

M5 Junction 10 Improvements Scheme

Closing Submissions

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Rules 8 (k)

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M5 Junction 10 Improvements Scheme Development Consent Order 202[x]

Closing Submissions

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1 INTRODUCTION

- 1.1 The Applicant has prepared this document in response to the Rule 8(3) and 9 letter [PD-020] which requested that the Applicant submit 'closing submissions' at Deadline 11. The document is intended to supplement existing submission documents in order to assist the (ExA) and the Secretary of State (SoS) in their reporting and decision-making on the application for a Development Consent Order (DCO) for the M5 Junction 10 Improvements Scheme (the **Scheme**).
- 1.2 This document does not introduce new matters, rather it seeks to bring together in one place a summary of the Applicant's final position in respect of the principal planning issues that have been considered through the course of the Examination - particularly where, despite an extensive process of discussion, collaboration and negotiation, they represent matters of remaining disagreement between the Applicant and key stakeholders. This document does not, therefore, seek to cover every matter that may be relevant to decision making. It does not go through each individual point of disagreement as these are addressed in the Principal Areas of Disagreement Summary (PADS) trackers and Statements of Common Ground (SoCGs) but highlights the Applicant's position on those key areas of agreement and disagreement which are considered to be most directly relevant to the ExA's consideration of the Scheme's accordance with national and other relevant policy.

2 STRUCTURE OF THIS DOCUMENT

Chapter 3: Sets out the legislative and policy framework for determining the Application. It addresses the 2008 Act, accordance with the relevant National Policy Statements (NPSs) and other potentially relevant and important matters.

Chapter 4: describes the Scheme and the change applications submitted by the Applicant

Chapter 5: explains the need for, and benefits of, the Scheme set in the context of the Scheme Objectives

Chapter 6: deals with issues related to the compulsory acquisition and temporary possession of land including statutory undertaker land and Crown land. It covers the compelling case in the public interest for the acquisition of land for the public benefit, including for environmental purposes.

Chapter 7: summarises and explains the Scheme's funding position.

Chapter 8: explains the alternatives process undertaken by the Applicant and the reasonable alternatives considered.

Chapter 9: addresses matters related to good design, dealing, in particular, with highway standards and safety and the evolution of the scheme into its detailed design.

Chapter 10: details traffic matters, focussing on the traffic benefits of the Scheme and wider network impacts.

Chapter 11: presents the Applicant's position in respect of environmental and social matters; health and equality impacts; landscape, environmental and ecological impacts; and the Habitats Regulations Assessment.

Chapter 12: summarises the key provisions of the draft DCO and matters relating to its implementation, including the discharging authority, the use of commuted sums and outstanding concerns regarding protective provisions.

Chapter 13: explains the Mitigation Route Map with a particular focus on controls on construction, permitting, and long-term maintenance and management.

Chapter 14: summarises at a high level the consultation and engagement that the Applicant has undertaken in the pre-application and examination phases including matters related to the Statements of Common Ground (SoCGs).

3 STATUTORY AND POLICY FRAMEWORK

3.1 The Scheme is a Nationally Significant Infrastructure Project ("**NSIP**") under sections 14(1)(h) and 22(1)(a) of the Planning Act 2008 (the "**Act**"). Under section 14(1)(h) of the Act "highway-related development" constitutes an NSIP. Under section 22(1) of the Act highway-related development is within section 14(1)(h) only if the development falls within one of three specified categories: construction of a highway in a case within subsection (2), alteration of a highway in a case within subsection (3) or improvement of a highway in a case within subsection (5).

3.2 The Scheme includes alterations to Junction 10 of the M5 motorway, which is part of the strategic highway network. It therefore constitutes the "alteration" of a highway within the meaning of section 22(3). The Scheme meets the requirements of this definition under section 22(3) as follows:

- (a) The highway is wholly in England (section 22(3)(a))
- (b) National Highways (the strategic highways company) is the highway authority for the highway (section 22(3)(b)); and
- (c) The area of development for the element of the Scheme relating to motorway alteration is approximately 53 hectares, which is greater than the relevant limit set out in subsection (4), in this case being 15 hectares as the M5 is a motorway (sections 22(3)(c) and 22(4)(a)).

- 3.3 This position remains unchanged at the end of Examination and this policy framework is not considered to be a matter of contention.
- 3.4 The National Policy Statement for National Networks (“**NPS NN**”) (Department for Transport (DfT), 2014) has effect in relation to the proposed highways NSIP. As advised at paragraph 1.2 of the NPS NN, the SoS will use this as the primary basis for making decisions on development consent applications for national networks NSIPs.
- 3.5 The Applicant has demonstrated the Scheme’s accordance with the NPS NN throughout the Planning Statement and, in detail, in Appendix B of that Statement.
- 3.6 At Deadline 10, the Applicant submitted a revised Planning Statement to capture detailed submissions made regarding the need for the scheme throughout the examination. Principally, these related to updating Appendix B, and incorporating the Applicant’s position as set out in Need for Scheme Technical Note [REP4-042]. The need for the scheme is visited further in Chapter 4 of this Statement.
- 3.7 Chapter 7 of the Planning Statement also raised various other key policy drivers for the Scheme being:
- (a) NPPF 2023: The NPPF does not provide specific policies relating to NSIPs. Paragraph 1.17 of the NPS NN states that the NPS and NPPF are consistent, with paragraph 1.18 stating that the NPPF will be an important and relevant consideration ‘but only to the extent relevant to [the] project’. Therefore, it is necessary to consider the extent of any such relevance and compliance with the policies that it contains. Appendix D of the Planning Statement [REP10-063] contains a full policy assessment of the most up to date NPPF.
 - (b) Strategic road network and the delivery of sustainable development (December 2022): This policy paper is the policy of the Secretary of State in relation to the SRN. The policies are considered important and relevant to decisions on NSIPs in the absence of a stated position in the NPS NN. The Planning Statement makes various reference to this policy at page 59, 61, 121, 226, and 231.
 - (c) The Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011 – 2031 (2017) (JCS). This policy is a key driver to establishing the need for the scheme. Policy SA1.7 seeks to ensure the implementation of the Infrastructure Delivery Plan for Gloucestershire and the provision of any other necessary infrastructure in accordance with Policies INF6 and INF7 of the JCS. SA1.8 links to the local transport plan and states that the transport strategy to support the delivery of Strategic Allocations should align with and where appropriate contribute to the wider transport strategy contained within the Gloucestershire Local Transport Plan (2021).

- (d) Gloucestershire's Local Transport Plan 2020-2041 (2021). The Gloucestershire Local Transport Plan, at paragraph 4.2.31 (Central Severn Vale Strategic Vision to 2031), states that the Central Severn Vale Strategic Vision will require improvements to M5 Junction 10 and 11 to maintain the safe operation of the highway and that these improvements will also support the delivery of the North West Cheltenham, (Policy A4 of the JCS) and West Cheltenham (Policy A7 of the JCS) strategic allocations, addressing traffic congestion issues on the A40 and A4019 corridors and facilitating both the housing and employment need that the Scheme seeks to unlock.

4 DESCRIPTION OF THE SCHEME

- 4.1 The Environmental Statement (ES) Chapter 2: the Scheme [AS-010] provides a description of the Scheme including its three principal components such as the M5 J10 gyratory, the West Cheltenham Link Road, and the A4019 widening.
- 4.2 During the examination it was discussed that whilst the Scheme consists of a principal element being the M5 J10, the other associated elements being the A4019 widening and the link road are associated development and therefore should be judged by the same tests in the NPS NN. The Applicant has, following a number of precedents, not drawn a sharp line between what is the NSIP and what is the associated development in Schedule 1 of the dDCO. All the works in Schedule 1 are either NSIP or associated development and, if consent were to be granted, there would be no distinction in law between the two. The M5 Junction 10 improvements are required to be an NSIP under section 22 of the Planning Act 2008 and other highway works are capable of being associated development.
- 4.3 The Applicant set out in its oral submissions to ISH1, as can be seen in [REP1-046], that it considered that there are three main relevant principles set out in the DCLG 2013 Guidance when considering whether development should be treated as associated development:
 - (a) There should be a direct relationship, in that associated development should either support the construction, operation or address the principal development impacts
 - (b) Associated development should not be an aim in itself but should be subordinate
 - (c) Associated development should be proportionate to the nature and scale of the principal development.
- 4.4 In its oral submissions to ISH1, the Applicant confirmed that, in relation to the first principle, the purposes of the two local roads are directly related to the objectives of the M5 Scheme, as a growth led Scheme, to unlock development potential. For the second

principle, the elements are subordinate to the main purpose. Here, the guidance is intended to prevent some separate purpose from the other elements, it must be integrated as part of that main purpose. Whether the development is proportionate in scale is a matter for planning judgement. The Applicant confirmed that both in relation to their impacts and geographical scope, that the other elements are proportionate in relation to the key works for the improvement of M5 Junction 10. The Applicant provided detail in its response to Action Points 7 & 8 of ISH1 [REP1-046] which further justified this position. The third principle is therefore met.

- 4.5 The Applicant provided additional context for the scale of the associated development in the Applicant Written Submissions of Oral Case for Issue Specific Hearing 2 (ISH2) [REP1-046]. The ExA asked further questions of the Applicant during its ExQ1s, and the Applicant provided a full justification for its associated development in its response to Q1.2.4 [REP3-043]. No representations from Interested Parties have been raised in respect of this issue.

CHANGES TO THE SCHEME

- 4.6 The Applicant submitted two change applications to the Examining Authority (ExA): Change Application 1 on the 4 September 2024 and Change Application 2 on the 11 October 2024.
- 4.7 Change Application 1 sought changes to the compulsory acquisition rights required to deliver the Scheme, seeking the upgrade of rights from temporary possession to acquisition of new rights in respect of certain plots. The changes in this change application were required as a result of engagement with key stakeholders such as National Highways and the need to reflect the principles agreed for the acquisitions of land within the strategic road network. The changes included in this application were also required in order to ensure control over land required for the purpose of implementing ecological mitigation measures. These changes engaged the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (“the **CA Regulations**”).
- 4.8 Change Application 2 related to 7 design changes which were the result of refinements proposed as part of the evolution of the Scheme design to ensure the delivery of more sustainable and financially viable solutions to implement improvements to the Scheme. The changes were also reflective of continuing engagement with key stakeholders and the result of feedback received during the course of Examination.
- 4.9 The need for the changes to the Scheme proposed by the Applicant were the result of a variety of factors such as requests from Interested Parties, stakeholder feedback and the identification of opportunities to further reduce the impacts and deliverability of the Scheme.

- 4.10 All changes forming part of Change Application 1 were accepted into the examination by the ExA on the 17 September 2024 in the Rule 9 procedural decision [PD-014].
- 4.11 All changes forming part of Change Application 2 were accepted by the ExA on the 18 October 2024 and a procedural decision was made accepting all the changes within this application into the examination for the DCO Application [PD-017 and PD-018].
- 4.12 Consultation in respect of both Change Application 1 and Change Application 2 commenced on the 27 September 2024 and ran for 30 days until the 27 October 2024. Notices were published in newspapers, in compliance with the CA Regulations. Details of the consultation carried out in respect of the change applications can be found in the Consultation Statement submitted with the Change Application 2 submissions [REP8-003].
- 4.13 Following the end of the consultation period, hearings for the purpose of discussing the changes took place on the 20 November and the Applicant submitted the revised documents including all accepted changes into the core DCO Application documents at Deadline 10.
- 4.14 In summary, the changes sought by the Applicant are:
- 4.15 **Change Application 1:**
- (a) **Hedgerow Plots:** upgrade the following plots 5/4d(v), 5/4d(vi), 5/31c(i), 5/4d(vii), 5/4d(viii), 5/31a(i) and 5/31b(i) from temporary possession (shown as green in the Land Plans) to temporary possession and acquisition of new rights (shown as blue in the Land Plans) to enable the Applicant to undertake more efficient maintenance of hedgerow H48.
 - (b) **National Highways Plots:** upgrade of rights sought in respect of plots 3/2b, 5/2h(i), 5/2j, 5/2k, 5/2l and 5/2y within National Highways' ownership from temporary possession (shown green in the Land Plans) to temporary possession and acquisition of rights (shown blue in the Land Plans) as a result of agreement of a set of principles agreed with National Highways for the acquisition of land either in National Highways' ownership or within the Strategic Road Network.
- 4.16 **Change Application 2:**
- (a) **Change 1 Link Road replacement of swales with filter drain.** Filter drains provide a more efficient solution in terms of alignment design, earthworks and constructability. Filter drains would be narrower than swales allowing for reduction in the cross-section of the link road reducing the requirement for imported fill and reducing the footprint in the flood plain.

- (b) **Change 2 Link Road replacement of culverts with bridges:** The purpose of this change is to replace the two sets of pre-cast concrete flood culverts under the Link Road with two flood alleviation bridges.
- (c) **Change 3 Link Road River Chelt bridge structural form:** This change optimises the reprofiling of the River Chelt to run perpendicular with the link road, in order to replace the skewed crossing of the River Chelt Bridge with a square crossing.
- (d) **Change 4 Link Road alignment:** This change locally reduces the vertical alignment of the Link Road by more than the vertical limits of deviation of -1.0m as defined in the draft DCO and reduce the width of the combined footway/cycleway from 4m to 3m. This change will reduce the volume of imported material required for the embankment and the embankment footprint within the flood plain.
- (e) **Change 5 Relocation of existing NRTS transmission station:** This change relocates the Uckington NRTS Transmission Station from its existing position in the northeast quadrant of the M5 junction 10, to a location 2.6km further south on the M5, within the highway's boundary and DCO red line boundary. This change eliminates the health and safety risks associated with the construction of the retaining wall in close proximity to the Transmission Station, and mitigates the risks associated with maintaining National Highways' data links during the construction period.
- (f) **Change 6 Flood storage area reconfiguration:** This change reconfigures the flood storage area south-east of the Piffs Elm Interchange, between the M5 corridor, the A4109 and the Link Road providing two separate basins and upgrade existing culverts under the A4019. This provides the benefit of minimising the maintenance responsibilities by removing the requirement to use either the M5 or the A4019 road embankments to impound the reservoir.
- (g) **Change 7 Infill of existing northbound on-slip loop:** This change infills the existing M5 J10 northbound on-slip loop with site-won material which would not be suitable for re-use elsewhere, to provide improved screening of the gyratory.

5 NEED FOR THE SCHEME AND BENEFITS

Objectives

- 5.1 The Planning Statement demonstrates that there is a clear and compelling need for the Scheme. The determining root cause of the need for the Scheme is set out in its objectives. As outlined in Table 2-1 of the Introduction to the Application [APP-001], in meeting these objectives the Scheme delivers overall public benefit which are outlined in

more detail below which is drawn from the Need for the Scheme Technical Note [REP4-042].

- 5.2 Objective 1: The Scheme will increase highway capacity around M5 Junction 10 and on the A4019, required to unlock the planned development on the strategic allocations A4 and A7 located east of M5 Junction 10 in the Joint Core Strategy (JCS) (2017). The Scheme will contribute towards economic growth through unlocking the development of approximately 7,203 dwellings and 85 hectares of employment land through the provision of a highway network that has the capacity to accommodate the increased traffic the allocated sites will generate, addressing road congestion and ensuring the future resilience of both the national and local networks.
- 5.3 Objective 2: As has been established by both the JCS Transport Evidence Base [REP3-049] and the Scheme Transport Assessment [REP3-033] Cheltenham currently experiences significant congestion at peak times. The Scheme will enable additional capacity on the road network and at its junctions, whilst acting as a catalyst for economic growth and relieving traffic congestion and delay at Junction 9, 10 and 11 of the M5 and on the existing local road network, to support increased capacity and connectivity. The proposed West Cheltenham Link Road will also support the increased capacity, providing the A7 Strategic Allocation and areas to the south of Cheltenham with connectivity to Junction 10 and the M5. A need established through the DS5 to DS7 modelling scenarios of the JCS Transport Evidence Base.
- 5.4 Objective 3: The M5 Junction 10 element of the Scheme will become part of the Strategic Road Network (SRN), with M5 Junction 10 being a key junction and connection for the wider region. This would support higher capacities and greater connectivity to the M5 and local road network enhancements to the existing national road network as a result of the Scheme including:
- (a) New and improved junction and slip roads (improvements to Junction 10 of the M5)
 - (b) Improvements to trunk roads, in particular, dualling of single carriageway strategic trunk roads and additional lanes on existing dual carriageways (improvements to the A4019)
 - (c) Measures to enhance the capacity of the motorway network (all three components of the Scheme).
- 5.5 Objective 4: The Scheme will support the delivery of environmental goals through the provision of biodiversity enhancements and meeting 10% BNG on site, whilst encouraging the utilisation of alternative means of transport and helping to achieve the goal of creating a more integrated and sustainable transport network, whilst reducing

GHG emissions. Moreover, the Scheme will improve transport resilience by replacing old degrading assets that were designed with less resilience to climate change than the assets that will replace them. The all-movements junction on the M5 will improve road users' ability to join the wider SRN by providing opportunities for both north and south entrance and exits to the M5, allowing more efficient connectivity to Cheltenham and to the wider SRN. New dedicated crossing points for pedestrians and cyclists, as well as realigned PRow, will also be provided as part of the Scheme. This includes continuous provision for pedestrian and cyclist movement along the A4019 and facilities to link over the M5. The Scheme will also contribute towards Improved links to the north and south of M5 Junction 10, allowing for the increased movement of goods and reliability of journey times, improving connectivity on the SRN and the local road network.

5.6 Objective 5: The Scheme provides safe access to services for the local community and for users of sustainable transport modes within and to West and North West Cheltenham. The Scheme has been designed in accordance with all current standards and guidance, helping to improve road safety in the area. The Scheme will reduce road casualties and improve safety for users of sustainable modes of transport including walkers and cyclists during its operation through the provision of dedicated NMU facilities (footways, crossings, Public Rights of Way) and upgraded signalling and crossing points. The Scheme will enhance connectivity offered by recreational routes for NMUs and will include new, altered and improved PRow improving conditions and accessibility for NMUs, promoting a modal shift to active travel and public transport alongside providing a safer SRN and local road network.

5.7 The benefits the Scheme will bring are:

- (a) Provision of infrastructure to alleviate existing congestion in Cheltenham and improve connectivity on the SRN which provides access to Bristol to the south and Birmingham to the north.
- (b) Facilitate and unlock development of approximately 9,000 dwellings by providing a highway network that has the capacity to accommodate traffic growth.
- (c) Employment sites unlocked by the Scheme would provide employment opportunities for residents of Cheltenham, Gloucester and the surrounding settlements and will be of importance to the UK as a whole providing supportive industries to the nationally important GCHQ facility.
- (d) The junction itself and the wider SRN would benefit from the increased capacity for motorised users that is required and allow the development allocations in the JCS to be brought forward.

- (e) Improve the connectivity between the SRN and the local transport network in west and north-west Cheltenham.
- (f) Safe access to services for the local community, including for users of sustainable transport modes within and to west and north-west Cheltenham.

