



The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

The Planning Act 2008

**WEST MIDLANDS RAIL FREIGHT INTERCHANGE**

Examining Authority's Report  
of Findings and Conclusions

and

Recommendation to the Secretary of State for  
Transport

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Examining Authority

**Paul Singleton** BSc MA MRTPI

**27 November 2019**

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# OVERVIEW

**File Ref: TR050005**

## **The West Midlands Rail Freight Interchange**

The application, dated 3 August 2018, was made under section 37 of the Planning Act 2008. It was received in full by The Planning Inspectorate on 3 August 2018.

The Applicant is Four Ashes Limited.

The Application was accepted for Examination on 24 August 2018.

The Examination of the application began on 28 February 2019 and was completed on 27 August 2019.

The development proposed is a Strategic Rail Freight Interchange on land at Four Ashes near Junction 12 of the M6 motorway in South Staffordshire District. The proposed development comprises:

- An intermodal freight terminal with connections to the West Coast Main Line, capable of accommodating up to 10 trains per day of up to 775m long, including container storage, Heavy Goods Vehicle (HGV) parking, rail control building and staff facilities;
- up to 743,200 square metres (gross internal area) of rail served warehousing and ancillary service buildings;
- new road infrastructure and works to existing road infrastructure;
- demolition and alterations to existing structures and earthworks to create development plots and landscape zones;
- reconfiguring and burying of existing overhead power lines and pylons; and
- strategic landscaping and open space, including alterations to public rights of way and the creation of new ecological enhancement areas and publicly accessible open areas.

## **Summary of Recommendation**

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

# REPORT TABLE OF CONTENTS

1.	INTRODUCTION.....	1
1.1.	INTRODUCTION TO THE EXAMINATION .....	1
1.2.	APPOINTMENT OF THE EXAMINING AUTHORITY .....	3
1.3.	THE PERSONS INVOLVED IN THE EXAMINATION .....	3
1.4.	THE EXAMINATION AND PROCEDURAL DECISIONS.....	3
1.5.	ENVIRONMENTAL IMPACT ASSESSMENT .....	13
1.6.	HABITATS REGULATIONS ASSESSMENT.....	14
1.7.	TRANSBOUNDARY EFFECTS .....	14
1.8.	UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS.....	15
1.9.	OTHER CONSENTS .....	16
1.10.	STRUCTURE OF THIS REPORT .....	17
2.	THE SITE AND THE PROPOSED DEVELOPMENT .....	19
2.1.	THE APPLICATION SITE.....	19
2.2.	THE APPLICATION.....	20
2.3.	CHANGES TO APPLICATION PLANS AND DOCUMENTS .....	24
2.4.	RELEVANT PLANNING HISTORY .....	25
3.	LEGAL AND POLICY CONTEXT .....	27
3.1.	THE PLANNING ACT 2008.....	27
3.2.	NATIONAL POLICY STATEMENT FOR NATIONAL NETWORKS .....	27
3.3.	UK LEGISLATION AND POLICY .....	28
3.4.	EUROPEAN LAW AND RELATED UK REGULATIONS .....	29
3.5.	OTHER DEVELOPMENT CONSENT ORDERS AND RELEVANT PERMISSIONS ...	31
3.6.	THE NATIONAL PLANNING POLICY FRAMEWORK .....	33
3.7.	PLANNING PRACTICE GUIDANCE .....	33
3.8.	THE DEVELOPMENT PLAN .....	33
4.	REPRESENTATIONS CONCERNING THE PRINCIPLE OF THE PROPOSED DEVELOPMENT .....	37
4.1.	THOSE OBJECTING IN PRINCIPLE .....	37
4.2.	THOSE SUPPORTING THE PROPOSED DEVELOPMENT .....	39
4.3.	OTHER LOCAL AUTHORITIES .....	40
5.	THE PLANNING ISSUES .....	42
5.1.	MAIN ISSUES IN THE EXAMINATION .....	42
5.2.	GREEN BELT .....	42
5.3.	NEED FOR THE PROPOSED DEVELOPMENT .....	47
5.4.	SCALE OF DEVELOPMENT PROPOSED .....	63
5.5.	CAPACITY OF THE RAIL NETWORK.....	69
5.6.	MEETING THE NPSNN CRITERIA AND OBJECTIVES FOR A SRFI.....	71
5.7.	ALTERNATIVE OPTIONS AND ALTERNATIVE SITES.....	87
5.8.	MINERAL RESOURCES .....	97

5.9.	PUBLIC RIGHTS OF WAY .....	99
6.	ENVIRONMENTAL AND OTHER EFFECTS .....	102
6.1.	SCOPE OF ENVIRONMENTAL ASSESSMENT.....	102
6.2.	TRANSPORT AND ACCESS .....	102
6.3.	AIR QUALITY AND HEALTH EFFECTS.....	124
6.4.	NOISE AND VIBRATION .....	133
6.5.	ECOLOGY AND NATURE CONSERVATION.....	145
6.6.	HABITATS REGULATIONS ASSESMENT .....	158
6.7.	AGRICULTURE AND SOILS.....	158
6.8.	LANDSCAPE AND VISUAL EFFECTS .....	162
6.9.	ARCHAEOLOGY AND CULTURAL HERITAGE .....	174
6.10.	SOCIO-ECONOMIC EFFECTS AND HUMAN HEALTH.....	184
6.11.	GROUND CONDITIONS .....	199
6.12.	DRAINAGE AND FLOOD RISK .....	200
6.13.	WASTE MANAGEMENT .....	203
6.14.	CLIMATE CHANGE .....	204
6.15.	CARBON.....	204
6.16.	PUBLIC UTILITIES.....	204
6.17.	BENEFITS OF THE PROPOSED DEVELOPMENT .....	205
7.	FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING AND OTHER ISSUES.....	208
7.1.	INTRODUCTION.....	208
7.2.	HARM RESULTING FROM THE PROPOSED DEVELOPMENT .....	208
7.3.	NEED FOR AND BENEFITS OF THE PROPOSED DEVELOPMENT .....	210
7.4.	CONCLUSIONS ON COMPLIANCE WITH THE NPSNN .....	212
7.5.	THE PLANNING BALANCE .....	215
8.	FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT .....	218
8.1.	INTRODUCTION.....	218
8.2.	PROJECT LOCATION .....	218
8.3.	HRA IMPLICATIONS OF THE PROJECT.....	218
8.4.	ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS (LSE).....	219
8.5.	HRA CONCLUSIONS .....	220
9.	CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT .....	221
9.1.	INTRODUCTION.....	221
9.2.	THE PLANNING BALANCE .....	222
9.3.	OVERALL CONCLUSION ON THE CASE FOR DEVELOPMENT.....	222
10.	COMPULSORY ACQUISITION AND RELATED MATTERS.....	223
10.1.	INTRODUCTION.....	223
10.2.	THE REQUEST FOR CA AND TP POWERS .....	224
10.3.	THE PURPOSES FOR WHICH LAND IS REQUIRED .....	226
10.4.	LEGISLATIVE REQUIREMENTS.....	227

10.5.	THE APPLICANT’S JUSTIFICATION FOR THE USE OF CA POWERS .....	228
10.6.	EXAMINATION OF THE CA AND TP CASE .....	229
10.7.	SECTION 127 REPRESENTATIONS.....	233
10.8.	CONCLUSIONS .....	234
10.9.	HUMAN RIGHTS ACT .....	236
10.10.	RECOMMENDATION ON THE INCLUSION OF CA POWERS IN THE ORDER. ...	236
11.	DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS .	237
11.1.	EVOLUTION OF THE DRAFT ORDER.....	237
11.2.	GENERAL MATTERS .....	238
11.3.	SPECIFIC ELEMENTS OF THE DRAFT DCO.....	240
11.4.	OBLIGATIONS .....	253
11.5.	CONCLUSIONS .....	256
12.	SUMMARY OF FINDINGS AND CONCLUSIONS .....	257
12.1.	INTRODUCTION.....	257
12.2.	CONSIDERATION OF FINDINGS AND CONCLUSIONS.....	257
12.3.	RECOMMENDATION.....	258
APPENDIX A: THE EXAMINATION.....		I
APPENDIX B: EXAMINATION LIBRARY .....		IV
APPENDIX C: LIST OF ABBREVIATIONS .....		I
APPENDIX D: THE RECOMMENDED DCO .....		VII

**List of Tables**

Table 11.1: DCO Provisions Not Recommended to be Changed .....	241
Table 11.2: DCO Provisions Recommended to be Changed .....	246

# ERRATA SHEET – West Midlands Rail Freight Interchange – Ref TR050005

## Examining Authority’s Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport, dated 27 November 2019

### Corrections agreed by the Examining Authority prior to a decision being made

Paragraph	Error	Correction
1.5.6	chapter	Chapter
1.6.1	Habitats Assessment Regulations (HAR)	Habitats Regulations Assessment (HRA)
1.6.1	Report	report
1.8.4	Vehicle	Vehicles
1.10.1	Bullet point “Chapter 8...Habitats Assessment Regulations Assessment”	Amend to read “Chapter 8...Habitats Regulations Assessment”
3.4.4	Whole paragraph and heading ‘The Air Quality Directive’	Delete paragraph as duplicated at 3.4.5
3.4.11		Add ‘(COUNCIL DIRECTIVE 2000/60/EC) to the heading.
3.4.11	1 <sup>st</sup> sentence “Directive 2000/60/EC, establishing a framework for Community action...”	Amend “The Water Framework Directive (WFD), establishes a framework for community action...”
3.6.2	NSIPS	NSIP
5.6.14	In the quote from NPS NN paragraph 4.83 it says “accommodated”	Delete “ed” so it becomes “accommodate”
5.7.1	RRS	RRs

5.7.48	his	this
6.3.17	Last sentence begins “The twotlocations shown”	Delete the “t” after “two” to read “The two locations shown”
6.7.3	ACL	ALC
6.9.53	Last sentence “provides”	Provide
6.10.43	Last sentence “...the moorings are use...”	Amend to read “...the moorings are used...”
7.5.2	2 <sup>nd</sup> sentence “...consent is therefore. triggered.”	Delete the “.” after “therefore”
10.6.2	1 <sup>st</sup> sentence “In views of those objection...”	Amend to read “In view of those objections...”
10.10.1	Last sentence “...there is a compelling case in the public interests...”	Amend to read “...there is a compelling case in the public interest...”
11.4.1	1 <sup>st</sup> sentence “SCDC”	Amend to “SSDC”
Appendices contents	Page numbering for Appendices A – D is incorrect	Amend to read: Appendix A – A1 Appendix B – B1 Appendix C – C1 Appendix D – D1

# 1. INTRODUCTION

## 1.1. INTRODUCTION TO THE EXAMINATION

1.1.1. The Application for the West Midlands Rail Freight Interchange (the Proposed Development) TR050005 was submitted under section 31 of the Planning Act 2008 (PA 2008) on 3 August 2018. It was accepted for examination under section 55 of the Planning Act 2008 on 24 August 2018.

1.1.2. All documents relating to the Application and Examination are saved in the Examination Library under Project Reference TR050005 on the Planning Inspectorate's National Infrastructure Planning website: <https://infrastructure.planninginspectorate.gov.uk/projects/west-midlands/west-midlands-interchange/?ipcsection=docs>.

All documents considered during the Examination are listed in Appendix B to this report. Where documents are referred to in the text of the report, their Examination Library references are given in square brackets; e.g. [APP-007].

1.1.3. A large number of organisations and reports/documents are referred to in the report and I have used acronyms or abbreviations for many of these and for other terms that are repeatedly used in the report. These abbreviations are introduced at the first point of reference to the full name or term and a full list of abbreviations used in the report is set out in Appendix C.

1.1.4. Within the examination documents the terms "rail-connected", "rail-served", "rail-accessible" and "rail-linked" are frequently used as if they were interchangeable. There appears to be no universally accepted definition as to what each of these terms conveys. To avoid any confusion, I have adopted the following approach in the report:

*"Rail-connected"* - a warehouse or other building either with its own dedicated rail siding or which is sufficiently close to the rail terminal to allow containers to be moved from the rail wagons into the warehouse by overhead cranes or reach stackers without the need for them to be loaded onto a HGV or Tugmaster<sup>1</sup> vehicle;

*"Rail-served"* - a warehouse forming part of the Strategic Rail Freight Interchange development, but which would require containers to be moved from or to the rail terminal by means of an HGV or Tugmaster vehicle.

*"Rail-accessible"* - having the potential either for a direct rail connection (rail-connected) or to be rail-served.

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<sup>1</sup> See section 5.6 below for an explanation of the potential use of Tugmaster vehicles within the Proposed Development.

