical Note" [Applicant reference TR010060/EXAM/9.83] for details.

3.3 LRN traffic modelling/Level of Service at Duke of Wellington mini-roundabout

As previously explained in response to REP5-041-003 [REP6-090], the Applicant has proposed reduced speed limits on the B1137 Main Road which increase the travel time to junction 19. To ensure these proposals are self-enforcing, the Applicant has committed to a suite of additional measures in Requirement 14 of the draft DCO [REP7-005].

2.2 Junction 21/Local Road Network – Duke of Wellington mini-roundabout

Refer response to REP7-052-003.

2.3 Local Road Network/Omission of Maldon Link Road/Hatfield Peverel Bypass

Refer response to REP7-052-003.

2.4 Duke of Wellington mini-roundabout/Design of mini-roundabout

As explained in response to reference 2.2 in the SoCG, one collision of slight severity has occurred at the mini-roundabout in the period from 2017 to 2021. The mini-roundabout is currently used by HGVs and LGVs on all approaches to the mini-roundabout, and this is not proposed to be changed by the proposed scheme. Within the same time period, there have been 13 reported incidents of varying severity at junction 20A, and 22 reported incidents of varying severity in the vicinity of junction 20B and junction 21.

As detailed in Requirement 16, the Applicant has committed to traffic monitoring at The Street/Maldon Road (Duke of Wellington) junction.

2.5 Duke of Wellington/2-way traffic and operation of Duke of Wellington mini-roundabout

The preliminary design of the integration between the local road network and the strategic road network at junction 21 is shown on Sheet 5 of the General Arrangement plans [REP6-018].

REP7-055-009

Sub-Part

3 Gas Pipeline - Agenda Item 6 3.1 At the hearing, Annie Keen for MDC informed the Inspectors that an area of concern and therefore uncommon ground currently "In Discussion" in the draft SoCG between the parties, was the treatment afforded to protected trees within the preferred route of the Cadent gas main diversion. MDC therefore stated the 'Council remain concerned about the level of protection afforded to the roots of the Black Poplar within the Blue Mills Nature Reserve, which National Highways own assessment determines is a 'Veteran Tree' and posed the question to National Highways 'to confirm the distance of the root protection area being given to the Black Poplar to ensure it comes to no harm during the gas pipeline's rerouting operation?'

3.2 As noted in 1.1, the Examining Authority noted from its Deadline 6 submission that MDC was seeking arboricultural advice regarding the wording of the dDCO in relation to trees at Blue Mills Nature Reserve and requested MDC submit this advice to National Highways and the ExA before Deadline 7. MDC sent a letter outlining the advice to National Highways and the ExA on 28 June 2023.

Applicant's Response3.1

Please refer to the Applicant's response to MDC's Appendix B - Comments on draft Statements of Common Ground & Statement of Commonality – REP7-052-001 and REP7-052-002 of this document.

3.2

Please refer to the Applicant's response to MDC's Appendix D - Any further information requested by the ExA in REP7-051-001 of this document.

Network Rail Infrastructure Limited	REP7-056-001
Sub-Part	
Please see original document here: https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010060/TR010060-002830-Network%20Rail%20Infrastructure%20Limited%20-%20Other-%20Network%20Rail%20position%20statement%20on%20its%20protective%20provisions.pdf	
Applicant's Response	
<p>The Applicant acknowledges the Interested Party's submission made at Deadline 7 and the Interested Party's request for a revised form of Protective Provisions to be included in the DCO. The Applicant accepted a number of Network Rail's amendments, but is not able to agree all of the proposed amendments for the reasons set out below.</p> <p><u>1. Introduction</u></p> <p>The Interested Party's position in relation to the inclusion of additional references to 'protective works' is noted by the Applicant. The Applicant notes that this concept is no longer being sought by the Interested Party for inclusion in the Protective Provisions. The Applicant does consider that the wording added to the DOC at Deadline 6 [REP6-037] is a helpful clarification but does not have a strong objection to its removal.</p> <p><u>2. Electromagnetic Interference</u></p> <p>The Applicant has previously provided to the Interested Party the following rationale for not including their requested paragraph at 76(7)(d):</p>	

The Applicant does not agree to this wording being inserted. This drafting may be appropriate for other infrastructure schemes such as electricity cables or gas mains where the undertaker causes use and operation by causing electricity to flow, and has the power to turn the power off.

However, because the authorised development is a highway, National Highways does not in the same sense "allow the use or operation" of the highway and is constrained in its actions by the ambit of its statutory powers and duties. A highway carries a public right and if the Applicant attempts to interfere with that right without lawful authority a criminal offence will be committed.

National Highways may only therefore restrict the "use or operation" of the highway in circumstances where it has a statutory power to do so. In particular in exercising its powers under the Road Traffic Regulation Act 1984 it must have regard to its duties under Section 122 of the Act and balance the factors specifically set out in that Act: it cannot fetter its statutory discretion in that regard, as that would be unlawful and open any action it took to judicial or statutory review. Equally there is no power to permanently stop up the strategic road network on the basis of EMI being caused.

In these circumstances the Applicant considers that the Interested Party's proposed wording does not work in the context of a highway scheme the Interested Party may instead rely on paragraphs 70 and 74 of the protective provisions which allow the Interested Party to require protective works to be carried out at the Applicant's expense.

The Interested Party, suggests in its submission that the purpose of paragraph 76(7)(d) is to prevent the commencement of use or operation until measures have been taken to prevent EMI from occurring and seeks to place this sub-paragraph in the context of sub-paragraph 76(6).

In full, in relation to sub-paragraph (d) It states:

“(7) In the event of EMI having occurred.:

(d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI 1 until measures have been taken in accordance with this paragraph to prevent EMI occurring.”

Nothing in sub-paragraph 76(7) suggests that is a time limitation in relation to when EMI occurs. It is therefore clear that this sub-paragraph would apply after the commencement of use of the highway, at which time National Highways would be not simply be able to prevent the use of the highway.

Moreover, sub-paragraph 76(6) itself, which relates to EMI testing, states that where the tests reveal EMI use o the authorised development (which would not be a highway at that stage) must cease until measures have been taken to remedy the EMI. The paragraph is clearly self-contained in terms of the cessation of the works. Sub-paragraph 76(7)(d) is therefore either duplicative (and therefore unnecessary) or provides for National Highways to take steps to prevent use of a highway which go beyond its powers.

3. The Indemnity of the Interested Party at paragraph 80 of the Protective Provisions

Proposed conditionality on liability

National Highways considers that this clarification is required to protect its interests. The Interested Party acknowledges that this wording does not adversely affect its interests.

The conduct of Network Rail in relation to claims or demands for payment of costs under paragraph 80(1)

This provision follows on from National Highways' obligation to pay these costs under paragraph 80(1) and provides a number of safeguards as to how that obligation is to work in practice.

Not including liability for indirect losses

The Applicant considers that the losses which are recoverable should be limited to "direct" losses. That means the natural result of the breach in the usual course of things.

Looking at paragraph 80(2), the Applicant considers that the additions that have been made ensure that the Applicant is able to be involved when claims are being settled to ensure that public money, for which it is accountable is carefully and properly mitigated and accounted for.

The Interested Party's clause does not include the word "direct" and would expose the Applicant to "indirect" (or consequential) losses. This is essentially loss due to the special circumstances of the case.

The nature of undertaking of the Interested Party, and its interface with the project, is very complex and special circumstances which could give rise to liability. The Applicant does not consider that it should be made liable for these special losses under the protective provisions.

Although such losses must be foreseeable, the judgment as to what was and was not foreseeable does not just reflect what the Applicant does know – it reflects what a third party considers the Applicant should have known – and the Applicant wishes to exclude these losses to avoid costly and unnecessary litigation.

The Interested Party refers to damages for a breach of contract claim. Although enforceable between the parties, the protective provisions are not contractual clauses. In any case, liability for consequential losses are frequently and routinely excluded during contractual negotiations, and this is a normal and established practice: it in no way offends the integrity of the common law. Essentially it is up to the parties (or in the absence of agreement the Secretary of State) to determine what the extent of National Highways' liability should be.

The text proposed by the Applicant has been included in other development consent orders.

It was included in the National Grid (Hinkley Point C Connection Project) Order 2016. The examining authority's recommendation report in relation to that application stated that the protective provisions contained within the recommended order "would give adequate safeguards" (paragraph 9.2.137). The Secretary of State's decision letter points to the examining authority's finding that Network Rail's proposed indemnity wording was "unduly onerous", and states that the Secretary of State was satisfied with the examining authority's finding on this issue, thereby confirming the point.

More recently the exclusion was included in paragraph 14(4) of Schedule 9, Part 5 of the Hornsea Three Offshore Wind Farm Development Consent Order, made on 31 December 2020.

In addition, albeit in relation to a different statutory undertaker, the examining authority took the same approach in relation to analogous provisions in the M42 Junction 6 Improvement Order 2020. At paragraph 5.15.8 and 5.15.9 of the examining authority's recommendation report, it was found that the provisions sought by Cadent in respect of an indemnity covering indirect and consequential loss were not required to meet the tests set out in Section 127 of the Planning Act 2008:

"The requirement is that Cadent should be protected from 'serious detriment' in undertaking its functions. Section 127 does not protect it from all the costs of doing so. Moreover, Cadent, like other road users, will derive some benefit from the improvements in efficiency and capacity of the SRN delivered by the Scheme and, as a statutory undertaker, it should be obliged to help where appropriate."

The above examples demonstrate that the Secretary of State in decision-making has moved properly to limit the liability of Applicant in the public interest and is tempering the exposure to third party costs. This is entirely appropriate, particularly where those Applicants are public sector organisations who have sought to engage constructively with the statutory undertakers in question. The Applicant therefore requests that the provision in paragraph 80(3) be included in the Order.

Without prejudice to the above, in the event that the Secretary of State does not agree with the Applicant, the Applicant would have no issue with the inclusion of the revised wording of paragraph 80(3) which is set out in paragraph 3.15 of Network Rail's response:

"In no circumstances is the undertaker liable to Network Rail under subparagraph (1) for any indirect or consequential loss that was not in the reasonable contemplation of the parties at the time of making the Order"

4. A1 Birtley to Coal House Improvement Scheme

The Applicant notes the wording of Network Rail's protective provisions in the the A1 Birtley to Coal House Improvement Scheme (A1 DCO). The Applicant has referred to a number of precedent orders in section 3 of this response where the contrary view was taken by the Secretary of State.

5. The Indemnity of the Interested Party at paragraph 80 of the Protective Provisions

The Applicant is committed to working with the Interested Party to put in place a Framework Agreement and the negotiations of this will continue following the close of the Examination. The Applicant will provide an update to the Secretary of State.

Anglian Water	REP7-057-001
Sub-Part	
Deadline 7 Submission	
<p>Anglian Water makes this submission in relation to the outstanding matters that remain under discussion with the Applicant, as identified in the draft Statement of Common Ground at Deadline 6 [REP6-074] and which remain 'under discussion' in final Statement of Common Ground between Anglian Water and National Highways to be submitted by the Applicant at this deadline (Deadline 7).</p>	
<p>ISSUES IN DISCUSSION: Rivenhall End - removal of access from A12 Service Area (11/11b) As a result of the A12 widening project, Anglian Water's freehold access to the Rivenhall End water recycling centre (REWRC) will no longer be available to Anglian Water as an alternative means of access to the REWRC. Whilst it is acknowledged that the existing access utilised by Anglian Water from Braxted Road is available, the availability of an alternative means of access across new National Highways land (Plot 11/8a) would provide a reasonable alternative to the loss of the freehold. The final Statement of Common Ground (SoCG) between both parties, acknowledges that an easement over Plot 11/8a, which includes access to the proposed balancing facility, would be agreeable to National Highways, to enable a right of access to REWRC in the event that the existing access from Braxted Road can no longer be utilised by Anglian Water.</p>	
<p>Anglian Water considers that an easement over Plot 11/8a offers a suitable alternative access given the loss of the freehold access to REWRC. Anglian Water would welcome the suggested letter of comfort from the Applicant to this effect, to enable this outstanding matter to be agreed prior to the end of the examination period at Deadline 8.</p>	

Applicant's Response
<p>The Applicant has provided the letter of comfort to Anglian Water in an agreed form and understands that Anglian Water will be withdrawing its objection on this particular ground.</p>
REP7-057-002
Sub-Part
<p>Draft DCO Protective Provisions: Schedule 11 Pt.3 Clause 27 (Retained Apparatus) Para. (7) Anglian Water has noted the statements made by the Applicant at Issue Specific Hearing 5 (ISH5) with respect to the draft DCO and outstanding matters regarding the Protective Provisions for the protection of Anglian Water. These statements are reiterated in the final SoCG between both parties for submission at Deadline 7.</p> <p>It is noted that the stand-off distances included in the draft DCO are those which National Highways considers are reflective of previous precedent in the A47 Blofield, Tuddenham, Thickthorn and Wansford orders. Anglian Water recognises that the draft DCO includes stand- off distances used in previous National Highway DCO decisions, however, the “stand-off” distances in those historic DCOs were based on our assessment at those times for assets within those Order limits and have no precedent value at this time for our assets within the A12 widening Order’s limits.</p> <p>Anglian Water – requested revision to draft DCO Schedule 11 Pt.3 Clause 27 (Retained Apparatus) Para. (7)</p> <p>(7) For the purposes of sub-paragraph (1) and without prejudice to the generality of the principles set out in that sub-paragraph, works are deemed to be in land near Anglian Water’s apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus: (a) 4 metres where the diameter of the pipe is less than 250 millimetres; (b) 5 metres where the diameter of the pipe is between 250 and 400 millimetres, and (c) 12 metres where the diameter of the pipe exceeds 400 millimetres.</p>

National Highways does not consider that sufficient justification has been provided for it to accept this departure from the protective provisions in the draft DCO, despite further reasoning being submitted by Anglian Water at Deadline 5 - submission REP5-023. Anglian Water would like to take this opportunity to state that the revised distances have arisen from issues that have emerged on other nationally significant infrastructure projects and by reference to the largest piped asset within the specified Order area.

The factors and risks to our piped assets (both water supply and wastewater assets are within the order limits) are dependent on not just size, but also depth, pressure, and location. Anglian Water would like to reiterate that this particular provision does not prevent National Highways from working within these distances but provides us with increased oversight to ensure we can sufficiently mitigate against the impact of failures if they should occur, such as the scope for working areas, over-pumping setups with generators and so on.

Anglian Water is aware that if agreement is not reached by the end of the examination on this matter, the Secretary of State will need to adjudicate on whether to accept the distances set by the Applicant in the draft DCO or the revised distances proposed by Anglian Water.

Applicant's Response

National Highways has sought information about the type of difficulties the normal stand-off distances have caused Anglian Water in order that it can assess whether an increase in the stand-off distances is the best and most reasonable solution to those issues, or whether an alternative solution might be more appropriate. However this information has not been provided and no further substantiation has been provided as to why stand-off distances should increase.

The Applicant is concerned that the increased stand-off distances have the potential to constrain the ability of the Undertaker to deliver the scheme efficiently, and as such cannot accept this constraint based on the limited information provided by Anglian Water, relating to unspecified 'issues' on other NSIPs.

The Applicant would put in place as matter of course reasonable measures to keep Anglian Water's assets safe and secure during the works, and this would be considered on an asset by asset basis in conjunction with Anglian Water, understanding the risk associated with each individual asset. This is an obligation under Health and Safety legislation.

On the evidence provided to the Examination, the Applicant can see no justification, or need, for the increased stand-off distances requested.

It will now be up to the Secretary of State to adjudicated on this point.

Environment Agency

REP7-058-001

Sub-Part

APPLICATION BY NATIONAL HIGHWAYS FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE A12 CHELMSFORD TO A120 WIDENING

Please find below Deadline 7 comments from the Environment Agency in response to document 9.68 Technical Note on Proposals for Main River Crossings [REP6- 095].

Section 2 Legislation and Policy Framework

2.3 National Networks National Policy Statement (NNNPS)

It is stated by the Applicant in section 2.3.5 that: "if the Secretary of State does decide to grant a DCO which includes culverts, it would not then be open to the Environment Agency, to refuse to grant the Environmental Permits on the basis that open span bridges should have been used instead of culverts." The Applicant makes a similar statement in Section 4.5 of the Technical Note.

The Environment Agency has refused to give consent under s150 Planning Act 2008 for disapplication of the flood risk activity permitting regime under the Environmental Permitting (England and Wales) Regulations 2016 (EPR) which means that National Highways will need to separately obtain flood risk activity permits (FRAPs) for any part of the works proposed in the application for the DCO which require such a permit. The Environment Agency will consider the applications in the usual way on their merits at the time they are made.

In section 4.5 National Highways contends that the “Powergen” line of cases would preclude the Environment Agency refusing consent if the application for the DCO is granted. The Environment Agency disagrees with this submission. Its view is that the DCO regime and the flood risk activity permitting regime are different systems of control and have an independent existence. ‘Powergen’ does not involve a situation where there is a quite separate statutory consent regime.

Neither the Examining Authority nor the Secretary of State for Transport as part of a consideration of the DCO application can make a definitive determination as to which legal submission is correct. In the event that National Highways applies to the Environment Agency for FRAPs and these are refused, the applicant has a right of appeal against the refusals which could be determined by an Inspector from the Planning Inspectorate (or the Secretary of State for the Environment if she chose to recover the appeal) and would be expected to pursue this before bringing any legal challenge based on the ‘Powergen’ principle. A refusal at the appeal stage could then be legally challenged and the Court would make a decision on the issue.

Paragraph 5 of Part 1 of Schedule 25 of the Environmental Permitting (England and Wales) Regulations 2016 states that the Environment Agency must exercise its relevant functions, in this case flood risk activity permitting, for the purpose of achieving the following objectives:

(a) Managing flood risk (b) Managing impacts on land drainage (c) Environmental protection.

Furthermore, when determining the permit application, the Environment Agency has a duty to secure compliance with the Water Framework Directive. The Environment Agency must not issue a permit for any activity that may cause a deterioration of the status of a water body or will jeopardise the attainment of good status unless the defence under Regulation 19 of the Water Environment (Water Framework Directive) Regulations 2017 (transposed from Article 4.7 of the Water Framework Directive) applies.

When making an application for culverting applicants must assess the impact of proposed culverts on water bodies and the objectives in the relevant River Basin Management Plan. If culverting results in deterioration of the WFD water body status or

prevents it from meeting 'good' status, the applicant will have to demonstrate the development meets the requirements of Regulation 19.

Further detail regarding our concerns in respect of the effect of the proposals on the objectives of the Water Framework Directive is provided below.

Applicant's Response

The Applicant's detailed submissions are set out in its Technical Note on Proposals for Main River Crossings [REP6- 095] and does rely on the Powergen case as set out in that document.

The Applicant disagrees with the Environment Agency's position that Powergen is not applicable to environmental permits because it is a separate statutory consent regime. Powergen itself related to a consent required from a county council acting as local highway authority in relation to a planning application made to a district council as local planning authority. The rationale in Powergen is clear; once the issue regarding culverts has been determined by the Secretary of State in the DCO process, it would not be rational for the Environment Agency to come to a different conclusion on the same issue in the permitting process.

With regard to the Water Framework Directive (WFD), the Applicant has prepared a detailed Water Environment Regulations (WFD Regulations) Compliance Assessment [APP-159] in accordance with the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. This clearly demonstrates that the scheme is compliant with the requirements of the WFD and would not compromise the achievement of the statutory environmental objectives.

During ISH5 on 27 June 2023 the Examining Authority (ExA) suggested that, in light of the Environment Agency's stance on the issue of culverts, the Applicant should prepare a document to set out a Water Framework Directive Article 4(7) derogation case on a without prejudice basis in the event that the ExA in preparing its report and the Secretary of State, as competent authority, would find this helpful in considering WFD requirements. Subsequently, at Deadline 7 on 3 July 2023, the Environment Agency submitted representations [REP7-058] in which it disagreed with aspects of the WFD assessment undertaken by the Applicant.

The Environment Agency states that 'We do not concur with the results of the WFD assessment which we believe undervalues the significant damage and risk of deterioration to waterbodies' (see below in subsection REP7-058REP7-058-002). However, the Environment Agency has not provided any evidence to support this apparent change of position and its response [REP7-058] blurs the distinction between WFD requirements and other ecological issues such as riparian mammals and biodiversity net gain, which are not relevant to the WFD compliance assessment.

Notwithstanding this, and in light of the ExA's request to do so, the Applicant is preparing an Article 4(7) derogation case without prejudice to the Applicant's position that the proposed scheme is compliant with WFD requirements. Although the Applicant has endeavoured to respond to the ExA's request prior to the close of the Examination, this has not been feasible given the very short period of time available for preparation of the without prejudice derogation case, as well as for engagement with the Environment Agency on the content and approach to be taken.

The Applicant and the Environment Agency held a meeting on 10 July 2023 at which the Applicant set out the proposed approach and structure for the without prejudice derogation case. The Applicant proposes to continue to engage with the Environment Agency in the preparation of the without prejudice derogation case in the coming weeks and intends to submit the without prejudice derogation case to the Secretary of State as soon as it reasonably can, allowing for ongoing engagement with the Environment Agency, following the closure of the Examination.

REP7-058-002

Sub-Part**2.4 Water Environment (Water Framework Directive) (England and Wales) Regulations 2017**

All development has impacts but the Environment Agency has serious concerns about the proposals to culvert Main Rivers. We believe this design choice will cause significant unnecessary harm to the water environment with a very real risk of contributing to or causing waterbody deterioration or the ultimate inability to achieve good potential or status on these waterbodies.

In our experience, most highways bodies choose to build clear span bridges over Main Rivers and even many smaller ordinary watercourses as the environmental benefits over culverts are very clear. Given that there would appear to be space for alternatives which would avoid the significant damage to the river corridors we are not clear why the Applicant has chosen to propose such a damaging approach. We do not concur with the results of the WFD assessment which we believe undervalues the significant damage and risk of deterioration to the waterbodies.

The new and widened watercourse crossings which are proposed to be culverted will have significant impacts on the sections of rivers that they cross. Damage to rivers often creates cumulative effects elsewhere and a significant impact in one section cannot be undone or fully mitigated for by enhancing an alternative section. The mitigation hierarchy dictates that all damage to the environment should be avoided in the first instance where possible. Any new road crossings will have some adverse impacts, but culverting destroys whole reaches of natural river habitat, severs connectivity with the terrestrial riparian zone on either side of the river and damages the integrity of the ecosystem. Whilst we support the proposals for mitigation which will deliver a slight improvement on the enhanced lengths over the existing condition, they will unfortunately in no way undo or be adequate compensation for the unnecessary and very significant damage that will be permanently done by the proposals to culvert.

These proposals appear to have made no attempt to avoid unnecessary damage and are not in accordance with the Anglian River Basin Management Plan (RBMP) (December 2022). The introduction to the Plan states in section 3:

“The aim of the river basin management plans is to enhance nature and the natural water assets that are the foundation of everybody’s wealth, health and wellbeing, and the things that people value including culture and wildlife. Rivers... and the essential services they provide, are worth billions of pounds to the economy. All parts of society benefit from clean and plentiful water.

The plans describe the framework used to protect and improve the quality of waters in each river basin district... he plans consider climate change to be a critical challenge that requires urgent action and investment in order to limit future deterioration in the quality of the water environment.”

The Environment Agency oversees and surveys rivers and watercourses to aim to deliver the RBMP with partners. Public bodies and industry are expected to work together to achieve results including to:

- Work with natural processes – where possible choose nature-based solutions to protect and improve natural water assets and deliver multiple benefits.
- Build catchments resilient to warmer water temperatures – choose measures that help natural assets cope with or recover from shock.
- Promote restoration and recovery of freshwater habitats and species

We consider the Applicant’s approach to be contrary to the above. The proposed crossings do not appear to have been designed to limit the initial impact on the environment. The approach instead appears to have been to try to carry out some degree of mitigation after the main design stage. Whilst it is not our role to design such projects, we were asked in early pre application discussions with the Applicant what we would accept and were quite clear. The culverting proposals do not represent the appropriate RBMP approach and will destroy all natural habitat on these sections of river creating biodiversity blackspots and restrictive areas of damaged habitat where biodiversity and the health of the water environment will be put under extra pressure and stress during a time of climate change and biodiversity emergency.

Planning to build damaging structures that destroy lengths of river when there are clear river basin management plans dictating the opposite is an approach at odds with the RBMP, the National Policy Statement for National Networks (NNNPS), the draft NNNPS and the National Planning Policy Framework (NPPF). The SoS has a statutory duty to have regard to the RBMPs when deciding the DCO application.

Applicant's Response

In response to the Environment Agency's comments relating to design choice, the Applicant considered alternatives to structures as part of the design and the environmental impact assessment processes. The Applicant has assessed the impacts to the watercourses from the proposed Scheme as part of the Environmental Statement Chapter 9 Biodiversity [APP-075] and Chapter 14 Road Drainage and the Water Environment [APP-081]. A Water Framework Directive Compliance Assessment was also produced (Appendix 14.2 [APP-159]) to support the Environmental Statement.