5.8 The Scheme conforms to the Government's vision and strategic objectives for the national networks. The Applicant provided detail on this at Table 3-1 of its Planning Statement [REP10-063] as set out in its Need for Scheme Technical Note [REP4-042]. The Scheme is in compliance with the broader policy objectives of the NPS NN. The Applicant has provided a full appraisal of its compliance with the NPS NN in its Planning Statement. Regarding key drivers, this is also included in its Planning Statement and summarised in Section 2 of the Need for Scheme Technical Note [REP4-042]. As highlighted in that Technical Note, the identified housing and employment growth outlined in the JCS would result in increased traffic level, placing increased pressure on a strategic and local road network that already experiences issues with congestion and safety that constrains the ability for identified economic growth to be met. To facilitate the required development the associated traffic related impacts would also require a major Scheme intervention. Moreover, the new housing and employment developments would also bring with it the requirement for greater accessibility for non-motorised users. In light of the Government's vision and strategic objectives set out in NPS NN (2014) paragraphs 2.10 and 2.22 conclude that:

2.10 ...at a strategic level there is a compelling need for development of the national networks – both as individual networks and as an integrated system. The Examining Authority and the Secretary of State should therefore start their assessment of applications for infrastructure covered by this NPS on that basis.

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

5.9 In order to address the need identified, the Government's wider policy, as outlined in NPS NN (2014), paragraph 2.23 is to bring forward improvements and enhancements to the existing SRN to address the needs set out above.

2.23 Enhancements to the existing national road network will include:

- *• junction improvements, new slip roads and upgraded technology to address congestion and improve performance and resilience at junctions, which are a major source of congestion;*

- *implementing "smart motorways" (also known as "managed motorways") to increase capacity and improve performance;*
- *improvements to trunk roads, in particular dualling of single carriageway strategic trunk roads and additional lanes on existing dual carriageways to increase capacity and to improve performance and resilience.*

5.10 The Applicant has summarised its position on need below. The Applicant has provided submissions on its basis for need in its Planning Statement [REP10-063] and its Need for Scheme Technical Note [REP4-042].

5.11 In determining the root cause of the need for the Scheme, the JCS (in particular Policy SP1) establishes that during the plan period: *SP1 ... provision will be made to meet the need for approximately 35,175 new homes and a minimum of 192 hectares of B-class employment land to support approximately 39,500 new jobs.*

5.12 More specifically, Policy SA1 of the JCS formally designates seven Strategic Allocations, focusing on the need to deliver comprehensive development in each area. Moreover, Policy SA1 also establishes the need to maximise the efficient and effective delivery of infrastructure stating that:

SA1.7 Infrastructure should be planned and provided comprehensively across the site taking into account the needs of the whole Strategic Allocation. Developers must engage with the relevant infrastructure regulators and providers to ensure the implementation of the Infrastructure Delivery Plan and the provision of any other necessary infrastructure in accordance with Policies INF6 and INF7.

SA1.8 The transport strategy to support the delivery of Strategic Allocations should align with and where appropriate contribute to the wider transport strategy contained within the Local Transport Plan, including priority transport corridors and junctions. The development of Strategic Allocations must encourage the use of walking, cycling and the use of public transport and ensure that transport demands arising from the development can be effectively mitigated in accordance with Policy INF1.

5.13 The above policy SA1.7 seeks to ensure the implementation of the Infrastructure Delivery Plan for Gloucestershire and the provision of any other necessary infrastructure in accordance with Policies INF6 and INF7 of the JCS. SA1.8 links to the local transport plan and states that the transport strategy to support the delivery of Strategic Allocations should align with and where appropriate contribute to the wider transport strategy contained within the Gloucestershire Local Transport Plan (2021).

5.14 Whilst housing growth might be the root cause of the Need for the Scheme, it should be noted that the need is established by the traffic impact caused by that future growth established in the JCS Transport Strategy Evidence Base (See Section 6 of [REP3-049]),

the Traffic Forecasting Report (TFR) submitted as part of the HIF Outline Business Case (see Section 6 of Appendix C of [REP1-046]) and confirmed by the Joint Council's GC3M Assessment (see Section 5 of [REP3-065]), in order to meet the identified housing and employment need a major scheme intervention is required to address the associated impacts on both the strategic and local road networks.

- 5.15 The Applicant provides a full summary and breakdown of the various design scenarios that were tested as part of the JCS Transport Strategy Evidence Base in section 3 and 4 of the Need for Scheme Technical Note [REP4-042], section 4.2 of that Technical Note clarified those elements of the Scheme which were identified as part of this evidence base.
- 5.16 To assess the impact of the JCS Transport Strategy Evidence Base, 11 strategic travel corridors were identified within the JCS area. Within those corridors, highway junctions considered to be critical to their function were identified. The operation of these junctions were used to assess journey time reliability as a proxy of how well the corridor is functioning. The 11 corridors are illustrated in Appendix L of the JCS Transport Strategy Evidence Base. They were identified on the basis of their importance to support national and local economic growth, and informed by the Link and Place Spectrum outlined within Gloucestershire's Local Transport Plan (2015-2031). As the CSV SATURN model is a strategic highways model, only those junctions identified where a 'significant' increase in delay or any safety issues occur for the M5 would be mitigated were taken forward as part of the strategy. The definition of 'significant' in the JCS strategic context is for any junction with a Ratio of Flow to Capacity (RFC) greater than 100% where a 10% increase is recorded between the 'Do Nothing' and 'Do Minimum' scenario for any part of the junction. Junctions were assumed to be operating within capacity if the RFC is less than 100%. The corridors of particular relevance to the Scheme are Corridors 1 and 6, the impacts of DS7 on each of the strategic corridors is summarised in section 4.1 of the Technical Note [REP4-042].
- 5.17 Further to the adoption of the JCS and the associated findings of its Transport Strategy Evidence Base GCC made an application to Homes England, in March 2019, for Housing Infrastructure Fund (HIF) funding to fund the M5 Junction 10 Improvement Scheme works. As has been outlined in the Scheme Funding Statement (REP10-031) as part of the funding application an investment case was made for the delivery of infrastructure improvements required to support the delivery of the identified dependent housing. This was supported by a Traffic Forecasting Report (TFR) as part of the HIF Outline Business Case (See Appendix C of REP1-046), with a design year of 2041, The select link analysis undertaken as part of the TFR established that the developments having a substantive impact on the most severely affected links were North West Cheltenham, West Cheltenham and the associated safeguarded sites.

- 5.18 Subsequently the HIF programme awarded funding to local authorities on a competitive basis for new infrastructure to unlock new homes in the areas of greatest housing demand, as referenced in the funding response received from Homes England and submitted into Examination (AS-057). Having been granted funding for the Scheme it is the Applicant's position that Homes England is also of a corroborating view that there is a justifiable need for the Scheme, as well as a need to consider growth beyond the existing JCS plan term.
- 5.19 The need for the Scheme identified by the JCS Transport Strategy Evidence Base and the DCO application has been reaffirmed by the Joint Council's GC3M Assessment that establishes the traffic impact of development associated with the West of Cheltenham and North West Cheltenham Strategic development sites on the surrounding road network, in the absence of the proposed M5 Junction 10 Improvements Scheme.
- 5.20 In its conclusions the assessment outlines the following:
- (a) At 2041 (just prior to the Scheme design year of 2042) there are parts of the local road network with capacity issues at several junctions in the absence of further development.
 - (b) Despite the inclusion of proposed mitigation measures relating to individual developer planning applications, even with the deadweight level of development, there remains residual capacity issues at several junctions.
 - (c) In the deadweight scenarios, the capacity issues at the already congested junctions increase but for the most part, other key junctions are relatively unaffected (exceptions include the Coronation Square junction, High Street approach to the Gloucester Road/A4019/ junction). This suggests that the 'deadweight' position is potentially achievable in the absence of the M5 Junction 10 Improvements Scheme – but there may be some isolated junction improvements (above the identified Elms Park mitigation) required to ensure emerging capacity issues seen in the reference case are not exacerbated by new development.
 - (d) With 50% of development delivered, again problems are exacerbated where congestion issues were already observed in the reference case. Some of the biggest impacts are seen along the A40 corridor (particularly the Arle Court junction and M5 Junction 11) but other locations such as the Withybridge Lane junctions are also shown to be far above their available capacity. This increases the need for further mitigation (above that identified for the Elms Park site) in order to resolve the issues identified.

- (e) With 100% development, there are widespread congestion issues across almost all of the junctions analysed (both with and without the Elms Park mitigation). This provides a clear indication that this level of development cannot be accommodated in the absence of major scheme intervention.
- 5.21 When considering the outcomes of the GC3M assessment it confirms the severity of cumulative impact that would be felt by the local road network in the absence of the M5 Junction 10 Improvements Scheme. Whilst a proportion of deadweight development could be achieved on an individual development site basis the strategic need identified by the JCS cannot be met without the intervention of a Scheme that addresses the cumulative impacts of the Strategic Allocations.
- 5.22 The improvements to the A4019 as part of the Scheme are required to provide sufficient highway capacity between the JCS allocated and safeguarded sites and M5 Junction 10 to accommodate the additional traffic forecast to be generated by the dependant developments, as well as facilitate enhanced public transport (through the reduction of traffic congestion and provision of a bus lane) and active mode connectivity (through the provision of enhanced pedestrian and cyclist facilities) for these developments. The dependent developments, without the Scheme, are forecast to have a severe residual cumulative impact on the A4019 between M5 Junction 10 and the JCS sites. This demonstrates that improvements to the A4019 are a necessary component of the Scheme to achieve its objective of unlocking the JCS dependant development. Furthermore, the forecast peak period traffic flows on the A4019, with the Scheme and dependant development exceed the maximum hourly flow that can be accommodated by the existing single carriageway road. Furthermore, M5 Junction 10 would be subject to severe impacts due to JCS dependant development generated traffic and inadequate capacity on the A4019 would cause traffic congestion at junction 10 that would exacerbate this.
- 5.23 In relation to the West Cheltenham Link Road element of the Scheme, Figure 7 of the HIF OBC Traffic Forecasting Report (Appendix C to the Applicant Written Submission of Oral Case for ISH1 [REP1-046]) shows that the B4633 Gloucester Road that provides an access to and from the north for the west JCS allocated and safeguarded sites is forecast to be operating at or over practical capacity in the scenario with developments on the JCS allocated and safeguarded sites but without the Scheme. Thus, this route cannot accommodate additional development generated traffic. Withybridge Lane, which is an alternative potential route to and from the north for the west JCS allocated and safeguarded sites is included as one of several alternative route corridors options (Route Corridor 2) considered and evaluated in Section 3.5 of Chapter 3 of the ES - Assessment of Alternatives [REP10-037]. This summarised that "The options considered for Corridor 2, utilising the existing Withybridge Lane layout concluded that this is unlikely to be suitable to cater for future traffic and walking, cycling and horse-riding demand after the

Scheme and surrounding developments are in place due to the existing alignment and cross sectional restrictions.” Consequently, the West Cheltenham Link Road is essential to unlocking the west JCS allocated site by providing a suitable road link between it and M5 junction 10.

- 5.24 The Applicant considers that the JCS Evidence Base, through an iterative design process, has demonstrated the need for the Scheme presented at examination to resolve traffic issues in the road network which would occur from planned development during the JCS period. The Applicant further considers that this need has been underscored through the HIF application and most recently the need for the Scheme has been demonstrated by the GC3M report. The Applicant considers that alternatives to a traffic solution, as well as alternative road schemes, were appropriately considered as part of the design iteration in the JCS in order to develop an appropriate solution to the one faced in this network. The solution before the examination is the only scheme demonstrated to be appropriate. The Applicant separately has assessed the proposed solution as part of its environmental statement, to assess for whether alternatives to the proposal could result in a lesser impact, the findings of this assessment of alternatives can be found in Chapter 3 of the Environment Statement. There is no alternative before the examination which the Applicant would consider to be capable of meeting the objectives of the Scheme.
- 5.25 It should be noted that the Statements of Common Ground for North West Cheltenham [REP10-082] , West Cheltenham [REP10-086] and the Safeguarded Land [REP10-084] all make reference to the need for the Scheme in relation to their specific development as outstanding matters. The Applicant has responded to the developer’s respective positions in the Statement of Common Ground. However, the Developer’s position should be read in the context of their Letters of Support [REP9A-005] where they continue to support the funding and delivery of the Scheme. Further, the Joint Councils continue to re-iterate their support for the Scheme [REP9-013] and have confirmed in their SoCG [REP10-072] that they consider that the Applicant has demonstrated a need for the Scheme.

Economic Case

- 5.26 As reported in the Planning Statement [REP10-063] the Scheme has a most likely estimate of £293.210 million including allowances for risk and inflation at the date of application. This estimate includes all costs to deliver the Scheme from the Options Stages through to the opening for traffic. It includes an allowance of £24.579 million for compensation payments relating to the compulsory acquisition of land interests in, and rights over, land and the temporary possession and use of land. A sum of £11 million has also been allocated to post completion costs which takes into account potential claims under Part 1 of the Land Compensation Act 1973, Section 10 of the Compulsory

Purchase Act 1965 and s152(3) of the 2008 Act. Land negotiations continue to take place across impacted properties for the Scheme and the majority of residential properties have been acquired totalling £13.8 million as of November 2024. Discussions are well advanced on the remaining properties needed for the Scheme and, therefore, there is a high degree of certainty that the budget figures are accurate

- 5.27 An initial Benefit Cost Ratio (BCR) has been calculated over the 60-year appraisal period that excludes the outputs of the journey time reliability assessment, with an adjusted BCR also reported that includes these impacts.
- 5.28 The Scheme is forecast to produce user benefits of £55.3m (PV) over the 60-year appraisal period.
- 5.29 The Scheme is forecast to generate wider economic impacts, but they are anticipated to be modest in scale as a result of the characteristics of the Scheme and its impacts on travel costs and the economic characteristics of the study area.
- 5.30 Further non-monetised benefits have been captured including social and distributional benefits and additional environmental benefits. These non-monetised impacts have all contributed to the assessment of value for money of the Scheme.
- 5.31 The final assessment of VfM for the Scheme has been rated as 'Medium to High'.
- 5.32 The Applicant does not consider there to be any remaining issues of contention in relation to the economic case.

Transport Case

- 5.33 As set out in Chapter 6 of the Planning Statement [REP10-063], the proposals constitute a highways scheme which is subject to an application for a DCO due to the proposals including alterations to M5 Junction 10, a new link road and dualling of the A4019. As part of the suite of DCO deliverables, a Transport Assessment ("TA") [REP4-021] has been prepared to assess the likely impacts of the Scheme on traffic movements during both construction and operation.
- 5.34 The TA states that the existing transport conditions within the vicinity of the Scheme consist of poor existing walking, cycling and public transport facilities. The area benefits from access to bus routes and some pedestrian facilities on the A4019, but poor access to cycle facilities. A review of local accident data indicates that there have been 30 personal injury accidents over the five years prior to 2022, including one 'fatal' accident.
- 5.35 The evidence presented in the TA has demonstrated that operation is predicted to improve for pedestrian, cyclist and vehicle users with the inclusion of the Scheme. It is

concluded that there would not be an unacceptable impact on highway safety and that the residual cumulative impacts on the road network would not be severe.

- 5.36 It has been demonstrated that the Scheme creates networks with the capacity and connectivity to support national and local economic activity and facilitate growth. The modelling demonstrates that the Scheme creates networks which improve journey quality, reliability and safety.
- 5.37 The sustainable transport infrastructure improvements in the Scheme achieve the aims of the NPS to create networks which support the delivery of a low carbon economy and create networks which enable communities to link effectively to each other.
- 5.38 The Applicant does not consider there to be any outstanding issues of contention in relation to the TA.

Sustainable Development

- 5.39 The strategic aims of the NPS NN and NPPF are consistent in aiming to achieve sustainable development and paragraph 1.20 of the NPS NN states that '*both documents seek to achieve sustainable development and recognise that different approaches and measures will be necessary to achieve this.*' Chapter 7 includes a summary of the relevant policy position for sustainable development.
- 5.40 The Scheme design has incorporated sustainable design principles through the development of a Sustainability Framework Tool (SFT), a proactive optioneering of the designs and systematic documentation of the process. The SFT has been developed to align with NH's and GCC's sustainability requirements and maintains a focus on sustainable outcome performance improvement. By applying the bespoke SFT for the Scheme, sustainability outputs have been collated from across disciplines, aligning outcomes, influencing decisions and generating further innovation. This approach has integrated sustainability and environmental assessment within the design process. Application of the SFT has provided clarity, assigned practical actions at a project level and avoided mystifying sustainability subjects. It has helped make sustainable planning and design simple, developing a process within which to challenge the teams and drive them to achieve the best sustainability performance.
- 5.41 Discussions around sustainable development during examination took place principally between the Applicant and the Joint Councils in relation to the Scheme's active travel provision. The Planning Statement [REP10-063] provides the Applicant's position on this. The Applicant provided a specific summary of its active travel provision in the document entitled "Active Travel Provision within the Scheme" [REP5-030]. Overall, the Scheme adheres to all relevant policies, when considering the extents of the Scheme. Furthermore, when considering the objectives of the Scheme and its intent to unlock

Strategic Allocations A4 and A7, the Scheme is also considered to facilitate the wider active travel provision associated with the Strategic Allocation sites through enabling the sites to come forward for development and is compliant with the relevant Local Plan policies relating to those sites.

- 5.42 When considered as a combined package of works the active travel provision across the M5 J10 Improvements Scheme and Strategic Allocations A4 and A7 ensure that pedestrian, cycling and public transport links are improved across the area, helping to form a continuous and accessible network accessing town centres, residential areas, employment areas, and routes to schools, facilitating connections into the strategic and LCWIP desire lines. In complying with local plan policy relating to active travel provision and contributing to a beneficial impact on the local transport networks the Scheme also satisfies paragraph 5.211 of the NPS NN.
- 5.43 The Applicant does not consider there to be any extant issues of contention regarding the Scheme's active travel provision. Item 22.6 of the SoCG with the Joint Councils [REP10-072] confirms that the Joint Council's agree that the Scheme is in compliance with paragraph 5.211. Other than the Joint Council's submissions, the Applicant is not aware of other representations made suggesting that the Applicant is not in compliance with paragraph 5.211 NPS NN.

6 COMPULSORY ACQUISITION AND TEMPORARY POSSESSION

Case and justification for compulsory acquisition

- 6.1 Prior to the submission, the Applicant entered into negotiations to voluntarily acquire interests over the land required for the delivery of the Scheme and such negotiation continued throughout the course of the examination.
- 6.2 The Planning Act 2008: Guidance related to procedures for compulsory acquisition ("the CA Guidance") (Department for Communities and Local Government, 2013) recognises (paragraph 25) that for linear schemes where multiple landowners are affected, negotiations are likely to proceed in parallel with the DCO process. The Applicant progressed negotiations where persons with an interest in land were willing and has acquired land and rights by agreement where possible. The Applicant provided updated information in relation to progress and status of negotiations during the Compulsory Acquisition Hearing 2 ("CAH2") and the Land Rights Tracker submitted at Deadline 10 [REP10-103]
- 6.3 The Applicant sought to work collaboratively with those impacted by the proposals to identify specific areas of concern, amending the design to remove and mitigate these as far as reasonably possible, and downgrading compulsory acquisition rights to temporary possession in those instances where this would not obstruct its ability to deliver the

Scheme. This proactive approach resolved many compulsory acquisition matters not only prior to the submission but also throughout examination.