- 1.1.5. The Application seeks development consent for a Strategic Rail Freight Interchange (SFRI) on land at Four Ashes within South Staffordshire District, close to Junction 12 of the M6 motorway. The Applicant has adopted the name '*West Midlands Interchange*' as the short title of the project. I have used this short title and the abbreviation 'WMI' when referring to the Proposed Development.
- 1.1.6. The Applicant is Four Ashes Limited (FAL), a company formed by Kilbride Holdings in partnership with the Grosvenor Group and Mr P Monckton who is the primary landowner.
- 1.1.7. The Proposed Development briefly comprises the following key elements:
- An intermodal freight terminal with direct connections to the West Coast Main Line (WCML) railway, capable of accommodating up to 10 trains per day of up to 775 metres (m) long, including container storage, Heavy Goods Vehicle (HGV) parking, rail control building and staff facilities;
  - up to 743,200 square metres (sq. m) (gross internal area) of rail served warehousing and ancillary service buildings;
  - new road infrastructure and works to existing road infrastructure;
  - demolition and alterations to existing structures and earthworks to create development plots and landscape zones;
  - reconfiguring and burying of existing overhead power lines and pylons; and
  - strategic landscaping and open space, including alterations to public rights of way and the creation of new ecological enhancement areas and publicly accessible open areas.
- 1.1.8. The location of the Proposed Development is shown in Figure 1.1 of Chapter 1 of the Environmental Statement (ES) [APP-017] and the Order Limits and Parish Boundaries Plan [APP-189]. The site lies in the County of Staffordshire and within the administrative area of South Staffordshire District Council (SSDC). The site is wholly in England.
- 1.1.9. The legislative tests for whether the Proposed Development constitutes a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State for Housing, Communities and Local Government in its decision to accept the Application for Examination in accordance with section 55 of the PA2008 [PD-001].
- 1.1.10. On this basis, the Planning Inspectorate agreed with the Applicant's view, as stated in the Explanatory Memorandum [APP-010] submitted with the Application, that the Proposed Development is an NSIP as it would:
- be situated in England and would be at least 60 hectares (ha) in area;
  - be capable of handling consignments of goods from more than one consignor and to more than one consignee and at least four goods trains per day;
  - be part of the railway network in England;
  - include warehouses to which goods can be delivered from the railway network either directly or by means of another form of transport; and
  - not be part of a military establishment.

The Proposed Development is, accordingly, within s26(1) of the PA2008, and meets the definition of an NSIP set out in s14(1)(l) of the PA2008.

1.1.11. As the Proposed Development comprises an NSIP development consent must be issued before the project can proceed (s31 PA2008). Development consent under the PA2008 can only be granted by the Secretary of State (SoS) and is issued in the in the form of a Development Consent Order (DCO or Order). This report provides the SoS with my findings and conclusions on the Application for development consent for the WMI. It also sets out my recommendations as to whether or not a DCO should be made, whether consent should be granted for the powers sought by the Applicant for the compulsory acquisition of land and rights in or over land within the Order Limits, and on the terms of the DCO should the SoS conclude that this should be made.

1.1.12. The Proposed Development constitutes Environmental Impact Assessment (EIA) development as defined in the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations) and the application was accompanied by an Environmental Statement (ES). In my view the ES satisfies the definition of an Environmental Statement as set out in Regulation 14(1) of the EIA Regulations. Various sections of the ES as originally submitted with the Application have been revised during the course of the Examination and additional environmental information has also been submitted. In reaching my conclusions and recommendation, I have taken all of the environmental information into consideration as required by Regulation 4 of the EIA Regulations.

## **1.2. APPOINTMENT OF THE EXAMINING AUTHORITY**

1.2.1. I was appointed under s78 and s79 of the PA 2008 as a single person Examining Authority (ExA) for the Application. Notice of my appointment [PD-002] was published on 2 November 2018.

## **1.3. THE PERSONS INVOLVED IN THE EXAMINATION**

1.3.1. The persons involved in the Examination were:

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

## **1.4. THE EXAMINATION AND PROCEDURAL DECISIONS**

1.4.1. The Examination began on 27 February 2019 and concluded on 27 August 2019. The Examination has been carried out in accordance with the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR).

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

## **THE PRELIMINARY MEETING**

- 1.4.3. On 23 January 2019, I wrote to all IPs, Statutory Parties under Rule 6 of the EPR. This letter (the Rule 6 Letter) [PD-006] invited them to the Preliminary Meeting (PM) and to the hearings held at the start of the Examination. The Rule 6 letter outlined:

- the arrangements and agenda for the PM;
- notification of two Open Floor Hearings (OFH) and an Issue Specific Hearing (ISH) to be held in the early stage of the Examination;
- agendas for OFH 1 & 2 and ISH1;
- my Initial Assessment of Principal Issues;
- a draft Examination Timetable;
- information as to where RRs and application documents could be accessed; and
- my procedural decisions.

- 1.4.4. The PM was held on 27 February 2019 in the Hayward Suite at the Molineux Stadium, Waterloo Road, Wolverhampton. An audio recording [EV-003] and a note of the meeting [EV-07a] were published on the Planning Inspectorate's National Infrastructure Planning website.

## **KEY PROCEDURAL DECISIONS**

- 1.4.5. My procedural decisions and the Examination Timetable took full account of matters raised at the PM. The procedural decisions were confined to matters relating to the procedure of the Examination and did not bear on my consideration of the planning merits of the Proposed Development. They are set out in my letter dated 4 March 2019, which was issued under Rule 8 of the EPR (the Rule 8 Letter) [PD-008], and there is no need to reiterate them here. They were generally complied with by the Applicant and relevant IPs.

## **SITE INSPECTIONS**

- 1.4.6. I carried out the following Unaccompanied Site Inspections (USI) during the course of the Examination:
- USI1 on 26 February 2019 to familiarise myself with the site and surroundings generally. A note of USI1 [EV-008] has been published on the project website.
  - USI2 on 28 February 2019 to inspect the general layout and various zones within the Daventry International Rail Freight Terminal (DIRFT) and the new access junction and the early stages of construction of the East Midlands Gateway Rail Freight Interchange (EMGRFI). A note of this USI [EV-009] has been published on the project website.

- USI3 on 3 June 2019 to assess the form and character of nearby settlements and local roads serving these settlements; to visit viewpoints identified in the Applicant 's Landscape and Visual Impact Appraisal (LVIA) in Chapter 12 of the ES [APP-034]; and to assess the character and appearance of the Staffordshire and Worcestershire Canal Conservation Area (the Canal Conservation Area) at locations outside of the Order Limits. A note of this USI [EV-020] has been published on the project website.
- USI4, on 5 June 2009, was carried out immediately before and after dusk from the elevated viewpoint on Shoal Hill in the Cannock Chase Area of Outstanding Natural Beauty (AONB). Its purpose was for me to assess the extent and intensity of artificial illumination present in this view and to inform my judgement as to the likely effects of the additional lighting proposed as part of the WMI scheme. A note of this USI [EV-021] has been published on the project website.
- USI5 on 7 June 2019 to assess the character and appearance of the Canal Conservation Area at further locations outside of the Order Limits; consider the relationship of the proposed development and Green Infrastructure (GI) with the nearest residential receptors; to visit further viewpoints identified in the LVIA; assess the potential effect of the proposed introduction of one-way traffic on a section of Cratford Road; and the nature and traffic conditions on the A449 to the south of Gailey Roundabout and the A5 to the west of Gailey Roundabout. A note of this USI [EV-022] has been published on the project website.
- USI6 on 11 July 2019. On this visit I undertook an inspection of the Kingsway Lakeside Employment Park on the edge of Cannock and the Cannock Pentaver Container Depot. I drove on the A5 west from Gailey roundabout to its junction with the A41 and back again to assess the character of the route and traffic conditions along it in light of additional evidence submitted to the Examination; undertook further observations of the potential alternative site at Dunston; and followed the signposted "M6 North Diverted traffic" route from the A449 through central Stafford to Junction 14 of the M6 to assess the character and traffic conditions on the route normally used for diverted traffic at times when the M6 between Junctions 12 and 14 is closed. A note of this USI [EV-029] has been published on the project website.

1.4.7. I carried out one Accompanied Site Inspection (ASI) over two days on 3 June (pm) and 4 June (all day). I was accompanied by representatives of the Applicant's team, the relevant local authorities, the Canal and River Trust (CRT) and various AP and IP, including representatives of the Stop WMI Community Group (Stop WMI). This inspection was carried out partly by coach and partly on foot.

1.4.8. The ASI involved a circular tour of the general site boundaries and inspection of: Calf Heath Reservoir including views into the working area of Calf Heath Quarry; Calf Heath Wood; the canal corridor and Canal

Conservation Area within the Order Limits; a number of viewpoints identified in the Applicant's LVIA including from Shoal Hill in the Cannock Chase Area of Outstanding Natural Beauty (AONB); the local highway network and the location of the proposed new highway infrastructure; existing industrial and commercial development in and around the application site; and the Hollies Truck Stop on the A5 between Gailey and Cannock, a nearby parking and rest facility for HGV drivers. As part of the ASI I also inspected the extent of the land holdings and use of land at Croft Lane and Vicarage Road that is subject to objections to the CA powers sought as part of the draft DCO.

- 1.4.9. The itinerary for both parts of the ASI can be found in the Examination Library under the references EV-010 and EV-011.
- 1.4.10. I have had regard to the information gathered and impressions obtained during my site inspections in all relevant sections of this Report.

## **HEARINGS**

- 1.4.11. I held a number of hearings to ensure the thorough examination of the issues raised by the Application.
- 1.4.12. Given the level of public interest I deemed it appropriate to hold two OFH at the outset of the Examination. These were programmed to follow immediately after the PM and in the same venue in Wolverhampton on 27 February 2019. To facilitate attendance by as many IPs as possible, two consecutive OFHs were held with one commencing at 14.00 and one at 18.00 hours. All IPs were provided with an opportunity to be heard on any important and relevant subject matter that they wished to raise. Audio recordings of OFH1 and OFH2 can be found in the Examination Library under the references EV-004 and EV-0005.
- 1.4.13. The Examination Timetable published with the Rule 8 Letter [PD-008] set a series of deadlines (D) for receipt of written submissions and information. This included a time limit of Deadline 2 (D2) on 5 April 2019 for requests to be made by anyone wishing to speak at a further OFH. No such requests were received by that deadline.
- 1.4.14. The first Issue Specific Hearing (ISH1) under s91 of the PA 2008 was also held at Molineux Stadium on 28 February 2019. ISH1 was concerned with the draft DCO and the draft Development Consent Obligation (DCOb). Notification of ISH1 was given to all IPs and all were invited to attend. I expressly requested the attendance of several parties who I considered would have a particular interest in the detailed wording of the draft DCO and DCOb. The agenda for ISH1 can be found in the Examination Library [EV-002]. The audio recording of the hearing is in two parts, as Documents EV-006 and EV-007.
- 1.4.15. Following discussions between the Applicant, the Planning Inspectorate's Case Management Team and IPs, all subsequent hearings were held at The Premier Suite on High Green in central Cannock.

- 1.4.16. Two further ISHs were held on the subject matter of the draft DCO and DCOB as follows:
- ISH4 on 6 June 2019. The agenda [EV-015] and audio recording [EV-019] of ISH4 are saved in the Examination Library. A note setting out Agreed Actions has the reference EV-026.
  - ISH6 on the 11 July 2019. The agenda [EV-028] for and audio recording [EV-028c] of that hearing and note setting out Agreed Actions [EV-028e] are saved in the Examination Library.
- 1.4.17. I also held ISHs on specific subject matters as set out below:
- ISH2 concerning accessibility and transport matters was held on 5 June 2019. An agenda [EV-012], audio recording [EV-017] and a note setting out Agreed Actions [EV-024] from ISH2 can be found in the Examination Library.
  - ISH3 concerning environmental matters was held on 6 June 2019. An agenda [EV-014], audio recording [EV-018] and a note setting out Agreed Actions [EV-025] can be found in the Examination Library.
  - ISH5 concerning the achievement of the objectives for a SRFI and matters relating to need, scale, viability, commitment to rail and policy compliance was held on 10 July 2019. An agenda [EV-027], audio recording [EV-028a and 028b] and a note setting out Agreed Actions [EV-028d] can be found in the Examination Library.
- 1.4.18. I interpreted the representation submitted by Mr Anthony Powell at D2 [REP2-142], an AP, as a request to be heard at a Compulsory Acquisition Hearing (CAH) under s92 of the PA2008. A CAH was, accordingly, held on 5 June 2019. This focused on the proposed acquisition of land at Croft Lane owned by members of the Powell family and occupied by MMS Gas Power, and land owned by the Inglewood Investment Company Limited who had also submitted a substantive objection to the proposed CA powers [REP2-114 to 120]. Representatives of those owners/occupiers attended and spoke at the hearing.
- 1.4.19. All persons affected by CA or TP proposals were provided with an opportunity to be heard. I also used these hearings to examine the Applicant's case for CA and/or TP in the round. The agenda [EV-013], audio recording [EV-016] and note on Agreed Actions [EV-023] for the CAH are saved in the Examination Library.

## **WRITTEN SUBMISSIONS**

- 1.4.20. Examination under the PA 2008 is primarily a written process, in which the ExA has regard to written material forming the Application and arising from the Examination. All this material is recorded in the Examination Library (Appendix B) which includes hyperlinks to each of the original documents held online. For this reason, this Report does not contain extensive summaries of all documents and representations, although full regard has been had to them in my conclusions. I have

considered all important and relevant matters arising from them. Key written sources are set out further below.