The Applicant agrees that the mitigation hierarchy requires proposed schemes firstly to avoid adverse effects as far as possible and secondly to mitigate adequately any harmful effects where they cannot be avoided. However, the Applicant's position is that there are no adverse significant effects and this is evidenced by the environmental assessment of the proposed scheme on water bodies.

The Applicant supports the mitigation measures (and environmental improvements) identified in the Anglian River Basin District Management Plan (Defra, 2016) for artificial or heavily modified water bodies to be implemented in the RBMP cycle. Part of the Compliance Assessment is to consider these specific measures and assess whether the proposed scheme can contribute to their implementation or would obstruct any of them from being delivered. As demonstrated in Section 6.2 Table 6.5 of the Compliance Assessment [APP-159] only one mitigation measure of the four noted as not already in place would be affected by the proposed scheme, namely the mitigation measure to remove or soften hard banks. Whilst the proposed scheme is not contributing to that mitigation measure, the Applicant's assessment has shown that it would not give rise to significant adverse effects in not doing so. Additionally, it would not prevent implementation of the other three: preserve or restore habitat; in-channel morphological diversity; and bank rehabilitation.

The Applicant disagrees that the proposed scheme would destroy 'all natural habitat on these sections of river' and put the health of the water environment 'under extra pressure and stress'. The culverts are small at the river basin scale, which have been assessed as not having any likely significant effect on habitats at the river basin scale. The culverted sections have been designed to maintain river flows similar to the sections up and downstream of the culverts and maintain similar streambed material. The Applicant considers that these attributes would allow fish to swim through the culverted sections as opposed to creating barriers to migration. The Environment Agency has not submitted any factual objective evidence to support their statements, but the Applicant has shown through assessment and its conclusion of no likely significant adverse effects that this is not the case. Where it is considered there may be potential impacts, the Applicant has sought to avoid where possible and provide mitigation.

As detailed within Environmental Statement Chapter 3: Assessment of Alternatives [APP-070], the refinement of Option 2 for the proposed scheme at PCF Stage 2 (preferred option selection) provided environmental benefits including reducing potential development within the floodplain.

In accordance with the mitigation hierarchy, the Applicant has also sought to avoid impacts by retaining existing vegetation (including riparian habitat) as far as reasonably practicable and will continue to do so as the detailed design develops. This is committed to in LV4 in the Register of Environmental Actions and Commitments (REAC) [REP7-015] and shown on the Retained and Removed Vegetation Plans [APP-035 and REP4-007]. Where it has not been possible to avoid loss of vegetation mitigation measures have been proposed. The measures of most relevance to this response are provided below, with full details available in Section 9.10 of Environmental Statement Chapter 9: Biodiversity [APP-076].

Landscape planting has been designed to increase connectivity across the landscape and avoid fragmentation of habitats, as well as connect to existing wildlife corridors (paragraph 9.10.14 of Chapter 9: Biodiversity [APP-076]). In addition, paragraphs 9.10.117 to 9.10.120 of Chapter 9: Biodiversity [APP-076] detail proposed enhancement measures for Boreham Brook, Domsey Brook and Rivenhall Brook and include the implementation of a 10m buffer zone (either through fencing, where practicable, or landscaping, (leaving the area to rewild) to allow for a natural riparian zone and habitat creation. Buffer zones of this design can

be as effective, if not more so, than planting and would result in an improvement on baseline conditions, where riparian vegetation is largely restricted by agriculture.

As stated in paragraph 9.11.119 of Chapter 9: Biodiversity [APP-076], while there would be an overall loss of 230m of river lengths through the creation of the proposed new alignments, the realigned sections would improve the condition and therefore the river condition score (Appendix 9.14 Biodiversity Net Gain Report [APP-138]) of the affected reaches of Domsey Brook, Roman River and Rivenhall Brook under the Water Framework Directive. Enhancement measures for Boreham Brook, Domsey Brook and Rivenhall are also proposed as described in the preceding paragraph.

Enhancements of existing culverts on Roman River, Domsey Brook west and River Brain Bridge include the following measures:

- Incorporation of gravels to improve sediment substrate of the riverbed and overall channel heterogeneity (commitments RDWE 39 and RDWE 42 in the REAC [REP7-015]. At each of the box culverts, the invert is to be embedded by sediment (0.3m deep).
- Where practicable, in-channel works would be avoided for Main Rivers during freshwater fish spawning and migration periods (October to May inclusive) [REP7-015].
- Where sections of watercourses are to be isolated as part of construction work, fluming would be used to protect any fish species present, preventing direct mortality of fish migrating from downstream (BI42 in the REAC [REP4- 023]).
- Culvert design and river morphology protection (good practice design of culverts RDWE 39, hydromorphological mitigation RDWE 40, and introduction of sediments in culverts RDWE 42 in the REAC [REP7-015]).
- Protection of vegetation and species during construction (exclusion zones to protect habitats and species BI2 and vegetation clearance supervision to protect watercourses RDWE17 in the REAC [REP7-015]).
- Retention of existing vegetation as far as practicable (LV4 in the REAC [REP7-015]).

- Landscaping and habitat planting to tie in with culverts to guide bats [and other species] through the culverts instead of over the A12 (BI21 in the REAC [REP7-015] and the 1st Iteration Environmental Management Plan Appendix I Landscape and Ecology Management Plan [APP-193]).

In conclusion, the scheme complies with the requirements of the NNNPS (and the draft NNNPS), the NPPF and supports the objectives of the RBMP as discussed as part of the Environmental Statement Chapter 9 Biodiversity [APP-075]; Chapter 14 Road Drainage and the Water Environment [APP-081]; and the Water Framework Directive Compliance Assessment, which was also produced (Appendix 14.2 [APP-159] to support the Environmental Statement.

REP7-058-003

Sub-Part

Impacts of the culverts Building new culverts and extending older ones using a similar design will exacerbate the damage of the original poorly designed crossings and put extra pressure on the river waterbodies.

Clear span bridges align with the RBMP approach as they are built around the river. They do not cause the significant integral damage to the river or the natural corridor it is reliant on. Spanning over rivers is a method of working with natural systems and protecting the natural water resource whilst delivering development.

Essex rivers are already showing strains from hotter drier summers which are a feature of climate change, with reduced flows and lower dissolved oxygen levels. We believe that there is an urgent need for collaboration to deliver positive works that enhance river quality and avoid negative impacts.

The RBMP states the following:

“Public bodies should ensure the environmental objectives of the plans are reflected in their processes and plans.

The plans will...help reverse the significant decline in water dependent biodiversity by restoring and reconnecting essential habitats.

The RBMP will assist to deliver the Government's 25-year environmental plan including: Thriving plants and wildlife – achieve a growing network of land water and sea that is richer in plants and wildlife.

The current culverts installed as part of the previous development of the A12 damaged the rivers they crossed, and the Environment Agency would expect to see an applicant seeking to improve and looking to remove at least some of these poorly designed damaging and constraining structures.

We know of numerous otters killed at the existing A12 crossings from our work with the Cardiff University Otter Project. We are aware that where otters are killed avoiding barriers like culverts, there are usually other species such as water vole and eel that also find it difficult to pass through especially in periods of higher river flows. Whilst culverts may be passable to some species or individuals in some conditions, their continued use does not enhance nature or help to build a resilient water environment.

Damage to habitats is sometimes difficult to assess and the cause of deterioration over time can by its nature be multifaceted and influenced by a number of different stress factors. Sometimes stresses on a system combine and affect population crashes in natural ecosystems years after the trigger cause. Declines in viable wildlife populations can be masked even when surveyed and difficult to assess. Now that the climate emergency and biodiversity crisis are scientifically proven and accepted the existing very worrying declines of species and conditions of habitats need positive action and embracing via a completely proactive approach.

Our rivers have declined due to many reasons. Some are well known - the impact of river encroachment by development and poor engineering design for example. There are lots of actions which we expect applicants to do in mitigation for proposed works

but before all that we expect the basic damage limitation and avoidance of harm to the environment. In this case the proposals to lengthen old culverts and build new ones is a damaging approach that will cause more severance of habitats in river systems which are already under stress by virtue of being in the driest area of the country and are now becoming exposed to the most extreme summer temperatures in the UK.

The proposed enhanced lengths do not deliver the radical mitigation needed to offset the culverts which we consider to be a significant harm to the river environment.

Natural river is proposed to be lost here without proper justification and this river habitat is not being replaced. We believe that the lengths of enhancement proposed could be adequate for mitigating for the effects caused by the shade of a clear span bridge but not for the total loss of natural river corridor as proposed through culverting.

The proposed culverts are likely to cause effects on deterioration contributing to biological elements including macrophytes, invertebrates, fish and water quality as well as harming the river continuity, floodplain connectivity, and adding to stresses which will act in combination with other factors over time. These issues are dismissed in the Applicant's WFD assessment [APP-159] as not causing deterioration at a waterbody scale. However, the effects will most likely be cumulative and there are likely to be continuing multiplier stress effects on the water environment.

Already many East Anglian rivers are suffering fish kills due to heat, low flows, low dissolved oxygen levels and algal blooms in summer. Confining rivers to long dark concrete culverts is going to create damaged sections that are less resilient and will undoubtedly lead to erosion of river habitat and water quality through lack of light and aquatic life. Water quality and oxygen levels will be reduced and contribute to exacerbating problems downstream. The culverts could therefore potentially cause or contribute to waterbody failure in other parts of the catchment through failure of fish and eel passage or cumulative impacts of low flows, warmer water temperatures and low dissolved oxygen. Brown trout are a key indicator for fish in the water environment and are already suffering badly due to heat stress. They need healthy headwaters to migrate to and breed in. Equally eels are reliant on a healthy fluvial river system for their growth and internationally numbers appear to be collapsing. The Blackwater catchment (which the Ter, Brain, Domsey Brook and Rivenhall Brook are all part of) is a vital national resource with

the constituent waterbodies currently supporting large numbers of female European eel. In East Anglia some of our environmentally compromised rivers have lost their eels through mass die off. There is a need to build resilient and more complete, healthier ecosystems for key endangered and protected species like eel to survive in healthy numbers. A revision of these culverts and replacement with options which do not affect the banks or riparian zone is needed here for us to agree with the assessment that effects are likely to be benign.

Applicant's Response

The Applicant notes the concerns raised by the Environment Agency and provides responses under each subheading below. As detailed within the Technical Note on Proposals for Main River Crossings [REP6-095] the Applicant does not agree that the proposed culverts would lead to a worsening of effects on main rivers. The WFD Compliance Assessment also supports this by concluding there is no deterioration as a result of culverts [APP-159].

Accordance with the Anglian River Basin Management Plan (RBMP)

The Applicant does not dispute that clear span bridges align with the RBMP approach, although the Applicant notes culverts and clear span bridges are not specifically discussed in the Anglian RBMP as individual factors. However, it is the Applicant's view, as set out below, that the proposed scheme accords with the relevant environmental objectives of the Anglian RBMP.

The following summary explains how the proposed scheme has been developed to support both the RBMP and WFD objectives. For specific information refer to the Compliance Assessment [APP-159].

1) Preventing deterioration of the status of surface waters and groundwater

The Applicant concluded in the WFD compliance assessment that the proposed scheme would not lead to the deterioration of the status of surface waters and groundwaters and therefore would accord with the requirements of the Water Framework Directive and the RBMP (see Table 6.7 compliance with the environmental objectives of the WFD in APP-159).

During operation of the proposed scheme, surface water runoff would be controlled through incorporating the proposed drainage features e.g., attenuation ponds and swales which would provide appropriate pollution control measures in accordance with the requirements of DMRB CG 501 and LA 113 and would reduce the risk of pollution to the receiving watercourses as a result of the proposed scheme surface water runoff.

2) Achieving objectives and standards for protected areas.

The Applicant has demonstrated in the HRA No Significant Effects Report [APP-201] that there would be no significant effects from construction or operation of the proposed scheme on European protected sites (Special Protected Areas, Special Areas of Conservation and Ramsar Sites). As reflected in the Statement of Common Ground (SoCG), Natural England is in agreement with this assessment (item reference 2.1, [REP7-019]). The proposed scheme does not compromise the nitrate vulnerable zones, and the nitrate and eutrophic sensitive areas as assessed in the WFD compliance. Also refer to Table 6.7 for compliance with the environmental objectives of WFD Regulations in the WFD compliance [APP-159].

3) Aiming to achieve 'good' status for all waterbodies

The Applicant confirms that the proposed scheme would not lead to the downgrading of status of any watercourses within the vicinity of the proposed scheme as concluded in the WFD Compliance Assessment (Appendix 14.2; [APP-159]). Furthermore, the assessments as presented in the Environmental Statement (specifically Tables 9.29 and 9.31 of Chapter 9: Biodiversity [APP-076] and Table 14.19 of Chapter 14: Road Drainage and the Water Environment [APP-081]) demonstrate that there would be no risk of deterioration to watercourses within the proposed scheme, and therefore the WFD Compliance Assessment is robust.

The RBMP also identifies 'Other biodiversity objectives'. The paragraphs below set out the relevant biodiversity objectives and how the proposed scheme accords with those objectives.

1) Take into account water dependent sites of special scientific interest – these protected sites support many, rare and endangered species, habitats and natural features.

As stated within paragraph 9.7.3 of Chapter 9: Biodiversity [APP-076], the Applicant has undertaken a desk-based assessment to identify Sites of Special Scientific Interest (SSSIs) within 2km of the proposed scheme, and 200m of the Affected Road Network (ARN), or which have hydrological connectivity to the proposed scheme, therefore including any sites beyond 2km where there is potential for impacts to occur over greater distances.

Any adverse impacts from hydrological and water quality changes to surface water during construction of the proposed scheme would be avoided through standard mitigation outlined in Section 9.10 of Chapter 9 [APP-076], specifically, the use of silt fencing, cut-off drains, baffles at discharge locations, and adoption of CIRIA guidance. Operational effects would be prevented through embedded mitigation measures, including approved drainage designs and water management, such as the proposed 71 attenuation ponds to store surface runoff.

As stated in paragraph 9.11.266, operational effects to the European sites with hydrological connectivity and therefore the SSSIs which they overlap would be prevented through embedded mitigation measures, including approved drainage designs and water management, such as the proposed 71 attenuation ponds to store surface runoff.

As reflected in the SoCG, Natural England is in agreement with the Applicant's assessment that there would be no significant construction or operational effects on SSSIs (item reference 4.4, [REP7-019]).

2) Take into account protected species and species of most conservation concern (priority species) when considering action which could affect the water environment.

The Applicant concludes within Chapter 9 Biodiversity [APP-076] no significant adverse effects on protected species (including fish, macrophytes and invertebrates) as a result of construction or operation of the proposed scheme. The Applicant recognises the Environment Agency's position that they currently disagree with the assessment. Mitigation measures to ensure continued permeability of existing structures where widening is proposed, and new proposed structures includes WFD-specific measures such as the introduction of sediment to regulate local flow dynamics for fish (as per commitment RDWE42 in the REAC [REP7-015]).

All existing culverts and new proposed culverts exceed the minimum dimensions for mammal passage in accordance with CIRIA guidance (C786). In addition, mitigation measures for riparian mammals include the provision of mammal ledges and retrofitting

of mammal ledges (which are not WFD-specific measures as mammals are not assessed under the WFD) to existing culverts where practicable (as per commitment BI32 in the REAC [REP7-015]) and the provision of otter fencing to dissuade otters from entering the carriageway and guide them towards culvert entrances. The Applicant therefore considers these measures would ensure continued permeability of the proposed scheme to riparian mammals and would prevent any new barriers to their movement being introduced.

Culverts

The Applicant has submitted a detailed Technical Note on Proposals for Main River Crossings [REP6-095] which covers the assessment of environmental effects associated with the proposed crossings and the Applicant's position on the requirement for alternatives to be assessed.

As noted in the Applicant's Comments on Written Representations [REP3-009], while it is recognised that DMRB LD 118 states 'environmental assessment reports should identify opportunities to address historic impacts from motorway and all-purpose trunk roads on biodiversity resources', it should be noted this falls under the category of 'enhancement' as opposed to mitigating impacts of the proposed scheme. It is the Applicant's view that measures to address historic impacts from the A12 would need to be proportionate and that provision of mammal ledges within existing sections of culvert on the Domsey Brook (west) and Roman River is appropriate in this instance.

The Applicant notes the Environment Agency's position that a revision of the proposed culverts whereby existing culverts on the de-trunked section should be replaced with open span bridges is needed in order for the Environment Agency to agree with the assessment of effects. However, the Applicant maintains their position that this is disproportionate, as outlined within the technical note [REP6-095].

Otters and water vole

The interactive map of otter casualties published by the Cardiff University Otter Project includes records of only three otter deaths consistent with collisions with vehicles along the existing A12 between junctions 19 and 25, across a 10-year period, from

2009 to 2019. The proposed main river crossings along the proposed scheme are not considered to introduce any new barriers to the movement of otters, and in some areas, there will be an improvement on the baseline due to the retrofitting of mammal ledges within existing structures (as per commitment BI32 in the REAC [REP6-052]) and the introduction of otter fencing where there currently is none. In addition, detrunking of the existing A12 would lead to a reduction in traffic on the detrunked sections, reducing the risk of mortality to otters should they attempt to cross that road.

With respect to the loss of river habitats, the Applicant acknowledges that there would be an overall loss of river reaches as a result of the proposed scheme, which is associated with the proposed river realignments. However, the realigned sections would improve the condition and therefore the river condition score (Appendix 9.14 Biodiversity Net Gain Report [APP-138]) of each of the reaches affected on Domsey Brook, Roman River and Rivenhall Brook under the Water Framework Directive. The Applicant is also predicting an overall net gain of 156.73% for rivers and streams and therefore does show a clear delivery of biodiversity net gain. Within this there would be no net loss to individual habitat distinctions and therefore no trading rule issues. The large percentage comprises mostly the excavation of ditches, whilst ordinary watercourse realignments and realignments and mitigation to main rivers also drive the score.

It is the Applicant's assessment that the proposed structures would not reduce the permeability of the river to water vole, please refer to the Technical Note on Proposals for Main River Crossings [REP6-095]. Chapter 9: Biodiversity [APP-076] concludes significant beneficial impacts on water vole during construction due to the pond and ditch complexes to be created near junction 19 and the River Brain (see sub-question REP7-058-007).

Eels and brown trout

It is the Applicant's view (as detailed within the Technical Note on Proposals for Main River Crossings [REP6-095]) that with the implementation of mitigation (commitments RDWE39 and RDWE42 of the REAC [REP7-015]) the proposed extension of existing structures and provision of new structures will not adversely affect the possibility of eel and brown trout to access the upper reaches of the catchment and as such no deterioration on fish populations are predicted. The Applicant is investigating opportunities to enhance fish passage at new and existing structures where appropriate to further benefit fish and eel migration. The Applicant considers that the River Blackwater will remain a vital national resource for European eel on completion of the proposed scheme, and that there would be no significant effects on any fish species. As detailed within the Technical Note on

Proposals for Main River Crossings [REP6-095], Ashman's Bridge on the River Blackwater would be widened however as stated by the Environment Agency in paragraph 1.5.10 of their Written Representation [REP2-054], 'replicating the existing structure will not create a barrier to fish or mammals. Therefore, we have no objection to the proposed structure'.

Water Framework Directive assessment

The Applicant has produced a comprehensive WFD compliance assessment [APP-159] and, as stated by the Environment Agency, effects on macrophytes, invertebrates, fish, water quality, river continuity, floodplain connectivity are addressed within this assessment. The Applicant refers the Environment Agency to the response provided above in sub-part REP7-058-001 of this response regarding the preparation of a without prejudice WFD derogation case.

Climate emergency and biodiversity crisis

The Applicant acknowledges that the proposed scheme is located within the southeast of England, which is typically the driest and warmest part of the country, with climate change potentially bringing about more rainfall in the winter months and during extreme weather events. With this in mind, the design (including the design of the proposed culvert extensions and new culverts) has taken into account climate change considerations as appropriate (as detailed in Section 1.6 of the Flood Risk Assessment [APP-162]). For example, new culverts and extensions of existing culverts would be designed such that they would not result in an increase in flooding based on the 1 in 100 year flood model including an allowance for climate change, and mammal ledges will be installed above the 1 in 100 year flood level (as per commitments RDWE37 and BI32 of the REAC respectively [REP7-015]). Furthermore, Chapter 15: Climate [APP-082] concludes no significant residual effects are deemed likely during construction or operation of the proposed scheme due to vulnerability changes in climate and the proposed scheme therefore is considered to be compliant with the relevant requirements of the NNNPS.

Assessment of Alternatives

The Applicant has scoped out the use of alternatives to culverts due to these being technically not feasible at specific crossings, or due to reasons such as the alternatives being disproportionately costly, more carbon-intensive, and giving rise to technical risk and constructability issues (such as programme, traffic management, and disruption to local communities), as explained in the Technical Note on Proposals for Main River Crossings [REP6-095]. The proposed new culverts will be designed in accordance

with best practice, including CIRIA guidance (C786) to mitigate localised impacts as far as is practicable, whilst environmental mitigation (such as commitments BI32, RDWE39 and RDWE42 of the REAC [REP7-015]) will offset any potential adverse impacts on biodiversity and hydromorphology.

Conclusion

In conclusion, it is the Applicant's view that overall, the proposed scheme will maintain the health and resilience of watercourses through the design which is informed by best practice and the implementation of mitigation measures as described above.

REP7-058-004

Sub-Part

The failure to achieve a positive result from the Water Environment (Water Framework Directive) England and Wales 2017 regulations assessment can potentially be overridden by Regulation 19 (Article 4.7) derogations where the 4 tests can be met, although this is clearly to be treated as a last resort. This is a matter for the Secretary of State for Transport who is the decision maker on the DCO application.

We do not believe that the Article 4.7 tests can be met in this instance as the road scheme can be built without causing the culverting damage and clear alternatives exist that could deliver the scheme without significant harm. Costs for alternatives such as clear span bridges may be higher but the difference in environmental impact will be considerable and will not leave a legacy of damage to the water environment which would be more costly to resolve in the longer term. The extra funding for bridges spanning and set well back from the banks of the rivers would be an investment for the long term capable of delivering multiple benefits locally and across the whole catchment. This is a multi-million pound project and the extra cost of clear span bridges is unlikely to be a significant amount in the context of the overall cost of the scheme which makes it very disappointing that National Highways has remained intransigent on this issue.

Looking more widely, if similarly designed road-schemes were to be rolled out across the country without due regard to RBMPs it is our opinion that there will be significant damaging effects and that public and private money invested in restoring rivers will

sadly be wasted. The proposals go against our consultation advice and the RBMP requirements to “embrace nature-based solutions” and “help reverse the significant decline in water dependent biodiversity by restoring and reconnecting essential habitats”. This is not an adequate and acceptable set of proposals as it stands.

Applicant's Response

As requested by the Examining Authority at ISH5 on 27 July 2023, the Applicant is producing an Article 4(7) derogation case without prejudice to the Applicant's position that the proposed scheme is compliant with WFD requirements. As outlined in 002-001, the Applicant has endeavoured to respond to the ExA's request prior to the close of the Examination, but this has not been feasible given the very short period of time available for preparation of the without prejudice derogation case, as well as for engagement with the Environment Agency on the content and approach to be taken.

The Applicant and the Environment Agency held a meeting on 10 July 2023 at which the Applicant set out the proposed approach and structure for the without prejudice derogation case. The Applicant intends to submit the without prejudice derogation case to the Secretary of State as soon as it reasonably can, allowing for ongoing engagement with the Environment Agency, following the closure of the Examination.

REP7-058-005

Sub-Part

We would also highlight that Natural England have confirmed to us that they have not provided any site-specific advice on this scheme for water vole and otter but directed the Applicant to the Protected Species Standing Advice for those species. The Applicant has discussed bat and badger licences with them for specific works. It is the applicant's responsibility as normal to act responsibly with regard to protected species including otter and water vole.

Applicant's Response	
<p>The Applicant confirms that Natural England has directed it towards their Standing Advice for otter and water vole and that detailed discussions have been held with them regarding bats and badgers.</p> <p>The Applicant will have regard to protected species legislation, for example through timing of works (commitment BI4 of the REAC [REP7-015]), use of an ecological clerk of works (commitment BI5 and BI12 of the REAC [REP7-015]), provision of buffer zones (commitment BI9 of the REAC [REP7-015]), and pre-construction surveys (commitment BI11 of the REAC [REP7-015]), amongst other measures outlined in the REAC [REP7-015].</p>	
REP7-058-006	
Sub-Part	
<p>2.5 Environment Agency's Policy on Culverts</p> <p>Culverting involves firstly the destruction of the natural river corridor and replacement with a dark concrete tunnel with little scope to support river life or promote good water quality. The Environment Agency and predecessor organisations (such as the National Rivers Authority) have long recognised that open natural rivers function best without too much unnecessary human interference. Engineering and building encroachment on river corridors usually has adverse long-term consequences. The long-established watercourse consenting system (now Flood Risk Activity Permitting, falling under the EPR) and indeed national planning policy recognises that natural ecosystem services are provided by our watercourses and environmental harm has serious long-term consequences. The damage caused to rivers by culverting has been the reason for a longstanding anti-culverting policy which predates the establishment of the Environment Agency in 1996.</p>	

National Highways has argued that no weight should be placed on the Environment Agency's culverting policy. We disagree. The policy is a material consideration as policy produced by a statutory body giving expert advice on these issues and it is a matter for the Secretary of State as decision maker to decide what weight to place on it.