- 6.4 As a result of negotiations with affected parties for the voluntary acquisition of land, the Applicant now owns or has agreed terms to voluntarily acquire 32 of the 34 residential properties required for the Scheme. Whilst 34 properties are required overall for the Scheme, 10 properties were already owned by GCC prior to any formal promotion of the Scheme. These 10 properties continue to be referenced in the Applicant's proposed compulsory acquisition in order to address unknown interests. Of the 24 residential properties included in the Applicant's proposed compulsory acquisition in which GCC had no interest prior to formal promotion of the Scheme, 22 have been acquired. Overall, the Applicant has agreed terms and acquired the land required for the Scheme by negotiation from 48% of the interested parties impacted (not including sub-soil interests).
- 6.5 Related to residential properties, the Applicant continues to negotiate for voluntary negotiation for the land owned by Messrs Dorran in relation to the Travellers Site.
- 6.6 Engagement and negotiations with the all other remaining owners of land, including those owners of agricultural land impacted by the Scheme, started before and have continued through examination. This has included identification and resolution where possible of specific concerns, such as accommodation works to minimise the impact of the Scheme. Negotiations have progressed well with draft Heads of Terms in negotiation with parties. A full summary of the engagement the Applicant has had to secure voluntary acquisition of land is contained in the Land Rights Tracker [REP10-103].
- 6.7 In relation to smaller interests where the Scheme proposes to acquire parts of residential gardens or sub-soil interests. Offers to voluntarily acquire the rights required have been made to all parties with an interest or a presumed interest in land, which includes subsoil owners impacted by the Scheme.

Legal tests for the compulsory acquisition of land

- 6.8 The test for compulsory acquisition of land (including the creation and acquisition of new rights over land) are set out in Section 122 of the Act and further explained in the CA Guidance. In its application for a development consent order for the Scheme, the Applicant seeks compulsory acquisition and temporary possession powers in respect of certain land interests set out in the Book of Reference [REP10-033] for the scheduled works to be constructed. The Applicant's Statement of Reasons [REP10-029] to be read together with the Land Plans [REP10-003], Crown Land Plans [REP3-006] set out the purpose and need for seeking compulsory acquisition and temporary possession powers to deliver the Scheme.

- 6.9 Section 122 of the Act provides that an order granting development consent may include powers of compulsory acquisition only if the Secretary of State is satisfied that the conditions in subsections (2) and (3) are met.
- 6.10 Subsection (2) provides that the land must be:
- (a) Required for the development;
 - (b) Required to facilitate or is incidental to the development; or
 - (c) Is replacement land which is to be given in exchange for the order land under section 131 or 132.
- 6.11 In respect of these legal tests, the CA Guidance explains that the Applicant should be able to demonstrate to the satisfaction of the Secretary of State that the land in question is needed for the development for which consent is sought. The Secretary of State will need to be satisfied that the land to be acquired is no more than is reasonably required for the purposes of the development.
- 6.12 Subsection (3) provides that the condition is that there is a compelling case in the public interest for the land to be acquired compulsorily.
- 6.13 In respect of the condition in subsection (3), the CA Guidance states at paragraphs 12 and 13 that the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired.
- 6.14 Sections 131 or 132 are not engaged in respect of the Scheme, therefore there is no need to provide replacement land or to satisfy the test in Section 122(2)(c).
- 6.15 *Requirement for the land – section 122(2)(a) and (b) of the Act:*
- 6.16 The Applicant's case is that the DCO should be made, and that therefore this must be followed by an assessment by the Examining Authority of whether the compulsory acquisition powers sought in the application for development consent should be granted.
- 6.17 The Applicant set out its case and confirmed that it is satisfied that the conditions in Section 122(2) of the Act are met in the Statement of Reasons [REP10-029] and throughout the examination at the Compulsory Acquisition Hearing 1 ("CAH1") [REP4-038] and in response to the Examining Authority First Written Questions [REP4-035]. The Land subject to compulsory acquisition powers is either needed for the development, or is needed to facilitate the development, or is incidental to the development. Within Appendix A of the Statement of Reasons [REP10-029] the Applicant sets out why compulsory powers are necessary in relation to each individual parcel of Land with

reference to the relevant DCO Works Numbers and the nature of the works as set out in Schedule 1 of the DCO.

- 6.18 The Applicant's is seeking no more land than is reasonably necessary for the delivery of the Scheme and the land-take is also proportionate. The land sought is the minimum required for safe and efficient construction, operation, and maintenance of the Scheme, including what is necessary to mitigate the effects of the Scheme and that it has sought to achieve a balance between minimising land-take and securing sufficient land to enable the Scheme to be delivered.
- 6.19 As is typical of a dDCO, the position of the Applicant is as against its preliminary design. As the Scheme's design evolves from preliminary into detailed design the Applicant continues to review the proposed land-take against the tests set out in section 122 of the Act, to ensure that the land over which compulsory acquisition is sought is the minimum required for the safe and efficient construction, operation and maintenance of the Scheme.
- 6.20 During the course of examination, the Applicant continued to engage with affected parties to ensure that, where possible, reductions were made to the extent of the land and rights to be acquired compulsorily. By way of example, the Applicant and National Highways developed a set of principles to be applied to the acquisition of NH's land and rights. One such principle is that only temporary possession would be sought in respect of plots where NH own the freehold and the works proposed by the Applicant are within existing SRN and relate to SRN works, apparatus or services which are to be maintained by NH going forwards or the works are within existing public highway (local road network) and relate to works, highway apparatus or services that are to be maintained by the Applicant as local highway authority. The application of this principle has led to plots being downgraded from either permanent acquisition of freehold or acquisition of rights to temporary possession.
- 6.21 The continued review of land required for the Scheme has generated a number of changes to ensure only land needed is included. By way of examples where design evolution and any subsequent amendments, following engagement with the owners of the House in the Tree and Statutory Undertakers, the Applicant secured the required utility diversions within the Old Gloucester Road. Only service re-connections will be required in the plot, and as such the Applicant has downgraded the plot 16/5b from Temporary Possession with Permanent Rights to Temporary Possession only.
- 6.22 This is reflected in the Land Plans [REP10-003] Statement of Reasons [REP10-029] and Book of Reference [REP10-033].
- 6.23 *Compelling case in the public interest – section 122(3) of the Act*

- 6.24 Section 122(3) of Act provides that there must be a compelling case in the public interest for the land to be compulsorily acquired. The NPS NN, at paragraph 2.2, identifies a "critical need" to improve road congestion to provide safe, expeditious and resilient networks that better support social and economic activity. The Applicant case justifying that there is a compelling case in the public interest for a development consent order containing compulsory acquisition powers to be granted for the delivery of the Scheme is identified in paragraph 2.22 to 2.24 and section 5.4 of the Statement of Reasons [REP10-029] which cross-refers to the Planning Statement (other documents support this position). The Planning Statement and Schedule of Accordance with National Policy Statement [REP10-063] sets out benefits of the Scheme and reiterates that the compelling case in the public interest for compulsory acquisition is met and demonstrates that there would be substantial public benefits arising from the implementation of the Scheme as set out in Chapter 5 of this document. The Applicant has considered the potential adverse effects associated with the changes of land use that would be required for the Scheme if development consent is granted and has carried out extensive balancing exercise between the public benefit of delivering the Scheme and private loss, in particular where the loss results in the loss of private homes. This is set out in detail at paragraph 6.3.1 to 6.3.5 of the Statement of Reasons [REP10-029] and was addressed orally at the CAH1.
- 6.25 ES Chapter 13: Population and Human Health [REP3-022] (among other matters) identifies the likely significant effects of the Scheme on private property, housing, community land and assets and agricultural land holdings. Table 13-4 of Chapter 13 of the ES provides a description of a type of impact which includes loss of property or quality as a major impact, which is taken through with regard to a number of properties.
- 6.26 Considering the above, the Applicant considers there is a compelling case in the public interest for the authorisation of the compulsory acquisition of land and that the interference with private interests in land is justified.
- 6.27 **Human Rights Act 1998**
- 6.28 The Applicant's approach to compulsory acquisition is consistent with the relevant duties in the Human Rights Act 1998 and the European Convention on Human Rights (ECHR). The Applicant has also set out its obligations in detail in the Statement of Reasons at paragraph 6.3 and this was also presented during the CAH1 and addressed in the Applicant Written Submission of Oral Case for Compulsory Acquisition Hearing 1 [REP4-038].
- 6.29 Article 1 of the First Protocol is discharged by the appropriate process under the Planning Act 2008 being followed and the relevant parties having a right to claim compensation under the compensation code.

- 6.30 Article 6 ECHR relates to the procedures and the opportunity through the examination process to comment on the proposals and to make representations on the DCO and challenge it by judicial review if there are ground in doing so. This was discharged during the examination process.
- 6.31 Article 8 of the ECHR involves engagement of the compelling case test and matters referred to earlier, such as minimising land necessary and the balance of proportionality and justification.
- 6.32 During evolution of the Scheme, the Applicant has considered the impacts on human rights of exercising compulsory acquisition rights and balanced the rights of the individual property owners against the interests of the public. Beyond seeking to acquire the minimum land necessary to deliver the Scheme, the existing use of the land has informed the compulsory acquisition approach.
- 6.33 The Applicant has had regard to the human rights implications of implementing the Scheme and the engagement in particularly of Article 8 and Article 1 of the ECHR. This is evidence in the Applicant's Cabinet meetings in July 2020 and December 2023 where the commitment to use compulsory powers for the M5 Junction 10 Improvement Scheme was considered and approved. The minutes of the Applicant's Cabinet Meeting dated December 2023 (extract of relevant consideration provided in the Applicant Written Submission of Oral Case for Compulsory Acquisition Hearing 1 [REP4-038] are a record of how private loss of property has been weighed against the public benefit of the Scheme and how the latter would demonstrably and overwhelmingly outweigh the former was considered by the Applicant.
- 6.34 The Applicant considers that there is a fair balance between the public interest seeing the Scheme proceed, underpinned by the need, and the private rights that would be affected by compulsory acquisition. Relevant to that is whether the land is the minimum necessary and the position is that the land required is the minimum necessary to ensure delivery of the Scheme and the interference with human rights is considered to be both proportionate and justified having regard to the objective of minimising harm which has informed the Scheme while achieving the objectives of the Scheme.
- 6.35 Further consideration, particularly in connection with the loss of private homes is the steps the Scheme has been seeking to secure those interests by private agreement rather than compulsory acquisition. The Applicant provided an update on the compulsory acquisition position in relation to properties, above.
- 6.36 As set out in the ES Chapter 3 on Alternatives [REP10-037] at paragraph 3.5.7, the Link Road contains the most theoretical scope for alternatives, having regard to the constrained of the other two sections. In relation to Corridor 3 (the option selected) the

table summarising the factors taken into account includes the impact on properties, of which the selected corridor had the least impact on properties.

6.37 As set out in the Applicant's response to Action Points arising from CAH1 embedded in the Applicant Written Submission of Oral Case for Compulsory Acquisition Hearing 1 [REP4-038], examples of how and where the Applicant sought to acquire the minimum land necessary so that interference with human rights was minimised where possible are:

- (a) West Cheltenham Link Road Alignment: The existing agricultural use of the land informed the alignment and design of the new road. Existing field boundaries were considered along with minimum farmable areas to ensure the minimum area of land was severed by the Scheme. This has ensured that landowners can continue to farm the maximum extent of land subject only to Temporary Possession or Permanent Rights following construction of the Scheme.
- (b) Accommodation Works: Accommodation works appropriate to the land use have been incorporated into the Scheme, with consideration to the responses received during consultation. This again has ensured that land is only subject to Temporary Possession or Permanent Right, and the existing land use can continue following the Scheme with the least impact possible.
- (c) Hedgerow Improvement and Protection: Where possible the Applicant has not sought to permanently acquire land, but only the rights required to ensure the least impact on the existing land use. This has included seeking only rights to undertake and maintain improvements to hedgerows where needed for mitigation. Reducing the impact on the continued agricultural use of the land and allowing the continued inclusion of the hedgerow within any appropriate agricultural environmental schemes.
- (d) Residential Properties: Due to the considerable significance of impact compulsory acquisition will have on the owners of residential properties, the Applicant has wherever possible designed the Scheme to avoid residential properties and in order to minimise compulsory acquisition. An example of this in relation to the designed widening of the A4019 has been provided in response to paragraph CAH1.6 in [REP4-038] above. Where it has not been possible to avoid residential properties, the Applicant in recognition of the existing land use, has engaged with landowners at the earliest opportunity. The Applicant has structured the voluntary negotiations with an early focus on residential properties to provide landowners certainty in relation to their home and the opportunity to purchase a replacement property soon as possible.

6.38 The Applicant is aware that Mr Neil Hadley has raised his concerns regarding the impact the Scheme will have on his human rights. The Applicant has responded to Mr Neil Hadley

throughout the examination and remains of the position, as stated above, that the interference of human rights remains proportionate and justified.

6.39 Equality Act 2010 – Equality Impact Assessment

6.40 The Applicant has complied with its duties under Section 149 of the Equality Act 2010 and has had due regard to the need to (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by or under the Equality Act 2010; (ii) advance equality of opportunity between persons who share a protected characteristic and persons who do not share it; and (iii) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

6.41 The Applicant has carried out an Equality Impact Assessment (EqIA) [REP10-068] to consider how the proposed Scheme could directly impact and contribute to equality effects for equality groups. In developing the EqIA, the Applicant used National Highways' 'Equality, Diversity and Inclusion sifting Tool (EDIT)'. Section 5 of the EqIA provides additional information on the process of the assessment during the Scheme development. Given the involvement of National Highways due to the M5 being a National Highways asset, the Applicant ensured compliance with National Highways' procedures. Each project within Major Projects directorate has to go through the project life cycle. The life cycle of a Major Project begins at Stage 1 (Option Identification) and ends at Stage 7 (Closeout). The Project Control Framework (PCF) is the electronic manual for the Major Projects directorate and sets out who needs to do what and when to deliver a successful road project in a consistent and controlled manner throughout the project lifecycle. Equality impacts are considered from PCF Stage 1 (Options Identification) throughout the PCF process including at PCF stage 3 Preliminary Design stage. The EqIA will continue to be updated as the project progresses through the project lifecycle. The EDIT is used as part of the process and is designed to help National Highways (and in this instance, the Applicant) project managers, designers and engineers make an informed decision about how equality issues relate to their scheme.

6.42 The first submitted EqIA [REP10-068], dated December 2023, is not a solitary exercise and was preceded by equality impact screening in July 2020 and an Equality Impact Assessment in October 2022 during the design and consultation stage. That process has permeated the Scheme's considerations from an early stage in July 2020. The assessment of impacts on protected characteristic groups is set out at section 5, table 5-1 of the Equality Impact Assessment [REP10-068] and identifies the level of impact, the reasons for it, the evidence and anticipated pathways of securing mitigation.

6.43 The EqIA has been updated throughout the course of examination and will continue to be developed throughout the remaining design and construction stages of the Scheme, the most recent and up-to-date version of the EqIA was submitted at deadline 10 [REP10-

068] It will ensure that due regard is made towards the needs of people with protected characteristics under the Equality Act 2010. It will also help identify opportunities for enhancing equality of opportunity and fostering good relations between those who have protected characteristics and those who do not.

- 6.44 In respect of land acquisition, the Applicant has identified affected persons with protected characteristics and designed the Scheme considering the issues that could be experienced by equality groups. At paragraph 3.13.10 of the Equality Impact Assessment [REP10-068] it notes that a small proportion of the local population are landowners whose land may be impacted by the Scheme who could also fall into a Protected Group Characteristic (PCG).
- 6.45 The EqIA identifies the Travellers Site has housing persons with protected characteristics and as a result of this has included Travellers as part of the assessment. For consultation a statutory consultation pack was issued to the Occupiers of the site including a cover letter translated into six different languages offering opportunity to contact the Applicant to discuss proposals further if required. The assessment also shows that if the site is still operational at the time of construction mitigation is included in the design to ensure that access is retained to the site through construction period and also when the Scheme is complete.
- 6.46 Chapter 13, Population and Human Health of the Environmental Statement [REP3-022] contains a description of human health receptor groups. The residents of the informal Traveller site are included at pages 224/225, which states that '*Traveller community groups have Protected Characteristics and are therefore considered to be a sensitive population group.*' The sensitivity assigned to this receptor is 'High' which reflects this aspect of the receptor.
- 6.47 The occupiers of the Traveller Site were issued a Section 42 consultation pack including the S42 Notice in December 2022. Taking advice from the Traveller Liaison Support Officer at Gloucestershire County Council and the Friends, Families and Travellers' charity, the pack included a cover letter which was translated into six of the most commonly used languages for this community. This offered the opportunity to contact the Applicant to discuss the proposals and if any further information/ translation was required. The consultation pack was physically issued to the occupiers of the site in line with the advice from the Travellers Liaison Support Officer. The consultation period was extended to 44 days to allow for the Christmas period. As set out in the Consultation Report [APP-038] and EqIA [REP10-068] no response was received. The Applicant has responded to ExA Questions on this matter in its response to ExQ2s and ExQ3s being [REP5-027] and [REP9-011] respectively.

6.48 The Applicant was advised by GCC's Traveller Liaison Support Officer not to visit site without police support due to history of the site and a serious incident that occurred previously. Having received this advice, the Applicant considered the implications of visiting the site with police support and the impact this could have on constructive engagement moving forward. The police were not consulted on this matter as it was the Applicant's position that the Traveller Liaison Support Officer was the most appropriate authority to consider engagement with the occupants of the site. As such it was determined that a police presence would likely antagonise the occupants of the site and undermine any attempts for constructive engagement moving forward. Therefore, a decision was taken to rely on the information pack served in the languages noted in the Applicant's response to Q1.0.4 of ExQ2 [REP5- 027].

6.49 The Applicant does not consider that there are any extant issues of contention in relation to the Applicant's duties under the Equality Act 2010.

6.50 **Statutory Undertakers Land and Section 127 test**

Section 127 of the Act

6.51 Section 127 applies to land (statutory undertakers' land) if:

The land has been acquired by a statutory undertaker for the purpose of its undertaking;

A representation has been made and not withdrawn about an application for development consent order;

The Secretary of State is satisfied that:

The land used for the purposes of carrying out the statutory undertaker's undertaking; or

An interest in land is held for those purposes; and For the purposes of section 127 "land" includes any interest in or right over land (as defined in section 159 of the 2008 Act).

6.52 If representations from statutory undertakers have not been withdrawn and the Secretary of State is satisfied that the land or an interest in the land is used for the purposes of carrying on a statutory undertaking, then the DCO may include provisions authorising the compulsory acquisition of land or right over statutory undertakers' land by the creation of a new right over and only to the extent that the Secretary of State is satisfied that the requirements of section 127 have been met.

- 6.53 In these circumstances the DCO may only include a provision authorising the compulsory acquisition of statutory undertakers' land or of a right over statutory undertakers' land by creation of a new right over land where the Secretary of State is satisfied that:

The land or right may be purchased and not replaced without serious detriment of the carrying on of the undertaking; or

It can be replaced with other land belonging to, or available for acquisition by, the undertaker without serious detriment to the carrying on of the undertaking.

Section 138 of the Act:

- 6.54 Section 138 applies to land if:

There subsists over the land a relevant right; or

There is on, under or over the land relevant apparatus.

- 6.55 Section 138 also provides that a DCO may include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus only if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the DCO relates.

- 6.56 The DCO also includes the power for the Applicant to extinguish the rights of, remove or reposition the apparatus belonging to the statutory undertakers, and as such the Applicant believes that section 138 of the 2008 Act is also engaged.

Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects (DLUHC, April 2024).

- 6.57 Government guidance states that:

“Applicants should expect to agree the form of protective provisions with the relevant parties for inclusion in the draft DCO prior to submitting the application for development consent. Where agreement on protective provisions has not been reached during the pre-application stage, applicants should include their preferred drafting taking into account the standard protective provisions commonly used by the relevant party (usually statutory undertakers) and endorsed in recent DCO decisions. [...]

Most statutory undertakers have now developed their own preferred form of protective provisions which is very helpful to the preparation of the draft DCO. However, these must be adapted as necessary, so they accurately reflect the proposed development. They should also not simply negate other provisions of the DCO, particularly concerning proposed compulsory acquisition of statutory undertakers' land.

Examining Authorities are expected to ensure that the final form of a recommended DCO contains protective provisions which are bespoke to the application under consideration."
[emphasis added]

Engagement with Statutory undertakers

- 6.58 The Applicant engaged with statutory undertakers which were impacted by the Scheme. Updated revisions of the following documents were submitted throughout the examination process, detailing the positions of the Applicant and Statutory Undertakers impacted by the Scheme. Those documents should be read in conjunction with this Closing Submission. Where the position or status differs, this document shall take precedent:
- (a) Land Rights Tracker (final submission at Deadline 10) [REP10-103];
 - (b) Applicant's case under sections 127 and 138 of the Planning Act 2008 [AS-110].
- 6.59 As submitted at CAH1, the Applicant engaged with those statutory undertakers in respect of which it is proposing to exercise compulsory acquisition powers to remove or divert operators' equipment.
- 6.60 Statutory undertakers Gigaclear PLC and Zayo Group UK Ltd confirmed, before the start of examination, that the protective provisions included in the Part 2 of Schedule 9 of the draft DCO were acceptable and did not request bespoke protective provisions for the protection of their apparatus.
- 6.61 Negotiations continued throughout examination with four of the statutory undertakers who required the inclusion of bespoke protective provisions within the draft DCO: National Grid Electricity Distribution (West Midlands) PLC ("NGED"), Wales and West Utilities ("W&W"), Severn Trent Water ("STW"), National Highways ("NH") and BT Openreach. Of these five statutory undertakers, four submitted representations to the Scheme: NGED, STW, W&W and NH which have not yet been withdrawn.
- 6.62 The Applicant's position in relation to National Highways is summarised in the section on Statements of Common Ground in Chapter 14 below.
- 6.63 Agreement was reached with BT Openreach in respect of their preferred set of protective provisions, which were included in the draft DCO submitted at Deadline 7 [REP7-002]. A letter from BT Openreach dated 7 November 2024 confirming this was submitted to examination at Deadline 9a which can be found at Appendix C of the Applicant's response to Open Floor Hearing 2 (OFH2), Compulsory Acquisition Hearing 2 (CAH2) and Issue Specific Hearing 5 (ISH5) Action Points [REP9A-006].
- 6.64 Whilst the Applicant continues to seek to reach agreement with the outstanding statutory undertakers, given the imminent close of examination, the Applicant included a set of

bespoke protective provisions for each of the outstanding statutory undertakers in the draft DCO and Schedules submitted at Deadline 7 [REP7-002].

- 6.65 The Applicant's reasoning and justification in respect of the points of disagreement were set out in detail in the Applicant's case under sections 127 and 138 of the Planning Act 2008 [AS-110] and follows this year's updated Government Guidance "Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects (30 April 2024)". The Guidance confirms at paragraph 012 that:

"Most statutory undertakers have now developed their own preferred form of protective provisions which is very helpful to the preparation of the draft DCO. However, these must be adapted as necessary, so they accurately reflect the proposed development. They should also not simply negate other provisions of the DCO, particularly concerning proposed compulsory acquisition of statutory undertakers' land"

- 6.66 With this in mind, the Applicant continues to pursue agreement with each of these statutory undertakers after the submission of its preferred protective provisions in the Deadline 7 draft DCO. However, it has proved difficult obtaining feedback from some of the outstanding statutory undertakers putting the Applicant in a difficult position given the strict deadlines the Applicant must adhere to during examination.

- 6.67 The main outstanding points of disagreement are in relation to the definition of "specified works" and procedure for approval of such works and the ability of the Applicant to exercise compulsory acquisition powers obtained in the development consent order.

- 6.68 The Applicant has sought to take a reasonable approach to whilst also including provisions that are workable and could not pose a disproportionate risk in terms of unnecessary delays to the construction programme of the Scheme.

- 6.69 In the Applicant's view, the bespoke protective provisions included in the draft DCO are a balance between accommodating each statutory undertaker standard and preferred set of protective provisions and what is practicable for the Scheme-specific requirements.

- 6.70 Given the established need for the proposed development (please see the case as set out in the Statement of Reasons [REP10-063]), the fact that satisfactory protective provisions for the benefit of the statutory undertakers which representations have not been withdrawn yet, the Applicant's position is that there is a compelling case in the public interest for the inclusion of the compulsory purchase powers within the DCO. No freehold acquisition of statutory undertaker land is required to implement the Scheme, the Applicant only seeks to coexist in rights alongside those of the SUs.

- 6.71 For the reasons set out in the Applicant's case under Section 127 and 138 [AS-110], it is the Applicant's position that:

- (a) pursuant to section 127 of the Act, the Secretary of State can be satisfied that the prescribed tests of section 127 have been met and that the land in which STW, NGED and W&W have interests may be included for compulsory acquisition in the DCO.
 - (b) pursuant to section 138 of the Act, the Secretary of State can be satisfied that the power for the Applicant to extinguish the rights of, remove or reposition the apparatus belonging to STW, NGED and W&W is necessary for the purpose of carrying out the proposed development but for which each of these SUs has protection in the form of protective provisions and the Applicant seeks alternative land to divert and replace their apparatus, and the test of section 138 has therefore been met.
- 6.72 The procedure and test under section 127(5) only applies to the compulsory acquisition of a right, so is not engaged by plots subject to Articles 31 and 32 of the DCO (temporary use). Therefore, any plots in which the statutory undertakers have an interest, and which are to be temporarily possessed do not need to meet the test in section 127(5) and section 127(6) and accordingly there is no need for the Secretary of State to be satisfied that there is no serious detriment.
- 6.73 **Crown Land – Section 135 consent**
- 6.74 Section 135 of Act states that a development consent order may authorise, with the consent of the Crown, the compulsory acquisition of an interest held in Crown land which, for the time being, is held otherwise than by or on behalf of the Crown, and appropriate Crown authority consents to acquisition.
- 6.75 The Applicant has identified that Crown interests exist within the boundaries of the Scheme. These are shown in the Book of Reference [REP10-033] and the Crown Land Plans [REP3-006]. The implementation of the Scheme requires the authorisation of the compulsory acquisition of interest of the Crown land.
- 6.76 There is Crown owned land within the boundaries of the Scheme and the Applicant is proposing to acquire this voluntarily. The Applicant noted at the CAH1 that there are three plots which qualify as Crown Land where the interest is held by the Department for Environment, Food and Rural Affairs (“DEFRA”), Department for Levelling Up, Housing and Communities/Ministry Housing Communities and Local Government (“DLUHC”/“MHCLG”) and The Crown Estate Commissioners (“TCE”).
- 6.77 The Applicant attempted to engage with all parties throughout the course of examination by way of presenting the Scheme and requesting consent under Section 135 of the Act from all three parties.

- 6.78 In respect of DEFRA, the Applicant sent letters requesting consent on 19 March 2024 and chased on 9 May 2024, 3 September 2024 and 12 November 2024, but has not received a response. The Applicant has discussed with its contacts in Homes England who have offered support to encourage a response in this regard. The Applicant will continue to pursue a response from DEFRA.
- 6.79 The Applicant is at an advance stage of engagement with MHCLG and is awaiting a signed letter of consent. The Applicant has been in touch with MHCLG via the Government Legal Department. The Applicant was informed last week that the GLD are seeking further instructions in relation to a signed letter of consent and are seeking the correct person within MHCLG to provide those instructions. The Applicant therefore, is unable to present a s135 consent from MHCLG during examination but hopes to be able to provide further updates to the Secretary of State prior to her determination of the Scheme.
- 6.80 The Applicant is in discussion with the Crown Estate Commissioners regarding heads of terms and is discussing the possibility of obtaining a s.135 from the Crown Estate Commissioners once signed heads of terms are received. The Crown Estate Commissioners have in the last week requested a structural change to the voluntary acquisition of land and this has delayed the signing of any heads of terms. The Crown Estate Commissioners agent continues to advise that s135 consent will be withheld until signed heads of terms are agreed which the Applicant maintains is an unnecessary position to take, given that no additional leverage is gained by the Crown Estate Commissioners in withholding s135 consent as voluntary land acquisition will still be required. Regardless, heads of terms are progressing and the Applicant is of the strong belief that an update can be provided to the Secretary of State during their period of determination. No section 135 consent will be available during the Examination.
- 6.81 Whilst the Applicant continued its engagement with the appropriate Crown authorities to provide s135 consent during examination it should be noted that the Applicant considers that the draft DCO as drafted ensures that the Order does not permit the undertaker from undertaking any action pursuant to the Order which would be contrary to section 135.
- 6.82 The Applicant's proposed draft DCO includes Article 43(1)(b) which explicitly states that nothing in the dDCO authorises the undertaker to exercise any right under the Order compulsorily to acquire an interest in any land which is Crown Land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the Act). This ensures that notwithstanding the book of reference and relevant schedules of the Order the Applicant would be barred from including any Crown land which is otherwise held by or on behalf of the Crown without the Crown's consent.

6.83 The Applicant appreciates that article 43 does not bring the Scheme closer to obtaining Crown consent which will be a prerequisite for the Scheme. Further, the Applicant appreciates that whilst Government guidance states that Crown consent should be obtained at the earliest opportunity, it remains a commonplace occurrence that Crown consent is not obtained during examination of an NSIP, often due to lack of engagement from the relevant Crown authorities. The Applicant will continue liaise with the Crown authorities to obtain consent as soon as reasonably practicable, and once secured will provide further written submissions to the Secretary of State. Further enquiries of the Secretary of State to the appropriate Crown authorities and the Applicant may be necessary to resolve the matter.

7 FUNDING

7.1 The policy approach to Scheme funding is set out in the CA Guidance.

7.2 The CA Guidance confirms that there are two tests in relation to funding. The first is in relation to funding the acquisition of land and rights and requires the Applicant to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available within 5 years from authorisation (noting that the CA Guidance does acknowledge that SoS has discretion to grant a different period) (see paragraph 9 and 18 of the CA Guidance). The second test relates to funding for implementing the Scheme itself and requires the Applicant to provide an indication of how any potential shortfalls are intended to be met including the degree to which other bodies (public or private) have agreed to make financial contributions or to underwrite the scheme and the basis for this (paragraph 17 of the CA Guidance).

7.3 The Applicant's Funding Statement [REP10-031] confirms the anticipated costs of delivering the Scheme and the funding mechanisms available to meet those costs. This confirms that the Scheme has a current estimate of £293,210 million. Within that estimate is the cost of land acquisition and compensation, which is estimated to be £24.579 million (see paragraph 5.26 above). The cost of delivering the Scheme is £263,631 million, which comprises the costs of construction, preliminary costs and design. It also includes an allowance for risk and inflation as well as post completion costs. A breakdown of the elements of costs, and how they are allocated between the various Scheme components, is contained in Table 1-1 to the Funding Statement. The Applicant considers that the anticipated Scheme costs are robust and based on conservative estimates. National Highways did raise questions over the Scheme cost estimate but that is no longer an issue of for them [REP9-017]. The Funding Statement also recognises that the changes made to the Scheme (see paragraphs 4.6 to 4.16 above) will result in a reduction to the overall Scheme costs. These changes, together with the need to provide the MS4 gantries being confirmed by National Highways to the Applicant as not being necessary, could result in a reduction to the Scheme costs of approximately £15 million.

- 7.4 The key source of Scheme funding is through a £212,071 million allocation of Housing Infrastructure Fund monies secured pursuant to a Grant Determination Agreement (GDA) between the Applicant and Homes England. The funding availability period pursuant to the GDA is currently to September 2027 which requires the HIF funds to be committed and spent prior to this date. The Scheme completion date has recently been extended by agreement with Homes England to March 2028, which aligns with the Scheme construction programme. The spend profile (Table 1-2 REP10-031) sees the HIF monies being spent between March 2027 and September 2027, which complies with the GDA.
- 7.5 The £24,579 million land acquisition estimate (of which £13 million has already been committed on acquiring properties) will be incurred early in the process. Therefore, there is sufficient funding available within the HIF monies to acquire all land and rights necessary to deliver the Scheme and the test contained in paragraphs 9 and 18 of the CA guidance is met.
- 7.6 Whilst there is HIF funding available to complete the majority of the scheme, there is at this stage a shortfall which needs to be met to allow completion of the Scheme. Therefore, as per the second test, the Applicant must provide an indication as to how that shortfall is intended to be met. The Funding Statement outlines the sources of funding which GCC anticipate will be available. This includes the potential for section 106 contributions to be secured from the allocated developments A4 and A7 and other development proposals which are only considered acceptable through construction of the Scheme. The Joint Councils have highlighted that such contributions are for consideration by the relevant Local Planning Authority when determining individual applications, they must comply with the tests in Regulation 122 of the Community Infrastructure Levy Regulations and they cannot be secured retrospectively after completion of the Scheme [REP9-015]. The Applicant does not disagree with the Joint Council's submissions but considers that, given the need for the Scheme, there is a realistic prospect of such contributions meeting the CIL tests. Indeed, the Applicant has had discussions with some of the developers of the relevant sites and in principle positive commitments to section 106 obligations to fund the Scheme have been given [REP9A-005].
- 7.7 There is also the potential for Community Infrastructure Levy funds being made available for the Scheme, with the Scheme recently being added to the list of Infrastructure projects which would qualify for such funding. The Joint Councils do not consider all the unallocated funds will be available for the Scheme (currently estimated to be £20million [REP7-018]). The decision to allocate funds is one made by the CIL Joint Committee and currently the Applicant considers that there is a reasonable prospect that monies currently unallocated from the CIL fund may be made available. There is also the potential for GCC to use its reserves or otherwise ringfence GCC monies. In this respect a letter from GCC's Leader [REP9-001] confirms the Council's commitment to the Scheme and the possibilities of internal funding.

- 7.8 A key element to the Applicant being able to provide sufficient certainty of funding for the Scheme is its proposal to secure a loan facility from the UK Infrastructure Bank. The Applicant has been in discussions with UKIB in relation to putting a loan facility in place which covers the maximum level of potential funding shortfall (circa £81 million) in order to forward fund delivery of the Scheme. Engagement has been positive and UKIB/National Wealth Fund has confirmed its in principle support and the process required to secure the loan facility (see letter contained in [REP9-001]). The Applicant is progressing such discussions with a view to ensuring the facility is in place to draw down monies, in so far as they are needed, following expenditure of the HIF monies in Quarter 2 2027/28. GCC is committed to moving forward with this facility as part of its funding strategy.
- 7.9 There has been no challenge to this approach by any of party to the Examination and it demonstrates a realistic indication of Scheme funding. In this regard not only is the test in paragraph 17 met but the Applicant considers that the reasonable prospect is also met in so far as Scheme delivery is concerned. Therefore, funding is not an impediment to confirmation of the Order.

8 ALTERNATIVES

- 8.1 The JCS Transport Strategy Evidence Base contains the evidence base for the need for the Scheme in its current design. The Need for Scheme Technical Note [REP4-042], and the Deadline 10 Planning Statement [REP10-063] both summarise the chronology of the JCS process to arrive at the current Scheme design.
- 8.2 The assessment of alternatives is primarily set out in ES Chapter 3: Assessment of Alternatives [REP10-037]. This document sets out the identification of options for the M5 Junction, the options for improvements to the A4019 and the options for the Link Road. It sets out the preferred route option and the development of design following statutory consultation.
- 8.3 The JCS, adopted in December 2017, was an iterative process, with assessment of the transport impacts and resultant mitigation developed throughout its Examination. The transport evidence base for the JCS shows five iterations of transport impacts, mitigation and analysis up to October 2016. These iterations considered different potential interventions, including options with a range of improvements for sustainable modes of transport. The outcome of this process was a preferred package of measures to mitigate the impacts of the JCS that are incorporated into the JCS Transport Strategy. The package of measures includes improvements to public transport and active modes of travel, in addition to highway improvements such as the M5 Junction 10 Improvements Scheme.

- 8.4 The overall JCS Transport Strategy has sought to alleviate traffic growth by providing for modal alternatives and the Scheme is, therefore, part of a package of measures to address the adverse impacts of the JCS that has already accounted for the modal alternatives aimed at alleviating traffic growth.
- 8.5 Committed schemes providing modal alternatives have been included in the traffic model, such as the extension of Arle Court Park & Interchange Hub, and so it has accounted for any benefits they might bring. The Scheme incorporates a bus lane on the A4019, to cater for improved public transport provision, and a substantially improved and coherent network of facilities for active modes of transport, i.e., pedestrians and cyclists. Consequently, it facilitates increased travel demand by alternatives to the private car, in addition to providing additional road capacity, to enable delivery of the JCS developments in accordance with the JSC Transport Strategy.
- 8.6 Nonetheless, an assessment of potential alternative sustainable transport interventions to accommodate some of the forecast increase in travel demand was prepared during the pre-application phase and reported in a technical note. This technical note is submitted into examination at Deadline 3 [REP3-053].
- 8.7 This assessment concluded that *“The walking, cycling and public transport related improvements being brought forward in the area and as part of the M5 Junction 10 Improvements Scheme will have a positive impact on influencing travel behaviour change in the area. However, in terms of unlocking the scale of development planned for the area, there is a residual need for improvements to the highway network including at M5 Junction 10.”*
- 8.8 Discussions over alternatives were had during the examination, particularly associated with National Highways and their suggestion that they had not been sighted on the Scheme’s evidence base to support the determination of need. The Applicant engaged with National Highways and it was confirmed in the Applicant’s Response to Issue Specific Hearing 4 (ISH4) Action Points [REP7-010] that National Highways had seen the requisite documentation.
- 8.9 Mr Neil Hadley has, throughout the examination, raised the potential to construct a roundabout rather than a signalised junction at the junction of the link road and the Old Gloucester Road (Work No. 5(j)). The Applicant responded to this issue in its response to Written Representations [REP2-008] which identified that a roundabout would cause significant queuing at the junction.
- 8.10 Objections have been raised by Ms Bruton and Mrs Counsell, and Bloor Homes and Persimmon Homes regarding the arrangement of a replacement access for existing agricultural accesses being stopped up due to the Scheme (work no. 4(j)). Objections have centred on concerns regarding the safety of the proposed access, the suitability for

agricultural use, and the potential for a “ransom” to be created. The alternative suggested had been that instead of a “T” junction design for the access, that a straight running access road would be provided through GCC land plot 12/1a and 12/2a such as that shown in REP7-012. The Applicant has provided responses to these issues throughout examination, the principal submissions of the Applicant in this regard are Appendix B, REP5-028, the Applicant’s comments on Interested Parties Deadline 7 submissions, chapter 6 [REP9-008] and the Applicant’s response to ExQ3, chapter 15 [REP9-011]

- (a) Regarding safety of the proposed access: objections suggested that the signalised junction would present a greater safety risk than that currently in place, being access arrangement directly onto the A4019. The Applicant considers that the proposals would improve road safety compared to the current direct access arrangements. It is also the case that the Scheme proposes a three-lane dual carriageway on the A4019, either side of the proposed A4019/Link Road junction in order to improve capacity through the junction. The provision of a parallel connector/service road to collect accesses before they join the carriageway at a main junction location is a safety recommendation included within the design standard CD123 - Geometric design of at-grade priority and signal-controlled junctions. The same design standard also states that direct accesses should be avoided where possible and not provided on dual three lane carriageways. Therefore, the Applicant considers that the provision of the signalised junction and parallel connector road not only is an improvement on the existing access arrangements in term of safety but also that the revised scheme would not allow for direct access onto this section of the new A4019. The signalised junction will ensure that agricultural machinery can access the A4019 safely and without conflict even during peak times.
- (b) Regarding intensity and suitability of use: The proposed shared track has a total corridor width of approximately 12m between proposed fence lines. Of this 12m, approximately 9m would be available to passing vehicles. This comprises a 5m wide track with 1m over-run strips on either side, which provides a total width of 7m. There is also an additional 2m width between the back of the over-run strip and the proposed boundary fence line that runs to the north of the access track. This provides a greater passing width than much of the local road network would provide, including sections of the A4019. Furthermore, this access track would have much less traffic than the adjoining road network. Objections suggested numbers of extreme intensity of use, which the Applicant considered to be an unrealistic estimation of the reasonable intensity caused by the current agricultural use.
- (c) Regarding the potential for a ransom: The Applicant’s position throughout Examination has been that there has been insufficient evidence provided by

Interested Parties to demonstrate the existence of a ransom. The Applicant's Comments to Interested Parties' Deadline 7 Submissions at REP9-008 responds to a plan provided by Bloor Homes and Persimmon Homes which sought to demonstrate that in a no-scheme world, a secondary access which does not utilise the GCC land can be achieved which as a result of the Scheme can no longer be achieved. The Applicant's position is that this alternative design does not demonstrate that a secondary access is achievable without going through GCC land in a no-scheme world, and therefore does not facilitate an argument that the Scheme has created a ransom.