### **RELEVANT REPRESENTATIONS**

- 1.4.21. A total of 1361 RRs were received [RR-001 to RR-1361]. This includes a very large number of representations from individual members of local communities in the area surrounding the application site.
- 1.4.22. All those who submitted RRs received the Rule 6 Letter [PD-006] and were provided with an opportunity to become involved in the Examination as IPs. All RRs have been fully considered in the Examination and preparation of my report and recommendations.
- 1.4.23. One RR (from agents acting for Cadent Gas Limited) [RR-1154] was subsequently withdrawn<sup>2</sup> prior to the commencement of the Examination. In response to the Rule 6 Letter, correspondence was received from:
- The Peak District National Park Authority dated 28 January 2019 [AS-017]. This advised that, given the distance of the Proposed Development from the National Park, the Authority did not wish to comment in relation to the proposal and did not intend to send a representative to the PM or to participate in the Examination; and
  - National Air Traffic Systems (NATS) dated 6 February 2019 [AS-018]. This confirmed information set out in its RR of 18 October 2018 [RR-0695] that NATS anticipates no impact from the proposal and had no comments to make on the draft DCO. Accordingly, NATs indicated that it did not intend to be represented at any of the hearings.

### **WRITTEN REPRESENTATIONS AND OTHER EXAMINATION DOCUMENTS**

- 1.4.24. The Examination Timetable as published with the Rule 8 letter set a total of eight deadlines for the Applicant, IPs and Other Persons to submit evidence and supporting information to the examination as summarised below.

**Deadline 1 on 13 March 2019:** written submission of oral case presented at ISH1 and the OFHs and any supporting information.

**Deadline 2 on 3 April 2019:** submission of written representations (WRs), of Local Impact Reports by the relevant local authorities, Statements of Common Ground, comments on RRs, responses to the ExA's First Written Questions (FWQs), comments on any update information submitted to the Examination, suggestions for the itinerary for the ASI, and requests to be heard at a CAH or OFH.

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<sup>2</sup> Shakespeare Martineau letter of 6 November 2018 [AS-007] confirmed that Cadent Gas has reached agreement with the Applicant as to protective provisions to be included in the draft DCO and withdrew the RR on behalf of Cadent Gas Limited.

**Deadline 3 on 24 April 2019:** comments on submissions, including responses to FWQs, made by the Applicant and other IPs at Deadline 2. Submission by the Applicant of a revised draft DCO.

**Deadline 4 on 14 June 2019:** written submission of oral case presented at the hearings held in the first week of June and any supporting information.

**Deadline 5 on 5 July 2019:** written responses to the ExA's Second Written Questions (SWQs) and other written submissions requested or accepted by the ExA. Submission by the Applicant of revised draft DCO and Explanatory Memorandum.

**Deadline 6 on 19 July 2019:** written submission of oral case presented at the hearings held in the second week of July, comments on submissions, including responses to SWQs, made by the Applicant and other IPs at Deadline 5 and responses to further information requested by the ExA. Submission by the Applicant of their final draft DCO and updated Explanatory Memorandum.

**Deadline 7 on 7 August 2019:** responses to the ExA's Request for Further Information and Third Written Questions (TWQs) published on 31 July 2019 and comments on the Applicant's final draft DCO and related documents.

**Deadline 8 on 21 August 2019:** comments and responses to submissions made by the Applicant and other IPs at Deadline 7. This deadline was also used for responses from the Applicant and Walsall Council to the ExA's Request for Further Information published on 15 August 2019. IPs were then given the deadline of 27 August (the final date of the Examination) to submit any comments on the information provided by the Applicant and Walsall Council to that request for additional information. A small number of other written representations received between Deadline 8 and 27 August were also accepted into the Examination.

- 1.4.25. Throughout the rest of the report I have referred to these Deadline by using the letter 'D' followed by the relevant number: e.g. D6. I have fully considered all WRs and other examination documents. The issues that they raise are summarised and considered in the relevant chapters of my report.

### **LOCAL IMPACT REPORTS**

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

- South Staffordshire District Council (SSDC)[REP2-051]; and
- Staffordshire County Council (SCC) [REP2-062].

1.4.27. The LIR submitted by SSDC identifies what it considers to be both negative and positive impacts of the Proposed Development. These can be summarised as follows:

#### **Negative Impacts**

- Significant loss of Green Belt land and openness;
- significant encroachment into the open countryside;
- inappropriate development in the Green Belt;
- a significant increase in both private cars and HGVs in the local area which would lead to congestion, 'rat-running' on local roads and adverse environmental effects on air quality;
- potential for increased HGV parking in roadside laybys and local roads;
- the 15-year construction programme would have a significant impact on the local community;
- harmful visual effects from public paths and viewpoints;
- adverse noise effects on nearby residential properties; and
- potential pressure for additional housing development in the District over the longer term.

#### **Positive Impacts**

- Positive economic benefits at local, regional and national scales through the creation of 8,500 jobs and more efficient movement of goods into the metropolitan area;
- a reduction in congestion on the Strategic Road Network (SRN) and consequential reduction in greenhouse gases;
- additional income from business rates (£16.2M each year) which could be spent on sustaining local services; and
- positive benefits through providing noise insulation to properties that are affected by existing road traffic or industrial noise.

1.4.28. The LIR submitted by SCC does not expressly identify positive and negative impacts in the same way but the key areas covered in the LIR can be summarised as follows:

- The introduction of a substantial volume of traffic on the local highway network would have a negative impact but the LIR notes the work and discussions that have taken place regarding appropriate mitigation of the potential effects and that these are largely agreed;
- potential for increased HGV parking and the problems that this gives rise to but the LIR also notes that mitigation measures are put forward in the ES and that discussions about these are progressing;
- impact on the biodiversity of the area including the loss of several veteran trees and a change in the setting of others, and loss of and changes to other features including grassland, arable land, woodland and mature trees and hedges;
- the development would be a significant intrusion into the flat rural landscape and the proposed mitigation would take many years to become established but there would not be an appreciable loss to the character of the wider landscape;
- concern about the visual impact of the proposal on nearby residents and from the Shoal Hill viewpoint in the Cannock Chase AONB;

- concern about the potential lighting effects which the LIR says have not been fully assessed;
- loss of a public footpath but the LIR recognises that the new permissive paths and Country Parks could provide some recreational benefits;
- effect on buried archaeology and a minor effect on the setting of the Canal Conservation Area and nearby designated and non-designated heritage assets;
- loss of a sand and gravel reserve within a minerals allocation and safeguarding area with an adverse impact on planned provision of sand and gravel in Staffordshire; and
- the positive impact of the additional jobs.

1.4.29. The LIRs have been taken into account in all relevant chapters of this report.

### **STATEMENTS OF COMMON GROUND**

1.4.30. A Statement of Common Ground (SoCG) is a statement signed by the Applicant and one or more IPs, recording matters agreed between them.

1.4.31. By the end of the Examination, the following bodies had concluded SoCGs with the Applicant:

- Historic England [AS-024];
- Network Rail [AS-025];
- The Environment Agency [AS-026];
- Highways England [REP2-008]
- Natural England [REP1-003]
- South Staffordshire District Council: SoCG [REP2-006] and Addendum to SoCG [REP5-040];
- Staffordshire County Council [REP2-007] and Addendum to SoCG [REP8-017]
- The Canal and River Trust [REP7-131]

1.4.32. Towards the end of the Examination the Applicant submitted a 'travelling draft' of a SoCG prepared by the Applicant's team and commented on by Greensforge Sailing Club but that had not been agreed by the close of the Examination. This was submitted in Appendix 2 to the Applicant's Responses to D7 Submissions [REP8-016]. I refer to this in my assessment of the likely effect on sailing conditions on Calf Heath Reservoir and on the Sailing Club in Chapter 6 of the report.

1.4.33. The signed SoCGs have been taken fully into account in all relevant chapters of this report.

### **WRITTEN QUESTIONS**

1.4.34. I asked three rounds of written questions.

- First written questions (FWQs) [PD-007] and procedural decisions were issued with the Rule 8 letter [PD-008] and dated 4 March 2019.
- Second written questions (SWQs) [PD-011] were issued on 19 June 2019.

- Third written questions (TWQs) [PD-012] were issued on 30 July 2019.

- 1.4.35. The third written questions were issued as a formal Request for Information under Rule 17 of the Examination Procedure Rules. Other IPs had the opportunity to comment on responses received to those questions by D8 on 21 August. My final request for further information was issued on 15 August, seeking responses from the Applicant and Walsall Council by D8 on 21 August, with IPs being asked to submit any written comments on the responses received by 27 August, when the Examination was formally closed.
- 1.4.36. My FWQs were broad in scope and covered a wide range of matters concerning planning policy including Green Belt; the need for the SRFI; the capacity of the rail network to support the development; rail connectivity; alternative facilities and sites; and detailed questions about a number of the potential environmental effects of the Proposed Development.
- 1.4.37. My SWQs sought further detail and clarification of a number of the areas covered in the first questions and written responses and comments on further evidence submitted at D1 and D2. These also covered aspects of planning policy, need and alternatives, potential environmental effects and proposed mitigation measures.
- 1.4.38. My TWQs were focused on: The Applicant's proposals for the phasing and delivery of the rail infrastructure; the assessment of air quality effects; a request for the Applicant to respond to submissions from specific IPs; and a request for updated information in respect of the Applicant's Consenting Strategy, the proposed Development Consent and Planning Obligations, outstanding SoCG, and progress with negotiations for the acquisition of land parcels included in the Book of Reference.
- 1.4.39. My final request for further information was directed to the Applicant and Walsall Council only and sought further clarification about the Applicant's conclusions as to compliance with paragraphs 5.10-5.13 of the National Policy Statement for National Networks with regard to the potential effects on air quality and an Air Quality Management Area (AQMA) within the Walsall area.
- 1.4.40. I have fully considered the responses to my written questions and requests for further information and have taken these into account in all relevant chapters of my report. Where specific questions are referred to in the text of the report, I have used their individual Examining Authority's Question reference, abbreviated for example as ExQ1.2.1 or ExQ2.3.1.

## **REQUESTS TO JOIN AND LEAVE THE EXAMINATION**

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

- 1.4.42. South Staffordshire Water Plc submitted a written objection [REP4-030] at D4 on the grounds that the Applicant had provided insufficient information for the Company able to assess the potential effects of the Proposed Development on its fixed assets and operations. That objection was subsequently withdrawn, by means of a submission dated 21 August 2019 [REP8-062], subject to the Protective Provisions set out in Part 10 of Schedule 13 to the draft DCO [REP-005] being incorporated in any Order made by the Secretary of State.
- 1.4.43. Although not objecting to the making of the DCO in principle, the Inglewood Investment Company Limited objected [REP2-114 to 120] to the proposed CA of its freehold and mineral interests in land within the Order Limits, arguing that the Applicant had not demonstrated a compelling case in the public interest for that acquisition. Following further negotiations with the Applicant, the Company's agent advised that a conditional agreement had been entered into for the disposal of its interests. Their D7 submission [REP7-036] confirmed that the Company wished to withdraw its objections to the proposed DCO and proposed CA in respect of its land holdings.
- 1.4.44. No other persons wrote to the ExA to formally record the settlement of their issues and the withdrawal of their representations.

## **OPPORTUNITY TO PARTICIPATE IN THE EXAMINATION**

- 1.4.45. I am satisfied that the Examination Timetable, as set out in Appendix A to this report, provided full opportunity for all of those who submitted representations in respect of the DCO Application to participate in the Examination by means of making written submissions and/or attendance and participation in the hearings. All relevant matters raised have been taken into account in my findings, conclusions and recommendations.

## **1.5. ENVIRONMENTAL IMPACT ASSESSMENT**

- 1.5.1. As noted above, the Proposed Development is development for which an Environmental Impact Assessment (EIA) is required (EIA development).
- 1.5.2. On 12 September 2016, the Applicant submitted a Scoping Report [APP-058] under Regulation 8 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2263) (as amended) (the 2009 EIA Regulations) to request an opinion about the scope of the Environmental Statement (ES) to be prepared (a Scoping Opinion). Hence, the Applicant is deemed to have notified the Secretary of State under Regulation 6(1)(b) of the 2009 EIA Regulations that it proposed to provide an ES in respect of the Project.
- 1.5.3. In October 2016 the Planning Inspectorate provided a Scoping Opinion [APP-059], thereby confirming, on behalf of the Secretary of State, that the proposed development did constitute EIA development, under the 2009 EIA Regulations. The 2009 EIA Regulations have subsequently been superseded by The Infrastructure Planning (Environmental Impact

Assessment) Regulations 2017 (SI 2017 No.572) (the 2017 EIA Regulations). This change does not affect the status of the Proposed Development as EIA Development but required that the ES be prepared in accordance with the revised, 2017 EIA Regulations. The Applicant has complied with that requirement. The various chapters, appendices and figures comprising the ES (dated July 2018) as submitted with the Application are saved in the Examination Library [APP-012 to APP-152].

- 1.5.4. On 31 October 2018 the Applicant provided the Planning Inspectorate with certificates confirming that s56 and s59 of PA 2008 and Regulation 13 of the EIA Regulations had been complied with.
- 1.5.5. Various revisions, additions and updates to the information within the ES have been submitted during the course of the Examination and I have included references for these various documents in the relevant sections of my report. Together with the ES as submitted, these documents and the evidence concerning the potential environmental effects of the Proposed Development submitted to the Examination by other parties form the environmental information which must be considered by the SoS in the determination of the application for a DCO.<sup>3</sup>
- 1.5.6. Consideration is given to the adequacy of the ES and matters arising from it in chapter 6 of this report.