To deliver widespread improvements to river systems historic culvert removal will be a necessary yet expensive task. The Environment Agency's view is that we should avoid making historic mistakes of the past by new culverting which will cause a legacy of further unnecessary environmental harm.

The Environment Agency was set up with and retains a duty under Section 6 of the Environment Act 1995, to such extent as it considers desirable, generally to promote:

(a) the conservation and enhancement of the natural beauty and amenity of inland and coastal waters and of land associated with such waters; (b) the conservation of flora and fauna which are dependent on an aquatic environment

Under EPR our approach is to permit culverting only where there is no viable physical alternative and only for the shortest lengths where the watercourse environment will not be adversely impacted. Culverts are not normally permitted on Main Rivers as these are recognised as our vital wildlife corridors and important natural resources. Culverts cause serious damage to rivers which can rarely be undone. We consider that allowing the installation of box culverts has the potential to create a worrying precedent for further damage. On linear habitats such as river systems the damaged weakest point lowers the potential of the whole ecosystem. Such damage is serious and unfortunately cumulative on the system.

Culverts are usually proposed as an economic solution, that is they are the cheapest option. This approach fails to take account of the resulting serious long-term consequences for the catchment. The Environment Agency and partners seek to undo historic damage to rivers, but this is rarely possible for structures previously installed as part of major engineering schemes due to the excessive costs involved. National Highways has, as a public body, a duty to consider biodiversity under the Natural Environment and Rural Communities Act (2006) and an additional stronger new duty under the Environment Act (2021) to

conserve and enhance biodiversity. The Applicant also has a clear duty through the planning process to follow the mitigation hierarchy to aim primarily to avoid negative impact. Culverts cause significant negative effects on the river environment. The mitigation hierarchy is a feature of National Highways own guidance in the Design Manual for Roads and Bridges (DMRB) LD118 Biodiversity (March 2020). In proposing culverts, the applicant has failed to follow its own guidance and national planning policy from the start of this project, by not avoiding significant environmental harm in the first instance.

The DMRB states that structures will have an expected lifespan of 120 years or more. The imposition of the long dark culverts as proposed would have a lasting legacy on these river catchments.

We believe the use of culverts over Main Rivers here will cause significant environmental harm and does not constitute sustainable development.

The Applicant's mitigation proposed on some damaged sections of the rivers is welcome as it undoes some of the old damage done to the river system by the poor designs of the original historic A12 construction. It does not go far enough to mitigate for having new road crossings which culvert the river causing additional significant harm. It is therefore not acceptable as mitigation for such potentially damaging culverting proposals.

Applicant's Response

The Applicant's response in relation to the application of the mitigation hierarchy, what must be done to avoid harm and the assessment of alternatives is set out in Section 7.7 of its Closing Statement [REP7-078].

The Applicant's position is that the environmental assessment has been undertaken in accordance with the NNNPS (see NNNPS Accordance Tables [APP-251]) and in line with the mitigation hierarchy as presented in Design Manual for Roads and Bridges (DMRB LA 104), whereby the Applicant has sought to avoid impacts where possible.

Since the Applicant's assessment does not identify any 'conspicuously harmful effects' arising from the proposed culverts, no duty arises as a matter of law for the Secretary of State to consider alternative proposals to them.

The Environment Agency has asserted that the proposed culverts would give rise to significant harm. However, no reasoned assessment has been produced by the Environment Agency to evidence the assertions made. Nothing has been produced by the Environment Agency which addresses in detail the existing baseline conditions, which include culverts and barriers to the movement of fish, mammals and reptiles. No assessment of the incremental effect of the proposed development has been produced by the Environment Agency.

By contrast the Applicant has carefully appraised the likely impacts of its proposals. It recognises that the proposed culverts will have adverse effects. However, with the mitigation proposed it does not identify the culverts as giving rise to likely significant effects. The Applicant has demonstrated that these works would not introduce further barriers to species movement on these watercourses, and proposed mitigation including placement of natural substrate in the culverts and mammal ledges for passage during high flows would mitigate the effects of the culverts on the movement of fish and riparian mammals (commitments RDWE 39, RDWE 42 and BI32 in the REAC [REP6-052]). The Applicant has addressed the incremental project effects in combination with other projects in the Compliance Assessment [APP-159] and the Environmental Statement Chapter 16 Cumulative effects [APP-083].

The issues between the Applicant and the Environment Agency have to be determined by reference to the evidence. It is for the Secretary of State to resolve the issues by reference to that evidence. On the one hand, the Applicant has produced a highly detailed impact assessment undertaken by suitably qualified experts. On the other hand, the Environment Agency has produced a series of unevidenced assertions, and a case founded upon a misunderstanding of national policy.

As the culverts do not give rise to significant effects and the proposed Scheme is fully in accordance with the NNNPS, resulting in no significant residual effects on ecology (apart from N-deposition in Perry's Wood) while delivering substantial biodiversity net gain, the Applicant considers that the scheme does conserve and enhance biodiversity.

REP7-058-007

Sub-Part

Section 3 Literature Review

The Environment Agency, and partners including Essex Wildlife Trust, collect data on otter death blackspots and carcasses of dead otters for Cardiff University's long running research project. Roadkill numbers on busy dual carriageways are under-recorded due to safety considerations, but despite this the particular problem of narrow culverts on historic trunk roads such as this has long been recognised. A significant number of otter deaths have been recorded in the vicinity of this section of the A12.

Over many years we have seen that bridges with abutments set well back from the riverbank are much less likely to have problems with mammal deaths and these areas often support good viable populations of both otter and water vole. Where the river is narrowly constrained by less sustainable designs of bridge or culvert more problems arise with animals becoming road traffic casualties.

Road deaths or predation due to habitat damage and fragmentation is not recorded for smaller mammals such as water vole. Water vole are prey for many predators and scavengers and being much smaller animals would disappear very quickly without trace. There is no evidence that water voles will use long culverts and they require natural soft banks for year-round survival. Severance of water vole populations has become a significant problem along rivers in East Anglia. The Applicant refers in this section to the CIRIA Culvert Screens and Outfall Manual (CSOM) (CIRIA C786). This was written to combine previous guidance on screens and culverts from different sources including the Environment Agency. It was aimed primarily at drains and small outfalls rather than Main Rivers for which there has been an assumption against the granting of permits for culverts more than 20 years.

In introducing the Guide, the GOV.UK webpage states:

They (culverts) have the potential to completely restrict flow. They are often costly to maintain and being intrinsically linked to other infrastructure or urban environments, can adversely affect sensitive aquatic environments, and create severe health and safety hazards.

The CSOM seeks to avoid the use of culverts and screens altogether. Where there are demonstrably no alternatives to culverting, the design principles in the CSOM helps designers to remove the need for screens, as well as reducing whole life costs to little more than routine inspection and maintenance.

In conclusion it adds: The CSOM adopts an 'evidence-based', 'whole life' and 'full system' approach to the design and management of culverts, screens, and outfalls, with strong presumptions for restoring systems to a more natural state through 'daylighting' and against building screens or culverts – unless there are demonstrably no alternatives.

The suggestion that creating more culverts will be an improvement on baseline conditions is somewhat surprising. There are very clear alternatives to culverts over these Main Rivers in this widening scheme which will be demonstrably better and deliver multiple benefits for the water environment.

Applicant's Response

The Applicant notes the concerns raised by the Environment Agency and the points made with respect to under-recording of road casualties. However, it remains the Applicant's position that the proposed main river crossings along the proposed scheme are not considered to introduce any new barriers to the movement of otters, and in some areas, there will be an improvement on the baseline due to the retrofitting of mammal ledges within existing structures (as per commitment BI32 in the REAC [REP6-052]) and the introduction of otter fencing where there currently is none.

Water vole and culverts

Regarding water vole and long culverts, the Water Vole Mitigation Handbook is explicit in stating that while water voles are known to use culverts under roads of certain types and sizes, it is not known which culvert design and size works best, nor which will not be used at all by water voles. The handbook suggests that box culverts up to 35m in length are known to be effective, however this is based on the authors' personal observation. While this information is useful, it does not mean by omission that culverts of a different (longer) length are ineffective. The Applicant acknowledges the lack of empirical data to support or refute the use of culverts as an effective mitigation measure to support the continued movement of mammals across the landscape and is therefore committed to undertaking monitoring of mammal ledges post-construction (as per commitment B149 of the REAC [REP7-015]) to determine whether the ledges are used by wildlife for safe passage under the A12. Details of the monitoring, including the time periods and length of monitoring, will be presented in the second and third iteration Environmental Management Plans.

In addition, the Applicant is proposing enhancements for water vole which includes habitat creation in the form of ditch and pond complexes (as shown on Sheet 1 of Part 1 of the Environmental Masterplan [REP6-043]). These have been located in areas with connectivity to existing suitable water vole habitats (the River Brain and ditches near Boreham where water vole were recorded in 2020, as shown on Sheet 1 of Figure 2 within Appendix 9.10 Riparian Mammal Survey Report [APP-134]). These habitats would be created in advance of construction as part of the proposed ecological mitigation areas. Detailed design of these habitats will incorporate bank profiles and depths of water that would accommodate water vole and provide sufficient depth to escape predators, areas of steep bank in which to burrow and shallow banks on which deep swathes of riparian vegetation could establish as a food source (paragraph 9.11.181 of Chapter 9 Biodiversity [APP-076]). This would increase the areas of riparian habitat available locally.

The Applicant recognises the potential for culverts to completely restrict flow, however, considers that with the implementation of mitigation measures (including the introduction of sediment to act as natural flow regulation as per commitment RDWE 42 of the REAC [REP6-052]) there would be no adverse changes in flow as a result of the proposed widening of existing culverts or proposed new culverts.

The Environment Agency suggests that the Applicant concludes introducing new culverts would be an improvement on baseline conditions. This is not the case. The Applicant's reference to an improvement on baseline conditions is specific to where mammal ledges are being retrofitted to existing structures (as per commitment BI32 of the REAC [REP6-052]) and where otter fencing is being erected.

Regarding the assessment of alternatives to culverts, the Applicant has published a Technical Note on Proposals for Main River Crossings [REP6-095] which sets out the Applicant's position on the requirement for alternatives to be assessed.

REP7-058-008**Sub-Part**

Section 4 Review of the proposed crossings

4.2 Watercourse crossings on the on-line section

The Applicant has made numerous references within this section to the Environment Agency's fish and eel migration barriers database and stated that the absence of inclusion within that dataset suggests that structures (i.e., the existing crossings) do not pose a significant barrier to fish passage. The dataset is limited and focusses primarily on in-channel obstructions such as weirs. The absence of the existing crossings from this list should not be taken to suggest that these structures present no barriers to movement.

Applicant's Response

The Applicant notes the limitations of the database and confirms that the fish and eel migration barriers database was not used to inform the Applicant's assessment of effects of the proposed scheme (particularly the assessment presented in Chapter 9: Biodiversity [APP-076]), which concludes no significant effects on fish.

The Technical Note on Proposals for Main River Crossings [REP6-095] provides the Applicant's reasoning for concluding the structures would not present a barrier to movement of fish. In summary;

- No works are proposed at the Boreham Brook culvert or River Ter Bridge and so there would be no impact.
- Commitments RDWE42 of the REAC [REP7-015] to provide enhancements of the existing Brain Bridge, Domsey Brook (east and west), Rivenhall Brook and Roman River would support natural flow regulation and improve overall channel heterogeneity, therefore ensuring there is no barrier to migration of fish and eels.
- Commitment RDWE 39 [REP7-015] to bury the invert of new culverts beneath the natural bed of the watercourse would allow the continuation of sediment conveyance and reduce the impact on local flow dynamics, replicating the natural stream bed material within the structure to aid permeability to fish and eels.
- As stated by the Environment Agency in paragraph 1.5.10 of their Written Representation [REP2-053], 'replicating the existing structure [Ashman's Bridge] will not create a barrier to fish or mammals. Therefore, we have no objection to the proposed structure'.

REP7-058-009

Sub-Part

There are four watercourse crossings referred to within this section for which no changes to the existing structures are proposed as part of these works. These are:

Boreham Brook culvert (road widening here but no change to structure) River Ter Bridge (road widening here but no change to structure) Rivenhall Bridge (remains on de-trunked section) Domsey Brook (east crossing) existing structure (remains on de-trunked section)

Consequently, when commenting on the DCO application we have not requested that these structures be amended. However, we would be supportive were the Applicant to consider options for improving those structures as part of this scheme. An infrastructure project of this scale presents a significant opportunity to rectify past engineering choices which are now known to be having a damaging effect on the river corridors.

The Cardiff University Otter Project has recorded a significant number of otter deaths in the vicinity of this section of the A12. The Domsey Brook crossing had no evidence of otters using it at the time of the Applicant's survey, but we know of at least one otter death on the A12 at that location. As a minimum the Applicant should be looking to retrofit all existing culverts with appropriate ledges to provide an opportunity to reduce any further otter deaths.

Applicant's Response

Whilst the Applicant recognises that DMRB LD 118 states 'environmental assessment reports should identify opportunities to address historic impacts from motorway and all-purpose trunk roads on biodiversity resources', works to existing structures crossing the Boreham Brook, River Ter, Rivenhall and Domsey Brook (east) would fall under the category of 'enhancement' as no significant adverse effects are being introduced at these crossings that would require mitigation. It is the Applicant's view that measures to address historic impacts from the A12 would need to be proportionate in terms of improvements to main rivers and biodiversity that could be realised against the cost, removal and disposal of materials, further loss of existing vegetation and increased embodied carbon associated with demolishing and replacing the structure. The Applicant is proposing measures to improve existing structures on the A12, in the form of mammal ledges within existing sections of culvert on the Domsey Brook (west) and Roman River (secured by commitment BI32 of the REAC [REP7-015]). The Applicant considers these measures sufficient to address DMRB LD 118, particularly considering that the Cardiff University Otter Project shows records of only three otter deaths consistent with collisions with vehicles along the existing A12 between junctions 19 and 25, across a 10-year period, from 2009 to 2019. The Applicant does acknowledge the additional record provided by the Environment Agency of an otter mortality within close proximity to the Domsey Brook.

The Applicant responds to the matter of otter mortality records below within sub-part REP7-058-010 of this response.

REP7-058-010

Sub-Part

River Brain Bridge We agree that the widening of this structure will not reduce its permeability to riparian mammals, and we have not requested that it be replaced with a larger structure. We have raised concerns, including in our Written Representation [REP2- 054], that the existing concrete invert slab causes particular problems for fish in summer and for migrating young eels and elvers. We would not wish to see an extension of this structure that could exacerbate an existing known problem, and we have highlighted that the scheme presents an opportunity to improve flows at this location during drier months. As such we welcome the commitment by the Applicant to look at options to increase the depth of the main channel. Agreement on a suitable design will be required prior to the granting of a Flood Risk Activity Permit.

Applicant's Response

The Applicant welcomes agreement from the Environment Agency that the proposed widening of Brain Bridge will not reduce its permeability to riparian mammals. In the light of this, the status of the position between both parties regarding the Brain Bridge culvert extension within the final version of the Statement of Common Ground between the Applicant and the Environment Agency submitted into examination at Deadline 7 (Item reference B5 within REP7-020) of 'Not Agreed' is superseded.

It is the Applicant's view that any impacts should be considered within the context of the existing A12 and while it is recognised that DMRB LD 118 states 'environmental assessment reports should identify opportunities to address historic impacts from motorway and all-purpose trunk roads on biodiversity resources', it should be noted this falls under the category of 'enhancement' as opposed to mitigating impacts of the proposed scheme. On this basis, any measures to address historic impacts from the A12 would need to be proportionate and that the conclusion of no significant adverse effects in this location (as presented in Chapter 9 Biodiversity [APP-076]) provides a reasonable case as to why enhancement beyond that already included is not required in this instance.

However, the Applicant can confirm that options to improve the River Brain bridge will be considered during the detailed design stage and the Applicant will continue to engage with the Environment Agency during the detailed design stage as this develops.

The Applicant notes the comment from the Environment Agency regarding the granting of the Flood Risk Activity Permit and will continue engagement with the Environment Agency to progress this matter.

REP7-058-011

Sub-Part

River Blackwater (Ashman's Bridge) We've agreed that the widening of this structure would not reduce its permeability to riparian mammals, and we have not requested that it be replaced with a larger structure. We have highlighted the potential harm caused by the loss of natural bank as a result of the extension and use of concrete revetment [REP2-054]. We welcome the commitment from the Applicant [REP5-003] to look at how natural banks can be retained at the detailed design stage, and other design measures to maximise delivery for biodiversity.

Applicant's Response

The Applicant notes the points raised by the Environment Agency and confirms that the matter of the River Blackwater (Ashman's Bridge) is now 'agreed' within the latest version of the Statement of Common Ground with the Environment Agency (item reference B16 of [REP7-020]).

REP7-058-012

Sub-Part

Roman River The existing structure is of poor design and significant morphological damage has been done to the naturalness of the Roman River at this location. Large scale infrastructure schemes such as this represent an opportunity to upgrade crossings with structures that are better designed to maintain ecological networks. We acknowledge the costs in doing so as outlined in the Technical Note.

An extension to the existing culvert is proposed which mirrors the current design. We note that alternatives to a box culvert are stated as being feasible, although no further information is provided as to what those alternatives might be. The first preference for the design of the extension to the crossing is one which avoids harm.

We would welcome a further assessment of design options which retain a more open and natural river channel. We do not believe that the Applicant has demonstrated that an extended box culvert will not make fish (including protected species European eels and brown trout) and mammal passage more difficult.

Applicant's Response

The Applicant notes the concerns of the Environment Agency.

As raised in the Technical Note on Proposals for Main River Crossings [REP6-095], the Applicant has considered the option of replacing the entirety of the Roman River culvert with an open span structure and notes this would be feasible from an engineering perspective. However, the cost implications along with the need to remove and dispose of materials and spoils, loss of existing planting on both sides of the carriageway, potential impacts on water quality and aquatic ecology (as stated in paragraph 4.2.63 of the technical note [REP6-095]) and the significant disruption this would cause to the local communities of Marks Tey and Copford mean that this option has been discounted. This is compounded by the restricted headroom that could be achieved and the recent highways improvement works that have been carried on the A12 mainline in this location which would be abortive should the culvert be replaced under the proposed scheme.

The Technical Note on Proposals for Main River Crossings [REP6-095] did not speak to providing an alternative form for the extended section of the Roman River crossing. The Applicant does not consider this to be feasible from an engineering perspective. The joint between the existing culvert and the proposed new structure is located directly beneath carriageway of the proposed southbound off-slip and the cover between the top of the existing culvert and existing road level is low. If the two structures were to have differing structural forms, this would create a high risk of longitudinal cracking forming in the carriageway above the joint due to the differing articulation and effects of thermal expansion. The Applicant has proposed a box culvert that mirrors the existing culvert form to minimise these effects and reduce the need for increased maintenance interventions over the life of the structure.

During the detailed design phase, the Applicant will explore opportunities to reduce the footprint of the proposed highway alignment in this area to reduce the total length of the required culvert extension, however, it is not considered feasible to remove the need for an extension entirely. The Applicant will continue to engage with the Environmental Agency as this develops.

As stated in the Applicant's Comments on Other's Responses to ExQ3 [REP7-046], under the proposed scheme the existing highway drainage outfall at the Roman River culvert is no longer required and will be removed. A new outfall is proposed downstream of the proposed culvert which will discharge via a new attenuation pond. This will provide water quality improvements through settlement and regulate discharge rates into the watercourse. This will improve the long-term wildlife benefits by reducing potential pollutants entering the watercourse and reduce the impact on river processes caused by high, turbulent flows compared to the existing condition. To further improve river processes, the watercourse has been redesigned replicating a more natural reach with a gently sinuous planform and varied bedforms comprising pool-riffle and plane-riffle sequences. These sequences also provide variation in the width of the channel and will result in varied flow types, which will support continued fish passage and provide opportunities for refugia for invertebrates. The Applicant is committed to maximising opportunities for environmental improvements wherever practicable.

Other environmental mitigation consists of mammal ledges on both sides of the extended culvert (as per commitment BI32 of the REAC [REP7-015]), which would benefit otter and smaller mammals such as water vole. Sediment will also be introduced along the extended culvert to act as natural flow regulation and provide overall channel heterogeneity (as per commitment RDWE 42 of the REAC [REP7-015]). These measures would reduce impacts on riparian mammals and fish. The position of the proposed drainage outfall and the geometry related to the drainage connection will be refined at detailed design to minimise the impacts on river processes. If required, appropriate scour protection will be provided to prevent localised erosion at the outfall and measures to achieve this would be included in the water management plan to be updated in the second iteration of the Environmental Management Plan (as per commitment RDWE2 and GN1 of the REAC [REP7-015]).

The Applicant refers the Environment Agency to the Technical Note on Proposals for Main River Crossings [REP6-095] where the Applicant's position on the requirement for alternatives to be assessed is presented, along with the Applicant's conclusions that the proposed culvert extensions and new culverts would not give rise to any significant adverse effects on protected species, notably otter, water vole and fish.

REP7-058-013

Sub-Part**4.3 Watercourse crossings on the off-line section**

Rivenhall Brook The Technical Note states that an alternative 10m precast portal bridge structure was reviewed and found to be feasible to construct but would result in a slight reduction in headroom. There is no information on whether the feasibility of a clear span bridge was assessed. While a clear span bridge would offer a preferable continuation of the river corridor, a portal bridge structure, depending on design, would appear to offer potential benefits over the proposed box culvert. Designs would be required to prevent fragmentation of the river habitat, retain natural banks and a natural channel and permit macrophytes to grow in much of the crossing. Further detail would be required were this option to be progressed.

We note the comment regarding the loss of height and light ingress, but we are not clear if a full comparison between the effects of a box or portal culvert on the ecology of the river corridor has been carried out.

The proximity to the existing culvert structure (Rivenhall Bridge) is cited as a reason for not providing a more open structure at this location. We would suggest that the retention of historical structures elsewhere within the river corridor does not justify a crossing design which will further restrict species movement and cause additional habitat fragmentation.

Applicant's Response

As a point of clarification, the definition of a clear span bridge, as taken from the Environment Agency's publication Standard rules SR2015 No 28, Chapter 4, The Environmental Permitting (England and Wales) Regulations 2016 is stated as 'being a bridge that requires no bed or bank reinforcement and no support in the watercourse'. In the context of the proposed Rivenhall Brook crossing, a 10m span precast portal structure with appropriate detailing would conform with this definition and is therefore

considered to be an option for a clear span bridge which the Applicant has considered. Likewise, in the case of Domsey Brook (east) a 12m span precast portal structure has been considered by the Applicant which also complies with the above definition of a clear span bridge.

However, as confirmed within the Technical Note of Proposals for Main River Crossing [REP6-095], the Applicant maintains that the proposed box culverts at these crossings do not give rise to any significant adverse effects on the river environment at these locations and therefore the additional cost to the taxpayer, technical risk, programme delay and carbon impacts of providing this clear span bridge alternative is not justified.

The Applicant notes the comments made by the Environment Agency with respect to the proximity of the existing structures but maintains that it is legitimate when evaluating the relative benefits of a proposal to consider both the proposal itself and the context within which it sits. In the case of both the proposed Rivenhall End and Domsey Brook (east) culverts, the ecological benefits sought by the Environment Agency by implementing clear span bridges would be limited as the desired corridors along the river would terminate at the existing structures, which in both cases are less than 100m away. As such the additional cost to the taxpayer is not considered justifiable. In addition, while the Applicant recognises that DMRB LD 118 states 'environmental assessment reports should identify opportunities to address historic impacts from motorway and all-purpose trunk roads on biodiversity resources', it should be noted this falls under the category of 'enhancement' as opposed to mitigation impacts of the proposed scheme. Although the Applicant has sought reasonable opportunities for enhancements, it is not the objective or responsibility of the proposed scheme to demolish and rebuild sound structures, despite any historical environmental issues. Furthermore, Chapter 9: Biodiversity [APP-076] concludes no significant adverse effects on protected species (including riparian mammals and fish) as a result of construction or operation of the proposed scheme and it is the Applicant's view that the proposed scheme does not introduce any new barriers to mammal or fish passage, nor does it lead to a worsening on baseline conditions for these species.

REP7-058-014

Sub-Part

Domsey Brook (west) We note that no alternative to the existing design was considered feasible for the extension to the crossing and replacing the existing structure has been discounted due to costs. It is not clear how options for widening the opening and including natural banks within the extension have been considered. Our view remains that it has not been demonstrated that the proposed extension will not introduce a further barrier to species movement.

Applicant's Response

As detailed within section 4.3.18 of the Technical Note on Proposals for Main River Crossings [REP6-095] the geometric complexity of the existing precast monolithic arch structure limits the viable structural options available to widen the Domsey Brook (west) structure. Other structural options have been considered but have been subsequently discounted on this basis.