9 GOOD DESIGN

- 9.1 As set out in the Applicant's response to ExQ1 [REP3-043], the Scheme has been developed using the National Highways' Project Control Framework (PCF). This provides a clear, pragmatic approach to project management throughout the development of major road projects, defining what is required throughout each stage. It has three key principles which can be summarised as: Planning to ensure delivery of relevant outcomes; Integrated consultation; eliminate waste and focus effort where most needed. The PCF defines activities and products for each stage and has inbuilt reviews at appropriate stages to ensure that the Scheme is on track, taking account of all considerations and delivering against social, environmental and economic objectives. Throughout this process, design alternatives have been considered, assessed and prioritised to be discarded or developed, taking account of constraints and opportunities and the project aims.
- 9.2 Feeding into the design process, a range of experts have gathered existing data in their own area of expertise pertaining to the locality, and where appropriate carried out further, more detailed studies and surveys to ensure sufficient data is available to inform the design. The DMRB has guided the environmental impact assessment process.
- 9.3 The proposal of going through a Design Review process prior to detailed design was discussed during the examination. The Applicant explained that National Highways has set out the criteria which would trigger a requirement for a Design Panel for a National Highways scheme (page 13 of [REP4-049]), specifically:
- (a) On the design of road improvements schemes, where these are in sensitive locations or expected to have a substantial impact on the surrounding landscape;
 - (b) On the development of relevant design standards concerning the visual impact of schemes; and
 - (c) At any other time where required by the Secretary of State.

9.4 Paragraph 4.33 of the NPS NN states “*The use of professional, independent advice on the design aspects of a proposal should be considered, to ensure good design principles are embedded into infrastructure proposals.*” Therefore, independent advice is not a requirement of the NPS NN; rather the consideration of its use is the requirement. Taking into account both NPS NN and National Highways’ criteria, the Applicant believes that a Design Review of the current design is not a requirement for the Scheme, and would not be a valuable use of resource on all sides given the objectives of the Scheme design and the characteristics of the environment in which the Scheme is located.

(a) In the context of the perception and visual appearance of this Scheme, the local landscape already includes a network of local roads passing over or under the M5 with the finish and design vernacular remaining simple, functional plain concrete. The slightly undulating landform combined with hedgerows, trees and buildings give rise to intermittent views in which these bridges and underpasses are concealed or glimpsed, and views to the road infrastructure generally are broken by hedgerows and trees.

(b) The preliminary design of the Scheme’s structures and landscape plan is aligned with this. For example, the design mitigation embedded in the Scheme design includes horizontal and vertical adjustments to the engineering elements to more easily bed with the existing landscape and road network, and planting of locally appropriate species and mixes to develop vegetation in keeping with the existing vegetation pattern.

(c) The detail of finishes for structures proposed as elements of the Scheme including the bridges across the M5, is to be decided at the detailed design stage.

9.5 However, the Applicant has accepted that in further consideration of ensuring the principals of good design, two Requirements are added to the dDCO as suggested by the ExA in their Consultation dDCO [PD-022].

9.6 National Highways raised issues regarding the Applicant’s design, however, the Applicant does not consider that there remain any outstanding points of contention regarding the requirements for Good Design.

10 TRAFFIC

Traffic Assessment and Modelling

10.1 The Applicant has provided a Transport Assessment [REP4-021] which evaluates the transport aspects of the Scheme in relation to the existing highway network and sustainable transport provision within the vicinity of the Scheme. The Transport Assessment is based on both a strategic traffic model and a more focuses and detailed Paramics Discovery microsimulation model that have been developed to assess the

impact of the Scheme on the strategic and local highway networks surrounding the M5 J10 and A4019 corridor.

- 10.2 The purpose of the Transport Assessment is to quantify and evaluate the impacts of the Scheme reflecting comparisons of potential alternative scenarios. Consequently, this assessment has considered the following comparisons to evaluate the impacts of the Scheme:
- (a) Scenario R (with the Scheme and with the dependant development) verses Scenario P (without the Scheme and without dependant development) – Core cumulative comparison
 - (b) Scenario S (with the Scheme, but without the dependant development) verses Scenario P – Comparison to isolate the impacts of the Scheme as separate to the impacts cause by the dependant development.
- 10.3 Scenario Q (without the Scheme, but with the dependant development) is a theoretical scenario, since the Joint Core Strategy (JCS) policy position is that dependant developments cannot come forward without the Scheme being implemented. Therefore, this scenario has not been subject to operational (PARAMICS) traffic modelling and is not assessed in this Transport Assessment. Nonetheless, Strategic traffic modelling of Scenario Q has been undertaken in accordance with the requirements of the Department for Transport (DfT) Transport Analysis Guidance (TAG) and the outcomes of this traffic modelling is presented in Traffic Forecasting Report which is Appendix L to the Transport Assessment [REP5-012].
- 10.4 The comparison of performance between Scenario S and Scenario P shows the impact of the Scheme in isolation (without any dependent development). Overall, the Scheme improves average journey times and increases average speeds across the Paramics model area. Considering specific journey times for routes within the model, the results indicate that across the majority of the routes there are journey time improvements. In terms of queuing, and specifically queue lengths for the M5 off-slips due to the potential for queues to block mainline traffic, which is a safety issue, the proposed Scheme reduces the length of the queue on the southbound off-slip, which is predicted to approach storage and extend towards the mainline in the AM peak without the Scheme and is therefore a safety benefit.
- 10.5 The comparison of performance between Scenario R and Scenario P shows the cumulative impact of the Scheme in combination with the dependent development. Overall, the results indicate that the Scheme mitigates the impact of the additional dependent demand in Scenario R on the operational performance of the road network and will therefore enable the dependent developments to be delivered.

- 10.6 Various discussions were had with National Highways during the examination on the validity of the modelling undertaken by the Applicant. The discussions focussed on those matters raised in National Highways' written post hearing submissions including written submissions of oral cases made at Hearings the w/c 12 August 2024 (REP4-049) which related to validation of the westbound journey times along the A4019 in the base year model. National Highways state: *"If this one issue is resolved and the model remains satisfactory validated locally, then this would address National Highways concern in respect to the SATURN model and potentially any residual issues associated with the Paramics model."*
- 10.7 To specifically address this National Highway concern, the Applicant has undertaken a sensitivity test with relevant parameters adjusted such that the two westbound journey time routes in the base year model of concern meet the TAG validation criteria at segment level whilst maintaining TAG validation compliance for all other aspects of the model. The results of this sensitivity test are reported in a Technical Note submitted at deadline 5 [REP5-029]. A comparison of the outputs from the 'sensitivity test' baseline model with the DCO baseline model shows minimal differences in traffic flows. This demonstrates that the modelled routing or assignment of traffic across the road network is reliable and the model outputs are not materially affected by whether the modelled westbound journey time along the A4019 meets the TAG validation criteria in comparison to observed journey times. Therefore, the strategic traffic modelling used to assess the Scheme is both robust and fit for purpose.
- 10.8 National Highways confirmed their satisfaction with the traffic modelling during ISH4, as summarised in [REP7-019]. The Joint Councils have also confirmed that they are content with the Scheme's modelling [REP10-72]. The Applicant does note that there are some areas of contention regarding modelling with the Developers specifically related to its use to support the funding methodology. This is set out in the respective SoCGs of the development sites submitted at Deadline 10 and 11.

Construction Traffic

- 10.9 Details on the volume of construction traffic forecast to be generated by the Scheme and the anticipated size of the workforce are provided in both Chapter 2 of the ES (Section 2.8.4 – [AS-010]) and the Traffic Management Plan (TMP) (EMP Annex B11, Sections 11.2.17& 11.2.23 – [REP10-095]). These have been derived as follows:
- (a) The forecast number of vehicles delivering construction materials and equipment has been calculated from the estimated quantities of required materials in combination with the construction programme.
 - (b) The forecast number of vehicle trips generated by construction workforce commuting has been calculated from anticipated size of the workforce in

combination with assumptions regarding arrival and departure profiles/times and usage of different modes of transport.

- 10.10 The Transport Assessment [REP4-021] includes an assessment on the effects anticipated from construction traffic. The additional traffic construction forecast to be generated by the Scheme has not been included in the traffic modelling undertaken to establish the traffic impacts of the Scheme during construction, since information on forecast construction traffic generation was not available when this modelling was undertaken. However, the additional generated construction traffic, now quantified, is likely to represent an insufficient proportional increase in traffic on the road network compared to background traffic volumes to materially impact the operational performance of the road network, particularly during the morning and evening road network peak hours. Furthermore, the impact of temporary traffic management arrangements, such as temporary closures of the M5 Junction 10 slip roads, will have a greater impact that outweighs that likely to result from the additional construction traffic. Thus, the outcomes of the traffic modelling undertaken to establish the traffic impacts of the Scheme during construction are very unlikely to be materially altered by the inclusion of construction generated traffic.

Temporary Closure of Slip Roads

- 10.11 National Highways raised a concern at paragraph 3.4 [REP7-019] regarding the efficacy and safety implications for the SRN of the proposed temporary slip road closures at M5 junction 10 and the signposted diversion routes. The Applicant conducted a review of its position and consulted with National Highways. The Applicant's response to Q15.0.3 of ExQ3s [REP9-011] provides a summary of the position. National Highways confirmed that provided the Traffic Management Plan [REP10-095] was updated to provide additional reassurance regarding temporary traffic management of Junction 11, informed by further detailed traffic modelling at detail design stage, that they were satisfied this risk was mitigated. The Applicant has provided this update at Deadline 10 and therefore considers this matter fully addressed.

11 PRINCIPAL ENVIRONMENTAL ISSUES

- 11.1 The following documents are regarded as the key documents setting out the Applicant's conclusions on environmental issues.

Environmental Statement ("ES")

- 11.2 The ES has been produced for the Scheme on the basis of its categorisation as a NSIP project, and as Schedule 2 development:
- 11.3 Schedule 2 development - the Scheme is categorised as Schedule 2 development on the basis that is likely to have a significant effect to the environment, under the Infrastructure

Planning (Environmental Impact Assessment) Regulations 2017 (“the EIA Regulations 2017”), paragraph 10(f) – construction of roads, and therefore requires an EIA to be undertaken. This Environment Statement (ES) reports the results of the EIA, and has been submitted as part of the DCO application.

11.4 The ES has been produced in accordance with the requirements set out within the EIA Regulations 2017. The documents comprising the ES for the Scheme are listed in Schedule 10 of the DCO.

11.5 The purpose of the ES (and the EIA process that underlies it) is to protect the environment by ensuring that the Examining Authority and the Secretary of State, when deciding whether to recommend consent for a project which is likely to have significant effects on the environment, does so in the full knowledge of the likely significant effects, and takes environmental information into account in the decision-making process

11.6 The Applicant has produced the ES against the following policy framework. Section 104(2)(a) of the Act, requires the Secretary of State to have regard to the relevant National Policy Statement (NPS), amongst other matters, when determining the DCO application. The relevant NPS for the Scheme is the NPS NN. Chapters 5 to 15 of the ES include the relevant assessment paragraphs of the NPS NN, where relevant to the topic chapters, and the overall assessment of the Scheme’s accordance with the NPS NN can be found in the Planning Statement and Schedule of Accordance with National Policy Statement [REP10-063]. Section 104(3) of the Act requires the Secretary of State to decide the application in accordance with any relevant national policy statement, except to the extent that certain considerations may apply. As the Scheme involves changes to M5 Junction 10 which is part of National Highways Strategic Road Network, then the Scheme has also taken account of NH’s policies, in particular the Road Investment Strategy 2 (2020-2025) and National Highways Strategic Business Plan (2020-2025). As National Highways is not the Applicant for the Scheme, then these policies are referenced here with regard to the overall policy framework applicable to the Scheme, but have not been addressed further within each of the ES Chapters 5 to 15:

- (a) Road Investment Strategy 2 (2020-2025) - Promotes a safer network, more reliable, and more sensitive to the places through which it runs. Strong focus on the differing needs of road users and adoption of new working practices and technologies including network users experiencing smoother, more consistent journeys and use of green infrastructure and good design, so users and residents alongside the network experience less noise, light and air pollution.
- (b) National Highways: Strategic Business Plan (2020-2025) - sets out National Highways’ response to Government’s Road Investment Strategy 2. It presents

the careful balancing between maintaining and operating the Strategic Road Network safely, and providing new capacity where it is needed.

- 11.7 Chapters 5-15 of the ES cover the environmental topics that are required to be assessed under Regulation 5(2) of the EIA Regulations 2017 and encompassing: air quality, noise and vibration, biodiversity, road drainage and the water environment, landscape and visual, geology and soils, cultural heritage, materials and waste, population and human health (P&HH), climate and cumulative effects.
- 11.8 The Applicant does not consider that there are any extant issues of contention regarding its ES.

Habitats Regulations Assessment (HRA)

- 11.9 A Habitats Regulations Assessment (HRA) is required by Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended)¹ for all plans and projects which may have likely significant effects on a European Site and are not directly connected with or necessary to the management of the European Site. Whilst the Scheme is not directly connected with, or necessary to, the nature conservation management of any European Sites, the Applicant undertook a HRA Screening Assessment to determine potential effects on European Sites that could be affected by the Scheme; and subsequently a Statement to Inform an Appropriate Assessment (SIAA).
- 11.10 The HRA undertaken by the Applicant for the Scheme is presented in ES Appendix 7.13 (Screening Assessment) [REP3-024], HRA Screening Addendum [AS-094] and ES Appendix 7.14 (Statement to Inform an Appropriate Assessment) [REP3-026].
- 11.11 This HRA Screening assessment concluded that, in the absence of mitigation, pollution, injury/mortality, disturbance, fragmentation and temporary reduction in extent of functionally linked habitat during construction and operation could have effects on European eel, Atlantic salmon, sea trout and river lamprey using the River Chelt, resulting in LSE on these qualifying species of the Severn Estuary SAC (in relation to river lamprey only) and Ramsar site. This Screening assessment has therefore concluded that these elements should be taken through to the second stage of HRA, Appropriate Assessment, and this is set out in the Statement to Inform an Appropriate Assessment (SIAA) [REP3-026].
- 11.12 The SIAA concluded that following a detailed assessment of the likely effect pathways, that there is a risk that the potential impacts could have adverse effects on the integrity of the Severn Estuary SAC/Ramsar Site alone. Mitigation measures have been designed which are effective, reliable, plainly established and uncontroversial. Taking the mitigation

¹ As amended by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019

into account, no residual effects remain, and therefore the Scheme would not add to any effects associated with other plans or projects.

- 11.13 The Applicant considers that there are no extant issues of contention regarding its HRA, with Natural England confirming their agreement in their SoCG [REP10-078]

Water Framework Directive (WFD)

- 11.14 The Applicant has assessed compliance of the Scheme with the Water Framework Directive (WFD), as detailed in ES Appendix 8.2 (WFD Compliance Assessment) [REP3-028] and the HEWRAT Assessment for DCO Change [REP9A-007]. The purpose of this WFD assessment is threefold:

- (a) Understand the Zone of Influence (Zol) and baseline conditions.
- (b) Understand which water bodies within the Zol have the potential to be impacted.
- (c) Assess the potential impacts against the Scheme design including embedded mitigation to determine if the Scheme is compliant with WFD objectives.

- 11.15 The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 aim to protect and enhance the quality of the water environment and inform the framework behind this WFD assessment. The WFD's principal aims are to protect and improve the water environment and promote the sustainable use of water.

- 11.16 There are two key objectives set out in the WFD legislation against which the impacts of proposed works on a water body need to be assessed to determine compliance with the overarching objectives of the WFD:

- (a) Test A: The Scheme will not cause a deterioration in any element of water body classification.
- (b) Test B: The Scheme will not prevent the WFD status objectives from being reached within the water body or other downstream water bodies.

- 11.17 As an NSIP, the Applicant has followed the guidance produced by the Planning Inspectorate (PINS) in Advice Note 18 on WFD² which was developed specifically for projects that fall within this process. The guidance suggests that a WFD assessment be comprised of three key stages:

- (a) Screening assessment.
- (b) Scoping assessment.

² The Planning Inspectorate, 2017. The Water Framework Directive. Advice Note Eighteen: The Water Framework Directive

(c) Impact assessment.

11.18 Further details on the assessments undertaken is provided in ES Appendix 8.2 [REP3-028]. This concludes that the Scheme is compliant with the requirements of the WFD.

11.19 The Applicant is not aware of any extant issues of contention regarding its WFD assessment, with the Environment Agency confirming their agreement in their SoCG [REP10-076].

Flood Risk Assessment (FRA)

11.20 The Flood Risk Assessment (FRA), comprising Part 1 [REP5-008], Part 2 [REP5-010] and the FRA Addendum [AS-095], undertaken by the Applicant for the Scheme documents the assessment of flood risk with regards to the National Planning Policy Framework (NPPF3). The December 2014 National Policy Statement for National Networks (NPS NN) sets out the need for, and Government's policies to, deliver development of nationally significant infrastructure projects (NSIPs) on the national road and rail networks in England. This relates back to the NPPF and guidance from the Environment Agency. The Scheme is considered to be an NSIP. Hence this FRA complies with any relevant requirements in the NPS NN.