## **1.6. HABITATS REGULATIONS ASSESSMENT**

- 1.6.1. The Proposed Development is one that has been identified as having the potential for Likely Significant Effects (LSE) on European Sites and for which a Habitats Assessment Regulations (HAR) Report or Reports has been provided. Consideration is given to the adequacy of the HAR Report, associated information and evidence and the matters arising from it in Chapter 8 of this Report.

## **1.7. TRANSBOUNDARY EFFECTS**

- 1.7.1. Prior to issuing the EIA Scoping Opinion, in October 2016, the Planning Inspectorate screened the development proposals with regard to their potential to affect the environment of another state outside the boundaries of the UK. The Application was screened again prior to its acceptance for examination and, on both occasions, the Planning Inspectorate concluded that the Proposed Development would not be likely to have any transboundary effects [PD-001]. There have been no subsequent changes to the development scheme which would lead me to a different conclusion.

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<sup>3</sup> Regulation 4 of the 2017 EIA Regulations

## **1.8. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS**

- 1.8.1. By the end of the Examination the Applicant had submitted two signed agreements, prepared under s106 of the Town and Country Planning Act 1990 (TCPA). These are the:

### **DEVELOPMENT CONSENT OBLIGATION (DCOb)**

- 1.8.2. This is an agreement between the Applicant, a number of the owners of land within the application site, SSDC and SCC. As not all of the land within the site has yet been acquired by the Applicant this includes measures to prevent the commencement of development under the DCO on such land until those parties having an interest in that land have entered into similar obligations to ensure a satisfactory form of development across the whole site.
- 1.8.3. Under the DCOb, the owners' principal obligations to SSDC (Schedule 1 of the DCOb) relate to: the establishment and operation of a Bespoke Noise Insulation Scheme (BNIS) to provide mitigation for adverse noise effects; the creation and operation of a Community Fund; the setting up of a Community Liaison Group; and the future management and maintenance of the GI proposed as part of the development.
- 1.8.4. The main obligations to SCC (Schedules 2 and 3) relate to: a range of measures for the management of Heavy Goods Vehicle and other traffic generated by the Proposed Development; for the approval, implementation and monitoring of a series of Travel Plans for various elements of the development and associated measures to encourage the use of sustainable transport modes; for the submission, approval and subsequent implementation of an Employment, Skills and Training Plan and associated measures to ensure accessibility for local people to the employment and training opportunities that would be generated by the Proposed Development; and for making a financial contribution to the improvement of Local Wildlife Sites and for the payment of the fee to SCC to enable the Council to monitor the effectiveness of the ecological mitigation proposed by the Applicant.
- 1.8.5. The signed and executed DCOb was submitted at D8 in both hard copy and electronic form [REP2-020 to 024].

### **BIRD MITIGATION OBLIGATION**

- 1.8.6. This agreement is between the owners of the land bound by the obligations within the document and Staffordshire County Council. This relates to approximately 12 hectares (ha) of farmland to the south of the application site which is to be retained and managed to provide an enhanced habitat for farmland birds as part of the Applicant's proposed mitigation for the loss of farmland within the site itself. The signed and executed document was submitted at D8 in both hard copy and electronic form [REP8-019].

- 1.8.7. These obligations have been taken fully into account in all relevant chapters of this report.

## **1.9. OTHER CONSENTS**

- 1.9.1. The Consenting Strategy within the Applicant's Guide to the Application [APP-002] and other information received during the course of the Examination have identified the following consents that the Proposed Development has obtained or must obtain, in addition to development consent under PA2008. The latest position with regard to these consents was explained in the Applicant's response to ExQ3.5.1 [REP7-004] and is recorded below.

### **APPROVAL FROM NETWORK RAIL FOR THE RAIL CONNECTION AND RAIL INFRASTRUCTURE**

- 1.9.2. The general arrangements for the layout of the proposed Rail Terminal and its rail connections with the main line railway have been reviewed by Network Rail (NR) and have received approval under Stage 2 of NR's *Governance for Railway Investment Projects* (GRIP) approval process. Further details of the GRIP process and the prospects of the Applicant securing the detailed approvals necessary in the later stages of that process are set out in Chapter 5 of the report. As set out in that chapter, I have no reason to conclude that the requirement for those approvals would represent a significant impediment to the Proposed Development.

### **CONSENT TO DISCHARGE SURFACE WATER TO THE STAFFORDSHIRE AND WORCESTERSHIRE CANAL**

- 1.9.3. The Applicant's Site Wide Surface Water Drainage Strategy (SWSWDS) [APP-152] proposes that surface water runoff from part of the completed development would be discharged into the Staffordshire and Worcestershire Canal (the canal), formal consent for which is required from CRT. At the close of the Examination an application had been made to CRT for that consent (on 3 March 2019) and CRT had undertaken hydraulic analysis of the canal network which had provided confirmation that there is capacity within the network to accept the surface water from the development at the rates specified in the SWSWDS (Applicant's response to ExQ3.4.1) [REP7-004]. All works associated with the discharge would need to be carried out in accordance with CRT's *Code of Practice for Works affecting the Canal and River Trust*, but I have no reason to believe that the consent for that discharge will not be issued.

### **VARIATION TO ENVIRONMENTAL PERMIT FOR ONGOING GROUND WATER REMEDIATION**

- 1.9.4. Part of the land required for the Proposed Development is to be acquired by the Applicant from SI Group UK Limited (SI Group) who own and operate a chemical manufacturing works on adjoining land to the west of the canal. The Proposed Development would necessitate localised resiting of remediation abstraction wells and associated pipework which have been installed by SI Group as part of an ongoing groundwater

remediation scheme under an Environmental Permit issued by the Environment Agency (EA). The relocation of that equipment will require a variation to the existing Environmental Permit. The technical aspects of those works have been set out in the Applicant's Remediation Safeguarding Report [APP-096] which has been agreed with SI Group and the EA. The SoCG with the EA [AS-026] confirms that the Remediation Safeguarding Report satisfactorily addresses the concerns that the EA previously had about the proposals (paragraph 5.1.6) and the EA's agreement that, in principle, securing the necessary variation to the Permit is not a significant impediment to the WMI development (paragraph 5.1.7).

## **LICENCES FOR WORKS AFFECTING PROTECTED SPECIES.**

- 1.9.5. The Proposed Development includes works to areas of existing habitat of some protected species including bats and associated mitigation measures to minimise the effect on those species. The details of the mitigation works have been discussed and agreed in principle with Natural England (NE) as set out in section 5.1.10 of the SoCG [REP1-003]. On 26 November 2017, NE provided the Applicant with a letter confirming that it saw no impediment to issuing a licence under The Conservation of Species and Habitats Regulations 2010 for the works affecting the habitats of the various bat species identified on the site. The 'No Impediment Letter' was included within the Application as Appendix 10.5 to the ES [APP-091].

## **OTHER DETAILED CONSENTS**

- 1.9.6. There will be a need for other detailed consents, such as Building Regulations Approval, agreements with utility providers and agreements in respect of drainage works under sections 98, 104, 106 and 185 of the Water Industry Act 1991. Such consents and agreements can only be obtained as and when the detailed proposals for each phase of the development have been drawn up and approved and I have no reason to conclude that these would not be forthcoming.
- 1.9.7. I have considered the available information in relation to the outstanding consents recorded above. Without prejudice to the exercise of discretion by future decision-makers, I conclude that there are no apparent impediments to the implementation of the Proposed Development, should the SoS grant the Application.

## **1.10. STRUCTURE OF THIS REPORT**

- 1.10.1. The structure of this report is as follows:

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

- **Chapter 4** provides a summary of representations made regarding the principle of the Proposed Development.
- **Chapter 5** sets out my consideration of the main planning issues arising from the Application and the Examination.
- **Chapter 6** sets out my assessment of the environmental and other effects of the Proposed Development, including the potential effects on European Sites and Species.
- **Chapter 7** sets out my findings on the main planning and other issues.
- **Chapter 8** sets out my findings concerning the Habitats Assessment Regulations Assessment.
- **Chapter 9** sets out my conclusions on the case for the grant of development consent.
- **Chapter 10** sets out my examination of the CA and TP proposals.
- **Chapter 11** considers the implications of matters arising from the preceding chapters for the DCO.
- **Chapter 12** summarises all relevant considerations and sets out my recommendation to the SoS.

1.10.2. This report is supported by the following Appendices:

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

## **2. THE SITE AND THE PROPOSED DEVELOPMENT**

### **2.1. THE APPLICATION SITE**

- 2.1.1. The application site encompasses an area of approximately 297 ha of land within the County of Staffordshire and the administrative area of SSDC. The major part of the site falls within the County Parish of Penkridge with that part to the south east of Vicarage Road being within Hatherton Parish. The site also extends to the parish boundaries of Saredon (to the south) and Brewood and Coven (to the south and west). This information is shown on the Order Limits and Parish Boundaries Plan submitted with the Application [APP-189]. The site's location within the West Midlands Green Belt has been a significant issue in the Examination.
- 2.1.2. The site lies immediately to the west and south west of Junction 12 of the M6 motorway. To the north, the site boundary is defined mainly by the southern verge of the A5 and, to the west, by the eastern verge of the A449. Both the A449 and that section of the A5 between its junctions with the M6 (Junction 12) and A449 (Gailey Roundabout) are trunk roads forming part of the Strategic Road Network (SRN). From Gailey Roundabout the A449 runs north through the small market town of Penkridge to join the M6 at Junction 13, and then on to Stafford. Going south, the A449 connects with Junction 2 of the M54 motorway some 4.5 kilometres (km) to the south of the site and then continues into the centre of Wolverhampton.
- 2.1.3. At its north eastern edge, the site extends up to the area of woodland immediately to the west and south of Calf Heath Reservoir and from there, the site boundary follows the private access road to the reservoir south to Vicarage Road. From Vicarage Road the site extends south east along the field boundaries to the west of Stable Lane, and then south west along field boundaries to the south east of Woodlands Lane.
- 2.1.4. The eastern half of the site extends south to Straight Mile and crosses to the south of that road as it approaches its junction with Vicarage Road. From here, the boundary follows a convoluted route around the edge of a recently completed warehousing development, both banks of the canal, and the western boundary of the SI Group chemical works, before reaching the A449 at the northern edge of an area of public open space to the north of Station Drive.
- 2.1.5. The Bushbury to Stafford railway line, which forms the western branch of the WCML, runs north-south through the western half of the site. This line is also referred to in the application documents as the West Coast Main Line Loop and I have used the abbreviation "WCML Loop" to distinguish this from the wider network of the WCML. The canal runs roughly north-south through the main site area from Gailey Wharf to Gravelly Way. The section of the canal running south from Gravelly Way to Vicarage Road is also included within the Order Limits.

- 2.1.6. The major part of the site (approximately 210 ha of the 297 ha total site area) is used as agricultural land with hedgerows and trees to many of the field boundaries. An area of mineral working within Calf Heath Quarry in the north eastern part of the site (approximately 40 ha) mainly comprises open cast working areas, spoil storage mounds and silt lagoons as shown in the photograph at Figure 4 (page 10) of the Planning Statement [APP-252]. The site also includes an area of mixed-use woodland (Calf Heath Wood) and a small number of residential properties. Calf Heath Reservoir, which separates the site from the slip road and roundabout at M6 Junction 12, is a feeder reservoir for the canal and is used for recreational sailing and angling.
- 2.1.7. To the south and west, the site is bounded by the SI Group Works, the Four Ashes Industrial Estate, and the recently completed warehousing scheme on land known as the 'Bericote Site'. Further to the south and east of the industrial estate are an Energy (from waste) Recovery Facility (ERF) and Severn Trent Water's Sludge Disposal Centre. Facilities for the hire, storage and repair of canal boats lie immediately to the east of Gailey Wharf at the northern edge of the site and there are further commercial uses along the A5. There are two wind turbines to the north of the A5 which are located approximately 1 km from the site. The Location Plan at Appendix 1 [APP-253] to the Planning Statement identifies the site location in relation to these various features.
- 2.1.8. There are a number of dwellings close to the site boundaries on Station Drive, Vicarage Road, Straight Mile, the A449 and the A5 and a small cluster of properties on Croft Lane towards the northern edge of the site. The site's proximity to these residential receptors is considered more fully in Chapter 6 of the report which is concerned with the potential environmental effects of the Proposed Development.
- 2.1.9. Public access to the site is currently available only via Gravelly Way, the canal towpath and a single Public Right of Way (PROW) in the north west part of the site. This is Public Footpath 29 Penkridge (PENK29) which runs east from the A449 across the fields before crossing on a pedestrian bridge over the railway to a point some 90 m to the south west of Croft Farm. There is also a claimed PROW which broadly follows the west-east alignment of Gravelly Way (see paragraph 2.2.5 below).