Both the existing and proposed cross-sections are generous in their proportions with a span of 7.0m and a vertical clearance of 5.5m. As such, the opacity of the structure is not considered to be an issue in this location. Under this option an artificial stone mattress river bed has been proposed as opposed to maintaining a natural bed in the widened section. This is driven by the requirement to provide piled foundations and appropriate scour protection for the structure to remove the risk of differential settlement and ensure long term stability respectively.

The introduction of a transition from natural to made bank at the mid-point of a 72m long structure, as suggested by the Environment Agency, poses the risk of creating an area of localised turbulent flow within the channel that will necessitate an increased maintenance regime for this structure. The requirements of The Construction (Design and Management) Regulations 2015 require the Applicant to eliminate or reduce the risks to those involved in maintenance so far as reasonably practicable. This is especially pertinent given undertaking maintenance within a live watercourse and an enclosed structure (bridge or culvert) is a highly hazardous environment. For these reasons the Applicant does not consider this to be an appropriate option.

The Applicant maintains that the proposed structural extension along with the proposed mitigations, including the provision of mammal ledges through the entirety of the structure with retrofitting of ledges within the existing structure (as committed to in BI32 of the REAC [REP7-015]) and otter fencing at either end will improve the permeability for riparian mammals when compared to the current baseline and would not introduce any new additional barriers for fish or eel passage.

REP7-058-015

Sub-Part

Domsey Brook (east) The Technical Note states that an alternative 12m precast portal bridge structure was reviewed and found to be feasible to construct. There is no information on whether the feasibility of a clear span bridge was assessed. While a clear span bridge would offer a preferable continuation of the river corridor, a portal bridge structure, depending on design, would appear to offer potential benefits over the proposed box culvert. Designs would be required to prevent fragmentation of the river habitat, retain natural banks and a natural channel and permit macrophytes to grow in much of the crossing. Further detail would be required were this option to be progressed.

As with the new Rivenhall Brook box culvert, the proximity to an existing culvert structure is cited as a reason for not providing a more open structure at this location. As stated above, we do not agree that the retention of historical structures elsewhere within the river corridor justifies a crossing design which will further restrict species movement and cause additional habitat fragmentation.

Applicant's Response

The Applicant notes the points raised by the Environment Agency and refers them to the response provided in sub-part REP7-058-013 of this response.

REP7-058-016

Sub-Part**4.5 Consideration of Alternatives**

The case law quoted (*R. v Warwickshire CC Ex p. Powergen Plc* (1998) 75 P. & C.R. 89) ("Powergen") relates to alternatives in relation to EIA which is not the issue here. The principles regarding alternatives are different in relation to WFD issues so the arguments set out in Section 4.5 are flawed. One of the tests for satisfying Regulation 19 (Article 4.7) is that the benefits of the project cannot be achieved by a significantly better environmental option. The Environment Agency has explained why it considers clear span bridges are a less environmentally damaging option.

It is for the applicant to demonstrate that the alterations to the water bodies made by the proposed development cannot be achieved by other means which are a significantly better environmental option, are technically feasible, and do not lead to disproportionate cost. The Applicant has not stated that clear span bridges for the new crossings are not technically feasible nor explained why they would be disproportionately expensive given this is a multi-million pound project.

We cannot agree that the Applicant has conclusively demonstrated that the highlighted Main River crossings will not cause unnecessary and avoidable environmental damage. It is not the role of the Environment Agency to undertake such an assessment.

Clear span bridges allow for the retention of a natural river channel and corridor, and limit the loss of light and bankside vegetation. The choice of a more open structure for the crossing of a Main River can avoid adverse ecological impacts such as habitat loss and fragmentation and prevent the introduction of barriers to species movement. The approach to first seek to avoid the adverse impacts of development is the basis of the mitigation hierarchy prescribed in the draft National Policy Statement for National Networks (NNNPS) (March 2023) and the National Planning Policy Framework (July 2021).

It is also the basis of the Environment Agency's culverting policy. This policy recognises the adverse ecological impacts of culverting and seeks to avoid those impacts by requiring applications for Flood Risk Activity Permits to demonstrate why potentially less damaging alternatives cannot be used. Each Main River crossing proposed as part of this DCO application will require a Flood Risk Activity Permit from the Environment Agency. In this case the Applicant does not appear to have taken an approach in line with the mitigation hierarchy or our culverting policy. Mitigation measures which we deem to be inadequate have been proposed to justify the use of culverts, with very little justification as to why alternative, less damaging design options have not been progressed.

Applicant's Response

The Applicant disagrees with the Environment Agency on the applicability of the Powergen case (R. v Warwickshire CC Ex p. Powergen Plc (1998) 75 P. & C.R. 89) ("Powergen") to WFD issues. Powergen is not about alternatives, or environmental impact assessments: it is about whether it is rational for an authority whose objections have been rejected during the planning process to act contrary to the decision maker's independent factual judgment on an issue and maintain its own original view. The Court was clear that:

"To my mind there can be but one answer to that question: a categorical "no"... "

With regard to the Water Framework Directive (WFD), the Applicant has prepared a detailed Water Environment Regulations (WFD Regulations) Compliance Assessment [APP-159] in accordance with the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. This clearly demonstrates that the scheme is compliant with the requirements of the WFD and would not compromise the achievement of the statutory environmental objectives.

As stated above in REP7-058-001, following a request by the ExA, the Applicant is preparing a document to set out a Water Framework Directive Article 4(7) derogation case on a without prejudice basis in the event that the ExA in preparing its report and the Secretary of State, as competent authority, would find this helpful in considering WFD requirements. The Applicant will

engage with the Environment Agency as to the approach and content of this document and will submit it to the Secretary of State as soon as reasonably possible.

With regard to the issue of flood risk activity permits by the Environment Agency, the Applicant's detailed submissions are set out in its Technical Note on Proposals for Main River Crossings [REP6- 095]. As stated in REP7-058-016 the Applicant considers that the principle set out in the Powergen case is applicable and once the issue regarding culverts has been determined by the Secretary of State in the DCO process, it would not be rational for the Environment Agency to come to a different conclusion on the same issue in the permitting process.

With regard to the assessment of alternatives and mitigation hierarchy, the Applicant has set out its response above in REP7-058-002 as to how it has complied with the mitigation hierarchy.

The Applicant's Technical Note on Proposals for Main River Crossings [REP6- 095] considers the engineering feasibility of free-span crossings and their environmental impact. The conclusions are set out in Sections 5.1 and 5.2 of that Note, which concludes that, balancing factors such as embodied carbon, whole life costs, construction related environmental impacts, the effects on the construction programme and cost, open span bridges are either technically not feasible or disproportionately costly.

The Applicant has also made detailed submissions in its Technical Note on Proposals for Main River Crossings [REP6- 095] as to the limited (or no) weight which should be given to the Environment Agency's culverting policy, which does not appear to have been subject to any consultation and which conflicts with NNNPS.

Environment Agency

REP7-059-001

Sub-Part

APPLICATION BY NATIONAL HIGHWAYS FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE A12 CHELMSFORD TO A120 WIDENING

Please find below Deadline 7 comments from the Environment Agency in response to document 9.38 Biodiversity net gain metric 3.0 - Rev 2 [REP6-083]

Biodiversity Net Gain is considered in addition to existing wildlife sites and species legislation, and to the mitigation hierarchy. We recognise it is not yet a legal requirement for NSIPs.

The Applicant has used the overall results from the Biodiversity Net Gain assessment submitted in part of the A12 application as a justification to show that impacts of culverting are fully mitigated for. We have grave reservations about this approach as the mitigation hierarchy of avoiding any significant effect should be the primary step in design of a scheme. This application appears to be one where the approach has been to design and then mitigate for damaging choices made during that initial process without seeking to avoid unnecessary harm in the first instance. The proposed culverts are an avoidable impact with significant effects on the water environment.

Any BNG calculations need to be led by a detailed on-site River Condition Assessment (RCA). The Applicant has confirmed within the Biodiversity Net Gain Report [APP-138] that some of the sites were not visited for the BNG assessment and watercourses were assessed from aerial photos and other second-hand information.

Whilst the mitigation proposed to enhance the watercourses is welcome and will go some way to undoing some of the historic river damage done by the original A12 road scheme, it does not justify, nor fully mitigate for, the significant effects of the new culverted sections. The new culverts will cause additional and serious long-term

harm on the waterbodies and the wildlife supported by them. We would support the replacement of them with less damaging options which avoid harm to the river, spanning right across the natural banks and retaining a wide buffer strip of natural habitat in the riparian zone.

Applicant's Response

The Applicant welcomes the acknowledgement from the Environment Agency that biodiversity net gain is not yet a legal requirement for NSIPs.

The Environment Agency has misunderstood the Applicant's position. For the avoidance of doubt, the Applicant is not seeking to use the overall results from the biodiversity net gain (BNG) assessment as justification to show that the impacts of culverts are mitigated for.

Within Chapter 9: Biodiversity, BNG figures are only provided within the penultimate section of the main body of the chapter. The Applicant included BNG figures within the chapter because BNG is a matter of interest for many stakeholders, however the BNG scores did not influence the assessment of effects presented within the chapter which followed the methodology in DMRB LA 108.

At Deadline 6 the Applicant submitted a Technical Note of the Proposals for Main River Crossings [REP6-094]. As stated within paragraph 1.3.1 of this document, the purpose of the report is to summarise the Applicant's approach to designing the watercourse crossings, including the assessment of environmental impacts with particular regard to riverine mammals and fish. It also sets out to demonstrate that the proposed scheme accords with the requirements of the NNNPS and other relevant policy

statements. Nowhere in this document is BNG used to justify the approach to, or conclusions made on effects from, the river crossings.

The intended purpose of the metric submitted at Deadline 6 [REP6-083] was to provide the spreadsheets generated in the metric tool for the Rivers metric. This was omitted from the metric submitted at Deadline 3 [REP3-022] in error, but it was subsequently included when it was requested by third parties including Mr Bolton [REP2-051], and the Environment Agency had requested the Rivers metric during a meeting with the Applicant on 5 May 2023.

As stated within paragraph 3.4.10 of the Biodiversity Net Gain Report [APP-138], rivers and streams were initially identified during hydromorphological surveys carried out in 2017. MoRPh (Modular River and Physical Habitat) surveys were then carried out in 2020 and 2021 evaluating the condition of rivers identified within the Order Limits.

Paragraph 3.4.10 then goes on to state that where the Order Limits changed leading to the identification of additional subreaches of rivers, additional MoRPh surveys were undertaken via desk studies using aerial imagery.

Paragraph 3.6.9 [APP-138] details the limitations with respect to virtual assessments of sections of the River Ter (downstream of the existing A12) and Boreham Brook (upstream of the existing A12). Virtual assessments were carried out over a length of 100m and 50m for the River Ter and Boreham Brook respectively, which represented their respective BNG assessment parcels. As also stated in the Biodiversity Net Gain Report, observations of timescale aerial imagery suggest the channels here have not changed between the time the photographs were taken and the present day. However, it is still the Applicant's position that the virtual assessment is not considered a substantial limitation to establishing the baseline.

Paragraph 3.6.1 [APP-138] states that ditches were assessed virtually using aerial imagery and photographs taken during hydromorphological surveys in July 2017. With ditch assessments being separate to River Condition Assessments, they do not require surveys under the MoRPh methodology and are assessed via spot checks against criteria set out in the ditch condition assessment. As such, no specific length of surveyed watercourses can be confirmed. These spot checks cover the entirety of

BNG assessment parcels considered to be ditches following observations of both historical mapping, on-site photography and/or aerial imagery over 11.9km of ditches, of which 2.1km will be crossed by the highway footprint of the proposed scheme. However, as also stated, while this was not a limitation in itself, as imagery was available for the ditch assessment, this approach made it difficult to assess whether the ditches did convey flows for four months in the year which determines whether they are assessed as part of the watercourse metric as opposed to the terrestrial metric.

It is the Applicant's view that it is common for there to be limitations with respect to surveys. As stated in paragraph 1.1.6 [APP-138], at this stage, the metric forecasts should be treated with some caution due to the limitations of the data, the assumptions made to allow a quantitative forecast of biodiversity unit change, and the preliminary nature of the design. However, it is considered that this assessment provides a good indicator of the likely performance of the proposed scheme in terms of net biodiversity, and a precautionary approach has been applied, so the metric provides a realistic 'worst-case' assessment.

Portal bridge structures 10-12m span were considered for the main river crossings on the off-line section of the A12 for Rivenhall Brook and Domsey Brook (West). These would provide sufficient width to cross the Main River and banks. However, as explained in the Technical Note of Proposals for Main River Crossings [REP6-095], there were various disadvantages with these options compared with box culverts.

As stated in paragraph 5.2.4 of the Technical Note of Proposals of the Main River Crossing [REP6-095], it is not considered that any of the proposals for main river crossings would lead to a level of impact of sufficient size (i.e., major adverse) that would lead to a significant (i.e., moderate or above) effect. Effects on otters, water vole and fish are therefore considered not significant with respect to the proposals for main river crossings.

Environment Agency	REP7-060-001
Sub-Part	
APPLICATION BY NATIONAL HIGHWAYS FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE A12 CHELMSFORD TO A120 WIDENING	
Please find below Deadline 7 comments from the Environment Agency in response to document 3.1 Draft DCO (Tracked) - Rev 7 [REP6-037]	
We note the amendments within Article 3 Disapplication of legislative provisions, and the removal of text under 3(3), 3(4) and 3(5) relating to consents issued by the Environment Agency. Also the deletion within Schedule 11 Protective Provisions of Part 7 For the protection of the Environment Agency.	
We can confirm that we are content with these changes. The changes reflect our previously stated position which is that we do not agree to give consent under s150 Planning Act 2008 for disapplication of the requirement for Flood Risk Activity Permits (FRAP) for permanent structures; and environmental permits for the discharge of water and sediment during operation (discharge consents).	
Applicant's Response	
The Applicant notes the Environment Agency's response.	

**Essex Local Access Forum
(ELAF)**

REP7-061-001

Sub-Part

Essex Local Access Forum (ELAF) deadline 7 submission (3 July 2023) page 1 Interested Party ref 2033138 ELAF revert to matters that have been raised in previous submissions where the PROW network is still negatively affected – due to new severance / re-routing in this proposed draft DCO or due to historic severance. National Policy requires the mitigation of these matters – NPPF paragraph 100, Highways Act 2008 section 136 and National Policy Statement for National Networks (2014) 5.184. Assurances were also given in the pre-lockdown forums hosted by Jacobs & National Highways. 1. Boreham Main Road B1137 – mitigation measures In January at ISH1, ELAF supported Essex County Council proposal that one of the ways of narrowing Boreham Main Road is to widen the off carriageway non-motorised user provision to 3 metres. [ECC Local Impact report 8.3.15 refers REP2-056 & ELAF REP3-038]. This proposal was referenced again by ELAF at ISH5. ELAF wish to see such a 3metre wide off-road WCH provision included in the draft DCO. This would both narrow this wide straight road so making is seem less like a “main” road and also provide a safer active travel and leisure route.

2. Historic severance between Boreham and Hatfield Peverel As noted in ELAF’s August 2021 consultation response, there are some PROWs that join up with the north or south side of the A12 which can legally, although not practically, be crossed by WCH users. (i) just north of the new Paynes Lane WCH bridge, Boreham PROW 24 is on the north side and Boreham PROW 25 is on the south side. The new Paynes Lane will provide a good WCH crossing of both the railway line and the A12 near to these paths. (ii) Boreham footpath 21 [PROW 213-21]: this passes under the railway through a tunnel & ends at a lay-by on the north side of the A12 – see sheet 3 of the NH plans. Before the A12 was widened, the route used to continue across the A12. There is now a housing estate on the south side but no house where the old path used to run. (iii) Chantry Lane: the road and bridge over the railway line still exist on the north side but there is no bridge continuation over the current A12. The stub end of Chantry Lane still exists on the south side connecting to the B1137 Boreham Main Road opposite Damases Lane. It is understood that the landowner on the south side is willing to have a WCH connection across the stub end on his land – see REP3-025. The north west arm of Boreham PROW 20 [213-20] is incorrectly labelled as Terling Hall Road on sheet 4 of the NH plans. The reconnection of Chantry Lane with a WCH bridge is requested which would mitigate historical severance and provide a useful off-carriageway WCH link from the B1137 (Boreham) Main Road.

3. Hatfield Peverel FP 29 [PROW 90_29], the demolition of the Woodend A12 sliproad Bridge and navigating Junction 21 As noted in ELAF's August 2021 consultation response and at ISH1 [REP3-038], the demolition of Woodend Bridge severs a direct route from the west end of Witham to Hatfield Peverel FP29. Under the current draft DCO plans, people from Witham will be required to walk west to the new Junction 21, cross four slip roads and then head back east to connect with footpath 29– a total detour of about 1 mile/1.6km, about 20 minutes walking. Crossing slip roads is a fraught experience and no controlled crossings are shown on sheets 6 and 7 of NH's plans. The 1 mile/1.6km detour compares with a current distance of about 0.15mile/ 250 metres, a 3minutes walk across the Woodend Bridge. Many new houses are being built on the west side of Witham. The railway line forms a barrier to the north so it is important that easy links to the south are retained and not severed. ELAF repeat the request that a a footbridge connection is provided in the DCO across the A12 to replace Woodend Bridge to mitigate this proposed new severance.

Applicant's Response

The Applicant does not share the Interested Party's view that PRow network is adversely affected, given 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. These facilities address existing severance and future-proof the network for the local authorities to provide additional PRow enhancements in future using the many new and enhanced crossings of A12 provided by the scheme.

The works described above represent substantial mitigation for the locations where adverse impact has been created for example due to structures needing removal to enable A12 widening to be implemented.

Regarding the specific points raised:

Boreham Main Road B1137

The Applicant is not proposing to widen the non-motorised user provision to 3 metres. The A12 scheme does, however, propose to lower the speed limit to 40mph over this extent and enforce that limit with average-speed cameras, which will reduce risk compared to the existing situation.

Historic Severence between Boreham and Hatfield Peverel

Paynes Lane WCH Bridge

The Applicant thanks the Interested Party for the recognition of the benefit of the Paynes Lane WCH Bridge.

Boreham footpath 21 [PROW 213-21]

The A12 scheme does not materially alter A12 in this area and there is no reasonably practicable way of reinstating this route so it is outside the scheme's scope.

Chantry Lane

This too is in the section where A12 scheme does not materially alter the A12 carriageway. The level difference between the railway and A12 at this location means re-instatement of the historic right of way would require very substantial engineering work and associated land acquisition.

Hatfield Peverel FP 29 [PROW 90 29], the demolition of the Woodend A12 sliproad bridge and navigating Junction 21.

Regarding Woodend Bridge, the structure must be removed to facilitate widening of the A12 carriageway. At present the pedestrian usage of the bridge combines travel between Witham and Hatfield Peverel, and between Witham and rights of way on the east side of A12.

The connection between Witham and Hatfield Peverel is served by new pedestrian and cycle route between the settlements along the north embankment of junction 21 and Wellington Road overbridge. This new route is segregated from the carriageway and alongside a quieter and lower-speed route than the current route.

The connection between Witham and rights of way on the east side of the A12 would involve a diversion as described by the Interested Party, or alternatively users could travel via the Wellington Bridge at the eastern end of Hatfield Peverel where a parallel crossing for pedestrians and cyclists is proposed to connect the west side route to the east side and the cycle and pedestrian route connecting to FP 90_40 and FP 90_29. This is a longer route that provides a connection further from A12 and which does not cross any slip roads.

The Applicant therefore considers that these measures mitigate the severance already caused by previous highway alterations as well as the unavoidable removal of existing structures to improve A12 through this scheme.

REP7-061-002

Sub-Part

4. Duke of Wellington junction – and cyclists Many parties have expressed concern about the busy Duke of Wellington junction. ELAF expressed concern in their August 2021 consultation response and at ISH1 [REP3-038] about what cyclists will do at this junction especially when travelling west from Witham / Wellington Bridge when they will have to cross the traffic stream (sheets 5 and 6 of National Highways plans). Hatfield Peverel station is the nearest railway station to the extensive new housing on the west side of Witham. The National Highways DCO Order limits extend north to the railway line between the west side of Witham and Station Road Hatfield Peverel, with one narrow section. An east -west WCH route on National Highways land would also provide a direct off-road connection to Hatfield Peverel footpath 2 [PROW 90-02] which connects north over the railway line on a

footbridge. In the interests of safe active travel, ELAF request that the draft DCO includes a direct off-road WCH route (on National Highways land) between the west side of Witham and Station Road, Hatfield Peverel.

5. Gershwin Boulevard Bridge and WCH connections Many parties have said that they wish to see Gershwin Boulevard WCH bridge moved slightly west – see also ELAF's comments at deadline 5 and 6 [REP5-035 and REP6-111]. ECC in their REP4-075 included a plan – see below - showing the bridge moved slightly west but STILL entirely on land within the draft DCO Order limits with the direct connection to Howbridge Hall Lane, a public road, and a link on National Highways land to Witham FP 95 [PROW 121_95]. This would facilitate a link south to James Cooke Wood and east to Witham FP95 and, via the replacement open spaces land, to Maldon Road. ELAF request that the ECC proposal is included in the draft DCO.

##~~See Original Document for images~~##

Applicant's Response

Duke of Wellington Junction

The Applicant notes the Interested Party's suggestion for additional WCH connections between Witham and Hatfield Peverel. However, such a change is outside the scope of the proposed scheme which is already making extensive improvements to walking cycling and horse-riding provision but cannot tackle all shortfalls in current provision for these groups in the whole scheme corridor and connecting roads.

The Applicant's proposals offer a significant improvement in the WCH facilities between Hatfield Peverel and Witham, in particular the new Cycle Track which connects between point 5/9 and 6/19 shown on sheets 5 and 6 of the Streets Rights of Way and Access Plans [REP6-013 and REP6-014]. This new facility will provide a high quality LTN 1/20 compliant link which also bypasses the Junction 21 roundabout. For southbound cyclists travelling between Witham and Hatfield Peverel (including the station), a parallel crossing (for pedestrians and cyclists) is proposed on B1137 to the south of Wellington Bridge, enabling riders to join the carriageway to travel through the village. This is secured in the Design Principles Appendix B [REP7-017].

Overall, as is stated in the Applicant's other responses to the Interested Party, the Applicant's proposals substantially increase the number and quality of WCH facilities.

Gershwin Boulevard Bridge.

The Applicant has previously explained the reasons why it is not appropriate to move the proposed Gershwin Boulevard Bridge to an alternative location. This is set out in detail in the Applicant's Comments on Information received at Deadline 6 [REP7-045], specifically in response sub-part REP6-111-002, and in the Applicant's Gershwin Boulevard Issue Summary Note [REP6-094].

The Applicant's proposal for the Gershwin Boulevard bridge provides an opportunity to connect Witham to onward circular routes south of the A12 such as the Witham River Walk and Witham Rail Trail via footpath 121_95 and Maldon Road to enhance the public right of way network. The Applicant does not consider the suggested location at Howbridge Hall Road to provide enhancement to the existing local Public Right of Way network as it would connect to a section of Maldon Road remote from any built up area with no clear onward facility that offers no benefit to users compared to footpath 121_95. The Applicant has consulted with the landowner of Olivers Nurseries regarding the permissive footpath that some Interested Parties are suggesting from the junction of Howbridge Hall Road and Maldon Road, adjacent to the eastern verge of Maldon Road and running south to the James Cooke Woods. At a meeting held on Friday 21 April 2023, the landowner stated they would consider a permissive path but did not say that they would accept one. The Applicant maintains that the most reasonable location for the Gershwin Boulevard bridge is that which has been proposed by the Applicant and included in the DCO application.

REP7-061-003

Sub-Part

It is noted that a section of the Blackwater Rail Trail, plots 8/3a and 8/6m [Book of Reference REP6-042pages 2460 & 2461] are shown as Crown Land on sheet 8 [REP6-016]. However the land comprising the Blackwater Rail Trail, the old Witham to Maldon railway line, from Witham to just north of Oliver's Nursery is Essex County Council land not Crown Land.

Applicant's Response

The justification for inclusion of plot 8/3a as Crown Land is due to the understanding through the land referencing and diligent inquiry process that ownership of Benton Bridge (and associated bridge deck) carrying the A12 over the Blackwater Rail Trail lies with the Department for Transport. The former railway (Blackwater Rail Trail) at ground level is owned by Essex County Council as shown on Land Registry title EX479078. Ownership of Benton Bridge was determined through detailed title investigation and confirmed by receipt of a Conveyance of land dated 25 January 1993 from the former British Railways Board to Essex County Council

For plot 8/6m, this plot is shown as Crown Land due to rights granted by a Deed of Grant dated 24 March 1965 made between the former British Railways Board and former The Minister of Transport.

REP7-061-004

Sub-Part

6. Rivenhall footpath 36 [PROW 105_36] – severed by the new off-line A12 ELAF repeat the request made in their August 2021 consultation response and in more detail at deadline 6 [REP6-111], that the severance of Rivenhall footpath 36 by the new A12 is against National Policies and National Highway's own objectives. As noted by ELAF at deadline 6 a clear span ridge under the new A12 suitable for both wildlife and human animals would mitigate this severance and should be included in the draft DCO. This would also provide a non-culverted river crossing as required by the Environment Agency.