11.21 The purpose of the FRA report is to:

- (a) support the Environmental Statement.
- (b) set out the flood risk policy and legislation relevant to this Scheme.
- (c) consider all sources of flooding and screen those relevant to the Scheme.
- (d) assess the actual flood risk and how it might change over the lifetime of the development.
- (e) consider how flood risk may be managed.
- (f) describe the residual risks of flooding beyond the design standard.

11.22 The Applicant is not aware of any extant issues of contention regarding its FRA.

Principal Topics of Discussion

11.23 The following matters were discussed during the examination. The Applicant considers that of those matters, only the comments of the Gloucestershire Wildlife Trust in relation to a perceived impact on Coombe Hill SSSI remain extant. All subjects of discussion with the Joint Councils, Historic England, Natural England, Environment Agency and National Highways regarding environmental matters have been resolved.

Air Quality: Assessment of slip road closures

- 11.24 As detailed in ES Chapter 5 (Air Quality) [AS-012], the Applicant has assessed the impact of construction traffic during the overall (30 month) construction phase with regards to air quality.
- 11.25 The closure of the southbound off slip road and then the northbound on slip road are scheduled to take place between month 11 and month 30, lasting 19 months within the overall construction period, as detailed in Table 2.1 of Chapter 2 – The Scheme [AS-010].
- 11.26 However, because any change in traffic flows as a result of the slip road closures is scheduled over a period of less than 2 years, there is no requirement for further assessment of the effects of these changes on air quality, as this is below the DMRB LA105 criterion for assessment. Hence, although there may be changes to existing traffic flows over the 30 month construction period as a result of additional construction traffic movements and slip road closures, changes over the DMRB criteria would only potentially occur over a 19 month period, and as such there is no requirement for assessment.

Biodiversity, Ecology and Natural Environment: Approach to veteran trees

- 11.27 The Woodland Trust (RR-041) stated that veteran trees can be identified on the basis of their size, age or condition, whereas the Applicant's view is that veteran trees need to meet criteria associated with all three characteristics, rather than just one. This position is captured in the Applicant's response to ExQ1 [REP3-043]. The Applicant has followed guidance in this regard that is set within the National Planning Policy Framework and the Core Standing Advice provided by Natural England and the Forestry Commission in the classification of veteran trees in support of this DCO Application.
- 11.28 The methodology adopted is detailed in section 2 of the submitted Arboricultural Impact Assessment [APP-116], and is the same as that used in several previous successful DCO applications, namely the M25 J10, M25 J28, A14 Cambridge to Huntingdon Improvement Scheme and A57 Link Roads Orders. The Applicant advocates the approach adopted and must point out that there is no defined British Standard in the classification of veteran trees. Indeed, the guidance available can be seen as ambiguous and its interpretation open to differing opinion. However, the Applicant is satisfied the approach follows the available guidance for the purposes of this assessment and there are no implications for the assessment carried out.
- 11.29 No further engagement has been received from the Woodland Trust past its initial relevant representation.

Biodiversity, Ecology and Natural Environment: Coombe Hill SSSI & in combination effects

- 11.30 Gloucestershire Wildlife Trust [RR-014, REP9-012] has expressed a concern that the Scheme would result in improved accessibility to the Coombe Hill Canal SSSI which had

not been considered. The Applicant notes that the HRA [REP3-024 and REP3-026] addresses the potential effects of increased recreational pressure from residents of the proposed housing developments in the local area, that will be facilitated by the Scheme. It is assumed that these housing developments are within the zone of influence of Coombe Hill SSSI, within which an increase in recreational use of the SSSI may be a result of housing growth.

- 11.31 This is supported by visitor survey information provided by Gloucestershire County Council (Footprint Ecology (2022) Severn Estuary Visitor Survey 2022) which was reviewed within the HRA Screening Report [REP3-024]. The visitor surveys undertaken at Coombe Hill Canal SSSI indicate that the majority of interviewees were on a day trip from home/short visit, with 50% of interviewees visiting a location that they go to at least once a week, with dog walking the most common activity.
- 11.32 The potential in-combination recreational effects of the combined housing developments within this and the wider area are known. There are already existing policy requirements that are in place at a strategic level (within the Joint Core Strategy and the Tewkesbury Borough Plan) that have been designed specifically to mitigate the potential in-combination recreational effects of the combined housing developments, and which must be met by the housing developments if planning permission is granted.
- 11.33 The Scheme does not provide direct access to the SSSI, which is located almost 2km north west of Junction 10. The existing M5 Junction 10 already provides access and egress to and from the north, with no connectivity to M5 south. It is this southern connectivity that will be improved as a result of the Scheme which will help to alleviate congestion across Cheltenham, as well as facilitate the planned housing development around the junction. As a result, the Applicant considers that improving the road infrastructure as the Scheme proposes would not facilitate access to the SSSI, and that this potential effect pathway has been fully considered, and a conclusion of no Likely Significant Effect at screening is appropriate.
- 11.34 It should also be noted that Natural England are in agreement with the Applicant's approach and conclusions [REP3-076]. Gloucestershire County Council, Tewkesbury Borough Council and Cheltenham Borough Council (the 'Joint Councils') [REP4-048] [REP4-048c] are also in agreement with the Applicant's position. No other Interested Parties have raised queries on this matter. Whilst agreement with Gloucestershire Wildlife Trust has not been reached the Applicant is satisfied that the agreement of Natural England, and the Joint Councils strongly indicate that the Applicant's position is justified and its HRA/ES assessments robust. The Applicant provided a most recent response to GWT at Deadline 10 [REP10-109]

Biodiversity, Ecology and Natural Environment: Waterbodies connected to Severn Estuary (LSE on eel, lamprey and salmon)

- 11.35 The Environment Agency [RR-013] raised concerns about the potential effects on waterbodies that have a hydrological link to the Severn Estuary and on the protected species therein, and sought clarification on survey and assessment undertaken and how the HRA addressed these matters.
- 11.36 The Applicant clarified that the presence of European eel, river lamprey, Atlantic salmon and sea/brown trout (which are all qualifying features of the Severn Estuary SAC/Ramsar), has been confirmed or assumed within the River Chelt, and the connectivity of the Chelt with the Severn has been considered within the assessments undertaken [REP1-043]. The Applicant provided further responses on this subject in its responses to ExQ1s [REP3-043].
- 11.37 A number of likely effect pathways were identified which could, in the absence of mitigation, result in Likely Significant Effects (LSE) on these qualifying fish species using functionally linked habitat within the River Chelt. The effect pathways included pollution, injury/mortality, disturbance, fragmentation and temporary reduction in the extent of functionally linked habitat. The Scheme includes a suite of mitigation measures, including pollution prevention measures, design of the River Chelt bridge to be a clear span structure, and measures to mitigate the potential for disturbance / injury / mortality / fragmentation including timing works to avoid ecologically sensitive periods in particular for qualifying fish species, and incorporation of SuDS (swales, ditches and attenuation basins) into the drainage strategy. The mitigation measures are effective, reliable, plainly established and uncontroversial, and will avoid any adverse effects. The mitigation measures are secured in the DCO via item B23 in the REAC [REP10-066].
- 11.38 Regarding watercourse channels other than the River Chelt, those that will be impacted by the Scheme have been assessed for their potential to support qualifying fish species. These other channels comprise heavily modified small tributary systems and managed drainage ditches with limited habitat complexity. They are typically dry and choked with terrestrial herbs and scrub and/or shaded by trees, with limited water/flow (i.e., small stagnant pools). They exhibit a limited range of aquatic habitat typologies and thus they are not considered suitable for supporting qualifying fish species most of the time.
- 11.39 The Leigh Brook is the largest of these minor watercourses, yet it exhibits low flow conditions within the study area (see Appendix 7.12 Aquatic Ecology Survey [APP-098]). The Applicant acknowledges that during periods when the Leigh Brook channel conveys flows/holds water, it may act as a suitable resource for migrating European eel within the wider catchment. However, the Leigh Brook is not considered in itself to be a viable resource for adult eel development due to very low water levels. Moreover, at the point

of interaction with the Scheme the Leigh Brook is unlikely to be a key migration route given there is limited upstream habitat which would be suitable for this species. Whilst there is potential for individual eel to utilise the reach at times, it is considered unlikely that this is a common occurrence. This potential very occasional and temporary use of the Leigh Brook by eels does not warrant its inclusion within the HRA.

- 11.40 Nonetheless, standard good practice pollution prevention measures and silt management/control measures will be implemented throughout the construction period to avoid pollution to all watercourses. Additional measures at the Leigh Brook will include avoidance of sensitive periods and development of a fish rescue plan if sections of the watercourse require dewatering.
- 11.41 Where realignments occur, these have been designed to improve habitat condition where possible.
- 11.42 The Applicant therefore considers that in taking the mitigation into account, no residual effects remain to waterbodies connected to the Severn Estuary.

Biodiversity, Ecology and Natural Environment: Dual function of the A4019 Withybridge underpass

- 11.43 As set out in the Applicant's response to interested parties Deadline 5 submissions [REP7-009], the A4019 Withybridge underpass has been included as part of the Scheme principally to provide a safe crossing over the A4019 for foraging bats, and thereby reduce potential impacts to bats from the Scheme. The underpass is also of sufficient size for use by walkers, cyclists and horse riders (WCH). The Applicant has sought to maximise the benefits of the underpass by designing a "dual" use function for this structure so that WCH might utilise this ecological mitigation during the day. Lighting in the underpass during the daytime will be considered during the detailed design stage to facilitate access through the underpass by WCH during daytime. Given the primary function of this underpass to provide ecological mitigation for bats then the underpass would not be lit between sunset and sunrise.
- 11.44 Alternative routes for WCH to cross the A4019 other than the underpass have been included as part of the Scheme.
- 11.45 In the Applicant's response to Interested Parties Deadline 9 submissions submitted at Deadline 10 [REP10-109] the Applicant responded to the Joint Council's Deadline 9 submission [REP9-013] which related to the perceived risk of harm from bats and interference with users of the PROW through the bat underpass with suggestions made to mitigate this interference. The Applicant is strongly of the view that the primary function of this underpass has been to provide ecological mitigation. The Applicant has sought to maximise the underpass' benefits by designing a "dual" use function by designing so that

WCH might utilise this ecological mitigation during the day. The Applicant does not consider that it would be appropriate to start to consider how to design this ecological mitigation to cater more for WCH users which was always intended as a secondary use.

- 11.46 The Applicant is not aware that this issue remains an extant issue of contention and considers it, therefore, resolved.

Climate Change Adaption and Carbon Emissions

- 11.47 The Scheme has the potential to effect the Earth's climate by increasing the emissions of GHGs into the atmosphere, which will occur during construction and throughout its operational life. As per regulation 5(2)(c) and paragraph 5(f) of Schedule 4 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017/572) (herein referred to as the 'EIA Regulations 2017'), the Applicant has considered the potential effects of the Scheme on climate, in particular the magnitude of GHGs emitted during both construction and operation.

- 11.48 The assessment undertaken by the Applicant and reported in ES Chapter 14 (Climate) [REP1-024] aligns with the Design Manual for Roads and Bridges (DMRB) LA 114 Climate³, DMRB LA 105 Air quality⁴ and TAG Unit A3 Environmental Impact Appraisal, Chapter 4 Greenhouse Gases⁵. The activities for which emissions have been quantified in the assessment include the direct and supply chain activities for the Do-Something scenario of the Scheme's life cycle, for both the construction and operation stages of the Scheme.

- 11.49 DMRB LA 114, section 3.20 states that: 'The assessment of projects on climate shall only report significant effects where increases in GHG emissions will have a material impact on the ability of Government to meet its carbon reduction targets'. The table of reporting significance in section 3.18 of DMRB LA 114 has been used to compare the Scheme's carbon emissions with respective carbon budget periods. The construction (2025) and Opening Year (2027) of the Scheme fall within the fourth and fifth carbon budgets respectively.

- 11.50 With regards to contributions to UK Carbon Budgets, the Scheme is likely to contribute 296,383 tCO_{2e} to the UK Carbon Budget's across the period 2025-2037, compared with the Do-Minimum scenario. The (net) contribution of the Scheme to the fourth Carbon budget period would be 208,024 tCO_{2e} (equivalent to 0.011% of that budget), including construction and operational phase emissions. The contribution of the Scheme to the fifth Carbon Budget would be 37,296 tCO_{2e} (equivalent to 0.002%) of that budget), from

³ LA 114 - Climate - DMRB ([standardsforhighways.co.uk](https://www.standardsforhighways.co.uk)).

⁴ <https://www.standardsforhighways.co.uk/prod/attachments/10191621-07df-44a3-892e-c1d5c7a28d90?inline=true>.

⁵ TAG UNIT A3 Environmental Impact Appraisal (publishing.service.gov.uk).

operational emissions. The contribution of the Scheme to the sixth Carbon Budget would be 51,064 tCO₂e (equivalent to 0.005% of that budget).

- 11.51 The Scheme is therefore unlikely to cause significant effects on climate, or significantly affect the UK's ability to meet its emissions reduction targets. It is considered that this magnitude of emissions from the Scheme will not materially impact the Government's ability to meet the budget, and therefore will not have a significant effect on climate.
- 11.52 This is in line with the position set out in the NPS NN, which acknowledges that the emissions from the construction and operation of a road scheme are likely to be negligible compared to total UK emissions, and are unlikely to materially affect the UK Government's ability to meet its carbon reduction targets. The NPS NN specifically states that 'it is very unlikely that the effect of a road project will, in isolation, affect the ability of Government to meet its carbon reduction plan targets'.

Green Belt: Assessment and conclusions

- 11.53 As set out in the Applicant's Planning Statement [REP10-031] The Scheme can be described the improvement of existing local transport infrastructure which can demonstrate a requirement for a Green Belt location, as per Paragraph 155 of the NPPF. As the majority of this infrastructure exists, with the exception of the proposed Link Road, it demonstrates a requirement for its location within the Green Belt. Therefore, the Scheme is considered to not be inappropriate development in the Green Belt. The Scheme preserves the Green Belt's openness and does not conflict with the purposes of the Green Belt, as set out in Paragraph 143 of the NPPF.
- 11.54 In the event that the SoS disagrees that the Scheme amounts to appropriate development within the Green Belt, the Applicant has provided an alternative case relating to 'very special circumstances'. This is based on Paragraph 5.170 of the NN NPS, which states 'a general presumption against inappropriate development within them. Such development should not be approved except in very special circumstances.' This can be found in section 7.6.20 onwards of the Planning Statement [REP10-031]. The Scheme amounts to "very special circumstances" for the reasons summarised below.
- 11.55 The Scheme is centred on improvements to the M5 Junction 10, the A4019 and connectivity around the west of Cheltenham. This existing infrastructure concerned is largely already within the Cheltenham and Gloucester Green Belt. The new infrastructure introduced by the Scheme into the Green Belt is the Link Road. The Applicant considers that the Scheme is not feasible without construction in the Green Belt [REP1-046].
- 11.56 Appendix A Section 6 of [REP1-046] (Assessment of alternatives and the Green Belt) sets out detail around consideration of alternative route options for the Link Road. The Applicant provided detailed submissions regarding green belt in Appendix 1 of Applicant

Written Submissions of Oral Case for Issue Specific Hearing 1 (ISH1) [REP1-046] and additionally at Q8.0.1, ExQ1 [REP3-043]

- 11.57 As set out in the above, four route options for the Link Road were assessed against directness of route, noise and air quality impacts, and impacts on floodplain, hedgerows and trees, buried archaeology, listed buildings and properties (see also paragraphs 3.5.9-3.5.8, Table 3.2 and Figure 3-4 of Chapter 3 of the ES [REP10-037]). Directness of route has an influence on air quality and noise impacts as well as affecting how effectively a route will function as a practical addition to the road network in alleviating potential congestion elsewhere. The options were then considered with the Green Belt as a separate criterion, whilst that changed the scoring it did not change the overall result [REP1-046]. The option that avoided the Green Belt land passed close to Moat House scheduled monument and was in a considerably less functional position than corridors closer to the M5 in terms of carrying traffic from / to M5J10 and to the West Cheltenham Development Area. Route option 3 minimises additional impact on existing properties, avoids carrying additional traffic close to the heritage assets at Moat House, minimises the potential impact on hedgerows and trees, and has the least flood plain impact of the three other options. At the same time, its location within the Green Belt- not far from the M5- ensures its functionality in terms of alleviating future traffic congestion and serving traffic from the improved M5 Junction 10 and development land to avoid adding to congestion in Uckington. The Link Road location is broadly within the zone of influence of the existing M5 relative to the Green Belt.
- 11.58 Further consideration of the Link Road design has enabled its vertical alignment to be lowered, reducing its apparent presence as an element of the environment. In conclusion, the selection of the Link Road location seeks to balance minimising the required length and height of the new road whilst optimising its effectiveness within the road network; its impact on floodplain, property, heritage assets, hedgerows and trees; the potential for disruption during construction; and consideration of potential impact on Green Belt status.
- 11.59 Although identified in the NPPF (and preceding PPG2) as one of the essential characteristics of Green Belts, ‘openness’ is not formerly defined. When considering whether development is appropriate or inappropriate, paragraph 154 of the NPPF (December 2023) includes defined exceptions which are identified, with the proviso that they “would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development”. There is no official methodology developed specifically for assessing the impact of a particular scheme on the ‘openness’ of the Green Belt. Furthermore, matters relating to potential impacts on openness are ‘planning judgement, not law’ (Supreme Court decision in *R.(on the application of Samuel Smith Old Brewery) v Yorkshire County Council* [2020] UKSC 3. This judgement gives weight to the consideration of visual openness, which can be interpreted as the inclusion of the consideration of visual effects on landscape and on receptors of visual impact.

- 11.60 As PPG2 made clear, 'openness' is not necessarily a statement about the visual qualities of the land, and it does not imply freedom from any form of development. PPG2 Paragraph 90 shows that some forms of development, including engineering development, may be not inappropriate, and compatible with the concept of openness.
- 11.61 NPPF paragraph 143 identified the 5 purposes of Green Belts:
- (a) to check the unrestricted sprawl of large built-up areas;
 - (b) to prevent neighbouring towns merging into one another;
 - (c) to assist in safeguarding the countryside from encroachment;
 - (d) to preserve the setting and special character of historic towns; and
 - (e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
- 11.62 Openness can be seen in this context to require a lack of urban development. The word "openness" is open-textured in the context of its relevance to planning decisions within the Green Belt, and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. However, although openness is not defined in either PPG2 or NPPF, it is commonly taken to be the absence of built urban development. PPG Paragraph 001[2] sets out factors to be taken into account when considering the potential impact of development on the openness of the Green Belt- 'openness is capable of having both spatial and visual aspects – in other words, the visual impact of the proposal may be relevant, as could its volume'. So openness is a broader concept than 'just' the degree of visual effect. It is a broad policy concept that is naturally read as referring back to the underlying aim of Green Belt policy, which is to prevent urban sprawl by keeping land permanently 'open'. Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt.
- 11.63 The Link Road can be considered as engineering development, that forms an integral part of the delivery of infrastructure improvements which in turn support the delivery of the Joint Core Strategy. The Link Road does not constitute 'urban sprawl', which is what the Green Belt designation aims to prevent.
- 11.64 Furthermore, Paragraphs 3.8.4-3.8.9 of ES Chapter 3 (Assessment of Alternatives) [REP10-037] set out the further design refinement of the Link Road that has been undertaken. This includes reducing the width of the Link Road from dual to single carriageway, refining the horizontal alignment to the most efficient use of land, and lowering the vertical alignment thus minimising the prominence of the bridge within the surrounding landscape. This demonstrates that the volume and significance of the Link Road within the Green Belt land has been refined and reduced where possible. The M5

passes north to south through the Green Belt. The Link Road aligns broadly with the route of the M5 through the local landscape, lies within its zone of influence and similarly is a linear infrastructure element, albeit at smaller scale. The Green Belt covers an area of approximately 66.94 km² (25.85 sq miles), and includes Cheltenham Racecourse, Gloucestershire Airport and the section of the M5 between Junction 10 and Junction 11a. In this context it can be seen that the Link Road is set within the zone of influence of the M5 and has a similar transport infrastructure purpose and impact on the land. It is not considered that its introduction would have a detrimental influence on the five purposes set out in the NPPF (and repeated above). Whilst locally there would be a new engineered element within the landscape, the Link Road will be set within planting designed to match the existing vegetation which will mean that perception of the Link Road as a new element will reduce as the planting matures, integrating with the surrounding Green Belt land through which the M5 already passes.