## **2.2. THE APPLICATION**

- 2.2.1. The Proposed Development is described in full in the application documents, in particularly in Section 3.5 of the Planning Statement [APP-252] and Chapter 4 of the ES [APP-020]. Further details are set out in Schedule 1 of the Recommended DCO at Appendix D, and the various plans submitted with the Application. A number of amendments have subsequently been made to the plans as submitted but the overall content and form of the Proposed Development has not changed during the course of the Examination. It is, therefore, appropriate to take the final iterations of these plans as forming the proposal as applied for and examined. The relevant plans that provide the detail of the Proposed Development are as follows:

- Works Plans [REP8-037 to 046]
- Development Zone Parameters Plans [AS-052 to 056]
- Floor Levels and Building Heights Parameters Plans [AS-057 to 061]
- Green Infrastructure Parameters Plans [REP5-019 to 023]
- Highway General Arrangement Plans [APP-211 & 212; AS-069 to 73; AS-87; and REP8-029 to 030]
- Rail General Arrangement Drawing [APP-238]
- Rail Terminal Drawings [APP-239 & 240]
- Rail Sections [APP-241 to 245]
- Bridge Plans [APP-246; AS-082 to 085]

2.2.2. An overview of the Proposed Development can be obtained from the Ease of Use A3 Plan Bundle [APP-251]. The plans in this bundle have not, however, been replaced with new versions where updates have been made.

2.2.3. The Proposed Development for which development consent is sought comprises a number of elements as set out in Parts 1 and 2 of Schedule 1 to the Recommended DCO. A summary of the key elements is set out below:

## **PART 1: AUTHORISED DEVELOPMENT: THE SRFI**

- **Works No.1:** A new railway line from the Rail Terminal to connect with the WCML Loop which would allow both north and southbound trains to access and leave the terminal, with associated points and signalling installations. These works include the removal of the bridge that carries PENK29 over the railway, the removal of an existing telecommunications mast and alterations to various elements of the existing railway infrastructure to accommodate the works.
- **Works No. 2:** A Rail Terminal designed to accommodate freight trains of up to 775m long (the maximum length of UK freight trains) with associated sidings, container storage, HGV access and waiting/parking areas. The terminal would enable the transfer of freight between road and rail vehicles and would be intended to serve occupiers of warehouses within the WMI and customers in the wider area who wish to use rail freight services. The first phase of construction (the 'Initial Rail Terminal') would enable the terminal to receive up to 4 trains per day with freight containers being loaded and unloaded and moved around the site using 'reach stacker' forklift vehicles. The proposed second phase or 'Final Rail Terminal' would enable up to 10 trains per day to use the terminal and envisages the erection of gantry cranes for the loading and handling of containers.
- **Works No. 3:** The construction of up to 743,200 square metres (sq. m) of rail-served warehousing and ancillary buildings with associated access, servicing and parking areas and landscaping.
- **Works No. 4:** The construction of a new link road between the A5 and A449 (the Link Road) including new roundabout junctions with both main roads, new bridges over the canal and the WCML Loop, upgrading of footways and cycleways and various alterations to existing highway infrastructure to facilitate these works. It is intended

that, on completion, the Link Road would become adopted highway maintained by SCC.

- **Works No. 5:** The construction of new on-site estate roads and access junctions, footways and cycleways with associated lighting and signage. It is intended that the estate roads would remain as private roads which would be maintained by an estate management company.
- **Works Nos. 1 and 2:** The stopping up of part of Gravelly Way as part of the Authorised Development.
- **Works Nos. 1 and 3:** The stopping up of part of Footpath PENK29 as part of the Authorised Development.

## **PART 2: ASSOCIATED DEVELOPMENT**

- **Works No. 6:** The provision of structural landscaping including 2 Community Parks, landscape bunds to provide noise and visual screening, boundary treatments including acoustic fencing, habitat creation, retention of existing woodland, enhancements to the canal corridor and towpath, alterations to existing drainage infrastructure and the construction of new drainage culverts.
- **Works No. 6:** The removal of existing 132 kilovolt (kv) overhead electricity cables and associated pylons and their replacement with new underground cables following the estate road network through the site. These works are necessary to facilitate the construction of the new warehouse units at the scale and heights envisaged.
- **Works No.6:** The stopping up of the remaining length of PENK29 as part of the Associated Development.
- **Works No. 7:** Works to the public highway including upgrading of footways and cycle ways, closure of gaps in the central reservation of the A449, and various traffic management measures to help manage traffic flows and mitigate potential adverse effects of the Proposed Development.
- **Works No. 8:** The conversion of existing buildings and construction of additional buildings at Gravelly Way Farm to be used for the purposes of estate management offices, training and meeting rooms, amenity and welfare facilities in connection with the Proposed Development.
- **Works No 9a:** The removal of an existing 132 kv electricity transmission pylon immediately to the north of the A5, its replacement with a new tower and associated works to connect the new underground cable network (part of Works No. 6) back into the overhead network to the north of the site.
- **Works No. 9b:** The removal of an existing 132 kv electricity transmission pylon immediately to the north of Straight Mile, its replacement with a new tower and associated works to connect the new underground cable network (part of Works No. 6) back into the overhead network to the south of the site.
- **Works No. 10a:** The provision of revised access arrangements for the SI Group Works.
- **Works No. 10b:** The provision of revised access arrangements for businesses within the Four Ashes industrial area (now renamed as Gailey Park).

- **Works No. 11:** The provision of improved access and turning area to serve Avenue Cottages.
- **Works Nos 6 and 10:** The stopping up of the remaining part of Gravelly Way and its reuse for cycle and pedestrian traffic only as part of the Associated Development.

The draft DCO submitted with the Application [APP-008] included proposed works for the retention of Straight Mile farmhouse and the provision of a garden area for that property as Works No.11. For reasons explained in Chapters 10 & 11 of this report, those works have been deleted and the works originally identified as Works No. 12 have been reclassified as Works No.11 in the Applicant's final draft DCO [REP8-005].

- 2.2.4. Part 2 of Schedule 2 provides for the authorisation of 'Further Works' which may be required to facilitate the construction and development comprised within Works Nos. 1-11. These are quite broad in scope and include such works as the installation of weigh bridges, signage and lighting, the diversion and provision of utility services and the provision of new mains services connections, the provision of landscaped bunds and other landscaping, the construction of footways, cycleways and permissive paths, relocation of telecommunications masts, demolition works and the provision of temporary compounds and facilities for the construction works.
- 2.2.5. After the Application had been accepted for examination, SCC advised that it had received an application under s53 of the Wildlife and Countryside Act 1981 for another PROW to be added to the Definitive Map of Public Rights of Way. This claimed PROW broadly follows the line of Gravelly Way and was initially described as having the status of a Byway Open to All Traffic (BOAT). Having published its intention to add this to the Definitive Map SCC received a further claim that it is a bridleway and, at the close of the Examination, its status was unresolved. The Applicant considers that the retention of the route as a PROW would be incompatible with the Proposed Development and has, accordingly, included this within the Further Works component of Part 2 of Schedule 1 to their final draft DCO such that this PROW would also be stopped up as part of the development proposals in the event that it is added to the Definitive Map.
- 2.2.6. Further details of the development scheme are set out in the following sections of the report as necessary for my consideration of the benefits and effects of the Application proposals.

## **2.3. CHANGES TO APPLICATION PLANS AND DOCUMENTS**

2.3.1. The Application was accepted for examination on 24 August 2018 and the formal acceptance letter was accompanied by a 'Section 55 Checklist'<sup>4</sup>. The Applicant submitted additional and corrected documents in response to that checklist in the period between acceptance and the PM. These were accepted and saved as 'Additional Submissions' [AS-001 to 006].

2.3.2. At various stages of the Examination the Applicant has submitted updated versions of a number of the application plans and documents. For the most part, this has been done in order to provide greater clarity in respect of the detailed proposals or to incorporate minor changes to respond to concerns raised by IPs. Because of the nature of the Application, even a relatively small change to the detail of the works has often necessitated changes to a large number of plans. The most significant revisions made to Application documents are:

- The submission of an Addendum (Chapter 13A) to the ES chapter concerning Noise and Vibration, together with the relevant appendices, [REP2-014 to 017]. This addendum was provided because further baseline noise measurements had been undertaken since the production of the ES in July 2018. These additional measurements were carried out with the agreement of SSDC, as the local authority with responsibility for environmental health matters, and the ES chapter was updated to take account of those additional baseline measurements.
- The submission of a revised and updated ES chapter concerning air quality (Chapter 7), together with the relevant appendices, submitted at D7 [REP7-016 to 027]. Following detailed discussions with consultants acting on behalf of SSDC the Applicant carried out a reassessment of the modelling of air quality effects from road traffic at receptors in the South Staffordshire district. However, as this information did not cover receptors in surrounding districts who might potentially be affected by emissions from traffic generated by the Proposed Development, I requested in my TWQs that the chapter should be updated with this information.
- The submission of revised and updated versions of the Framework Ecological Mitigation and Management Plan (FEMMP) to reflect discussions with NE and SCC. The final version of this document was submitted at D5 [REP5-033]
- The submission of revised and updated versions of the Site Wide HGV Management Plan (SWHGVMP) and Site Wide Travel Plan (SWTP) to reflect further discussions between the Applicant and the highway authorities. Further revisions to the SWHGVMP [AS-039] and the

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<sup>4</sup> Section 55 of P2008 enables the Planning Inspectorate to issue a list of detailed queries/ requests for clarification about documents and plans submitted with the Application. These are not matters that would affect the decision whether or the Application should be accepted for examination but provide the opportunity for corrected or missing information to be provided before the examination begins.

SWTP [AS-040] were submitted in April 2019 and were discussed at ISH2 on 5 June 2019. Additional revisions were subsequently made to the SWTP and the final version was submitted at D5 [REP5-037].

- The submission of revised versions of the draft DCO in response to matters discussed at hearings and raised in written representations. The final version of the Applicant's draft DCO [REP8-005] was submitted at D8. The applicant has also submitted updated versions of the DCO Explanatory Memorandum [REP8-007], Book of Reference (BoR) [REP8-009] and Statement of Reasons (SoR) [REP8-011].
- The submission of revised versions of the draft DCOB and Bird Mitigation Obligation to include additional landowners where the terms of acquisition by agreement have been agreed and in response to matters discussed at the hearings and raised in written representations. The signed DCOB [REP8-020 to 024] and Birdland Mitigation Obligation [REP8-019] were submitted at D8.

2.3.3. I reviewed these various documents and plans before accepting them into the Examination. I am satisfied that they help to clarify and further refine the development proposals and that the amendments and revisions which they include do not represent material changes to the Application.

## **2.4. RELEVANT PLANNING HISTORY**

2.4.1. Section 2.5 of the Planning Statement [APP-252] sets out the principal components of the planning history of the site and its immediate surroundings.

### **APPLICATION SITE**

2.4.2. The only relevant history relates to minerals extraction at Calf Heath Quarry in the north eastern part of the site. This has a long planning history with permission having been granted in November 1996 (SS.54/95) for the extraction of aggregates for the construction industry (sand and gravel). The permission related to a site of 23.9ha and allowed minerals extraction and subsequent restoration over a period of 8 years. The approved means of restoration was by landfilling with inert waste for the land to be returned to agricultural use.

2.4.3. In August 2009, a new planning permission was granted (SS.07/19/681) for the extension of the extraction area to the south and north west of the previously consented area and for extraction and restoration to be completed over a 13-year period expiring in 2021. This extended the area of extraction to approximately 40ha. That permission was subsequently amended in December 2012 (SS.2/08/681) to alter the layout within the site, to enable a small quantity of mineral products to be imported and stored on the site, and to update the conditions attached to the original consent.

2.4.4. Notwithstanding conditions attached to the 2012 permission which required a phased restoration of the site, no restoration works appear to have been carried out (see photograph at Figure 4 on page 10 of the Planning Statement). The Planning Statement states the Applicant's

understanding the site operator, Salop Sand and Gravel, is in discussion with SCC as the Minerals Planning Authority (MPA) concerning the restoration of the quarry (paragraph 5.7).

## **ADJACENT SITES**

- 2.4.5. The main history of relevance relates to a 25ha site located between the canal and Calf Heath Wood which is being developed by Bericote Properties Limited and is referred to in the Application and Examination documents as the 'Bericote Site' or 'Bericote Land'. Outline planning permission on this land was granted in March 2008 (07/01363/OUT) for the erection of 84,000 sq. m of warehousing (Use Class B8) and associated offices, parking and access.
- 2.4.6. That permission was not implemented, and, in May 2016, a revised proposal received full planning permission (16/00498/FUL) for the erection of 105,000 sq. m of industrial/ distribution warehousing buildings (Use Classes B1(c)/B2/B8) with access, servicing, parking, landscaping and associated works. That permission has been implemented and a number of the buildings are now occupied.
- 2.4.7. The Planning Statement advises that the Bericote Site development has been supported by an allocation of £1.91 million (M) by the Stoke-on-Trent and Staffordshire Local Enterprise Partnership (SSLEP) for access and signalling improvements to help facilitate the development of the site. These works included the resurfacing of Gravelly Way and the construction of a fully signalled access junction of Gravelly Way with the A449 and were completed in 2017.
- 2.4.8. It indicates that highway improvements in the immediate vicinity of the site have also been supported by a £2.4M developer contribution secured under the Section 106 Agreement attached to the planning permission for the development of the i54 South Staffordshire Business Park (i54) which is located some 5km to the south of the site. This contribution has funded improvements to the Gailey Roundabout and the A449 as part of the mitigation for the effects of that development on the highway network.
- 2.4.9. There are no other planning applications or appeals of relevance to the Proposed Development.