7. Prested Hall and severance of Feering FP 15 [PROW 78-15] ELAF have expressed their concern at the severance by the new A12 of Feering footpath 15 and the direct wide tree-lined driveway to Prested Hall. ELAF contend that the severance of this north-south connection between the north-east end of Feering (London Road & New Lane & the strategic growth location on both sides of London Road) and facilities at Prested Hall and the footpath link to Messing introduces a new severance of the PROW network and so is against National Policies and National Highway's own objectives of... "improving accessibility for walkers, cyclists, horse riders, and public transport users." A footbridge over the new A12 in the general location of Feering footpath 15 & Prested Hall Drive is requested to be included in the draft DCO. This would all be inside the DCO Order limits.

Applicant's Response

Rivenhall Footpath 36

The Applicant has previously explained the reasons why it is not appropriate to provide a crossing of the A12 in the location of Footpath 36 [PROW 105_36]. This is set out in detail in the Deadline 7 submission, Applicant's Comments on Information Received at Deadline 6 [REP7-045], specifically in response sub-part REP6-111-003.

Prested Hall and severance of Footpath 15 [PROW 78_15]

The Applicant has previously explained the reasons why it is not appropriate to provide a crossing of the A12 in the location of Footpath 15 [PROW 78_15]. This is set out in detail in the Deadline 7 submission, Applicant's Comments on Information Received at Deadline 6 [REP7-045], specifically in response sub-part REP6-111-004.

REP7-061-005

Sub-Part

8. De-Trunked A12 and sustainable transport ELAF support ECC's proposal for the use of one carriageway of the to-be-de-trunked A12 as a greenway / an active travel and leisure route. Whatever is decided on this matter, ELAF request that, as part of the handover, National Highways re-instate bus stop flags and bus stopping points on the to-be-de-trunked sections (i.e. Witham-Kelvedon and Feering-Marks Tey) – in particular at Rivenhall End, at the Fire-and- Rescue centre and by Domsey

Chase / new Easthorpe Road connection. People at these locations have been unable to make use of the bus along the A12 for many years as it was deemed too dangerous for buses to pull out from bus stops into the A12 traffic stream.

Applicant's Response

The Applicant notes the comments from the Interested Party regarding the de-trunked sections of the A12. The Applicant is not proposing to adopt Essex County Council's alternative de-trunking proposal. Regarding bus stops, a review of public transport routes would need to be undertaken by Essex County Council and operators reflecting the new network form. Once routes are identified, bus stop locations and form can then be determined, and this would form part of the detailed design process. This would be subject to both independent Road Safety Audit (to the Design Manual for Roads and Bridges (DMRB) GG 119), and Walking, Cycling and Horse-Riding Review (to DMBR GD 142).

Essex Local Access Forum (ELAF)	REP7-062-001
Sub-Part	
<p>27 June 2023 am: Issue Specific Hearing 5 (teams) Comments made by Mrs Katherine Evans , Chairman of ELAF (Essex Local Access Forum)</p> <p>Attending due to ELAF's interest in Gershwin Boulevard Bridge, Coleman's fisheries & main river crossings, specifically Rivenhall Brook, where ELAF has suggested an alternative proposal.</p> <p>Re: article 14 Boreham traffic mitigation measures I apologize, I couldn't find the page regarding to article 14 about the Boreham narrowing which was addressed just before the break. I'm speaking as Mrs. Katherine Evans, Chairman of the local access forum. At some point in the discussion when the Boreham Road narrowing was discussed, there was talk of an enhanced cycleway and footway provision. I'm not sure where we got to on that. And I'm not sure whether the cycleway provision was off carriage way or on carriage way. I just wanted to know whether that is being included somewhere. NH undertakes to respond in writing at deadline 7 It may that there's a response from Essex County Council as well, because I've simply lost track of where that comment went to.</p>	
Applicant's Response	
<p>The Applicant is not proposing enhanced cycleway/footway provisions on the B1137 Main Road as this is outside the project's scope and the width of the public highway is not sufficient for dedicated cycle facilities on this corridor.</p> <p>However, the Applicant's 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</p>	

WCH provision. The proposed scheme is also bringing over 3.5km of existing facilities up to compliance with current guidance such as LTN1/20.

REP7-062-002

Sub-Part

Re: Witham FP 103 at Coleman's Fisheries Good afternoon, Mrs. Evans, chairman of the local access forum. We indicated at deadline 6 that we were very content with what Essex County Council have proposed. And I believe that National Highways have agreed that the footpath now goes from the fisheries, where the existing path is, along to the Whetmead Nature Reserve. National Highways (Mr Christopher Alves-Greenland) confirms that the change has been made by National Highways in the deadline 6 revised Streets, Rights of Way and Access plans which shows the fisheries footpath connecting with footpath adjacent to the River Brain [Witham FP101] which goes under the A12 providing the connectivity back into Witham. The revised plans show the new agreed route under the A12 using the Brain bridge rather than looping back to the proposed Braxted Lane bridge.

Applicant's Response

The Applicant confirmed at Issue Specific Hearing 5 [Ref 5.5, REP7-043] that the Applicant has revised the proposed footpath diversion from the severed Footpath 121_103 . 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, to a junction where Footpath 121_101 crosses under the A12 via the Brain Bridge. . The proposed footpath is shown on Sheets 8 and 9 of the revised Streets, Rights of Way, and Access Plans [REP6-014] submitted at Deadline 6.

REP7-062-003

Sub-Part

Re: Gershwin Boulevard Bridge and Witham FP 95 References made to the ExA unaccompanied site visit on 16 June and to National Highways deadline 6 Technical Note REP6-094. No comment made on behalf of ELAF as nothing specific to add.

NOTE: Mrs Katherine Evans lost her Teams connection at the start of Agenda Item 6 and was not able to re- connect for the end of the ISH5 session.

Applicant's Response

The Applicant notes the comments from the Interested Party.

Feering Parish Council	REP7-063-001
Sub-Part	
<p>27 June 2023: Issue Specific Hearing 5 (teams) Cllr Katherine Evans – Feering Parish Council representative</p> <p>FPC have not studied the Inworth Road roundabout plans in detail but we do have a question... we are not sure whether all the properties on Inworth Road (in the roundabout area) actually have vehicular access. NH reply (Mr Greenland): With or without the proposed change at the interface of the roundabout (with Inworth Road) all properties that currently have vehicular access to the B1023 (Inworth Road) will continue to have permanent case vehicular access to the B1023 (Inworth Road).</p>	
Applicant's Response	
<p>The Applicant confirms that all properties that currently have vehicular access to the B1023 will continue to benefit from this vehicular access under the proposed scheme.</p>	
REP7-063-002	
Sub-Part	
<p>Re: Operation phase local traffic monitoring – draft DCO (new) article 16 (p94) Feering Parish Council are concerned that locations in Feering, which we understand that Essex County Council agree with – namely Gore Pit Corner & Hinds Bridge – are NOT included in the draft DCO. And the latest submission from Essex County Council DID appear to agree some of the other locations that Feering Parish Council had suggested, which was... • Coggeshall Road Feering • Coggeshall Road Kelvedon • London Road Kelvedon • London Road Feering These locations don't appear in article 14 (should have said 16). I don't have the expertise to know whether they're going to appear or whether they appear somewhere else. Examiner to NH: I was going to ask myself the point that Councillor Evans raised because I was aware that a number of other locations that had been suggested by other parties.... [continues page 30+31 of transcript] Feering Parish Council obviously don't agree with National Highways contention of leaving out Feering location. ECC input page 32 re original locations in the ECC LIR (Local Impact report at</p>	

deadline 2) & subsequent consultations / discussions including with Feering Parish Council so ECC think that additional monitoring locations need to be considered – see REP6-100, ECC's Monitoring & Mitigation Plan Technical Note

Applicant's Response

As noted in response reference 3.12 within the Applicant's Written Submission of Oral Case for Issue Specific Hearing 5 [REP7-043], the monitoring locations included within the draft DCO are those that were identified in Essex County Council's Local Impact Report [REP2-055].

In terms of the location of surveys, as noted in REP7-045 the Council's monitoring requests have increased considerably since it submitted its Local Impact Report, with the number of proposed monitoring locations increasing from seven to 29 sites around the proposed scheme. The additional monitoring locations are detailed in the Council's Monitoring & Mitigation Plan Technical Note [REP6-100], and include sites in Feering.

The Applicant has agreed to monitoring in the seven locations as confirmed in Requirement 16 of the deadline 8 dDCO [Applicant reference TR010060/APP/3.1 rev 9], but does not consider the additional 22 locations to be required and therefore do not propose that they should be included within a DCO Requirement.

REP7-063-003

Sub-Part

re: Local Plans (p31) Attention has been directed to the national planning policies for NSIPs and specifically the National Policy Statement for National Networks (NPS 2014)). I would point out that it specifically says that local plans should be taken into account. And there has been a reluctance to take local plans into account - adopted local plans - specifically the Strategic Growth Location at Feering. And it should be noted that national highways did actually change - had a specific separate consultation, which was then not relevant any more - to change the A12 route to take into account the proposed Garden Community at Marks Tey. So it seems perverse that there was a willingness to make a complete change to the A12 planning and plans to take into account the proposed Garden Community but there's no willingness to undertake changes and take into

account matters that are in the adopted Braintree Local Plan now. Thank you NH response by Ms Emma Harling-Phillips of WBD (page 33): just to put down a marker, it is not the case that the applicant has ignored adopted local plans, all adopted local plans and national planning policy has been taken into account by the applicant as relevant to the NSIP process. And that was fully demonstrated in our application documents, as you'll be well aware, sir. Thank you.

Applicant's Response

The proposed scheme's assessment against the National Policy Statement for National Networks (NNNPS) is discussed in Appendix A: National Networks National Policy Statement Accordance Table of the Case for the Scheme [APP-250] and the assessment against the relevant Development Plan policies is discussed in Case for the Scheme - Appendix F: Local Planning Policy Accordance Tables [APP-252].

Appendix F: Local Planning Policy Accordance Tables [APP-252] included an assessment against the following plans with Braintree District Council (BDC) development plan:

- Braintree District Local Plan 2013-2033 Section 1, North Essex Authorities Shared Strategic Section 1 Plan (2021a)
- Braintree Local Development Framework Core Strategy (2011, updated 2021)
- Braintree Local Plan Review (2005), saved policies
- Braintree Section 2 Main Modifications for Consultation (2021b)

On Monday 25 July 2022 Braintree District Council formally adopted its Local Plan 2033 (Section 2). Due to the timing of the submission of the DCO application it was not possible to address specific implications arising from any additional or minor modifications to these plans. However, whilst the policy numbers and descriptions may have changed for some policies in these now adopted local plans, as Appendix F: Local Planning Policy Accordance Tables [APP-252] assessed Braintree Section 2 Main Modifications for Consultation (2021b), the overall assessment of how the proposed scheme would conform with these policies does not change.

Messing and Inworth Action Group Limited	REP7-064-001
Sub-Part	
<p>Messing and Inworth Action Group Ltd and Messing-cum-Inworth Parish Council A12/A120 Widening Scheme Junction 24 Response to National Highways following Issue Specific hearing agenda items draft Development Consent Order and Statement of Common Ground, 27th June Following the original 'Statement of Position' submitted to the ExA on 12th June, which remains unaltered and definitive, the intention of this document is to additionally demonstrate to the Planning Inspectors (PI) and the Examining Authority (ExA), for the above designated Draft Development Consent Order (dDCO) enquiry submitted by National Highways (NH), the position of Messing and Inworth Action Group (MIAG), and the Messing-cum-Inworth Parish Council (MclPC), following the Issue Specific Hearings of 27th June, and the statements and subsequent comments from National Highways and their legal representatives.</p>	
Applicant's Response	
<p>The Applicant notes the Interested Party's comments.</p>	
<p style="text-align: right;">REP7-064-002</p>	
Sub-Part	
<p>MIAG and MclPC continue to believe; - NH have ignored and marginalised MclPC and MIAG. The approach taken to the presentations made by Ashfords, concerning the legal validity of the dDCO, remain unaddressed and have not been satisfactorily explained. The position taken by MclPC and MIAG continues to be that the dDCO should be sent back as it is both invalid and illegal;</p>	

Applicant's Response

In MIAG's written representation at Deadline 2 and oral case at ISH2, it is asserted that the whole of the A12 scheme does not constitute an alteration proposal under s22(1) of the 2008 Act. In particular, MIAG contends that the proposed 5 (or 6) km section between Feering and Marks Tey not only consists of the construction of a new highway but should also be treated as an NSIP in its own right. It is MIAG's contention that the Applicant has misinterpreted s22 of

the 2008 Act and should have submitted two highway NSIPs. Thus MIAG contends that to grant the DCO would be unlawful. MIAG's submissions in this regard are wholly misconceived.

The Applicant has responded to this submission at page 268 of the Applicant's Response to Written Representations [REP3-009]. The Applicant's position is that the A12 scheme consists of development that forms alteration of a highway for the reasons set out in the Applicant's Response to Written Representations [REP3-009].

MIAG's submission regarding the construction between Feering and Marks Tey is incorrect.

Section 31 of the 2008 Act states that "consent under this Act (development consent) is required for development to the extent that the development is or forms part of a nationally significant infrastructure project."

Section 14(1) of the 2008 Act provides that "In this Act "nationally significant infrastructure project" means a project which consists of any of the following—

... (h) highway-related development..."

Section 22 of the 2008 Act defines highway related development as follows:

“(1) Highway-related development is within section 14(1)(h) only if the

development is—

(a) construction of a highway in a case within subsection (2),

(b) alteration of a highway in a case within subsection (3), or

(c) improvement of a highway in a case within subsection (5)..."

1.2.7 Having regard to these provisions, MIAG's argument is obviously wrong.

Provided that the terms of section 22 PA 2008 are satisfied by way of any of the three available pathways in section 22, then the highways related development, here the A12 scheme, will be an NSIP. See, by analogy, *R. (Ross) v Secretary of State for Transport* [2020] EWHC 226 (Admin), [2020] PTSR 799 at [63], considering section 23 PA 2008.

There is nothing in section 22 of the 2008 Act (or any other part of the 2008 Act) which requires a NSIP to be confined to only one of the pathways in section 22 or which requires development within different pathways in section 22 to be treated as separate NSIPs.

To the contrary, the different pathways all lead to the same end point: the conclusion that the development is highways related development and thus a NSIP. The NSIP is 'highways related development'; the NSIP is not 'construction of highways related development' or 'alteration of highways related development'. It follows that a development may amount to a single NSIP within section 22 even if (1) it contains elements of construction, alteration, and improvement; and even if (2) those different elements are sufficient in their own right to qualify the development as an NSIP.

This approach is also consistent with the scheme of sections 31, 14 and 22 of the 2008 Act. Pursuant to section 31, development consent is required for development that forms part of a NSIP, even if that development would not, on its own, be a NSIP. For example, if the construction of the section between Feering and Marks Tey did not satisfy section 22(1)(a), it would still require development consent pursuant to section 31 as part of the NSIP. It would be absurd to take a different approach where the construction of the section between Feering and Marks Tey does satisfy section 22(1)(a). There remains a single NSIP, even when the construction is of a sufficient size to satisfy section 22(1)(a).

All the aspects of the A12 scheme apart from the DCO sought in respect of the gas main diversion either involve construction of a highway, alteration of a highway or improvement of a highway. All aspects of the proposed scheme comprise a single project: consent is not sought for any part of the scheme separate from any other part. Either the whole scheme is to be permitted or none of it.

MIAG's submission fails to recognise the clear wording of the 2008 Act, which can only reasonably be construed as meaning that a NSIP can consist of highway related development which includes any, some or all of the elements in section 22(1). The Planning Inspectorate was thus correct to accept the DCO on the basis that it properly seeks consent for a single project.

The reason why the Cadent Gas pipeline adjacent to the A12 scheme has been treated as a separate NSIP is because the pipeline application is referred to a different Secretary of State and is subject to a different National Policy Statement.

REP7-064-003
Sub-Part
<p>After failing to include McIPC/MIAG in the list of the 'status' of all Statements of Common Ground (SOCG), it is apparent that NH continue to fail in their duty to consult in any form with MIAG and McIPC and NH are operating in a manner that is obdurate, untruthful and myopic. It is with thanks to the ExA for bringing this to the attention of the ISH and forcing NH to comment and admit their litany of failings;</p>
Applicant's Response
<p>The Applicant has included a summary of the status of the Statement of Common Ground in the Statement of Commonality [REP7-032] as it confirmed it would at Issue Specific Hearing 5.</p> <p>The Applicant at Open Flooring Hearing 1 agreed to pursue a Statement of Common Ground with the Interested Party, but appreciates that securing a final one has not been possible.</p>
REP7-064-004
Sub-Part
<p>Throughout the enquiry, and in the months leading up to it, NH have failed to consult in a reasonable or openminded manner, as required by law, and at least in the minimum, by the Gunning Principles; This abrupt email was received as addressed and without preamble from NH's legal team. It is evident, once again, that NH have marginalised and 'forgotten' promises and commitments made to MIAG/McIPC. This email clearly demonstrates that there is no intention on the part of NH to seek, or even try to seek, any common ground. The endeavour to find any common ground is doomed to fail by the attitude on show through this communication</p>

Applicant's Response

The Applicant responded to this point at Deadline 7 in Applicant's Comments on Information Received at Deadline 6 [REP7-045].

- The Applicant has carried out both statutory and non-statutory consultations in regard to the A12 Chelmsford to A120 widening scheme. This includes the following main consultations: Non-Statutory options consultation junctions 19 – 25 (23 January 2017 – 3 March 2017)
- Non-Statutory options consultation junctions 23 – 25 (21 October 2019 – 1 December 2019)
- Statutory consultation (22 June 2021 – 16 August 2021)
- Supplementary consultation (9 November 2021 – 19 December 2021)
- DCO change application consultation (13 April 2023 – 14 May 2023)

A Statement of Community Consultation (SoCC) was prepared, as prescribed by Section 47 of the PA 2008, by the Applicant setting out how it proposed to consult people living near the land that would be affected by the scheme.

The SoCC can be found in Annex F of the Consultation Report [APP-052]. The Applicant's preparation of the SoCC took into account the DCLG's (2015) guidance on pre-application process, and advice and guidance from the Planning Inspectorate.

The Applicant consulted with Essex County Council, as the lead Highway Authority and the local planning authorities, Braintree District Council, Chelmsford City Council, Colchester City Council and Maldon District Council on the content of the SoCC. The final SoCC was made available at locations along the proposed route, as prescribed by Section 47(6) of the PA 2008, alongside statutory consultation materials.

On the 12 September 2022, the Planning Inspectorate decided to accept the application for Examination. As a matter of law, the Planning Inspectorate could only accept the application if it were satisfied that the Applicant had complied with Chapter 2 of Part

5 (pre-application procedure) (see s55(2)(e) of the 2008 Act. Thus, the application could only have been accepted if the consultation process with the local community accorded with the statutory requirements. The Planning Inspectorate concluded that the Applicant has complied with Chapter 2 of Part 5 of PA 2008 and thus that the statutory consultation requirements had been met.

With regard to the email and commonality, or indeed lack of it the Applicant has provided further comments in its response REP7-064-006

REP7-064-005

Sub-Part

Email received by MIAG and McIPC and Ashfords, Sent from Mr Richard Guyatt, Partner Womble Bond Dickinson, representing NH Quote;

From: Sent: 29 June 2023 18:41 To: Cc: Messing Cum Inworth Parish Council Subject: FW: A12 - Messing and Inworth (379023.16) [WBDUK-AC.FID124263388]

Andrew and Stephen, Andrew reminded me at the hearing on Tuesday I was yet to fully respond following the email exchanges regarding the proposed statement of common ground meeting. Andrew's previous emails indicate that the Parish Council and MIAG both do not believe that progress is possible on the Statement of Common Ground. The Statement of Common Ground and the proposed agenda relating to it were designed to try to narrow down the issues between us, rather than spend time on issues that have been dealt with by the parties before the Panel and where common ground is not going to be found. The Main Alternative was not included as a separate agenda item for the SOCG meeting because the parties' positions on the Main Alternative is clear. The Main Alternative is dealt with in the draft Statement of Common Ground, but my client anticipated the parties' position on this aspect would not change. A separate agenda item was therefore not provided for. You have since submitted in to the examination your document from February commenting on the initial draft Statement of Common Ground, to which my client has already responded. We also have your position paper. My client's recording of the position between the

parties in the Statement of Common Ground will be that there is no commonality, as you have indicated. As you indicated there was little purpose in arranging a further Statement of Common Ground meeting, my client will assume that this particular line of communication between the parties is now at an end. My client remains open to meeting with the Parish Council and MIAG. If you would like to arrange a meeting and to set out the purposes of such a meeting my client can consider the proposal. I would not at this time anticipate my being involved in such a meeting but can serve as the initial conduit for communicating meeting arrangements, if that assists.

Richard Guyatt Partner Womble Bond Dickinson (UK) LLP

End quote

Applicant's Response

The Applicant notes the content of the email sent to Messing and Inworth Action Group, Ashford and Messing cum Inworth Parish Council.

REP7-064-006

Sub-Part

It is fortunate the previous emails and exchanges are in the possession of the ExA, and we urge a thorough re-examination of the sequence of events. This will expose the errors, misstatements and flaws of NH and in our view Mr Guyatt has mis-remembered the communication stream.

The original statement of 'lack of commonality' was from Mr Guyatt. It referred to the matter of the agenda for the SOCG meeting and was about including the vital Main Alternative topic for discussion. It is to dissemble and engage in legerdemain to suggest that this failure is on the part of either McIPC or MIAG.

Responsibility for the failures in reaching any common ground are all entirely due to NH.

As matters progress, this, and all other failings, are being quantified, filed and recorded for future reference.

Applicant's Response

The Applicant agrees it is important that the email exchanges have been submitted and is grateful to the Interested Party for submitting them.

With regard to commonality between the Applicant and the Interested Party, or indeed lack of it as reaffirmed by the Interested Party at Issue Specific Hearing 5, the Applicant agrees commonality has not been reached. Fundamentally, the Interested Party has and continues to pursue the Main Alternative and while the Applicant accepts of course that it is the Interested Party's right to do so, the Applicant having assessed the proposals in great detail does not agree it is the correct approach and no new information has been presented by the Interested Party to change that assessment.

Of course, the Interested Party has made a significant number of submissions for examination, as well as attending hearings to make its views clear and the process will ensure that they are considered.

**Hatfield Peverel Feoffees (The
Hatfield Charities)**

REP7-065-001

Sub-Part

A12 Chelmsford to A120 Widening Scheme - Compulsory Purchase Orders

The charity owns two parcels of land listed under Land Registry reference EX841314, located close to junction 20b at Hatfield Peverel, and the Trustees are extremely concerned at the current CPO proposals relating to the larger of these (the Island site) being situated between the northbound on-slip and the A12, on which a telecommunications mast is situated.

National Highways (NH) has applied three plot references to the Island site, namely 6/14a, 6/14b & 6/14d. Their proposal is for permanent acquisition of 6/14a & 6/14d, with temporary possession and permanent rights over 6/14b. This will basically eliminate any further development potential there might have been on the Island site as it currently exists and, most worryingly, leave the charity with a much diminished, irregular-shaped plot entirely isolated within NH property, on which the restriction of an easement will additionally apply.

The Trustees have previously made contact with the Valuation Office Agency, with a view to acquisition of land by agreement, and have also requested NH permanently acquire the whole Island site, on which a highways maintenance and/or storage facility might be established. For the reasons given above the Trustees believe it unreasonable to be left with a remnant plot (6/14b) that will be practically unusable and consequently lacking in any actual value but are encouraged by discussions to date as it would certainly provide much relief to the charity if NH is finally able to agree to acquisition of the entire Island site.

Applicant's Response

The Applicant has been working closely with the Interested Party and has made an offer to permanently acquire plots 6/14a, 16/14c and 16/14d shown on the Land Plans [REP7-003]. The request to purchase the remaining land of the 'island site' was made recently (14 June 2023) and a response provided by the Applicant to say this would be considered and confirmed following detailed design.

Keith Lomax

REP7-066-001

Sub-Part

Summary of points made by Keith Lomax at Issue Specific Hearing 5 (27th June 2023)

â€¢ Firstly, I would like to thank the Examining Authority for taking the time to make an unaccompanied site inspection, to view the locality from our perspective.

â€¢ I have nothing further to add in relation to the proposed location and alternative proposal made by myself and a number of my neighbours.

â€¢ I do, however, wish to make some observations on the approach of the Applicant. At a previous hearing one of the speakers referred to National Highways "reluctance to admit that they had made an error". Perhaps that is too strong, but there is certainly a reluctance to make changes (as has been shown from this specific issue and was a common theme from a number of other discussions during today's meeting).

â€¢ In their document "9.66 Gershwin Boulevard Issue Summary Note" at section 2.2, the Applicant describes their consultation process, which I would contend is a smokescreen to cover the inadequacy of the consultation. Even if people were aware of the consultation taking place (which clearly many including myself were not), they would have expected it to be about the overall road scheme. What is a small part of the scheme will have a significant impact to a small locality, and one would have has to pore over detailed plans to even discover the existence of the proposed bridge.