- 11.65 Visualisations have been produced and submitted [REP2-003 - REP2-007; REP9A-004] to support understanding of the Scheme and the EIA undertaken, for the ExA and other interested parties. They were not produced specifically in relation to Green Belt issues, which, it has been established, are not solely based on visual matters.
- 11.66 It is not considered that the Link Road will affect the function of the Cheltenham and Gloucester Green Belt, which was designated to avoid urban coalescence of the settlements of Cheltenham, Gloucester and (latterly) Bishops Cleeve.

Geology and Soils: Best and Most Versatile (BMV) Land

- 11.67 Regarding compliance with Paragraph 5.168 NPS NN, including demonstrating that there are no areas of poorer quality land which could be used, the Applicant notes that BMV grade agricultural land is present across the entire Study Area for the Scheme and no areas of land within the Study Area were assessed as non BMV. Therefore, BMV agricultural land could not be avoided. However, the design of the Scheme has taken into account the most direct routes, minimising permanent land take as far as is possible. As set out in paragraph 10.7.4 in the Geology and Soils ES chapter [REP1-018], mitigation measures for minimising impacts on BMV agricultural land during construction will also be implemented, through the development of a Soil Handling Management Plan (SHMP) [AS-032], to ensure that the quality of the soil resource in areas within the temporary footprint of the Scheme is maintained.
- 11.68 As set out in the Applicant's response to ExQ1s [REP3-043] The Applicant considers that the Scheme is compliant with the requirements of paragraph 5.168 of the NPS NN, as the any effects to agricultural land have been identified, and the Scheme has sought to minimise impacts on soil quality, taking into account any mitigation measures proposed.

Cultural Heritage: Further geophysical surveys

- 11.69 In advance of examination, the Applicant had not been able to undertake geophysical survey work for all areas that could be excavated for the Scheme. The Applicant confirmed [Q9.0.2, REP5-027] that whilst further geophysical survey work is required to inform further mitigation measures proposed by the Scheme, and will be undertaken; the results of the geophysical survey are required to inform the nature and extent of mitigation identified within the ES, but such information is not required to understand the significance of the impacts identified in the ES and therefore not required to be adduced into the DCO Examination.
- 11.70 The view of the Joint Councils was that to avoid potential delays and increased costs due to unforeseen archaeological discoveries, then the necessary surveys should be conducted during the Examination. The Applicant subsequently undertook further geophysical surveys and assessment during September and October 2024. Following a review of the results from this survey work, as presented in ES Appendix 11.5 [REP9-007], the County Archaeologist concluded that the Scheme has sufficient baseline information for a decision to be made [Item 11.10 JC SoCG REP10-072] and the Applicant updated its archaeological management plan [REP10-092] to adjust its mitigation proposals to reflect the additional work undertaken, as set out below.

Cultural Heritage: Updates to the archaeological management plan (AMP)

- 11.71 The Applicant submitted an updated copy of the Archaeological Management Plan (AMP) (which forms Annex B.8 of the EMP 1st iteration) at Deadline 10 [REP10-092]. The AMP 1st iteration document was updated to respond to comments received from the Joint Councils and Historic England through the Examination process, and to include the further geophysical survey undertaken in September and October 2024.
- 11.72 The submitted AMP remains a 1st iteration management plan and will be updated by the Applicant to a 2nd iteration management plan in advance of construction.

Cultural Heritage: Non designated heritage assets (NDHA)

- 11.73 Eight non-designated built heritage assets were identified by the Joint Councils following the ISH4 and ISH5 hearings. None of these eight buildings are on the Gloucestershire Historic Environment Record (GHER) or the local heritage lists maintained by Tewkesbury Borough Council (TBC) or Cheltenham Borough Council (CBC). Seven of these buildings are residential dwellings, and the eighth is the House in the Tree Public House. All eight meet the criteria for local listing due to their age and form.
- 11.74 The Applicant submitted an updated copy of the ES Chapter 11 (Cultural Heritage) at Deadline 9 [REP9-002] and Deadline 10 [REP10-049], to include an assessment of these eight buildings. This assessment concluded that the Scheme is not anticipated to have

any impacts on the non-designated built heritage assets. Their heritage values are primarily related to age, design, and construction techniques, which will not be affected by the Scheme.

Landscape and Visual: Visualisations

- 11.75 The locations for the prepared visualisations for the Scheme [REP2-003 to REP2-007] were selected through a review of the Scheme against the locations of the visual receptors. The locations of the visual receptors are shown on Figure 9-3 of ES Appendix 9.1 [REP3-030]. The Applicant provided five locations for the visualisations for the Joint Councils to comment on and revise or add to as requested by the Planning Inspectorate in S51 advice note [PD-003]. The Joint Councils agreed the locations, and also requested a 6th (opposite Forge House on the A4019).
- 11.76 The visualisations have been produced in order to aid the ExA and SoS in understanding the form and scale of the proposed engineering works in the context of the existing area and have primarily focussed on earthworks and structures and the extent of lost existing vegetation, with an indication of the soft landscape proposals, based on the preliminary design [ISH3.35, REP4-037].
- 11.77 The visualisations were reviewed against the design changes submitted as Change Application 2. The visualisation from Viewpoint no.2 was updated as a result [REP9A-006].
- 11.78 Queries on the visualisations had been raised by the Joint Councils but the SoCG [REP10-072] with the Joint Councils confirms that there are no remaining issues regarding these visualisation.

Landscape and Visual: Noise barriers

- 11.79 Five of the six noise barriers included within the Scheme's design are to mitigate the impacts of noise during the operation of the Scheme within designated Noise Important Area (NIA). NIAs are defined as the areas where 1% of the population are affected by the highest noise levels from major roads. The sixth noise barrier is located adjacent to the Informal Traveller site, to mitigate noise impacts from the M5 to this noise sensitive receptor. For the properties affected, the noise barriers provide a reduction in noise to below the SOAEL (significant observed adverse effect level) and/or a minor, moderate or major benefit in noise reduction, as shown in Table 6-14 of ES Chapter 6 [REP10-041].
- 11.80 With regards to visual impacts the Joint Councils queried the design of the noise barriers that was assessed within the ES Chapter 9 (Landscape and Visual). The Applicant confirmed that the noise barriers in the preliminary design are assumed to be a 2m high barrier of a simple timber board design (11.0.1 REP7-009). This design provides the noise mitigation reported and assessed in ES Chapter 6 (REP10-041).

- 11.81 The visual assessment for the receptors adjacent to the noise barriers concluded that:
- (a) For the receptors on the M5 adjacent to Barn Farm and the Informal Traveller site, the inclusion of the noise barrier contributes to the beneficial effect of the Scheme, providing better screening to the motorway than the existing gappy vegetation.
 - (b) For properties on the A4019 at Uckington and properties on the A4019 east of the West Cheltenham Fire Station, the noise barriers provide screening for ground floor views and their inclusion contributes to reducing the visual effect at Year 1 from Moderate Adverse (without the barrier) to Slight Adverse (with the barrier). This is the case whatever the design of the barrier, and whether there is the possibility of effectively vegetating the barrier.

11.82 The Applicant confirmed it will undertake consultation with local stakeholders during the detailed design stage (as secured in item LV6 of the REAC [REP10-066]), to determine the final design of each noise barrier. The final design could be a vegetated design, and the Applicant has confirmed that space is available along the majority of both sides of each of the noise barriers in the preliminary design. There are exceptions where space constraints would preclude the inclusion of vegetation along a part of a particular noise barrier. These space constraints could be overcome through the micro-siting of the noise barriers at the detailed design stage as set out in the Applicant's submission of [REP7-010].

Noise and Vibration: Construction phase assessment

11.83 With regards to the methodology used to assess the impacts from construction noise, a different approach has been used in the ES Chapter 6 (Noise and Vibration) [REP10-041] to assess the impacts from construction activity the impacts from the road diversion routes during the construction stage.

11.84 The Applicant confirmed that the assessment approach for construction activity is as set out in the DMRB LA 111, which defines LOAEL and SOAEL values for construction activity noise, construction vibration and operation phase noise. These values are shown in the ES Chapter 6 [REP10-041] Table 6-2, Table 6-3 and Table 6-7 respectively, which have been used to help determine whether any significant effects would occur in combination with other relevant assessment criteria, such as impact magnitude changes.

11.85 The DMRB does not set specific LOAEL / SOAEL values for construction traffic and diversion routes because the assessment is not at individual receptors, however, it does provide an accepted framework for determination of significance. Table 6-6 of the ES Chapter 6 [REP10-041] provides the criteria for these assessments, determining the magnitude of impact from the change in noise alone.

- 11.86 In assessing potential impacts from construction traffic, in lieu of more detailed information about the construction traffic which would not be available until detailed design was completed, the Applicant has determined the construction traffic 'headroom' for HDV and cars and LDV along the construction traffic routes. The 'headroom' is the maximum number of additional vehicles (comprising cars, LDV and HDV) that could use each part of the preferred construction traffic route before exceeding the threshold for a moderate magnitude of impact.
- 11.87 The Applicant considers that its assessment is robust and in accordance with DMRB guidance.
- 11.88 The assessment of the impacts from construction noise has taken into account the likely duration of the construction activities. This is in line with guidance from DMRB LA 111, "A significant effect is likely where it is determined that a moderate or major magnitude of impact shall occur for: - either 10 or more days or nights in any 15 consecutive days or nights; or - a total number of days exceeding 40 in any 6 consecutive months.". Noise impacts during the construction stage will be managed through the 2nd iteration of the Noise and Vibration Management Plan which is secured via requirement 3 of the dDCO. This will be produced by the Principal Contractor in advance of construction, and submitted for approval by the county planning authority, following consultation with the relevant planning authority and strategic highway authority to the extent that it relates to matters relevant to its functions.

Noise and Vibration: Noise Insulation Mitigation

- 11.89 The assessment of the impacts of noise during the operation of the Scheme identified three residential properties that may be eligible for an offer of noise insulation under the Noise Insulation (Amended) Regulations 1988. These are the Gloucester Old Spot, Stanboro Cottage Annex and Stanboro Cottage (para 6.9.109 ES Chapter 6 [REP10-041]). Each of the three properties are located on the A4019 west of the M5 Junction 10, in all cases, the properties on the road are accessed from the road, making mitigation difficult. The eligibility at these properties for noise insulation is dependent on qualifying facades with rooms where noise insulation would be applicable. No formal offers of noise insulation can be made until after the completion of the statutory processes and the finalisation of the detailed engineering design of the Scheme.
- 11.90 The assessment of the impacts of noise during the construction of the Scheme identified properties (Table 6-18 ES Chapter 6 [REP10-041]) where noise levels are likely to exceed the noise level threshold for a significant effect to occur. Noise insulation and/or temporary rehoming could be required at those relevant receptors, during the period in which the works are at the shortest distance from the receptors.

11.91 As described in the Noise and Vibration Management Plan [AS- 033], insulation, compensation or rehousing as a result of noise impacts is triggered if specific noise levels are exceeded for a stated duration. Whilst the noise assessment (reported in ES Chapter 6 [REP10-041]) has reported that the specific noise levels could be exceeded at particular receptors during the construction stage, the assessment expects that the duration of the noise impact will not exceed the stated period, and therefore noise insulation or compensation will not be required. In the event that insulation, compensation or rehousing is required, the Applicant has accounted for this in its base cost estimate set out in paragraph 2.1.4, of the Funding Statement [REP10-031].

Noise and Vibration: Stoke Road Scheme

11.92 ES Chapter 6 (Noise and Vibration) [REP10-041] reported a significant adverse effect from noise in Stoke Orchard (outside of the Order limits) during the operation of the Scheme, as a result of minor to moderate increases in noise of >1dB. The chapter also reported that this effect would be subject also to a separate project (comprising traffic calming and speed reduction measures) undertaken by Gloucestershire Highways, and due for completion in 2025.

11.93 The traffic calming project within Stoke Orchard includes a speed limit reduction from 30mph to 20mph, priority system build-outs, and new and enhanced speed limit signage and road markings, which will mitigate the increase in traffic flows and associated noise impacts by encouraging slower speeds through the village, and potentially discouraging use of the route. The reduction in speed to 20mph would result in a reduction in noise of about 1.8dB, meaning that none of the properties would experience a 1dB, or greater, increase in noise, when compared with the DMOY used in the ES, thereby mitigating the significant adverse effect of the Scheme reported in the ES. The Applicant provided this detail in response to Q12.0.1 of ExQ3 [REP9-011].

11.94 The Applicant notes that the assessment reported in ES Chapter 6 (Noise and Vibration) [REP10-041] does not rely on the effect achieved through this separate project. The Applicant's position therefore, is that for the purpose of reporting on the likely significant effects of the Scheme the significant effects predicted at Stoke Orchard during operation should be considered. The potential effect offered by the Stoke Orchard scheme is considered to be too removed from the Scheme itself to be brought within the ambit of the Scheme and considered as mitigation in the Applicant's ES assessment. The Applicant considers that the Stoke Orchard scheme is a relevant matter for context of the assessment but that ultimately it cannot be relied on. The Applicant appreciates that this results in a reporting of a significant effect. However, with regards to compliance with the aims of the Noise Policy Statement at Stoke Orchard, the Applicant notes that the opinion of the Joint Councils is that the Applicant has considered acoustic measures to avoid,

mitigate and minimise noise as far as reasonably practicable in accordance with the aim of the Noise Policy Statement in this situation [REP7-018].

Water Environment: Essential Infrastructure and the Sequential test

- 11.95 The flood risk assessment undertaken by the Applicant for the Scheme [REP5-008], [REP5-010] and [AS-095] has been made on the basis that the whole Scheme is classified as Essential Infrastructure based on it being transport infrastructure with junctions to the existing SRN road network, as well as an NSIP
- 11.96 The Applicant considers the vulnerability of the Scheme to be Essential Infrastructure as defined under the NPPF Annex 3 - “essential transport infrastructure, including mass evacuation routes, which has to cross the area at risk”, as set out in [REP1-046].
- 11.97 The Scheme satisfies both parts of the exception test in accordance with paragraphs 31 to 37 of the NPPF, in that it will provide wider sustainability benefits to the community that outweigh flood risk by virtue of it encouraging economic growth in jobs and housing, by providing the improves transport network connections in West and North West Cheltenham as described by Scheme Objective 1 (ES Chapter 2) [AS-011]. The second part of the exception test is the demonstration through the flood risk assessment, and hydraulic modelling that supports it, that it manages flood risk satisfactorily over the lifetime of the development (accounting for future climate change with no material increase in flood risk elsewhere). In the alternative, if it is not described as essential infrastructure then it is unclear what it would be classed as none of the other classifications relate to this type of development. The Applicant highlighted the various alternative categories are highly vulnerable (police and fire stations), more vulnerable (residential) or less vulnerable (commercial and car parks), not to transport infrastructure as such. The Applicant explained that the Scheme involves essential transport infrastructure which must cross the areas at risk, as set out in the NPPF and NPPG [REP1-046].
- 11.98 The FRA [REP5-008] concludes that:
- (a) The Scheme crosses Environment Agency Flood Zone 2 and 3.
 - (b) The vulnerability classification of the Scheme is Essential Infrastructure.
 - (c) The Scheme vulnerability is compatible with the envisaged flood risk.
 - (d) The Scheme satisfies the Sequential Test.
 - (e) The Scheme satisfies the Exception Test (in accordance with the NPPF) as it will aid in unlocking economic potential and encourage growth, and job creation; and

has been demonstrated to manage flood risk satisfactorily over the lifetime of the development, with no material increase in flood risk elsewhere.

- 11.99 The Joint Councils agree with the Applicant that that the individual elements of the Scheme are linked and dependent on each other and can therefore be given a single overarching vulnerability classification; and that it would be appropriate for the Scheme to be considered as essential infrastructure [REP7-009]
- 11.100 The Applicant and the Environment Agency agree that it is for the Examining Authority to ultimately confirm if the Scheme is Essential Infrastructure (Item 8.14 JCs SoCG [REP10-072]).

Water Environment: Hard Bank Protection

- 11.101 As detailed within the SoCG (for example item 7.1 of EA SoCG [REP10-076]) the Applicant has discussed with the Environment Agency on the requirement for hard bank protection under the River Chelt Link Road bridge, due to the potential for erosion and risk to the crossing. The ES Chapter 8 (Road Drainage and the Water Environment [REP10-045]) has assumed that hard bank protection will be required (as a worst case assessment), and that this will be investigated further during detailed design.
- 11.102 Item 7.1 of the SoCG confirms that the Environment Agency is satisfied that the Applicant has included enough mitigation measures to offset the environmental effects on the aquatic environment or hard protection in this location. As per item WE4 of the REAC [REP10-066], the Environment Agency will be consulted following the confirmation of the requirement for, and details of, the bank protection measures.

Water Environment: Design of the flood storage area (work no.7)

- 11.103 The initial design proposed during examination that a flood storage area (work no. 7) would be classed as a large-raised reservoir under the Reservoirs Act 1975. This classification was due to the opinion of the all panel reservoir engineer appointed at the time that in a design flood event the M5 and A4019 embankments immediately to the west and north of the flood storage area would act as impoundment structures for flood water under the Reservoirs Act 1975. National Highways provided representations in examination that they were not prepared to have assets classified as strategic road network also classed as part of a large-raised reservoir and that this would result in unacceptable limitations on their ability to maintain the highway.
- 11.104 As a result the Applicant undertook a re-design of the flood storage area in change application 2, design change no.6 (Flood storage area reconfiguration) [AS-086]. Design Change No.6 changed the flood storage area from a single basin to two smaller storage basins. Whilst one of these smaller basins is still categorised as a reservoir under the Reservoirs Act 1975, the redesign removed the need to use either the M5 or the A4019

road embankments as impoundment structures for the reservoir. This was in part due to the addition of culverts crossing the A4019 which allow water to discharge to Leigh Brook in “normal” rainfall events, described in more detail above within Chapter 4. This reduced the maintenance responsibilities required under the Reservoirs Act 1975, when compared to the original design. Critically, it removed the use of the SRN as a retaining feature of the reservoir.

11.105 National Highways have supported the design change, and as a result the Applicant does not consider this matter to be in contention.

12 DCO AND CONTROLS

12.1 The Applicant has provided an Explanatory Memorandum [REP10-025] support the dDCO [REP10-022] and explain its rationale for the inclusion of the articles in the dDCO.