## **3. LEGAL AND POLICY CONTEXT**

### **3.1. THE PLANNING ACT 2008**

- 3.1.1. In a situation where a relevant National Policy Statement<sup>5</sup> (NPS) has been designated, section 104 of the PA 2008 requires that the Secretary of State (SoS) must decide the application in accordance with the NPS. In so doing the SoS must also have regard to:
- Any LIR;
  - Any prescribed matters, and
  - Any other matter that the Secretary of State considers to be both important and relevant to the decision.
- 3.1.2. The National Policy Statement for National Networks was designated by Parliament in December 2014 and forms the primary basis for making decisions on development consent applications for national networks NSIPs.
- 3.1.3. As set out in paragraphs 1.4.30-1.4.33 above, LIRs were submitted by SSDC [REP2-052] and SCC [REP2-062]. The issues raised by the LIRs are considered in the appropriate sections of the report. No matters were prescribed by the SoS for specific consideration in the examination of the application.

### **3.2. NATIONAL POLICY STATEMENT FOR NATIONAL NETWORKS**

- 3.2.1. The National Policy Statement for National Networks is subsequently referred to in this report by the abbreviation NPSNN. The NPSNN states that the Government believes that it is important to facilitate the development of the intermodal rail freight industry because the transfer of freight from road to rail has an important part to play in the low carbon economy and in helping to address climate change (paragraph 2.53).
- 3.2.2. For this reason, a network of SRFIs is needed across the regions, to serve regional, sub-regional and cross-regional markets. In all cases it is essential that these have good connectivity with the road and rail networks, in particular the strategic rail freight network (paragraph 2.43). The NPSNN states that Government has concluded that there is “*a compelling need for an expanded network of SRFIs*” and notes that it is “*important that SRFIs are located near to the business markets they will serve - major urban centres or groups of centres - and are linked to key supply chain routes.*”
- 3.2.3. The NPSNN sets out the Government’s wider policy with regard to national networks and the manner in which the potential environmental and social impacts of NSIP proposals should be assessed and taken into account in the decision-making process. Subject to the detailed policies

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<sup>5</sup> As defined in s5 and referred in s104 of the PA 2008.

and protections in the NPSNN, and the legal constraints set out in the PA 2008, there is a presumption in favour of granting development consent for NSIPs that fall within the need for infrastructure established within the NPSNN (paragraph 4.2).

- 3.2.4. My assessment of the extent to which the Application proposals comply with the general requirements of the NPSNN with regard to the location, form and content of SRFIs is set out in Chapter 5 below. I deal with compliance with the NPSNN policy and requirements in relation to the environmental and social impacts of the development under the relevant subject heading in Chapter 6.

### **3.3. UK LEGISLATION AND POLICY**

#### **THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)**

- 3.3.1. The Town and Country Planning Act 1990 (as amended) (TCPA) regularises the development of land in England and Wales and includes an expansive code of planning regulations.

#### **THE HIGHWAYS ACT 1980**

- 3.3.2. The Highways Act 1980 deals specifically with the management and operation of the road network in England and Wales.

#### **THE COUNTRYSIDE AND RIGHTS OF WAY ACT 2000**

- 3.3.3. Section 85(1) of The Countryside and Rights of Way Act 2000 imposes a duty on all public bodies, including the ExA and the SoS, to have regard to the purposes for which an AONB is designated. These statutory purposes are conserving and enhancing the AONB.

#### **HISTORIC BUILT ENVIRONMENT**

- 3.3.4. Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 requires that the ExA must have regard to the desirability of preserving any listed building or its setting and any features of special historic or architectural interest that it may possess. The SoS must also have regard to these matters in making their decision on the Application.

#### **THE UK BIODIVERSITY ACTION PLAN**

- 3.3.5. Priority habitats and species are listed in the UK Biodiversity Action Plan. The plan is relevant to the application in view of the biodiversity and ecological considerations discussed in Chapter 6 of this report.

#### **NOISE POLICY STATEMENT FOR ENGLAND**

- 3.3.6. The Noise Policy Statement for England (NPSE) seeks to clarify the underlying principles and aims in existing policy documents, legislation and guidance that relate to noise. Further details of this and the related Explanatory Note are set out in section 6.4 of this report.

## **THE PUBLIC SECTOR EQUALITY DUTY**

- 3.3.7. Section 149 of the Equality Act 2010 establishes a public sector equality duty (PSED) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The PSED is applicable to the Proposed Development, the conduct of the Examination and reporting, and to the SoS in decision-making.

## **3.4. EUROPEAN LAW AND RELATED UK REGULATIONS**

- 3.4.1. Every public body has a duty under the Natural Environment and Rural Communities Act 2006 with regard to the conservation of biodiversity<sup>6</sup>. In particular, the SoS must have regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992 when determining an application for development consent.
- 3.4.2. Specific steps are required under the Habitats Regulations<sup>7</sup> in order to protect species and habitats. These regulations also require competent authorities<sup>8</sup> to comply with the Habitats Directive.<sup>9</sup> However, the Applicant and NE agree that the Proposed Development would not generate any likely significant effects on the three European Protected Sites (EPS) with or without mitigation measures in place.
- 3.4.3. The European Union (Withdrawal) Act 2018 ends the supremacy of European Union (EU) law in UK law, converts EU law as it stands on Exit Day into domestic law, and preserves laws made in the UK to implement EU obligations except for certain named items. This recommendation is made on the basis that relevant EU law has been retained and it will be a matter for the SoS to satisfy themselves on the position at the point of decision.

## **THE AIR QUALITY DIRECTIVE**

- 3.4.4. Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe entered into force on 11 June 2008. It sets limit values for compliance and establishes control actions where the limit values are exceeded for ambient air quality with respect to sulphur dioxide (SO<sub>2</sub>), nitrogen dioxide (NO<sub>2</sub>) and mono-nitrogen oxides (NO<sub>x</sub>), particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>), lead, benzene and carbon monoxide.

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<sup>6</sup> Section 40: "Every public authority must, in exercising its functions, have regard, so far as consistent with the proper exercise of those functions, to the purpose of conserving biodiversity".

<sup>7</sup> Conservation of Habitats and Species Regulations 2010 (as amended).

<sup>8</sup> Regulation 7 of the Conservation of Habitats and Species Regulations 2010 (as amended).

<sup>9</sup> Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

## **THE AIR QUALITY DIRECTIVE (COUNCIL DIRECTIVE 2008/50/EU)**

- 3.4.5. The Air Quality Directive on ambient air quality and cleaner air for Europe came into force on 11 June 2008. It sets limit values for compliance and establishes control actions where the limit values are exceeded for ambient air quality with respect to SO<sub>2</sub>, NO<sub>2</sub>, NO<sub>x</sub>, PM<sub>10</sub> and PM<sub>2.5</sub>, lead, benzene and carbon monoxide.

## **THE AIR QUALITY STANDARDS REGULATIONS**

- 3.4.6. The Air Quality Standards Regulations 2010 give direct statutory effect to the Air Quality Directive

## **THE UK AIR QUALITY STRATEGY**

- 3.4.7. The UK Air Quality Strategy 2007 establishes the UK framework for air quality improvements and a long-term vision for improving air quality in the UK. It offers options to reduce the risk to health and the environment from air pollution. Individual plans prepared under its framework provide more detailed actions to address limit value exceedances for individual pollutants. In turn, these plans set the framework for action in specific local settings where limit value exceedances are found, including the designation of Clean Air Zones and more localised AQMAs where Air Quality Management Plans are prepared by local authorities.

## **THE EIA DIRECTIVE (COUNCIL DIRECTIVE 2011/92/EU)**

- 3.4.8. The EIA Directive defines the procedure by which information about the environmental effects of a project is collected and considered by the relevant decision-making body before consent is granted for a development. It sets thresholds for projects that require an EIA and outlines the impacts on the environment that need to be assessed. The Directive was amended in 2014 and is now implemented through the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. The Applicant provided an ES designed to comply with the Directive (Council Directive 2009/147/EC)

## **HABITATS DIRECTIVE (COUNCIL DIRECTIVE 92/43/EEC) AND WILD BIRDS DIRECTIVE (COUNCIL DIRECTIVE 2009/147/EC)**

## **THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017**

- 3.4.9. The Habitat Directive and Wild Birds Directive form the cornerstone of Europe's nature conservation policy. The Conservation of Habitats and Species Regulations (the Habitat Regulations) are the principal means by which the Habitats Directive is transposed in England and Wales.

- 3.4.10. The Habitats Regulations came into force on 30 November 2017. They consolidated the Conservation of Habitats and Species Regulations 2010 (the 2010 Habitats Regulations) with subsequent amending instruments, and made minor modifications reflecting changes to related legislation.

### **THE WATER FRAMEWORK DIRECTIVE**

- 3.4.11. Directive 2000/60/EC, establishing a framework for Community action in the field of water policy (the WFD), sets objectives to prevent and reduce pollution, environmental protection, improve aquatic ecosystems and mitigate the effects of floods. It provides for the production of River Basin Management Plans to provide for the sustainable management of rivers.

### **THE WATER ENVIRONMENT REGULATIONS**

- 3.4.12. The WFD is transposed into law in England and Wales by The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.

## **3.5. OTHER DEVELOPMENT CONSENT ORDERS AND RELEVANT PERMISSIONS**

- 3.5.1. There are no made development consent orders which directly affect the site of the Proposed Development, but references have been made in the Examination to a number of other SRFI projects which might be of relevance to the SoS' consideration of the application. These are:

### **DAVENTRY INTERNATIONAL RAIL FREIGHT TERMINAL (DIRFT)**

- 3.5.2. DIRFT is an operational SRFI close to Junction 18 of the M1 motorway near Daventry in Northamptonshire. The existing SRFI has been developed in two stages (DIRFT I and DIRFT II) under separate planning permissions secured through the TCPA. A DCO for the further expansion of the SRFI (DIRFT III), including a new rail terminal to replace that constructed as part of DIRFT I, was made in July 2014. DIRFT III was under construction at the time of my USI in February 2019.

### **EAST MIDLANDS GATEWAY RAIL FREIGHT INTERCHANGE (EMGRFI)**

- 3.5.3. EMGRFI is located adjacent to junction of the M1 motorway with the A50 (Junctions 24 and 24A) close to the East Midlands Airport near Kegworth in Leicestershire. The EMGRFI development was approved under a DCO issued in January 2016 which also gave consent for improvements to Junctions 24 and 24A of the M1 and to the southbound carriageway of the M1 between those junctions. At the time of my USI in February 2019 the highway works had been completed, the first warehouse building appeared to be nearing completion and there was evidence of extensive earth works in other parts of the site.

## **NORTHAMPTON GATEWAY RAIL FREIGHT INTERCHANGE (NGRFI)**

- 3.5.4. The examination into the DCO application in relation to the proposed NGRFI closed on 9 April 2019 and development consent for the project was granted by the Secretary of State for Transport on 9 July 2019. The site of the proposal is located close to Junction 15 of the M1 to the south of Northampton.

## **RAIL CENTRAL STRATEGIC RAIL FREIGHT INTERCHANGE (RCSRFI)**

- 3.5.5. RCSRFI is the subject of a live examination for a DCO. The application was accepted for examination in November 2018. The applicant subsequently requested that the start of the examination be delayed to enable the applicant to undertake a strategic review of the proposed highway mitigation works. Following further correspondence between the Planning Inspectorate and the Applicant the DCO application was formally withdrawn on 23 October 2019. The site of that proposed development is also located to the south of Northampton adjacent to Junction 15A of the M1.

## **RADLETT SRFI**

- 3.5.6. Outline Planning Permission for what is known as the Radlett SRFI was granted on appeal by the SoS for Communities and Local Government in July 2014. I understand that the planning permission remains extant as applications for reserved matters approval have been made within the requisite timescale but that no development has yet been commenced. The permission relates to a former aerodrome within the Green Belt in the Upper Colne Valley near to St Albans in Hertfordshire.

## **HOWBURY PARK RAIL FREIGHT INTERCHANGE (HOWBURY PARK RFI)**

- 3.5.7. The proposed SRFI known as Howbury Park was to be located on Green Belt land adjacent to the South Eastern Trains Depot at Slade Green in the London Borough of Bexley. Outline planning permission for the proposal was granted on appeal in December 2007. That outline permission was not implemented and is now time-expired. A planning application for a revised SRFI proposal on the site was refused by the Local Planning Authority (LPA) in July 2017 and a subsequent appeal against that refusal was dismissed by the Secretary of State for Housing, Communities and Local Government (SoSHCLG) in February 2019.

## **iPORT DONCASTER STRATEGIC RAIL FREIGHT INTERCHANGE (iPort)**

- 3.5.8. The iPort development was granted planning permission under the TCPA by Doncaster Borough Council in August 2011 close to Junction 3 of the M18 motorway. The site was mainly Green Belt land when planning

permission was granted. The permission has been implemented with around 156,000 sq. m of warehousing completed.

### **3.6. THE NATIONAL PLANNING POLICY FRAMEWORK**

3.6.1. The National Planning Policy Framework (NPPF) issued in 2012 was replaced by a revised version published on 24 July 2018. Further amendments were made in an updated document issued in February 2019 but these related mainly to new housing rather than other forms of development.

3.6.2. Paragraph 5 of the revised NPPF states that it does not contain specific policies for NSIPs as these are determined in accordance with the decision-making framework in the PA 2008 and any relevant NPS. However, paragraph 1.18 of the NPSNN advises that the NPPF is likely to be an important and relevant consideration in decisions on NSIPS, but only to the extent relevant to that project. I have, therefore, taken relevant NPPF policies into consideration in my assessment of the Application where appropriate.