Applicant's Response

The Applicant does not accept that it has been unwilling to make changes where they are required. Indeed, in Autumn 2021 it ran a Supplementary Consultation [APP-057] that covered various changes made by the Applicant following the Statutory Consultation. It also ran a Change Consultation during examination which responded to design changes that have been made.

It is important to note that broadly the design of the road itself (i.e. junction improvements and alignment of the road) reflects the route options consultation the Applicant undertook. More information on that can be found in Annex A1: Option Consultation Materials [APP-046].

In regard to adequacy of consultation, the Applicant has consulted adequately. Following the submission of the application for development consent, all local and neighbouring authorities were asked by the Examining Authority whether they felt the Applicant had consulted adequately. All the host authorities (Essex County Council, Braintree District Council, Chelmsford City Council, Colchester City Council and Maldon District Council) stated the Applicant had carried out adequate pre-application consultation in accordance with the provisions set out in Section 42 of the PA 2008, Section 47 of the PA 2008 and Section 48 of the PA 2008. Five of the seven neighbouring authorities also confirmed the Applicant had consulted adequately with the remaining two providing no comment.

On the 12 September 2022, the Planning Inspectorate decided to accept the application for Examination. As a matter of law, the Planning Inspectorate could only accept the application if it were satisfied that at the Applicant had complied with Chapter 2 of Part 5 (pre-application procedure) (see s55(2)(e) of the 2008 Act. Thus, the application could only have been accepted if the consultation process with the local community accorded with the statutory requirements. The Planning Inspectorate concluded that the Applicant has complied with Chapter 2 of Part 5 of PA2008 and thus that the statutory consultation requirements had been met.

REP7-066-002

Sub-Part

â€¢ The Applicant is also being obtuse about the extent of diversion that would be required, by suggesting the distance that would be required to cover the route by means of existing roadways. However, the planned "ecological reclamation area" to the South of the A12 between Howbridge Hall Road and the replacement open space includes a track along the Northern edge. It must surely be possible to route the path either along or parallel to this track?

â€¢ Another point that I would have made but could not due to the limited time and also the quality of the communications this morning is that the proposed replacement open space is unlikely to compensate for the lost space to the North of the A12. People living in the adjoining roads use the space exercise for themselves and their dogs. Surely most would not consider a walk of what must be at least 100 meters including the ramps on both sides as well as the bridge itself just to access a different piece of grass. I have also spoken to Councillors on both Witham Town Council and Braintree District Council, neither of which have the resources to maintain another piece of open space.

Applicant's Response

The length of the diversion is measured as the distance from one end of the stopped up section of footpath via the new route to the other end of the stopped up footpath. This is irrelevant of whether there is a proposed access track or not – it is the physical distance that a person would need to walk via the new route to avoid the stopped up section of footpath.

The length of this diversion is influenced by the distance of the proposed bridge from the proposed alternative and also the geometry of the ramps. As the alternative is approximately 300m from the proposed location, and a person would need to walk there on one side, and then back on the other, plus any additional distance associated with the ramps, the overall additional length has been assessed as likely being between 550 and 600m.

The proposed track along the southern embankment of the A12 between Howbridge Hall Road and footpath 121_95 will be a private track that provides maintenance access to the proposed attenuation pond and to private land adjacent to the pond. Whilst the Applicant acknowledges potential further enhancement of the network that could be brought about by a connection from the southern ramp of the bridge to Howbridge Hall road, this has the potential for introducing a new conflict point for non-motorised users along Maldon Road at the junction with Howbridge Hall Road and the Applicant is not proposing to dedicate a connecting route as part of the proposed scheme. However, the Applicant has agreed to work with whoever is the owner of the pond access track in the future to see whether it could be used by the public for non-motorised uses.

Regarding the lost amenity land to the north of the A12, the footprint of the bridge would not take up the entirety of the land in the vicinity of Olivers Drive. The works are for the diversion of a public right of way so the land will remain accessible by the public. The proposed replacement land also provides an additional approximately 1.75ha of land available for amenity use compared to the existing space near Olivers Drive. The proposed Replacement Land to the south of the A12 replaces land not only by the Olivers Drive / Halfacres area, but also open space between the A12 and Gershwin Boulevard. As a result, the new area of replacement land is greater than the area lost near to Olivers Drive/Halfacres.

The proposed bridge would also give the opportunity for those who wish to use the proposed open space on the south of the A12, as well as those who may wish to take longer circular walks via Maldon Road or towards the Whetmead Local Nature Reserve.

The Replacement Land provided replaces open space lost to the scheme, which the relevant authorities are currently maintaining, on a not less than 1:1 basis. Therefore, the overall cost for maintain the Replacement Land should be nominally cost neutral.

Regarding the Interested Party's discussions with Witham Town Council and Braintree District Council, the Applicant has had extensive engagement with the Parish, District and County Councils on replacement land, and this matter has been agreed in all of the Statements of Common Ground submitted by the Applicant at Deadline 7:

- 8.12 Statement of Common Ground with Essex County Council [REP7-027]
- 8.14 Statement of Common Ground with Braintree District Council [REP7-029]
- 8.16 Statement of Common Ground with Witham Town Council [REP7-031]

REP7-066-003

Sub-Part

â€¢ Subsequent to my evidence to the hearing, a representative from Essex County Council said that the opinion of the Council was that the bridge should provide a connection to Howbridge Hall Road. It is important to note that this road is in two parts with a gap between them following a severance when the existing A12 was built in around 1964 (the same time as the footpath in question). From the context of what was said, in relation to providing access to the onward paths, this presumably relates to the Southern section. If the ExA includes a reference to this in their recommendations it would be necessary to specify this, as Kinloch Chase already provides a connection to the Northern part of Howbridge Hall Road.

Applicant's Response

The Applicant notes the Interested Party's comment to the Examining Authority.

As explained in response to REP7-066-002, the Applicant is not proposing to provide a connection between the southern ramp of Gershwin Boulevard bridge and Howbridge Hall Road.

REP7-066-004

Sub-Part

â€¢ Finally, we have been told on a number of occasions, including at ISH4 and also to me personally by Mr Goodwin when I happened to meet him near to my house, that the DCO cannot be changed without starting again. Yet the DCO is still considered to be a draft and NH have accepted other changes.

Applicant's Response

It is the Applicant's opinion that to amend the location of the Gershwin Boulevard bridge from the proposed location to the alternative location proposed by the Interested Party and other stakeholders would require additional permanent land acquisition. None of the changes to the DCO proposed by the Applicant and subsequently accepted into examination by the ExA required additional permanent land acquisition.

Additionally changing the location of the bridge would have brought in new visual receptors and require additional consultation. It is due therefore to the scale and nature of the change to move the bridge and in particular the need to include additional land in the Application, that the Applicant does not believe it could have been accommodated as a change within the examination period.

Mark East	REP7-067-001
Sub-Part	
<p>I respectfully request that the Inspector's reopen consultation on Air Quality impacts in light of the above guidance issued by Government as it is clear that Hatfield Peverel should under this guidance be declared as an AQMA under Braintree District Council and as such this is a material change and renders the evidence as presented by National Highways in need of reassessment.</p>	
Applicant's Response	
<p>The guidance to which Mr East refers to has not been specified. As such, a fully considered response from the Applicant is not possible. However, with respect to the declaration of an Air Quality Management Area (AQMA), this has been fully explained in Section 2.2.1 of the Applicant's Response to ExQ2 [Rep4-055]. Here, the definition between the DMRB LA105 guidance to assess the significant impacts of proposed schemes are contrasted with Local Air Quality Management (LAQM) carried by local authorities. The declaration of an AQMA falls under the remit of local authorities. LAQM is the statutory process by which local authorities monitor, assess and take action to improve local air quality as required under the Environment Act 1995 (as amended by the Environment Act 2021 and secondary legislation). Local Air Quality Management Technical Guidance (LAQM-TG22) is designed to support local authorities in carrying out their LAQM duties. If monitoring or modelling has shown that an Air Quality Objective (AQO) has been exceeded or a risk of an exceedance in an area of interest is likely, the local authority is obligated to declare an AQMA through the production of an AQMA Order.</p> <p>The modelling results as presented in Environmental Statement Chapter 6: Air Quality [APP-073] did not indicate any exceedances of the AQOs in Hatfield Peverel in the opening year of the proposed scheme. In addition, Braintree District Council has also not indicated the need to declare an AQMA in Hatfield Peverel through the work it has undertaken as part of the LAQM process.</p>	

Mark Cathcart	REP7-068-001
Sub-Part	
<p>Cadent gas pipeline diversion near Witham (TR010060 A12 Chelmsford to A120 Widening Scheme – Gas Pipeline Diversion)</p> <p>Deadline 7 - Written submission of oral representations made at Issue Specific Hearing 5 on 27 June 2023</p> <p>Speaker: Mark Cathcart (owner of the Blue Mills nature reserve/local wildlife site)</p> <p>'No-dig' commitment in relation to the Blue Mills nature reserve</p> <p>At the hearing I queried whether the 'no-dig' (ie tunnelling) protection afforded by the Tree Preservation Order extended over the entirety of the Blue Mills Local Wildlife Site. The Applicant's response by email on 29 June 2023 confirmed that it does. We consider this to be satisfactory.</p>	
Applicant's Response	
<p>The Applicant welcomes the Interested Party's support for the use of trenchless installation techniques for the installation through the Blue Mills Local Wildlife Site.</p> <p>The Applicant has contacted the Interested Party to correct and confirm that the REAC commitment BI50 relates to the area covered by the Tree Preservation Order (TPO), which can be seen on Figure 1, of the first iteration Environmental Management Plan Appendix A: Register of Environmental Actions and Commitments (REAC) [REP7-015]. The commitment covers all of the area shown in green (within the Order Limits) which represents the area of the TPO. The proposed Local Wildlife Site (LWS) is a larger area, and the Applicant's understanding of this area has been sent to the Interested Party for comparison.</p>	

REP7-068-002

Sub-Part

Incorrect National Vegetation Classification – ‘sedge-bed’ described as ‘nettle-bed’

At the hearing I queried the Applicant's description of our sedge-bed (commonly known as reed-bed) in the nature reserve as 'nettle-bed' (Supplementary Botanical Report [REP2-027] Table 1).

We have corresponded with the Applicant on this issue. The area in question (f2f) is currently classified as 'other swamp' but we consider it to be more accurately described as sedge-bed because the greater part of it is dominated by Lesser Pond Sedge (see photographs in Appendix A). (Sedges are closely related to reeds, and frequently co-exist with these in the same wetland habitat, as is the case in the Blue Mills nature reserve). The Applicant acknowledges in his email that the area does in fact include part of the central area of sedge- bed and that nettles only dominate on the fringes of the wet woodland.

We therefore maintain that the description of the whole area as 'nettle-bed' is inaccurate and misleading.

In further support of the existence of our sedge-bed and the inclusion of part of it within the DCO order limits, we refer the Planning Inspectorate to the Essex Wildlife Trust's Local Wildlife Trust citation for Blue Mills which refers to 'a central area of reedbed', and also to the observation of it during the Accompanied Site Inspection, during which it was clearly visible, as it is still by a simple examination of Google Earth pictures.

The wetland basin in the Blue Mills nature reserve to the south of the order limits includes an area of reed and sedge-bed, wet woodland, and importantly the second, nationally important, veteran female Black Poplar, but this several acre site is currently

being discounted by the Applicant even though it may be affected if the route passes through any part of the wetland area within the order limits.

The Applicant has not carried out any National Vegetation Classification or veteran tree surveys for this area and we note with concern the statement in the Applicant's email of 29 June 2023 that the 'other area of 'swamp habitat'.. south of the order limits.. would not be affected by the gas main diversion.' This is incorrect - as this area is part of the same wetland basin as the wet woodland and sedge-bed within the border limits, it would be directly affected by hydrological changes such as increased drainage caused by any unmitigated tunnelling (or trenching) in any part of the wetland basin, including the area within the order limits.

We request that National Vegetation Classification and veteran tree surveys be carried out for this equally affected area and be taken into account in the planning and design process.

Wet woodland is of national importance as it is one of the rarest habitats in the UK and its creation requires unique geological conditions which are difficult to reproduce elsewhere. The Blue Mills site benefits from water flowing from the elevated ground on the eastern side which is then trapped by the Anglo-Saxon river embankment.

Applicant's Response

The sedge-bed described by the Interested Party has been classified in accordance with the UK Habitats Classification methodology as 'f2f other swamp habitat'. The description provided by the Applicant in table 2 of the Supplementary Botanical Report [REP2-027] notes the habitat was dominated by nettles with frequent recordings of greater pond sedge. The Applicant thanks the Interested Party for photographs kindly forwarded directly, which the Applicant believes to be towards the southern part of the 'other swamp habitat' adjacent to the wet woodland. The Applicant agrees that in the photographs provided by the Interested Party 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 transitions to areas dominated by greater pond sedge as shown in the photographs provided by the Interested Party.

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 on Figure 1 of the Supplementary Botanical Report [REP2-027], the area of 'f2f other swamp habitat' is south of the Order Limits and would not be affected by the gas main diversion.

The Applicant acknowledges the text within the Blue Mills proposed LWS citation which describes 'a central area of reedbed', however the citation is describing the entire LWS which extends south of the Order Limits (see Appendix A - Figure 1 of this document) and therefore what is described as 'central' means central to the entire proposed LWS, not central to the part of the proposed LWS which sits within the Order Limits. As shown on Figure 1 of the Supplementary Botanical Report [REP2-027] (and also shown of Appendix A - Figure 1 of this response) and as explained on page 64 of the Written Submission of Oral Case for ISH5 [REP7-043], there is no reedbed within the Order Limits. The area of reedbed is located east of the bend in the River Blackwater (as indicated on Appendix A - Figure 1 of this document). This is consistent with Figure 1 of the Supplementary Botanical Report [REP2-027], i.e., it is south (and outside) of the Order Limits.

The Applicant would also like to draw Mr Cathcart's attention to Figure 1 in Appendix A of this document which presents the correct boundary of the Blue Mills proposed LWS. This figure supersedes Figure 1 as provided in the Applicant's Comments on Information Received at Deadline 5 [REP6-090] within which the boundary of the LWS was incorrectly shown.

The Applicant acknowledges the presence of reed bed and a second black poplar within the local area, however these are located south of the Order Limits. 'Other swamp habitats (f2f)' supporting sedge and wet woodland are however located within the Order Limits.

The Applicant acknowledges the hydrological connectivity between the reedbed and black poplar and the other swamp habitat and wet woodland. However, as per commitment BI50 of the REAC [REP7-015], "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, depth and locations of temporary works required to install the pipe including the launch and receptor pits, 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].” With this commitment, there would be no trenches through habitats within TPO 07/22 which includes the wet woodland and ‘other swamp habitat’. There would therefore be no indirect effects from trenching on reedbed and black poplar which have hydrological connectivity with these habitats.

British Geological Survey 1:50,000 scale mapping shows that the Blue Mills proposed LWS sits largely within alluvium – ‘clay, silt and sand’ superficial deposits. Data collected to inform the detailed design of the proposed scheme shows that for a borehole situated within this geological layer, the top 2.85m of ground is comprised of clay rich deposits. Due to the low permeable nature of this soil type it is considered unlikely that construction of the gas main using trenchless techniques would lead to a significant effect on the wet woodland, swamp and other hydrologically connected habitats.

Below 2.85m depth the borehole data show the geology changes to sandy gravel. Construction of the pipeline within this layer using trenchless techniques is unlikely to lead to a significant effect on the wet woodland, swamp and other hydrologically connected habitats as this type of deposit is very permeable and will already have a good flow of groundwater.

The depth and alignment of the pipeline would be determined at detailed design, as per commitment RDWE58 of the REAC [REP7-015]. The minimum depth under the hard bed of the main river would be 1.5m, and this depth would be maintained for 5m either side of the banks of the river before rising. This means the deepest section of pipeline may be situated within the sandy gravel layer underlying the shallower clay rich deposits, where the likelihood of any adverse effects on the wet woodland, swamp and other hydrologically connected habitats is reduced.

It is the Applicant’s view that the most effective means of mitigating hydrological effects on the habitats at Blue Mills proposed LWS is through construction using trenchless techniques as opposed to an open cut method. This is secured by commitment B150 of the REAC (REP7-015).

National Vegetation Classification (NVC) surveys have not been undertaken by the Applicant to inform the DCO application. The Applicant has used an alternative methodology, UK Habitats Classification, as this methodology provides an appropriate level of detail to determine the type and extent of habitats present within the Order Limits to inform the assessment of effects of the proposed scheme. UK Habitats data also feeds directly into the biodiversity net gain calculator so was required for that purpose. NVC survey methodology provides a very detailed assessment of the abundance of species using quadrats. For woodland habitats these are at a scale of between 4m x 4m and 50m x 50m (different scales are required for different layers of the woodland, field, shrub, canopy, etc), and for grassland and swamp habitats at a 4m x 4m scale. This level of detail was not required to assess the effects of the proposed scheme on the habitats present, and the Applicant does not consider that further assessment is required.

Wet woodland priority habitat has been valued by the Applicant as being of National value (see Table 9.22 of Chapter 9: Biodiversity [APP-076]). The Applicant has assessed that there would be no significant effects on the wet woodland at Blue Mills proposed LWS and therefore no mitigation is required.

REP7-068-003

Sub-Part

The Applicant has not yet presented the Planning Inspectorate with any route or design details.

We wish to express our concern that the information presented to the Inspectorate to date is limited to the drawing of a wide DCO corridor across our land. While we appreciate the 'no-dig' assurance from the Applicant, we have no confirmation of the exact line of the route or of numerous other safeguards that we consider important to protect the ecological value of our nature reserve, such as:

- whether the 'no-dig' assurance applies to the operational as well as the construction phase
- the depth of tunnelling and root protection measures
- measures to prevent water draining from the wetland area into or through the tunnel
- an assurance that, in order to minimise disturbance to wildlife, no overground access is required during the construction and operational phases.

We believe these issues should be decided with the benefit of Planning Inspectorate oversight.

We wish to re-affirm to the Planning Inspectorate that the route described in our deadline 5 submission [REP5-048] was indeed the preferred route presented by the Cadent Team during their site visit on 22 March 2023, as the Applicant has since stated to us (via email dated 14 June 2023) that no particular route was put forward by the Cadent Team during that visit and that instead 'numerous routes were considered' and visually surveyed.

We are unable to understand how this misunderstanding has come about. We can confirm that we both attended the meeting, that we accompanied the Cadent team throughout the entire visit, that we were shown the preferred route marked on Cadent's planning map which was described as the route that had been independently selected as the preferred route, and we can confirm that this was the only route that was visually surveyed or discussed during the visit.

The route passes to the north of the Blue Mills nature reserve between the northern sited Black Poplar and the confluence of the Brain and the Blackwater and has our full support because it avoids the veteran and potential veteran trees and avoids crossing any part of the strip of mature oak woodland.

Finally, we wish to express our full support for the comments made by Maldon District Council during the examination process in relation to the Blue Mills nature reserve.

Applicant's Response

The Applicant welcomes the Interested Party's continued support for the route corridor around Whetmead Local Nature Reserve and for the potential use of trenchless installation methodology as considered during the Cadent site visit at Blue Mills on 22 March 2023.

The purpose of the site visit on 22 March 2023 was for Cadent to assess trenchless installation feasibility/constructability. The Applicant can confirm that the routes considered by the Cadent

team during the site visit on 22 March 2023 cross the River Blackwater to the north of the original Blue Mills proposed Local Wildlife Site (as shown on the sketch on the last page of 'Suggested locations for site inspections (Accompanied or Unaccompanied), including justifications' submitted by the Interested Party [PDA-016]) passing between the potential veteran black poplar and potential otter holt and the confluence of the River Brain and the River Blackwater.

Cadent has expressed that they also believe that the most favourable methodology of construction would be a trenchless installation at this location, as opposed to an open cut method of construction, which has been reflected in REAC commitment BI50.

As the detailed design is ongoing it is yet to be confirmed whether ending the trenchless installation in land parcels 8/54c and 8/54d, as per the Interested Party's proposal at the Deadline 2 submission [REP2-069] and shown on Figure 1 of the Interested Party's representation, or ending in land parcel 8/48e as shown on Figure 1 of the Interested Party's representation is the preferred option. Both of these routes were assessed as feasible from the visual survey carried out.

The exact route of the trenchless crossing, or crossings, within the corridor dictated by the Order Limits is yet to be finalised and will be subject to engineering, environmental (including the REAC commitments) and operational parameters. It is expected that Cadent will confirm their preference as detail design progresses over the coming months.

Cadent's design will include mitigation measures such as:

- 'no-dig' REAC commitment BI50 during the construction phase and for planned operational maintenance activities
- the depth of tunnelling and root protection measures
- measures to prevent water draining from the wetland area into or through the tunnel
- measures to minimise disturbance to wildlife.

Mary Lindsay

REP7-069-001

Sub-Part

TR010060 – A12 Chelmsford to A120 widening scheme Mary Ann Lindsay and John Chilcott Lindsay

Interested Party reference number: 20032403 Supplemental to our presentation to the ExA at CAH3 on 27

th June 2023 and our previous submissions. We would like to reiterate our appreciation of the time and attention given by the Examining Authority to our case and the opportunities afforded to us to speak at the various hearings. We are still not reassured by, or satisfied with, the response of the Applicant's representatives to our request for adequate mitigation measures to protect our home from the devastating effects of the scheme. Haul Road With regard to the Haul Road south of our property, the Applicant explains that this is necessary as it "wished to save the neighbouring property" (Barconn Ltd.), thereby choosing to blight a permanently occupied domestic property in order to save a commercial property. We cannot understand why a commercial property takes precedence over a historic 250-year-old traditional Essex weatherboard house that has been occupied by the same family for over 80 years. The Applicant's refusal to relocate the haul road means that we shall be subjected to constant noise and visual intrusion. It seems that no measures have even been considered to reduce the impact on the quiet enjoyment of our home and garden. Construction Work In its response to ExQ3.5.4, the Applicant states that it has added further controls to the proposed works in the vicinity of Columbyne Cottage. We would like details of these changes and how it is claimed they will further mitigate some of the disruption. The Applicant has not communicated this information to us. The Applicant acknowledges that there will be disturbance during construction but has not communicated any specific measures that it will take to protect us from that.

Boundary Hedge fronting B1023 owned by Columbyne Cottage The Applicant continues to refuse to guarantee the retention of our hedge fronting the B1023. This hedge was planted over 100 years ago and obviously is within the curtilage of the property. It is generally acknowledged that Land Registry plans can be inaccurate.

Discretionary Purchase The Applicant sets out the rules governing Discretionary Purchase in situations where the owners have a pressing need to sell their property in which case the owners are required pay all their own costs. If, however, the pressing need to sell is the result of, and only the result of, the aggravation caused by National Highways' road widening scheme, it is patently totally unjust that we should be required to meet the costs of a move that we would otherwise not choose to make. We strongly believe that this makes Columbyne Cottage a unique case that falls outside the normal rules. Additionally, we believe that we are suffering Injurious Affection. We ask again that the Examining Authority requires the Applicant to mitigate as much as possible the effects of the works during and after completion of the scheme and also to reconsider concessions with regard to the procedures governing Discretionary Purchase should the need arise. We remain extremely concerned and anxious about the effects of the scheme on our quality of life and our physical and mental health and feel that the Applicant has not properly provided the reassurance and mitigation measures that we need.

Applicant's Response

The Applicant has responded to the comments made by the Interested Party in the Deadline 7 Submission - 9.71 Written submission of oral case for Compulsory Acquisition Hearing 3, Ref 7.1.4 [REP7-044].

The Applicant notes that documentation referred to in the responses reference above has been updated at Deadline 7. In particular, the first iteration Environmental Management Plan Appendix A: Register of Environmental Actions and Commitments (REAC) [REP7-015] was updated at Deadline 7.