12.2 The Applicant has actively engaged with various statutory bodies and stakeholders during the examination to seek to address concerns raised in relation to the dDCO. The Applicant has provided a Change Log [REP10-096] at Deadline 10 which summarises the changes made during the examination. For example, the Applicant would highlight the following changes made during the examination at the request of others:

- (a) The removal of article 7 (planning permission) was agreed with the Joint Councils following concerns raised that this article unduly restricts the discretion of the local planning authorities regarding their enforcement duties.
- (b) Clarification added in Schedule 2, Paragraph 3 to confirm normal working hours at the request of National Highways
- (c) Addition of Historic England as consultee in requirement 9, at their request as well as several changes introduced throughout the examination to requirement 9 as a result of consultation with Historic England and the County Archaeologist
- (d) The Order was amended as whole to change the arbiter for the discharge of requirements and relevant articles from the County Planning Authority to the Secretary of State. This was done at the request of National Highways.
- (e) Inclusion at Requirement 11, of the need for the authorised development to be designed in accordance with the design principles set out in the design principles report. This was done to provide further reassurance as to the commitment of the scheme to the principles of good design enshrined in the NPS NN (2014). Further additions were accepted being new requirements 16 and 17 to provide further reassurance at the suggestion of the ExA.

- (f) Amendments made to Article 13 to extend protections to National Highways at their request.
 - (g) Additional requirements added to requirement 8 to submit a validation report to Environment Agency, at their request.
- 12.3 The Applicant has provided its position on protective provisions in detail in the above section on S127 / CA engagement with statutory undertakers.
- 12.4 The Applicant understands, notwithstanding protective provisions, that there is one principal area of disagreement on the drafting of the dDCO which concerns the time limit for the exercise of acquisition of compulsory purchase contained in article 23. The Applicant has provided its suggested wording to the ExA at Deadline 10, and provided a justification for its position in the Applicant's response to Examining Authority's (ExA) Consultation draft Development Consent Order [REP9-010]. The Applicant's provided further justification for this position at [REP10-104].
- 12.5 The Applicant considers that the wording of Article 23 is the only area of remaining disagreement within the dDCO. The Applicant responded to the ExA on this matter in its response to Action Points from ISH5 [REP10-104] this is set out below:
- (a) Article 23 (Time limit for exercise of authority to acquire land compulsorily) of the Applicant's preferred draft DCO (TR010063/APP/3.1) includes a five year implementation period for the service of notices to treat and execution of vesting declarations. The Applicant considers that this five year implementation period is the standard position for DCOs and notes that such a period is included in both model provision 20 (Time limit for exercise of authority to acquire land compulsorily) and the overwhelming majority of DCOs. The Applicant has completed a review of all development consent orders granted, and is not aware of any DCO outside of the Manston Airport Development Consent Order 2022 where an implementation period of less than five years has been granted. On the contrary, many DCOs have been granted an implementation period of more than five years, with previous wind farms being granted seven year implementation periods (see for example The East Anglia TWO Offshore Wind Farm Order 2022 and The East Anglia ONE North Offshore Wind Farm Order 2022), the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 was also granted an implementation period of 10 years. Therefore, the Applicant considers that there is an overwhelming precedent for 5 years. The Applicant considers that the circumstances leading to a reduction of the 5 year period would clearly have to be particularly unique to warrant such an individualised treatment of the availability period in this instance. The Applicant has previously provided submissions on why the Manston Development Consent Order does not present

an applicable precedent in this instance for reducing the period for compulsory acquisition. In summary, the position in Manston was that the reduction was due to uncertainty regarding sums required for the cost of land acquisition. The Applicant's position is not analogous to this. The Applicant has clear and demonstrable resources to meet the cost of land acquisition and it is only in relation to the total capital expenditure of the Scheme that the Applicant does not have funding fully secured. The Applicant has, however, provided detailed submissions regarding the feasibility of funding being obtained for this remaining funding gap and is prepared to secure debt financing if required. The Applicant is aware that one of the reasons that the period has been suggested to be less is to bring this in line with the Homes England funding availability period. The Applicant is of the strong view that such an amendment is unnecessary if motivated by an intention to bring the compulsory purchase availability period in line with the current availability period of funding. It remains possible for the Applicant to extend its funding arrangements. Any extension will need to be approved by HMT but that does not in itself imply that it is unlikely or unreasonable.

- (b) The Applicant has recently secured an extension to the Scheme completion deadline from Homes England. The Applicant considers that the continued support from Homes England for this project which will unlock housing the region is indicative of expected future support should an extension of the funding period be required.
- (c) As suggested in the Applicant's response to Examining Authority's (ExA) Consultation draft Development Consent Order [REP9-010] and oral comments at ISH5 (TR010063/APP/9.95) if the ExA is minded to recommend an implementation period of less than five years the Applicant considers that a three year implementation period would be more appropriate than the suggested period of 2 years and 6 months. The Applicant considers this would better balance the benefit of the Scheme with the impact to affected persons.
- (d) The Applicant appreciates that it has made submissions within its response to the ExA's consultation dDCO, and at ISH5 regarding the need to protect against legal challenge and suggested that the wording employed in the Manston DCO is used. The Applicant has reviewed its position further and considers that this wording is in fact not required. The Applicant considers that articles 27 and 28 adequately protects its position, and both these articles appear in almost every dDCO granted. These articles ensure that the protections in section 4A Compulsory Purchase Act 1965 and section 5B Compulsory Purchase (Vesting Declaration) Act 1981 apply to the DCO. The Applicant would note that both these articles make reference back to the period referenced in article 23 (Time

limit for exercise of authority to acquire land compulsorily) and therefore to the extent that there are any changes to the period referenced in article 23 both these articles will require changes to align

13 MITIGATION ROUTE MAP

- 13.1 Whilst the dDCO will be the principal consenting mechanism for the Scheme, it will be supplemented by other consent applications as necessary. The Consents and Agreements Position Statement [REP10-027] outlines the Applicant's strategy for securing environmental permits and other consents required to implement the Scheme. The Applicant updated this document at Deadline 10 to account for progress made in relation to some of these consents and the Applicant can confirmed in various hearings, including the ISH5, that it continues to seek permits and consent in order to allow a prompt start to Scheme construction.
- 13.2 The Applicant presents a preliminary scheme design along with measures to ensure that the detailed design achieves high quality environmental outcomes and, in particular, to ensure that mitigation and compensation measures are designed, monitored and managed collaboratively with key stakeholders to ensure that no materially new or materially different environmental effects arise in comparison with those assessed in the ES.
- 13.3 The preliminary design is shown on the works plans, general arrangement plans, environmental masterplan and engineering section drawings. These documents are all certified through article 44 of the dDCO. Requirement 11 of the dDCO provides that detailed design must accord with the design principles contained in the design principles report as well as the preliminary scheme shown on the aforementioned plans. The preliminary design is subject to approved limited of deviation set out in article 8 of the dDCO. Requirements 16 (Building and construction materials – highways) and 17 (Building and construction materials – structures) have been added to the dDCO to further align the Scheme to the NPS NN requirements for good design.
- 13.4 Requirement 3 of the dDCO provides that no part of the authorised development is the commence until an EMP (2nd iteration) for that part has been prepared in consultation with the relevant planning authority, county planning authority and the strategic highway authority and submitted to and approved in writing by the Secretary of State. The authorised development must be construed in accordance with the approved EMP (2nd iteration). Requirement 3 states that the EMP (2nd iteration) must include a number of management plans as well as incorporate the register of environmental actions and commitments (REAC). The management plans include:

- (i) materials management plan;

- (ii) soil handling management plan;
- (iii) noise and vibration management plan;
- (iv) air quality management plan;
- (v) landscape and ecology management plan;
- (vi) emergency preparedness and response plan including flood management plan and severe weather plan;
- (vii) pollution prevention and control management plan;
- (viii) archaeological management plan;
- (ix) invasive non native species management plan;
- (x) operational unexploded ordnance emergency response plan;
- (xi) traffic management plan
- (xii) site waste management plan;
- (xiii) public rights of way management plan;
- (xiv) emergency vehicle movement management plan;
- (xv) community engagement plan;
- (xvi) carbon management plan;
- (xvii) river realignment and channel diversion management plan

13.5 The Applicant has provided a number of the above management plans as a 1st iteration during examination for parties to comment on. The Applicant does not consider that any management plan is currently in contention with any Interested Party.

13.6 The Applicant has provided a REAC [REP10-066] during examination for comment. The REAC sets out the mitigation measures that have been committed to within the ES to manage the effects of the construction and operation of the Scheme to the environment, and how those mitigation commitments will be implemented through the construction of the Scheme and into its operation. The Applicant does not consider that the REAC is currently in contention with any Interested Party.

13.7 Requirement 3 further ensures that the Scheme is operated pursuant to a EMP (3rd iteration) which must be prepared in consultation with the relevant planning authority, county planning authority and the strategic highway authority and submitted to the

Secretary of State for approval within 28 days of the opening of the authorised development for public use.

14 STAKEHOLDER ENGAGEMENT

Consultation

- 14.1 The Applicant has carried out its obligations under the Planning Act 2008 regarding consultation and has delivered its pre-application consultation in accordance with the requirements of the Planning Act 2008 and the applicable guidance. Consultation on the Scheme has generated levels of interest and participation from a broad spectrum of consultees. It is recognised that certain members of the local community and stakeholders expressed concerns about the Scheme and its potential impacts, however there were also representations made supporting the Scheme, its benefits and the overall needs case. The Consultation Report [APP-038] outlines the consultation undertaken by the Applicant, the feedback received on the Scheme and how the Applicant has had regard to this feedback when preparing the Development Consent Order application. Furthermore, it demonstrates that the Scheme development has been either directly or indirectly influenced by the consultation undertaken.
- 14.2 In summary, the Applicant has carried out both statutory and non-statutory consultations in regard to Scheme and to the Change Application 1 and Change Application 2. This includes the following main consultations. This includes:
- (a) Non-statutory consultation (14 October 2020 to 25 November 2020);
 - (b) Statutory consultation (8 December 2021 to 15 February 2022);
 - (c) Additional targeted consultation (8 August 2022 to 5 September 2022);
 - (d) Further targeted consultation (18 January 2023 to 16 February 2023);
 - (e) Targeted consultation on bus lane (29 May 2023 to 27 June 2023);
 - (f) Targeted consultation in relation to Change Applicant 1 and Change Application 2 (27 September 2024 to 27 October 2024).
- 14.3 The above consultations have been complemented by a programme of engagement with various parties, including landowners, parish, district, city and county councils.
- 14.4 Non-statutory consultation (14 October 2020 to 25 November 2020):
- (a) As outlined in Chapter 3 of the Consultation Report, non-statutory consultation took place over a six-week period and aimed to provide stakeholders, the local community and the general public an opportunity to provide their views ahead of statutory consultation.

- (b) The main objectives were to identify the preferred option for a new Junction 10 design and link road to West Cheltenham and to ensure the improvements along the A4019 for anyone using the local road network.
- (c) The consultation was held virtually due to the COVID-19 pandemic restrictions at the time, however it was significantly publicised and made available to interested parties through letters, leaflets, posters, press releases in local and regional newspapers and also social media posts. Interested parties also had access to a dedicated website, which was in line with the Scheme's Equality Impact Assessment (EqIA).
- (d) All responses received by the Applicant were analysed and responded to accordingly and are included in the Non-Statutory Consultation Report, with more than 80% agreeing or strongly agreeing that there is a need for the Scheme, with a high level of support for all elements of the Scheme.

14.5 Statutory Consultation (8 December 2021 to 15 February 2022):

- (a) As outlined in Chapter 7, the statutory consultation ran for 10 weeks to ensure that the local community and all interested parties had sufficient time to have their say.
- (b) Since the non-statutory consultation, the scheme was developed to include further proposals, for example, new flood storage area east of Junction 10, so the consultation aimed to seek views on the support for the Scheme, the agreement with environmental proposals, views on preferred options as part of the West Cheltenham Link Road proposals and levels of support for the closure of right turns off the A4019 at Gallagher Retail Park junction.
- (c) A variety of methods were used to engage stakeholders, including multiple channels used to publicise the consultation, for example, social media releases, social media campaigns, leaflet drops and posters. The Scheme also used their dedicated website to engage stakeholders.
- (d) Due to the COVID-19 Pandemic, a significant digital approach was taken to ensure the safety and health of stakeholders, however the Applicant also held two face to face events, with hard copies of the materials provided. The Applicant remained responsive and reactive to the changes implemented by the Government as a result of the COVID-19 Pandemic.

14.6 Additional Targeted Consultation (8 August 2022 to 5 September 2022):

- (a) As a result of feedback from the statutory consultation, the Applicant undertook an additional period of consultation. The targeted consultation was directed

towards affected landowners and Prescribed Bodies whose interests could be affected as a result of Scheme design changes.

- (b) The design changes that were consulted on included increasing ecology mitigation, improving turning facilities, future-proofing bus provisions and riverbank protection.

14.7 Further Targeted Consultation (18 January 2023 to 16 February 2023):

- (a) The Applicant undertook a further targeted consultation due to further Scheme design amendments. The consultation was targeted at Prescribed Bodies and affected landowners, with the changes including increasing the working area around the proposed ecology mitigation works, increasing the working area around Junction 10 and increasing the DCO limits to allow for potential diversion of high-pressure main gas.

14.8 Targeted Consultation on Bus Lane (29 May 2023 to 27 June 2023):

- (a) The Applicant undertook a period of targeted consultation on the inclusion of a bus lane and it was focused on prescribed consultees, affected persons and non-statutory consultees who would be interested or affected by the Scheme design development. The design change aimed to enhance public transport and reduce the impact of the Scheme on the environment and local community.

14.9 DCO Change Application Consultation (27 September 2024 to 27 October 2024):

- (a) In respect of Change Application 1 and Change Application 2, in compliance with the Infrastructure Planning (Compulsory Acquisition) Regulations 2012, the Applicant carried out publication in appropriate newspapers for two weeks: two successive weeks in two local newspapers – the Gloucestershire Echo and the Gloucestershire Citizen (from 19 September 2024 and 26 September 2024) and once in a national newspaper – the Times – and once in the London Gazette.
- (b) Site notices were placed on Stanboro Lane and A4019 near the current entrance to the Robert Hitchens Ltd Land.
- (c) Notices were sent to Statutory Bodies and affected Interested Parties under section 42 of the Act and physical access to documents was made available in various locations.
- (d) The Applicant issued a Consultation Document to all affected and interested parties under section 42 of the Act with a summary description of all the proposed changes and its environmental impacts (later detailed in the Environmental

Statement Addendum submitted with this application) as well as relevant useful information in relation to the change application process.

- (e) Consultation on the changes run from the 27 September 2024 to the 27 October 2024.

Statements of Common Ground

14.10 The following summarises the Applicant's position set out in its Statements of Common Ground with the following parties;

- (a) Joint Councils [REP10-072]

There are two remaining principal matters outstanding which both relate to the Scheme's funding methodology to seek contributions from developers of the neighbouring site allocations. The Applicant considers that despite the SoCG recording that the parties are in disagreement on this front, that fundamentally the Applicant agrees with the Joint Council's submissions that any future funding methodology from the developers will have to be CIL compliant and the determination on how that methodology is applied, taking into account issues of viability will be a matter for the local planning authorities. The Applicant does not consider that its position relies on anything contrary to this, and therefore does not consider its position to be materially distinct to that of the Joint Councils.

- (b) Natural England [REP10-078]

A final version of the SoCG has been agreed, signed and has been submitted to Examination at Deadline 10 with no matters outstanding.

- (c) Historic England [REP10-080]

A final version of the SoCG has been agreed, signed and has been submitted to Examination at Deadline 10 with no matters outstanding.

- (d) National Highways [REP10-074]

An SoCG has been submitted to examination at Deadline 10 with a number of matters outstanding. The terms of a side agreement have now been agreed and the parties have undertaken to complete the agreement to allow the SoCG to be submitted prior to close of the Examination with no matters outstanding.

- (e) Environment Agency [REP10-076]

A final version of the SoCG has been agreed, signed and has been submitted to Examination at Deadline 10 with no matters outstanding.

- (f) North West Cheltenham (Elms Park) – Bloor Homes & Persimmon Homes [REP10-082]

The developers of Elms Park site have been formally consulted on the Scheme since the Preferred Route announcement in June 2021.

In the final SoCG there are six matters agreed which relate to the letters of support which outlined that, subject to a review of the revised funding methodology, there is support in principle of the development sites contributing to the methodology to make up the funding shortfall subject to a number of conditions.

A final version of the SoCG has been agreed and signed and has been submitted to Examination at Deadline 10. There are seven matters that will remain outstanding. Four of these relate to policy, alternatives and need, two relate to funding, and one relates to the Scheme overlap with the IPs development site.

- (g) West Cheltenham (Golden Valley) – Midland Land Portfolio Limited & HBD [REP10-086]

The developers of the Golden Valley site (West of Cheltenham), MLPL and HBD, have been formally consulted on the Scheme since the Preferred Route Announcement in June 2021.

Since the Deadline 5 submission there has been further engagement with these stakeholders on the draft SoCG. A final version of the SoCG has been agreed, signed and has been submitted to Examination at Deadline 10. This includes one matter outstanding in relation to the degree to which the site relies upon the Scheme. The Applicant considers that this outstanding matter is principally motivated by the outstanding discussions to be had on the future funding methodology.

- (h) Safeguarded Site adjacent to M5 Junction 10 – Bloor Homes [REP10-084]

The developers of Elms Park site have been formally consulted on the Scheme since the Preferred Route Announcement in June 2021.

Since the Deadline 5 submission there has been further engagement with these stakeholders on the draft SoCG. Three items have been agreed as a result which relate to funding contributions and secondary access to the site with and without the DCO.

A final version of the SoCG has been agreed, signed and has been submitted to Examination at Deadline 10. This includes the following items which remain outstanding, all other matters have been agreed:

- Scheme dependence
- Scheme design – site access

15 CONCLUSION AND PLANNING BALANCE

- 15.1 This document sets out the Applicant's position on the principal points raised during the course of the Examination. The Applicant has demonstrated a clear need for the Scheme which is grounded in national, local and transport policy.
- 15.2 The Planning Act 2008 requires that the Development Consent Order is determined in accordance with the relevant National Policy Statement. In this case the NPS NN is the primary basis for decision making. The Applicant has also carefully considered the legal obligations set out in the NPS NN, including the Habitats Regulations and Water Framework Directive.
- 15.3 The Scheme will deliver extensive benefits, not least the unlocking of significant housing in the region which is a key priority of the current government.
- 15.4 The Applicant considers that the benefits of the Scheme significantly and demonstrably outweigh any harm predicted. Section 104(3) of the Planning Act 2008 states that the Secretary of State must decide the Development Consent Order application in accordance with any relevant NPS, except in certain circumstances specified in subsection (4) to (8) which do not apply here.
- 15.5 As required by Section 104(7) of the Planning Act 2008, the benefits of the Scheme must be weighed against any adverse impacts identified in the Environment Statement, as certified by Schedule 10 of the dDCO. The Applicant's position remains that any unavoidable residual adverse environmental effects which remain following mitigation are outweighed by the public benefit that will accrue as a result of the Scheme.
- 15.6 Therefore, the Applicant requests that the dDCO is made.