3.6.3. There are many references in the ES and the Planning Statement to policies within the NPPF. The Planning Statement has a publication date of July 2018, but all of its references are to the revised July 2018 version of the NPPF. However, within the ES, which is also dated July 2018, all paragraph references are to the previous (2012) version of the NPPF.

3.6.4. I raised these inconsistencies in my FWQs. In ExQ1.1.1 the Applicant, the local authorities and other IPs were asked to comment on whether, in relation to matters covered in the ES, there are any specific new or significantly amended policies in the revised NPPF which are of particular importance to the Examination of the Application and the decision by the SoS as to whether development consent should be granted. The consensus among the responses was that there were not. I accept that conclusion but have ensured that I have given consideration only to the current NPPF.

### **3.7. PLANNING PRACTICE GUIDANCE**

3.7.1. The NPPF is complemented by the Government's Planning Practice Guidance (PPG) which provides guidance on a wide range of matters in a web-based format. This is referred to in some places within the NPSNN and in a number of the Application documents.

### **3.8. THE DEVELOPMENT PLAN**

3.8.1. The statutory development plan for the area in which the site is located comprises the following documents:

- South Staffordshire Core Strategy (SSCS) adopted in December 2012.
- South Staffordshire Site Allocations Document (SSSAD) adopted in September 2018.
- Minerals Local Plan for Staffordshire (2015-2030) (MLP) adopted in February 2017.

- Staffordshire and Stoke-on-Trent Joint Waste Local Plan (2010-2026) adopted in March 2013.

The Core Strategy (SSCS) and Site Allocations Document (SSSAD) together constitute the Local Plan for South Staffordshire.

3.8.2. The LIR submitted by SSDC [REP2-051] lists the following policies as being of relevance to the consideration of the Application.

**Core Strategy Policies:**

- Strategic Objectives 1 and 2, which seek to protect the Green Belt and aim to retain and reinforce the current pattern of development.
- CP1 which identifies how development will be focused in the most sustainable locations through the settlement hierarchy and confirms that the Green Belt will be protected from inappropriate development.
- GB1 sets out the circumstances where development acceptable within the terms of national planning policy in the NPPF will be allowed in the Green Belt.
- CP2 confirms that the Council will support development which protects, conserves and enhances the District's natural assets as expanded upon in Policy EQ1.
- EQ4 states that the intrinsic rural character and local distinctiveness of the District should be maintained and/or enhanced.
- CP3 requires development to cater for the effects of climate change and minimise environmental impacts.
- EQ5 and EQ7 seek to ensure that impact on the environment is minimised and that proposals do not have a negative impact on water quality.
- CP4, EQ11 and EQ12 expect development proposals to achieve a high quality of both the design of buildings and their landscape setting and set out the criteria that will be applied when assessing the design and landscaping of a proposal.
- CP7 supports measures to sustain and develop the local economy of South Staffordshire.
- CP9 supports the social and economic needs of rural communities within the District.
- EV5 sets out the criteria where proposals for employment development outside development boundaries will be supported.
- EQ9 considers the amenity of residents near to proposed development, particularly with regard to privacy, security, noise and disturbance, pollution, odours and daylight.
- EQ10 seeks to protect the public, land uses and the natural environment from proposals which would be detrimental to public health or amenity.
- CP11 seeks to ensure that accessibility will be improved and transport choice widened by ensuring that new development is well served by a choice of transport modes, including public transport.
- EV11 sets out the measures required to provide for sustainable forms of transport to access the site.
- EV12 identifies the criteria for assessing appropriate provision for off-street parking.

- CP13 supports initiatives that promote the safety of people, both in their own homes and in the community and CS1 advises on ways this may be achieved.

3.8.3. SCC's LIR [REP2-062] identifies the following development plan policies as being relevant to the consideration of the Application.

**Minerals Local Plan:**

- Policy 1 - Provision for Sand and Gravel.
- Policy 3 - Safeguarding Minerals of Local and National Importance and Important Infrastructure.
- Policy 6 - Restoration of Minerals Sites.

**Joint Waste Local Plan**

- Policy 1 - Waste as a resource.
- Policy 4 - Sustainable design and protection and improvement of environmental quality.

3.8.4. I consider these and other relevant policy documents relating to South Staffordshire and the Black Country and the wider West Midlands Region in my assessment of the need for the Proposed Development. For this reason, the text below is confined to setting out the key planning policy designations relating to the land within the application site.

**LAND USE DESIGNATIONS AND POLICIES**

3.8.5. Section 2.4 of the Planning Statement [APP-252] describes the Planning Policy Designations relevant to the site and Proposed Development and the plan at Appendix 2 to that document [APP-253] shows these in a spatial form. A summary of the relevant planning policies is also set out in section 2 of the LIRs submitted by SSDC [REP2-051] and SCC [REP2-062]. Accordingly, I have only set out the key policies of relevance in the paragraphs below.

3.8.6. All of the site is within the West Midlands Green Belt. The SSCS Spatial Strategy for South Staffordshire District (Strategic Objectives 1 and 2 and Core Policy 1) seek to reinforce the existing pattern of development and protect the Green Belt from inappropriate development. Policy GB1 provides that permission will be granted for forms of development which are acceptable under the Green Belt policies in section 13 of the NPPF.

3.8.7. The DCO Order Limits include a small part of the Four Ashes Strategic Employment Site which is designated as a strategic employment area under SSCS Core Policy 1. The designated area is excluded from the Green Belt and includes the SI Group complex, the Four Ashes Industrial Estate, the ERF and the Bericote Site. Policy EV5 sets out the criteria under which proposals for employment development outside of development boundaries will be supported.

3.8.8. The section of the canal (approximately 4.3 km long) which runs through the site forms part of the much more extensive Staffordshire and Worcestershire Canal Conservation Area. This designation includes the

full 174 km length of the Canal from the Severn at Stourport in Worcestershire to the Trent and Mersey Canal at Great Haywood in Staffordshire. Within Gailey Wharf (outside but very close to the site boundary), the Round House and Wharf Cottage are both listed as Grade II listed buildings. Within the site itself, Heath Farm is locally listed (Grade B) and Woodside Farm is a non-designated heritage asset.

- 3.8.9. SSDC has commenced work on a new Local Plan for the period to 2037 to replace SSCS. Reference is made elsewhere in this report to the Issues and Options Paper published in 2018 and to other work being carried out in the Plan preparation process. Because of the market area that the WMI is intended to serve I have also given consideration, in my assessment of the need for the SRFI, to development plan and other policy documents relating to the Black Country and South Staffordshire and the wider West Midlands Region, and to other reports and documents relevant to this matter. These are set out in chapter 5 below.

## **MINERALS LOCAL PLAN**

- 3.8.10. A large part of the application site falls within a Mineral Safeguarding Area for sand and gravel under Policy 3 of the MLP which seeks to protect mineral resources from needless sterilisation. This designation covers a wide area within South Staffordshire [REP5-052]. The existing operational area of Calf Heath Quarry is also subject to MLP Policy 3.5 which safeguards existing mineral sites from non-mineral related development. Policy 3 is reproduced in the appendices to SCC's D5 submission [REP5-051]
- 3.8.11. Two areas of land to the west and south-east of Calf Heath Quarry are allocated (under Policy 1) as extensions to the existing area of sand and gravel extraction. The extent of this allocation is shown in Figure 7 in the Planning Statement (page 16). The main text of Policy 1 is set out in section 4 of the Applicant's Minerals Resources Statement [REP4-011].
- 3.8.12. Further consideration of these issues and my assessment of the Application's compliance with the MLP policies is set out in Chapter 5 of the report.

## **4. REPRESENTATIONS CONCERNING THE PRINCIPLE OF THE PROPOSED DEVELOPMENT**

### **4.1. THOSE OBJECTING IN PRINCIPLE**

#### **LOCAL AUTHORITIES AND PARISH COUNCILS**

- 4.1.1. In its written representation submitted at D2 [REP2-046], SSDC opposes the scheme, stating that the nature and scale of the Proposed Development causes significant concerns. These include concerns about the cumulative effects with other development schemes on the local highway network, the visual and landscape impacts of the proposal and the scheme's dependence on attracting a significant proportion of the employees needed from outside of the District. In addition to the extra car journeys involved, SSDC is concerned that this could lead to increased pressure for new housing development within the District.
- 4.1.2. The Applicant and SSDC agree that the WMI proposals represent inappropriate development in the Green Belt and that development consent should not be granted unless very special circumstances have been demonstrated (paragraph 5.170 of the NPSNN). SSDC [REP2-046] considers that that test has not been met. The Council is particularly concerned about the Applicant's commitment to the use of rail and the proposed phasing of the rail terminal works.
- 4.1.3. All the local Parish Councils (PC) who have submitted representations on the Application oppose the development in principle. RRs were submitted by the Parish Councils for Hatherton [RR-0706 and 0789], Brewood and Coven [RR-0001], Shareshill [RR-0711], Dunston with Coppenhall [RR-0704] and by individual members of Penkridge Parish Council. The 'Collective of Parish Councils against the West Midlands Interchange' (PC Collective), which represents 12 parish councils in South Staffordshire District, also objects to the proposal [RR-0714].
- 4.1.4. Their concerns include: the need for a SRFI in South Staffordshire; the suitability of the proposed site in relation to the market it is intended to serve and the available labour market; the scale of the development; loss of Green Belt; traffic impacts; HGV parking in the area; landscape and visual effects including the effect on views from the Cannock Chase AONB; and the air quality, ecology and other environmental effects of the Proposed Development. Representatives of the PC Collective and individual PCs have participated in all stages of the Examination and maintain their opposition to the proposal.

## **MEMBERS OF PARLIAMENT<sup>10</sup>**

- 4.1.5. In his RR [RR-1188], Gavin Williamson, Member of Parliament (MP) for South Staffordshire constituency, states that, in April 2017, he held a referendum in the areas surrounding the Proposed Development. He received over 1,400 responses and says that “99% of my constituents felt that the planning application for the West Midlands Interchange should be rejected.” Their concerns relate to loss of Green Belt, traffic and pollution and a concern that the development would jeopardise the distinct identity of nearby villages. At D2 [REP2-179] Mr Williamson states his opposition to “*this monstrous proposal*” which he says would cause irreversible damage to the Green Belt and see the destruction of woodland and natural habitat. At D7 [REP7-123], he sets out his responses to my TWQs.
- 4.1.6. Jeremy Lefroy MP (for the adjacent Stafford Constituency) objects to the proposal [RR-1223]. He questions the continuing need for SRFIs in light of changes in technology and is concerned about the suitability of the site relative to the intended market and labour supply, the scale of development, loss of Green Belt, HGV traffic and environmental damage. Mr Lefroy restated his concerns at D2 [REP2-126] and submitted both a response to TWQs [REP8-070] and final comments on the application [REP8-069].

## **LOCAL ORGANISATIONS AND COMMUNITIES**

- 4.1.7. Brewood Civic Society [RR-0579] objects on the grounds that the proposal would destroy a huge area of Green Belt and that alternative, brownfield sites are available. The Friends of Penkridge Library [RR-0973] object on Green Belt grounds and because of concerns about the traffic and pollution, environmental effects and effects on local businesses. They assert that alternative, more suitable locations could be found.
- 4.1.8. The Shoal Hill Joint Committee (which includes representatives of both SSDC and Cannock Chase District Council) has a specific role in the management and protection of the Shoal Hill area which forms the southern extremity of the Cannock Chase AONB. The Joint Committee [RR-1324], [REP2-149], set out their concerns about the location and scale of the scheme and that it would have a significant adverse impact on views from Shoal Hill and, ultimately, on its setting as part of the AONB. They consider that it is not possible to mitigate that effect through landscape screening and that the very special circumstances test is not met.
- 4.1.9. Stop WMI states that it has been formed by local people to oppose the Proposed Development. The Group’s Planning Report [REP2-158] states that the Group has over 2,500 members who live in the area surrounding

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<sup>10</sup> Mr Williamson and Mr Lefroy were Members of Parliament for the South Staffordshire and Stafford Constituencies respectively during the course of the Examination which preceded the calling of the General Election to be held on 12 December 2019.

the site including the communities of Gailey, Four Ashes, Calf Heath, Hatherton, Penkridge, Brewood and Coven and consists of local residents and professional experts. It also claims that the Group has political support from the two local MPs, SSDC and the local parish councils. Stop WMI opposes the development on a wide range of grounds and has submitted a number of detailed technical reports [REP2-158 to 167] to substantiate its concerns and objections. The Group has taken an active role in the Examination and maintains its opposition to the proposal.