**Matt Cloke, Churchmanor
Estates Company**

REP7-070-001

Sub-Part

These Representations are made The Churchmanor Estates Company plc (ref A12C-AFP355) and Churchmanor Ltd (A12C-AFP354) (related group companies, and hereinafter referred to together as “Churchmanor”) in respect of its interest in development land at Gershwin Park, Witham. The Representations are made further to our previous Representations, and our appearance at the CAH3 hearing on 27th June 2023. Churchmanor has been the landowners’ consortium development partner since 2010, and has a legal interest in the land by way of a development agreement which, subject to certain Conditions being Satisfied, gives it a contractual right to acquire land for development from the landowners as required. This legal interest is registered on the various Land Registry Titles over which the development agreement applies. Accordingly, Churchmanor is understood to be an Affected Person, and not merely an Interested Party. A copy of the development agreement can be supplied to the Planning Inspectorate on request, but is not submitted herewith due to the fact it contains Confidential commercial Information, and therefore it would not be appropriate to publish it on the Examination website. Gershwin Park is a strategic westwards extension to Witham. It is located to the north of the Existing A12 and to the east of the Existing A12 Witham South junction 21. Several outline planning permissions for a Combination of Residential, commercial, and community uses have been granted in the past, with the latest outline permission (12/01071/OUT) granted by Braintree District Council in July 2013. The approved masterplan is attached at Appendix 1. This consent has been Partially implemented via several reserved matters Applications; in addition, other full permissions have also been granted for related development not strictly in accordance with the outline permission. The undeveloped parts of Gershwin Park are also allocated in Section 2 of the Braintree District Local Plan (2013-2033), which was adopted in July 2022. These are broadly in accordance with the outline permission, with the areas of the site remaining to be developed variously allocated for retail and town centre uses, retail warehousing, business park, Residential, and informal recreation. The relevant part of the adopted Local Plan map covering Witham South is at Appendix 2. The area affected by the DCO Application is clearly allocated for “Business Parks” (blue dots), and part of the “Employment Policy Area” (blue Tinting). In the south west corner of Gershwin Park, this Allocation directly abuts the current extent of the A12. The site is referred in policy LPP2 of the Local Plan as site reference “h”, and is known therein as the “Maltings Lane Business Park (Gershwin Park)”. By way of Explanation, the reference to “Maltings Lane” is a historic one, on the basis the north eastern extent of Gershwin Park (when originally proposed) abutted Maltings Lane, and therefore (at the Time) was the point at which the strategic extension to Witham commenced. Policy LPP2 sets out the new strategic employment sites within the District, and it

is clear Gershwin Park forms an important Contribution to the total land supply. It is also specifically referred to in policy LPP6, again as "Maltings Lane". From our engagement with National Highways' agent to date, we do not believe the planning status of the land as outlined above is in dispute. Specifically, the red line around the Draft compulsory purchase order and DCO Application affects the following developable parts of Gershwin Park within the area allocated in the Local Plan for Business Parks: an area known as "plot 1", and extending to approximately 1.27 hectares, immediately to the north of the Existing A12, west of Gershwin Boulevard, and south of Griggs Way. On National Highway's land Acquisition plans, plots 7/14a, 7/16h, and 7/16f (part) are to be permanently acquired from plot 1, together with 7/16e (required for the Acquisition of service rights only). The plots to be acquired amount to approximately 0.39 hectares, or 30% of plot 1. an area of land known as "plot 28" extending to approximately 0.8 hectares, immediately to the south of Chipping Hill Primary School, the north of Gershwin Boulevard, and west of Owers Road. On National Highway's land Acquisition plans, plots 7/16b, 7/16c, and 7/17c are to be acquired for temporary occupation as a recovery yard. For the avoidance of doubt, this area is not included within Churchmanor's development agreement. The above are shown on the extract from National Highway's latest Land Plan, submitted to the Examination as REP6-015, at Appendix 3. In addition to the above, the landowners also own further plots of land affected by the DCO Application (7/16a, 7/16d, 7/16f (remainder), 7/16g, 7/17a, and 7/17d). These comprise verge/public access land alongside Gershwin Boulevard. For the avoidance of doubt, they are not regarded as developable land, and are also not included within Churchmanor's development agreement.

Applicant's Response

The Applicant has been working with representatives from Churchmanor Estates for over two years and is aware of the planning status of the piece of land referred to as "plot 1" and covered by plots 7/14a, 7/16e, 7/16h, and a small part of 7/16f.

The permanent acquisition of plots 7/14a, 7/16h and a 7/16f, shown on the Land Plans [REP7-003] was reviewed by the Applicant following a request to reduce the permanent land take by Churchmanor Estates. The indicative plans of the proposed development provided by Churchmanor Estates were analysed and overlayed onto the A12 works plans.

To reduce the proposed permanent acquisition in this area would require a substantial extension of the proposed retaining wall and would have other consequential impacts on highway geometry and other proposed highway assets. Following careful

consideration, it was determined the scheme as currently proposed is the appropriate design and it is not practicable to reduce the land take in this area.

Regarding plot 28 (plots 7/16b, 7/16c, and 7/17c) and the temporary possession of the land to be used for a recovery yard, a response has been provided at REP7-072-002. It is noted that further plots (7/16a, 7/16d, 7/16f (remainder), 7/16g, 7/17a, and 7/17d) do not form part of the development land and Churchmanor's development agreement.

REP7-070-002

Sub-Part

The red line also borders a developable part of Gershwin Park (known as "plot 18") to the south Hanfield Road, west of Gershwin Boulevard, north of Griggs Way, and east of the Motus Mercedes premises. It appears to us that the red line stops at the back of the existing footway, and therefore plot 18 is not affected by the DCO proposals. However, this is being raised at the Examination now due to a holding objection now made by National Highways until 29th September 2023 in relation to a planning application Churchmanor has made to Braintree District Council (23/00827/FUL) on plot 18. National Highways have not yet commented on whether they have any actual objection to the proposed development on plot 18, and therefore the landowners and Churchmanor need to reserve their position in this regard.

Applicant's Response

The Applicant has contacted their Spatial Planning team and has been informed that a letter will be sent to the promoter of the scheme the week commencing 10 July 2023. The letter will request further information so a full assessment can be undertaken to understand the potential impact on the existing A12 and the proposed A12 scheme.

REP7-070-003

Sub-Part

It is important to reiterate Churchmanor understands the importance of the A12 widening scheme, and do not object to the principle of the development. As a result, Churchmanor (along with the landowners' representatives Strutt & Parker, and Ceres Property) has engaged with National Highways' agents in a positive and constructive manner as soon as the original s48 notices were issued in June 2021, in order to identify and attempt to mitigate potential conflicts with the allocated and consented development land as early as possible. Our detailed plans for the development of plot 1, including drainage arrangements, were shared in full electronic form with National Highways well before the DCO process commenced in December 2021/January 2022, to allow them to be overlaid onto the A12 proposals and conflicts identified. However, despite that engagement, and repeated undertakings from National Highways that they would investigate mitigation options, no meaningful response was received from National Highways until a brief confirmation on 24th April 2023 that no changes to the design of the DCO scheme would be made. As a result of the extended period of uncertainty, Churchmanor has had no option (due to its contractual obligations to the landowners under the development agreement, which National Highways were warned about on numerous occasions) to draw up and submit a detailed planning application to Braintree District Council for the development of plot 1 as it currently stands, within the current extent of the Business Park allocation for this part of Gershwin Park as shown on the Local Plan map, and before confirmation of the DCO. This has been registered by Braintree District Council with reference 23/00836/FUL, for the development of 18 no. business and light industrial units, totalling 33,900 sqFT gross internal area on the ground floor.

Applicant's Response

The Applicant notes the Interested Party's comments and as explained in response to REP7-070-001, the Applicant has been engaged with representatives from Churchmanor Estates throughout the development of the proposed DCO application and subsequent examination period.

The Applicant has provided further clarification on the decision regarding the Interested Party's requests in response to REP7-070-004.

REP7-070-004

Sub-Part

A plan showing the location of plot 1 and the layout of this application overlaid with the DCO red line boundary is attached at Appendix 4. From this it is clear that: 5 units totalling 13,000 sqFT (38% of the floorspace of proposed scheme) are directly affected. When the site is redesigned to take account of the DCO boundary, it is likely that once boundary landscaping and surface water drainage is considered, the loss will be closer to 45- 50% of floorspace, resulting in a significant injurious affection claim for the retained land, on top of compensation for land acquired compulsorily. Churchmanor will in addition have a separate claim for loss of development profit. Accordingly, we must continue to object to the scheme insofar as it affects Plot 1, for the reasons stated below: The proposals would substantially impact on consented and allocated development land, firstly by compulsorily acquiring land, and secondly by way of injurious affection, as a result of the remaining land being very irregularly shaped, and some being rendered undevelopable. In particular, the eastern end of plot 1 would taper into a triangular point, and the southern boundary would feature several "steps". This is we are told by National Highways as a result of the need to a) provide an emergency refuge on the northbound carriageway, resulting in the land required "stepping in", and b) the need to provide drainage to prevent run off onto the A12 from the surrounding land. These features are shown at Appendix 5 on the extract from National Highway's latest General Arrangement Plans (Part 3), presented to the Examination as REP6-019. The above matter was highlighted to National Highways over 18 months ago, well before the DCO application was made. Despite extensive engagement with National Highways, regular undertakings from them to investigate the matter, and chasing for updates, no change to the design of the scheme has been made. This was only confirmed to Churchmanor on 24th April 2023, almost two months after the CAH1 hearing, and 3 days before the CAH2 hearing. Whilst it is appreciated space needs to be made for drainage to capture run off from the adjacent land, together with the proposed emergency refuge, no proper explanation has been provided as to why: the current design requires such a large buffer between the road alignment and edge of the land take the retaining wall proposed immediately to the west cannot be extended eastwards to reduce the extent of embankment around the emergency refuge (and therefore land take) needed, as per our suggestion to mitigate the impacts of the scheme the emergency refuge cannot be moved a very short distance to the east where it would run alongside, and make use of, otherwise undevelopable land, as per our suggestion to mitigate the impacts of the scheme as appears to be the case with adjoining parcels of land, the drainage cannot be run much "Tighter" to the boundary, as per our suggestion to mitigate the impacts of the scheme Essentially, the only response we have received was simply that National Highways had decided it would not make those changes. No assessment appears to have been made of the costs of making such an adjustment, versus the

compensation that would need to be paid for land purchase, injurious affection, and loss of development profit. Without this, it is impossible to say whether best value is being obtained for public money. No account appears to have been taken of the economic effects of the loss of consented development land, nor the need to replace it to maintain a suitable supply within Braintree District. We have asked for National Highways to confirm it will make an on account payment of reasonable professional fees to allow a re-design of the plot 1 layout and resubmission of the planning application to be made if the proposed land take boundary is confirmed, but to date no such confirmation has been received. These costs will include fees for the architect, civil engineer, landscape architect, mechanical and electrical engineer, BREEAM assessor, air quality assessor, ecologist, acoustician, and highway engineer. We would anticipate these costs to be in region of £50,000, plus the cost of the new planning application fee. Despite requests for Confirmation, no detail has been provided to date of the extent of services acquisition needed in parcel 7/16e, so we are unable to understand whether this parcel is in fact capable of beneficial use once the services are installed, or is effectively sterilised and therefore should be included within the land required for permanent acquisition. We note and do not disagree with the comments made in the CAH3 hearing by the Valuation Office that the parties are in broad agreement informally as to the rate per unit area proposed to be paid for any development land that is to be compulsorily acquired. However, compulsory purchase should always be a final fallback following all attempts to mitigate the quantum of land needed, and we object on the basis that the land take proposed still appears to be excessive and unnecessary.

Applicant's Response

In addition to the response to REP7-070 -004, the Applicant has endeavoured to provide further clarity on the issues raised by the Interested Party.

Regarding the land between the edge of the road embankment and the Order Limits, the Applicant requires adequate space to allow for sufficient drainage of the highway. The offset between the embankment and the scheme boundary may allow for refinement of the highway and verge design which could influence the width of the slope, and refinement of the drainage design within the limits of deviation. In any event however working space will be required for the proposed scheme at this location.

The Churchmanor development plans were shared with the Applicant prior to the submission of the DCO application, however, the preliminary design for the proposed scheme available at the time did not allow the Applicant to respond to the Interested Party's requests with a sufficient degree of certainty. The Applicant is now proceeding with the detailed design of the proposed

scheme in parallel with the DCO examination and has been able to investigate the use of this land in sufficient detail to respond to the Interested Party.

The Applicant has investigated extending the retaining wall and relocating the emergency area to the east of the proposed location, but found that there were insufficient justifications to change the design.

The Applicant also investigated moving the emergency area in isolation and found that without extending the retaining wall the clash between the allocated proposed employment site and the proposed scheme would remain.

Following careful consideration, it was determined the scheme as currently proposed is the appropriate design and it is not practicable to reduce the land take in this area. This land is required to provide drainage at the interface with the retaining wall and facilitate maintenance of the retaining wall during operation.

The Applicant is in discussion with the developer regarding the scope of professional services required to amend the developer's planning application and/or development plans should the DCO be made and implemented.

The requirement for the use of parcel 7/16e is for Work No. U54 as shown on Sheet 7 of Works Plans Utility Diversions [REP6-005]. As described in the Draft DCO [REP7-005], "As shown on sheet 7 of the utilities works plans, the diversion of buried 11kV electricity cable ducts of approximately 600 metres in length between Latneys and Gershwin Boulevard, Witham with a crossing of the A12 to the east of Woodend Bridge". Access to the line for future maintenance purposes will be secured with the asset owner, UK Power Networks, in the form of their standard form documentation.

The Applicant notes the Interested Party's comments regarding CAH3 and the agreement regarding land values. The Applicant has previously explained above that land and rights as shown on the Land Plans [REP7-003] is required to deliver the scheme.

REP7-070-005

Sub-Part

We have a further objection to make in respect of Plot 18. Plans showing the location and layout of the proposed development for which the planning application referred to above is attached at Appendix 6. This site is not within the red line of the DCO. We have submitted a planning application to Braintree District Council (23/00827/FUL) for the development of 3 no. retail units, 2 no. drive thru units, and an ultra-rapid electric vehicle charging station. National Highways made a holding objection on 15th May 2023 that the application should not be determined before 29th September 2023, noting that:

“We are currently reviewing the documentation supporting this planning application and have not yet reached a view if the development proposals will have a material impact on the operation of the Strategic Road Network. Consequently, it is requested that this application is not determined before 29 Sept 23. If we are in a position to provide a formal response earlier we will withdraw this recommendation accordingly. It is noted that the A12 construction red line boundary is close to this site.”

National Highways should be capable now of confirming the development proposals on this plot do not fall within the red line of the DCO, nor affect the DCO proposals. If that is the case, there is no justification for a response time of up to four and a half months – it is not uncommon for National Highways to require a little extra time to consider applications, but the time proposed is excessive. We would be very concerned if National Highways now regard any part of plot 18 as falling within the DCO boundary, as they have not raised this point at any point in the last 2 years since the issue of the original s48 notices.

We trust these comments set out our current objections clearly to the Inspector, but we would be pleased to expand further or clarify any point which remains unclear.

Applicant's Response

Regarding Plot 18 as referenced by the Interested Party, the Applicant has contacted their Spatial Planning team and has been informed that a letter will be sent to the promoter of the scheme, the week commencing 10 July 2023. The letter will request further information so a full assessment can be undertaken to understand the potential impact on the existing A12 and the proposed A12 scheme. The issue will then be dealt with in the context of the application before the local planning authority.

Tom Sawdon	REP7-071-001
Sub-Part	
<p>I object to the entirety of my land being purchased by National Highways. The loss of the land will have a detrimental effect on the survival of our family business. I am willing to retain the land while working with National Highways in order to find a scheme design that suits both. My previous comments have not been formally noted and this is unacceptable given the importance of our land.</p>	
Applicant's Response	
<p>The applicant has been engaging with the interested party since 2019. The land in question is shown by plots 13/12a and 13/12b on the Land Plans [REP7-003]. As set out in the Annex A of the Statement of Reasons [REP7-040] the land is required for the following:</p> <p>Plot 13/12a:</p> <ul style="list-style-type: none"> • 45(a): The alteration of the A12 of 2882 metres in length, widening of the existing carriageways, new carriageways, including the demolition of Brick Kiln Farm, retaining earth structures and tie in works. • 54(a): An attenuation pond and associated outfall. 54(b): An access track of 174 metres in length from the realigned Maldon Road (Work No. 55(a)) including the provision of means of access to adjoining land. • 55(a): The realigned Maldon Road, Kelvedon. • U133: The diversion of buried communications cable ducts of approximately 450 metres in length between Ashmans Bridge and Highfields Bridge, Kelvedon along the A12 northbound verge. • U134: The diversion of buried communications cable ducts of approximately 700 metres in length between Highfields Lane, Kelvedon and Maldon Road, Kelvedon, over the proposed Highfields Overbridge Replacement (Work No. 55(b)). 	

- Access / working room for construction of temporary soil storage bunds and soil storage area during construction works.
- Temporary storage, laydown areas, access and working space to facilitate the construction of Highfield Lane Bridge.

Plot 13/12b

- 45(a): The alteration of the A12 of 2882 metres in length, widening of the existing carriageways, new carriageways, including the demolition of Brick Kiln Farm, retaining earth structures and tie in works.
- 50A: The construction of a proposed flood bund to the south of the altered A12 (Work No. 45(a)), Kelvedon.
- 61(b): New western culvert of 583 metres in length.
- 61(c): Ditch connection from the new culvert to River Blackwater. 63(a): An attenuation pond including associated outfall.
- 63(b): An access track of 149 metres in length from the realigned Highfields Lane.
- U134: The diversion of buried communications cable ducts of approximately 700 metres in length between Highfields Lane, Kelvedon and Maldon Road, Kelvedon, over the proposed Highfields Overbridge Replacement (Work No. 55(b)).
- U137: The diversion of buried communications cable ducts of approximately 5400 metres in length between Rivenhall Bridge and a point to the north of Domsey Brook Bridge, Kelvedon.
- U139: The diversion of buried communications cable ducts of approximately 650 metres in length between Braxted Road, Kelvedon and Highfields Lane, Kelvedon.
- U140: The diversion of buried communications cable ducts of approximately 5200 metres in length between Rivenhall Bridge and a point to the north of Domsey Brook Bridge, Kelvedon.
- T37: A haul road of approximately 1300 metres in length between Ashmans Bridge and the proposed Highfields Lane Overbridge replacement (Work No. 55(b)) and the proposed realigned Highfield Lane (Work No. 55(c)),

Kelvedon, including a temporary access and egress onto the A12 southbound carriageway at a point to the west of the proposed realigned Highfield Lane, Kelvedon.

- Access / working room for construction of temporary soil storage bunds and soil storage area during construction works.
- Temporary storage, laydown areas, access and working space to facilitate the construction of Highfield Lane Bridge.

The plots are required permanently for the scheme as set out above.

It is the Applicant's understanding this is an isolated piece of land owned by the interested party and the farm and business is located in Peldon, Colchester over 12 km away from the scheme.

The land is used for hay / silage and access to the two fields separated by the existing A12 is via Maldon Road or Braxted Road.

At Deadline 1 the Interested Party suggested their concerns related to development aspirations for their land being impacted by the proposed scheme. The Applicant relies on its responses to that submission (response to REP1-069, P 81 of REP2-030). The Applicant has explained in meetings that there is no access to the relevant land from the A12 (current or proposed) and any such development as is proposed by the Interested Party would need to be promoted through the Local Plan.

Given the need for the proposed scheme to secure the plots listed above the Applicant believes there is a compelling need in the public interest for the powers sought and the Applicant has a clear idea the purposes to which the land will be put if the Order is made and the proposed scheme is implemented.

Status of negotiation

The Applicant wrote to the Interested Party on 26.07.22 offering a meeting to commence discussions towards a private agreement to secure the land and rights in land sought by the project.

The Applicant received an email from the Interested Party on 19.09.22 advising they do not wish to enter into discussions regarding acquisition of land by agreement.

Oliver Lukies

REP7-072-001

Sub-Part

Further to previous representations made on their behalf, our clients are a consortium of landowners who between them own the remaining development land known as Gershwin Park, Witham. Gershwin Park has been developed by the consortium in collaboration with their longstanding development partner Churchmanor. Gershwin Park is a strategic westwards extension to Witham. It is located to the north of the existing A12 and to the east of the existing Witham South junction 21. Several outline planning permissions for a combination of residential, commercial, and community uses have been granted in the past, with the latest outline permission (12/01071/OUT) granted by Braintree District Council in July 2013. The approved masterplan is attached at Appendix 1. This consent has been partially implemented via several reserved matters applications; in addition, other permissions have also been granted for related development not strictly in accordance with the outline permission. The undeveloped parts of Gershwin Park are also allocated in Section 2 of the Braintree District Local Plan (2013-2033), which was adopted in July 2022. These are broadly in accordance with the outline permission, with the areas of the site remaining to be developed variously allocated for retail and town centre uses, retail warehousing, business park, residential, and informal recreation. The relevant part of the adopted Local Plan map covering Witham South is at Appendix 2. The area affected by the DCO is clearly allocated for "Business Parks" (blue dots), and part of the "Employment Policy Area" (blue tinting). In the south west corner of Gershwin Park, this allocation abuts the current extent of the A12. The site is referred in policy LPP2 of the Local Plan as site reference "h", and is known therein as the "Maltings Lane Business Park (Gershwin Park)". By way of explanation, the reference to "Maltings Lane" is a historic one, on the basis the northeastern extent of Gershwin Park when originally proposed abutted Maltings Lane, and therefore (at the time) was the point at which the strategic extension to Witham commenced. Policy LPP2 sets out the new strategic employment sites within the District, and it is clear Gershwin Park forms an important contribution to the total land supply. It is also specifically referred to in policy LPP6, again as "Maltings Lane". From our and Churchmanor's engagement with National Highways' agents to date, we do not believe the planning status of the land as outlined above is in dispute. Specifically, the red line around the draft compulsory purchase order and DCO application affects the following developable parts of Gershwin Park within the area allocated in the Local Plan for Business Parks: • An area known as "plot 1", and extending to approximately 1.27 hectares, immediately to the north of the existing A12, west of Gershwin Boulevard, and south of Griggs Way. On National Highway's land acquisition plans, plots 7/14a, 7/16h, and 7/16f (part) are to be permanently acquired from plot 1, together with 7/16e (required for the acquisition of service rights only). The plots to be acquired amount to approximately 0.39 hectares, or 30% of plot 1. • An area of land known as "plot 28" extending to

approximately 0.8 hectares, immediately to the south of Chipping Hill Primary School, the north of Gershwin Boulevard, and west of Owers Road. On National Highway's land acquisition plans, plots 7/16b, 7/16c, and 7/17c are to be acquired for temporary occupation as a recovery yard. For the avoidance of doubt, this area is not included within Churchmanor's development agreement. The above are shown on the extract from National Highway's latest Land Plan, submitted to the Examination as REP6-015, at Appendix 5. In addition to the above, the landowners also own further plots of land affected by the DCO application (7/16a, 7/16d, 7/16f (remainder), 7/16g, 7/17a, and 7/17d). These comprise verge/public access land alongside Gershwin Boulevard. For the avoidance of doubt, they are not regarded as developable land, and are also not included within Churchmanor's development agreement. The red line also borders a developable part of Gershwin Park (known as "plot 18") to the south Hatfield Road, west of Gershwin Boulevard, north of Griggs Way, and east of the Motus Mercedes premises. It appears to us that the red line stops at the back of the existing footway, and therefore plot 18 is not affected by the DCO proposals. However, this is being raised at the Examination now due to a holding objection now made by National Highways until 29 September 2023 in relation to a planning application Churchmanor has made to Braintree District Council (23/00827/FUL) on plot 18. National Highways have not yet commented on whether they have any actual objection to the proposed development on plot 18, and therefore the landowners and Churchmanor need to reserve their position in this regard.

It is important to reiterate the consortium understands the importance of the A12 widening scheme, and do not object to the principle of the development. As a result, we as the consortiums representatives (along with the Churchmanor) have engaged with National Highways' agents in a positive and constructive manner as soon as the original s48 notices were originally issued in June 2021, in order to identify and attempt to mitigate potential conflicts with the allocated and consented development land as early on as possible. Churchmanor's detailed plans for the development of plot 1, including drainage arrangements, were shared in full electronic form with National Highways well before the DCO process commenced in December 2021/January 2022, to allow them to be overlaid onto the A12 proposals and conflicts identified. However, despite that engagement, and repeated undertakings from National Highways that they would investigate mitigation options, no meaningful response was received from National Highways until a brief confirmation on 24th April 2023 that no changes to the design of the DCO scheme would be made. As a result of the extended period of uncertainty, Churchmanor has had no option (due to its contractual obligations to the landowners under the development agreement, which National Highways were warned about on numerous occasions) to draw up and submit a detailed planning application to Braintree District Council for the development of plot 1 as it currently stands, within the current extent of the Business Park allocation for this part of Gershwin Park as shown on the Local Plan map, and before confirmation of the DCO. This has been registered by Braintree District Council with reference 23/00836/FUL, for the development of 18 no. business and light industrial units, totalling 33,900 sqft gross

internal area on the ground floor. A plan showing the location of plot 1 and the layout of this application overlaid with the DCO red line boundary is attached at Appendix 3. From this it is clear that:

- 5 units totalling 13,000 sqft (38% of the floorspace of proposed scheme) are directly affected.
- When the site is redesigned to take account of the DCO boundary, it is likely that once boundary landscaping and surface water drainage is taken into account, the loss will be closer to 45-50% of floorspace, resulting in a significant injurious affection claim for the retained land, on top of compensation for land acquired compulsorily.

Churchmanor will in addition have a separate claim for loss of development profit.

Accordingly, the consortium must continue to object to the scheme insofar as it affects Plot 1, for the reasons stated below:

- The proposals would substantially impact on consented and allocated development land, firstly by compulsorily acquiring land, and secondly by way of injurious affection, as a result of the remaining land being very irregularly shaped, and some being rendered undevelopable. In particular, the eastern end of plot 1 would taper into a triangular point, and the southern boundary would feature several “steps”. This is we are told by National Highways as a result of the need to a) provide an emergency refuge on the northbound carriageway, resulting in the land required “stepping in”, and b) the need to provide drainage to prevent run off onto the A12 from the surrounding land. These features are shown at Appendix 6 on the extract from National Highway’s latest General Arrangement Plans, presented to the Examination as REP6-019.
- The above matter was highlighted to National Highways over 18 months ago, well before the DCO application was made. Despite extensive engagement with National Highways, regular undertakings from them to investigate the matter, and chasing for updates, no change to the design of the scheme has been made. This was only confirmed to us and Churchmanor on 24 April 2023, almost two months after the CAH1 hearing, and 3 days before the CAH2 hearing. Whilst it is appreciated space needs to be made for drainage to capture run off from the adjacent land, together with the proposed emergency refuge, no proper explanation has been provided as to why:
 - o the current design requires such a large buffer between the road alignment and edge of the land take
 - o the retaining wall proposed immediately to the west cannot be extended eastwards
 - o to reduce the extent of embankment around the emergency refuge (and therefore land take) needed, as per our suggestion to mitigate the impacts of the scheme
 - o the emergency refuge cannot be moved a very short distance to the east where it would run alongside, and make use of, otherwise undevelopable land, as per our suggestion to mitigate the impacts of the scheme
 - o as appears to be the case with adjoining parcels of land, the drainage cannot be run much “tighter” to the boundary, as per our suggestion to mitigate the impacts of the scheme

Essentially, the only response we have received was simply that National Highways had decided it would not make those changes.

- No assessment appears to have been made of the costs of making such an adjustment, versus the compensation that would need to be paid for land purchase, injurious affection, and loss of development profit. Without this, it is impossible to say whether best value is being obtained for public money.
- No account appears to have been taken of the economic effects of

the loss of consented development land, nor the need to replace it to maintain a suitable supply within Braintree District. • We have asked for National Highways to confirm it will make an on account payment of reasonable professional fees to allow a re-design of the plot 1 layout and resubmission of the planning application to be made if the proposed land take boundary is confirmed, but to date no such confirmation has been received. These costs will include fees for the architect, civil engineer, landscape architect, mechanical and electrical engineer, BREEAM assessor, air quality assessor, ecologist, acoustician, and highway engineer. We understand from Churchmanor that they anticipate these costs to be in region of £50,000, plus the cost of the new planning application fee. • Despite requests for confirmation, no detail has been provided to date of the extent of services acquisition needed in parcel 7/16e, so we are unable to understand whether this parcel is in fact capable of beneficial use once the services are installed, or is effectively sterilised and therefore should be included within the land required for permanent acquisition. • We note and do not disagree with the comments made in the CAH3 hearing by the Valuation Office that the parties are in broad agreement informally as to the rate per unit area proposed for any development land that is to be compulsorily acquired. However, compulsory purchase should always be a final fall back following all attempts to mitigate the quantum of land needed, and we object on the basis that the land take proposed still appears to be excessive and unnecessary.

We have a further objection to make in respect of Plot 18. A plan showing the location and layout of the proposed development for which the planning application referred to above is attached at Appendix 4. • This site is not within the red line of the DCO. Churchmanor have submitted a planning application to Braintree District Council (23/00827/FUL) for the development of 2 no. retail units, 2 no. drive thru units, and an ultra rapid electric vehicle charging station. National Highways made a holding objection on 15 th May 2023 that the application should not be determined before 29th September 2023, noting that: “We are currently reviewing the documentation supporting this planning application and have not yet reached a view if the development proposals will have a material impact on the operation of the Strategic Road Network. Consequently, it is requested that this application is not determined before 29 Sept 23. If we are in a position to provide a formal response earlier we will withdraw this recommendation accordingly. It is noted that the A12 construction red line boundary is close to this site.” National Highways should be capable now of confirming the development proposals on this plot do not fall within the red line of the DCO, nor affect the DCO proposals. If that is the case, there is no justification for a response time of up to four and a half months – it is not uncommon for National Highways to require a little extra time to consider applications, but the time proposed is excessive. We would be very concerned if National Highways now regard any part of plot 18 as falling within the DCO boundary, as they have not raised this point at any point in the last 2 years since the issue of the original s48 notices.

Applicant's Response

The Applicant has been working with the Interested Party and representatives from Churchmanor Estates for over two years and is aware of the planning status of the piece of land referred to as "plot 1" and covered by plots 7/14a, 7/16e, 7/16h, and a small part of 7/16f. The permanent acquisition of plots 7/14a, 7/16h and a 7/16f, shown on the Land Plans [REP7-003] was reviewed by the Applicant following a request to reduce the permanent land take by Churchmanor Estates.

The Churchmanor development plans were shared with the Applicant prior to the submission of the DCO application, however, the preliminary design for the proposed scheme available at the time did not allow the Applicant to respond to the Interested Party's requests with a sufficient degree of certainty. The Applicant is now proceeding with the detailed design of the proposed scheme in parallel with the DCO examination and has been able to investigate the use of this land in sufficient detail to respond to the Interested Party.

Regarding the land between the edge of the road embankment and the Order Limits, the Applicant requires adequate space to allow for sufficient drainage of the highway. The offset between the embankment and the scheme boundary may allow for refinement of the highway and verge design which could influence the width of the slope, and refinement of the drainage design within the limits of deviation. In any event however working space will be required for the proposed scheme at this location.

The Applicant has investigated extending the retaining wall and relocating the emergency area to the east of the proposed location, but found that there were insufficient justifications to change the design.

The Applicant also investigated moving the emergency area in isolation and found that without extending the retaining wall the clash between the allocated proposed employment site and the proposed scheme would remain.

Following careful consideration, it was determined the scheme as currently proposed is the appropriate design and it is not practicable to reduce the land take in this area. This land is required to provide drainage at the interface with the retaining wall and facilitate maintenance of the retaining wall during operation.

Regarding plot 28 (plots 7/16b, 7/16c, and 7/17c) and the temporary possession of the land to be used for a recovery yard, a response has been provided at REP7-072-002. It is noted that further plots (7/16a, 7/16d, 7/16f (remainder), 7/16g, 7/17a, and 7/17d) do not form part of the development land and Churchmanor's development agreement.

The Applicant is in discussion with the developer regarding the scope of professional services required to amend the developer's planning application and/or development plans should the DCO be made and implemented.

The requirement for the use of parcel 7/16e is for Work No. U54 as shown on Sheet 7 of Works Plans Utility Diversions [REP6-005]. As described in the Draft DCO [REP7-005] "As shown on sheet 7 of the utilities works plans, the diversion of buried 11kV electricity cable ducts of approximately 600 metres in length between Latneys and Gershwin Boulevard, Witham with a crossing of the A12 to the east of Woodend Bridge". Access to the line for future maintenance purposes will be secured with the asset owner, UK Power Networks, in the form of their standard wayleave. Access to the line for future maintenance purposes will be secured with the asset owner, UK Power Networks, in the form of their standard form documentation.

The Applicant notes the Interested Party's comments regarding CAH3 and the agreement regarding land values. The Applicant has previously explained above that land and rights as shown on the Land Plans [REP7-003] is required to deliver the scheme.

Regarding Plot 18 as referenced by the Interested Party, the Applicant has contacted their Spatial Planning team and has been informed that a letter will be sent to the promoter of the scheme the week commencing 10 July 2023. The letter will request further information so a full assessment can be undertaken to understand the potential impact on the existing A12 and the proposed A12 scheme. The issue will then be dealt with in the context of the application before the local planning authority.

REP7-072-002

Sub-Part

With regards to National Highways aforementioned recovery yard proposals we have the following points and objections to make; • The Scheme proposals have and will continue to impact and delay this consented and allocated development land from being developed for a number of years currently uncertain by holding it in effective limbo until such time that it is no longer required by National Highways. • We were asked by National Highways and their agents in 2022 to provide them with proposals on behalf of the consortium to enable them to utilise the land for their required purposes. In good faith, these proposals were prepared and submitted, to which responses have been slow and no counter-offer has been supplied despite repeatedly being requested. This has led S&P and Ceres Property to feel that National Highways want to wait for receipt of their CPO powers

to enable them to acquire the temporary rights that they need to use it as they have proposed rather than seeking to work with the Landowners to agree matters in the hope of not having to revert to their CPO powers. • The landowners remain willing to try and agree a sensible way forwards with regards to this issue, including lease of the land to National Highways for the duration of their requirement of it, and would welcome their counter-offer to enable discussions to take place with a view to making progress in this regard. We feel that this is the logical solution for all involved.

We trust these comments set out our current objections and comments clearly to the Inspectors, but we would be pleased to expand further or clarify any point which remains unclear. Yours Faithfully Oliver Lukies of Strutt & Parker and Paul Fosh of Ceres Property

Applicant's Response

The Applicant has been in discussions with the Interested Party for over 2 years and has provided options for the layout of the recovery yard (August 2022) to try and minimise the impact on plots 7/16b, 7/17b, 7/16c and 7/19b shown by the Land Plans [REP7-003] so part of the site could be built out if the Interested Party progressed the detailed planning permission. The main issue has been the unreasonably high rental value proposed by the Interested Party for the piece of land and the lack of evidence to support the figure provided by the Interested Party's agent.

The land is currently undeveloped, rough land and requires the objector to provide evidence of loss. Without such evidence it is not possible to assess the anticipated loss incurred as a result of the possession of the land for the period required by the Applicant. In light of the lack of evidence to support the substantial figure the Applicant has proposed an alternative way forward to lease the land and agree the compensation when it is possible to quantify it in the future. The Applicant is not waiting for compulsory acquisition powers as is demonstrated by the above attempts to reach agreement. The Applicant will continue to negotiate with the interested party with a view of reaching agreement to temporarily occupy this land.

Pinsent Masons LLP on behalf of Royal London UK Real Estate Fund and Edmundson Electrical Limited

REP7-073-001

Sub-Part

1. INTRODUCTION 1.1. This post-hearing submission is made by Pinsent Masons LLP on behalf of its clients Royal London UK Real Estate Fund (Royal London) and Edmundson Electrical Limited (EEL). This submission is made in order to summarise our oral submissions made at Compulsory Acquisition Hearing 3 (CAH3) on 27 June 2023 in relation to the A12 to A120 Widening Scheme (the Scheme), promoted by National Highways (the Applicant). 1.2. Although the substantive oral submissions were made at CAH3, we request that the submissions are taken into account where relevant for the purposes of the other hearing, Issue Specific Hearing 5, which also took place on 27 June 2023. 1.3. Where necessary, the summary below has been supplemented to provide any relevant additional information or further observations from CAH3 to support the points being made. 1.4. Our clients have made previous representations to the examination, and we refer the Examining Authority to Royal London's relevant representation [RR-032] and written representation [REP2-100], and EEL's relevant representation [RR-030] and written representation [REP2-099]. Royal London and EEL have also made various joint submissions: a Post-Hearing Submission dated 9 March 2023 [REP3-077], a Response to ExQ2 [REP4-094], a Post-Hearing Submission dated 10 May 2023 [REP5-054] and a Response to ExQ3 [REP6-116]. 2. OVERVIEW OF THE CURRENT POSITION 2.1. Our clients' objections remain in place on the basis that no agreement has been reached with the Applicant and that there is inadequate protection in the documentation before the examination. It is concerning that the examination is due to close in a matter of weeks and our clients have very limited protection from the impact of the proposals. 2.2. The points and concerns that we have raised throughout the examination principally relate to the justification for the use and adequacy of the proposed access and adjoining land interests required for the purposes of the gas pipe diversion works (Work No.U2 in the draft DCO) to be undertaken by Cadent. These issues remain. 2.3. As explained at the hearing and within our previous representations, a fundamental concern is that the proposed access is not sufficient for the purposes for which it is required, and it is very difficult to determine the full extent of the impact and whether the access proposed is sufficient without engagement from Cadent. As discussed during CAH3, we would like the Applicant to facilitate a meeting with Cadent as soon as possible, which it committed to doing during Compulsory Acquisition Hearing 2 on 27 April 2023. 2.4. At the hearing the Applicant referred to the recent correspondence from Cadent to National Highways which provides Cadent's reasoning as to why the adjoining Cadent site cannot be used to access the area proposed for the gas pipe diversion works (see Appendix C of the Applicant's Responses to ExQ3 [REP6-089]). As mentioned at the hearing, the correspondence does not negate or resolve the need for Cadent to engage in the DCO process

not least because it is necessary in order to determine the extent and size of expected vehicle movements, detailed design and location of the gas pipe diversion works and whether the access and the land identified for these works is in fact sufficient for the purposes required. 2.5. In addition, there is no restriction on the proposed use of our clients' site under the draft DCO [REP6-036] notwithstanding the promises made to the examination that the exercise of temporary possession powers over the EEL site would not be exclusive. It remains our position that a compelling case in the public interest has not been established. This test is appropriate as the implications of the unfettered powers would be analogous to compulsory acquisition – see [REP3-077]. 2.6. We have proposed various mechanisms for protecting our clients' position, including provision in management documents, proposed requirements in the dDCO [see REP3-077] and relevant legal agreements. 2.7. Discussions in relation to the grant of a licence to access the site are being progressed, alongside heads of terms for an easement for the purposes of the gas pipe diversion and use of the land on which the gas pipe sits. The heads of terms are currently with the Applicant for consideration and discussions remain at an early stage. Absent any agreement, the requirements that we have proposed to be added to the dDCO are reasonable and necessary. 2.8. Another issue previously raised is the overhead line diversion (Work No.U2A in the draft DCO, intended to be undertaken by UKPN) which has not been considered in any detail as part of the discussions at the various hearings as far as we are aware. This is an additional interface with and has an impact on our clients' interests and our clients must be protected suitably from the consequences of this Work – see our summary at [REP6-116]. 3. CONCLUSION 3.1. Royal London and EEL maintain their objections. 3.2. Our clients remain willing to continue discussions with the Applicant with a view to reaching an agreement such that both objections can be withdrawn by the end of the examination. However, we are unclear whether it will be possible to complete an agreement within that short remaining period. 3.3. In the absence of an agreement, the proposed requirements that we have proposed are reasonable and necessary. 3.4. We can provide the Examining Authority with a further update at Deadline 8 if that would be helpful.

Applicant's Response

The Applicant considers the access chosen through the EEL site is the least impactful. Alternative options raised by EEL and Royal London have been appraised below. None of the alternatives is a better option than the one for which temporary powers are sought.

The Order Limits have been designed not to encroach on any of the parking bays within the limits of land plot 1/10f. This is solely for access only, no construction vehicles related to the proposed scheme would park or obstruct this area. Further details can be found in paragraph 2.2.8 of the Outline Construction Traffic Management Plan [REP6-055]. The Applicant has confirmed that it

does not wish to take possession of the route and believes that it can exercise powers to access the area on a non exclusive basis and will work with the occupier on this basis. The affected Parties are entitled to compensation for the loss or damage caused by the exercise of temporary powers and it is in all parties' interests to minimise disruption to the current operations at the site.

Alternative options considered:

Consideration of alternatives; for clarity the Applicant has summarised the alternatives that have been raised by the Interested Party. The below references can be found in Plate 5 of the Interested Party's Deadline 2 submission – Written Representations [REP2-099].

IP's Alternative Ref 1:

The Applicant has had further discussion with Cadent Gas Limited about the access through Cadent's Above Ground Installation (AGI) and have been informed that Cadent have identified that the existing access to the AGI does have high pressure pipework traversing under it at shallow depths in multiple locations. There is also shallow ducting for electrical cables and flow and return water piping. In its current state, access is only suitable for light vehicular access through the AGI for sporadic maintenance purposes only, therefore making Ref 1 an unsuitable route.

IP's Alternative Ref 2:

This would involve removing a bund located to the north of the EEL site on land owned by HSBC. The Applicant has discounted this option due to the environmental impacts from removing the trees and vegetation on the bund and the associated transportation impacts. Heavy Goods Vehicle movements would be required to remove the material from the earth bund off site and then to import materials to form a temporary roadway with an associated impact on the local roads in the estate. These transport activities would need to be repeated in reverse to reinstate the bund once the work is completed. The Applicant believes this would generate significantly more vehicle movements along Winsford Way impacting on local occupiers in the vicinity of the proposed works.

IP's Alternative Ref 3:

The Applicant has investigated access from the A12 mainline and the findings are:

- The Edmundson Electrical (EEL) site is in close proximity to the junction 19 northbound off-slip road, where there is existing traffic signage within the northbound verge approximately 50m to the approach of the start of the off-slip road.
- To install temporary traffic management to enable safe access and egress from the A12 mainline to the EEL site, the Applicant would need to install an entry point access at least 500m prior to the EEL site, on the A12 mainline. The reason for this is to mitigate against accidental incursion from road users as there is a heightened risk that the entry access point could be mistaken for the junction 19 northbound off-slip road. Additionally, the existing lanes on the A12 mainline would need to be reduced to narrow lanes (Lane 1 down to 3.25m and Lane 2 down to 2.75m), with a speed reduction to no greater than 50 mph.
- To allow safe egress of works vehicles the egress point would be required to be extended up the junction 19 northbound off-slip road. To enable this, the off-slip road would have to be reduced to a single lane to provide a safe egress point for the workforce. This would reduce the capacity of the junction which already suffers with congestion during both the AM and PM peak traffic hours.
- Due to the limited cross section available on the A12, the Applicant would need to harden the verge to enable an access road to the EEL site. This would be approximately 1km long and would require the importing of construction materials and removal of the existing safety barrier and signage.
- All road markings would need to be adjusted on the A12 mainline.
- Removal of existing drainage would need to be considered and a temporary system installed.
- A temporary barrier system would need to be installed as the existing permanent assets would need to be removed, including the safety barrier.

- Upon completion of the works, the above listed temporary works would need to be removed and permanent works reinstated including removal of carriageway hardening, reinstatement of the highways drainage and safety barrier, and reinstatement of the carriageway lanes with road markings.

Due to the above reasons, the Applicant does not deem access and egress from the A12 mainline to the utility diversion site as a reasonable or proportionate option.

IP's Alternative Ref 4:

The Applicant proposes to use this area for the diversionary works.

Security

The security and parking concerns raised by the Interested Party were discussed at the meeting, in particular the working times of the business and the requirement to have three rigid delivery trucks parked in front of the palisade fence and locked at 15:00-16:00 on the proposed access way to the gas main site, located to the north of EEL. The Applicant believes that a pragmatic solution can be found for these issues, which could involve the installation of additional gates in the palisade fence, additional security measures and/or temporary alternative parking for one of the lorries. The Applicant will continue to work closely with the Interested Party to find a mutually acceptable solution. The Applicant's view is that the route selected is the least disruptive and this position has not changed.

The Applicant has appraised the above alternative options with the proposed route being the most suitable. The Applicant believes the land and access route required has been justified.

Cadent

The Applicant will continue to liaise with Cadent and if agreed with Cadent, will facilitate a meeting between the Interested Party and Cadent.

UKPN

The detailed design is currently be developed and it is now appearing that the UKPN Diversion (Work No. U2A) may not be required for the permanent works. However, it should be noted that a temporary diversion has not been ruled out to accommodate safe working room for the gas main diversion. Once this information becomes available, the Applicant will share this with the Interested Party.

dDCO

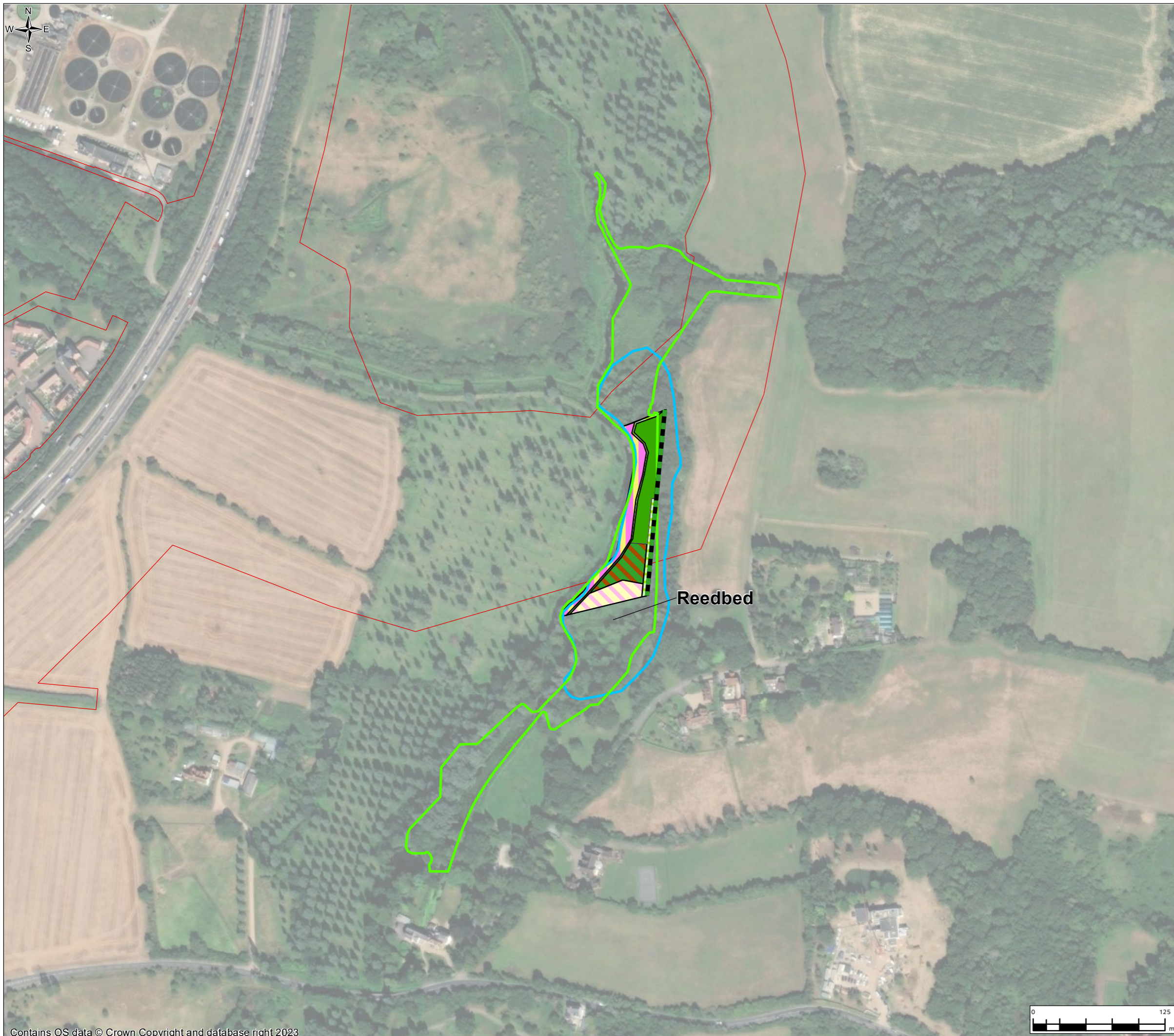
The Applicant responded to the Interested Party's query from REP3-077 in Applicant's Comments on Information received at Deadline 3 [REP4-056] with the following wording-

"The Applicant will look to reach agreement with the Affected Parties regarding only access being required over the relevant forecourt and parking area plots without the Applicant taking exclusive possession. It is not necessary for the Order to be amended nor for there to be a requirement imposed in this regard. The affected parties would have a remedy in compensation if exclusive possession was sought and it is in all parties' interest conclude an agreement on this issue".

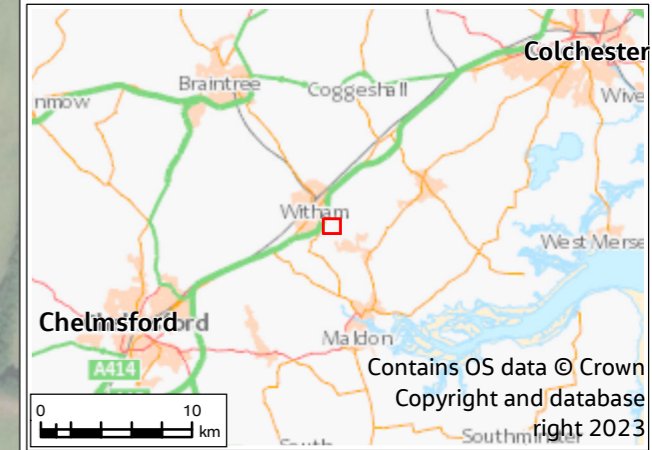
To provide assurance to the Interested Party, the Applicant has also provided wording in paragraph 2.2.8 of the Outline Construction Traffic Management Plan [REP6-055], which is a certified document of the DCO.

Appendix A – Figure 1 for REP7-068-002

FIGURE 1



- Legend**
- Order Limits
 - Blue Mills proposed Local Wildlife Site
 - Woodland TPO 07/22 and boundary for REAC commitment BI50
- 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	10/7/2023	FINAL	JC	AJ	CF	SL
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
**HABITAT AND PROTECTED SITES DATA
 RELEVANT TO REP7-068-002**

Drawing Status
S4 – SUITABLE FOR STAGE APPROVAL

Scale @ A3	1:3500	DO NOT SCALE
Jacobs No.	B36601D4	
Client No.	HE551497	Rev P1.0

Drawing Number
HE55 1497-JAC-EBD-SCHW-SK-LE-0002