- 4.1.10. The Council for the Protection of Rural England, Staffordshire Branch (CPRE) [RR-0969] objects to the major loss of Green Belt, the scale of the development and the lack of a link between the scale of warehousing proposed and the usage of the SRFI. It argues that only a small part of the proposed warehousing floorspace can be regarded as being rail-served. CPRE has subsequently submitted a number of issue specific representations [REP2-092 to 097] and responses to ExQ1 [REP2-098]. Its representative has participated in some of the hearings.
- 4.1.11. At D2 the Inland Waterways Association, Lichfield Branch (IWA) objected, stating that the damage caused would greatly outweigh the benefits of the development [RR-0654]. Its principal concerns are about the effect on the Canal Conservation Area and on the use and enjoyment of the canal and Calf Heath Reservoir. The IWA also raised concerns about the need for and scale of the proposal, its potential traffic impacts and the loss of Green Belt. IWA has not submitted any further evidence.
- 4.1.12. The 1362 RRs received included a substantial number of representations from local residents and members of the communities around the site. The large majority strongly oppose the WMI proposals for a wide variety of reasons including need; the suitability of the proposed location; loss of Green Belt; traffic impacts; air quality and other environmental effects; the loss of agricultural land and woodland; and the impact on the local communities. These RRs indicate a high level of public interest and very strong opposition to the Proposed Development. That interest has been maintained throughout the Examination with many individuals attending the hearings and significant numbers of representations from individual members of the community, in particular at D2, 4 and 7.

## **4.2. THOSE SUPPORTING THE PROPOSED DEVELOPMENT**

- 4.2.1. The City of Wolverhampton Council [RR-1167] and Walsall Council [RR-1349] support the proposal, stating that the WMI scheme could make a significant contribution to meeting local employment needs, and to regeneration and economic growth. Walsall Council notes the need to ensure that, if built, WMI should remain a logistics park so as not to displace industrial activity and investment in the Black Country and both Councils recognise the potential impact on the road network. They have jointly submitted further written and oral evidence and have maintained their support for the Proposed Development.

- 4.2.2. In its RR [RR-0990) NR is broadly supportive of the proposal and welcomes the prospect of the new rail traffic that the Rail Terminal would generate. NR has submitted both written and oral evidence at various stages of the Examination and has maintained its support for the Proposed Development. However, as the separate, Side Agreement that is envisaged between the Applicant and NR had not been signed before the close of the Examination, NR has requested changes to the draft DCO in order to safeguard its interests as a statutory undertaker.
- 4.2.3. SI Group [RR-1325] supports the proposed Order subject to the terms of the Remediation Safeguarding Report (see section 6.11 below) and the Protective Provisions in Part 6 of Schedule 13 to the Recommended DCO.
- 4.2.4. The Campaign for Better Transport [REP2-087] states their full support for the proposal and sets out a number of reasons for this support. A letter of support from Transport for West Midlands (dated 5 July 2019) was submitted as Appendix 2 to the Applicant's Responses to D6 Submissions [REP7-003]. I have not identified any letters of support from private individuals among the RRs and only one has been received subsequently [REP2-135].

### **4.3. OTHER LOCAL AUTHORITIES**

- 4.3.1. SCC's Written submission [REP2-060] raises no objection in principle but sets out areas of concern and outstanding issues in relation to effects on the highway network, landscape and ecological interests, flood risk and drainage, the economy and mineral resources. At ISH5 SCC deferred to SSDC in respect of whether or not very special circumstances exist to justify the granting of consent for inappropriate development in the Green Belt.
- 4.3.2. Cannock Chase District Council is a neighbouring local authority. In its RR [RR-0681], the Council accepts the need for a SRFI in the north west quadrant of the West Midlands Region and that the WMI could potentially help to meet that need. The Council adopts a neutral stance with regard to the Application but identifies a number of relevant issues including the implications for a possible rail freight interchange at the Pentalver site in Cannock, traffic and air quality effects, and the possible impact on the canal-side environment along the Hatherton Branch Canal which connects with the Staffordshire and Worcestershire Canal to the south of the Four Ashes area. In its RR the Council reserved its right to participate in the Examination but has not submitted any further evidence.
- 4.3.3. Stafford Borough Council (a neighbouring local authority) [RR-0993] states that the WMI would serve an existing economic need and that the Council supports the conclusions of the Alternative Sites Assessment (ASA) that there are no suitable sites within the Borough for a SRFI development of this scale. The RR sets out a concern that the scale of growth proposed at Junction 12 of the M6 could have an impact on future economic growth in the Borough. The matters underpinning that concern are the extent of the area from which WMI employees are expected to be drawn, traffic effects in combination with other large developments, and

the 'timing' of the development due to other strategic projects including HS2 and planned improvements to the motorway and some of its junctions. The Council has not submitted any further evidence.

## **5. THE PLANNING ISSUES**

### **5.1. MAIN ISSUES IN THE EXAMINATION**

- 5.1.1. Based on my preliminary assessment of the application documents and RRs I published an Initial Assessment of Principal Issues as Annex B to the Rule 6 Letter [PD 006] on 23 January 2019. These informed my FWQs and have been explored in written and oral evidence. I have had regard to other matters that have arisen during the Examination where I consider these to be relevant and important.
- 5.1.2. This chapter sets out my assessment of and findings in relation to what I consider to be the main planning issues. In Chapter 6, I set out my assessment of the likely environmental and other effects of the Proposed Development, including potential effects on European Protected Sites and Species. Matters relating to the Applicant's proposals for the use of CA and TP powers are dealt with in Chapter 10 and my consideration of the draft DCO is set out in Chapter 11.

### **5.2. GREEN BELT BACKGROUND**

- 5.2.1. The site's location within the Green Belt is a central issue in the Application. Concerns about the loss of nearly 300 ha of Green Belt are raised in many of the RRs from PCs [RR-0001 & 0704] and other IPs<sup>11</sup> and other submissions to the Examination. Many IPs believe that Green Belt designation should provide permanent protection to that land that should never be breached. A significant number express concern that a development of this type and scale could be contemplated in the Green Belt. The policy considerations are set out in the NPSNN and NPPF and can be summarised as follows.
- 5.2.2. The NPSNN states (paragraph 5.163) that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and permanence. There is a general presumption against inappropriate development in the Green Belt; this should only be approved in very special circumstances (paragraph 5.170). Inappropriate development is by definition harmful, and decision makers are required to give substantial weight to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations (paragraph 5.178). NPPF Paragraph 134 sets out the five purposes that might be served by land in the Green Belt.

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<sup>11</sup> My estimation is that around 11% of the RRs refer to the loss of Green Belt land - see for example RRs 0016, 0019, 0489, 0805, 0120 & 0138

## APPLICANT'S CASE

- 5.2.3. The Applicant accepts that, having regard to the policies in the NPSNN, the WMI scheme would constitute inappropriate development and has promoted the Application on the grounds that the very special circumstances required to justify the making of the DCO have been demonstrated. Their case in relation to the Green Belt is set out in particular within section 6 of the Planning Statement [APP-252], their responses to FWQs [REP2-009] and Appendix 3 to that submission [REP2-010], Appendix 2 to their Post Hearing Submissions [REP4-004]; responses to SWQs [REP5-004] and Appendix 7 to that submission [REP5-004].

## EXAMINATION

- 5.2.4. Concerns about the effect of the Proposed Development on the Green Belt were raised in a number of the Written Representations submitted at D2 including those from CPRE [REP2-095 to 097], Stop WMI in their Planning Report [REP2-158], Paul Windmill [REP2-181] and Brewood and Coven PC [REP2-019].
- 5.2.5. The LIR submitted by SSDC [REP2-051] identifies the effect on the Green Belt as a negative impact of the Proposed Development, stating that there would be a "*significant loss*" of openness and that the development would create a "*significant encroachment into the countryside*" thereby harming one of the five purposes of including land within the Green Belt. The LIR says that substantial weight should be given to the harm to the Green Belt in accordance with the NPSNN.
- 5.2.6. In my FWQs I requested a copy of an extract from the Proposals Map for the adopted development plan, with the site located centrally on that extract, to show the extent of the Green Belt and the existing Green Belt boundaries in the locality of the site. This was provided as Appendix 3 to the Applicant's Response to FWQs [REP2-012]. SSDC also provided a plan that showed the site in the context of the Green Belt and the development boundaries of nearby settlements [REP2-054].
- 5.2.7. ExQ1.3.3 sought views of the local authorities as to the specific roles that the Green Belt in the vicinity of the site plays and ExQ1.3.4 invited the authorities to comment on various statements made in the RRs about the purpose and importance of the Green Belt in this location. Responses to these questions were received from the Applicant [REP2-009], SSDC [REP2-049], Wolverhampton and Walsall Councils [REP2-032] and CPRE [REP2-098].
- 5.2.8. Although the Council's LIR only identifies harm to one of the five purposes of the Green Belt, SSDC's response to ExQ1.3.3 [REP2-049] states that harm would also be caused to the purposes of preventing towns from merging into one another and of assisting urban regeneration by encouraging the recycling of derelict and other land.<sup>12</sup> I sought

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<sup>12</sup> Sub-paragraphs (b) and (e) of NPPF paragraph 134.

clarification of the Council's position in ExQ2.3.3. SSDC's response [REP5-049] confirmed that the Council considers that three of the five purposes are engaged.

- 5.2.9. In the Planning Statement [APP-252] the Applicant asserts that the West Midlands Green Belt is tightly defined around the main settlements (Figure 2.1 of Planning Statement) and that the Green Belt policies in South Staffordshire are out of date. The SoCG with SSDC [REP2-006] confirms that the boundaries were last reviewed at a strategic level in 1996. The SSSAD has made some 25 changes to the Green Belt boundaries to enable land allocations for housing, employment and other development needs as detailed in the table submitted by SSDC in response to ExQ1.3.1 [REP-2053]. Section 10 of the SoCG with SSDC records that other local authorities in the West Midlands Region are relying upon Green Belt release to meet their housing and employment development needs. A number of IPs point to the SSSAD's release of Green Belt sites as an additional reason why the remaining Green Belt should be protected.
- 5.2.10. The evidence in the Planning Statement and Appendix 3 to the Applicant's Response to FWQs [REP-010], demonstrates that the need for a strategic review of Green Belt within the West Midlands Region has been recognised for some years. A report commissioned by the West Midlands Combined Authority (WMCA) recommended (in 2007) that a strategic review should be carried out,<sup>13</sup> but no review has yet been undertaken. A comprehensive review of the Green Belt within the Black Country and South Staffordshire is now underway and SSDC indicated at ISH3 that it hopes to publish this in Autumn 2019 alongside the 'Preferred Spatial Strategy' for its new Local Plan. No further information had been submitted when the Examination closed.
- 5.2.11. Based on the evidence submitted to the Examination, it is apparent that there is an ongoing tension between maintaining existing Green Belt boundaries and meeting future development needs within the Black Country and South Staffordshire. It is also apparent that the question of release of further Green Belt land may have to be considered to help meet those needs. Such a review can, however, only be taken forward as part of the development plan process and the Application has to be determined on the basis of existing Green Belt boundaries. It is, therefore, necessary to assess the extent of the harm that would be caused to the Green Belt as it is currently established.
- 5.2.12. Paragraph 6.3.37 of the Planning Statement asserts that, while the scale of the WMI proposals is substantial, the 297ha application site equates to only 0.9% of the Green Belt within South Staffordshire and only 0.1% of the total area of the West Midlands Green Belt. Whilst those figures are not disputed, I do not consider that these provide much assistance in terms of assessing the effect on the openness of the Green Belt.

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<sup>13</sup> See paragraph 6.3.34 of Planning Statement.

- 5.2.13. Although the Four Ashes Strategic Employment Site is excluded from the Green Belt, the Plan at Appendix 13 to the Applicant's response to FWQs (REP2-012] shows that this existing area of inset is no larger than the built areas of the nearby settlements of Brewood, Coven, Sharesill and Featherstone which are also inset in the Green Belt. These various insets are separated by significant expanses of Green Belt land.
- 5.2.14. The overall scale of the WMI proposals can readily be appreciated from the Site Location Plan submitted by SSDC [REP2-054] This shows that the application site is larger than the area of land within the development boundary of Penkrige to the north. In combination with the exiting Four Ashes Strategic Employment Site, the Proposed Development would cover an area similar to the larger settlement clusters in the local area; for example, those of Cheslyn Hay & Great Wyrley to the east and Codsall Bilbrook & Oaken to the south west. Not all of the site would be covered by buildings, fixed infrastructure and hard surfaces but I consider that the proposal would, nevertheless, result in the loss of a substantial area of Green Belt land.
- 5.2.15. The GI indicated on the GI Parameters Plans [REP5-019 to 023] would cover around 36% of the total site area. This would provide some screening and help to reduce the visual impact of the Proposed Development but would not, in my view, make a significant contribution to reducing the effect on the openness of the Green Belt.
- 5.2.16. The Development Zone Parameters Key Plan [AS-052] and Illustrative Masterplan [APP-205 to 209], show that the proposed Calf Heath Community Park would provide the only substantial expanse of open space adjacent to the site boundary. The proposed Croft Lane Community Park would not be on the edge of the built area but would be within a wedge of GI between the buildings within Development Zones A3 and A4. In that location it would not, in my view, serve to retain openness.
- 5.2.17. Elsewhere, most of the GI around the site perimeter would comprise new landscape mounds ranging in height from + 4.5m to + 8m above existing ground levels. The width of these mounds would enable a design that avoids an obviously engineered appearance and provides for variation in their height and shape. Nevertheless, these would not appear as natural features in an otherwise largely flat landscape where field boundaries are mainly defined by hedges and associated hedgerow trees. They would also cut off the medium to longer distance views across the site which are currently available through field gates and other gaps in boundary hedges from public roads within and around the overall site.
- 5.2.18. The mounds would be secured as part of the details to be submitted under Requirement 3(2) of the Recommended DCO. At ISH3 the Applicant's landscape expert stated his view that these mounds would provide good screening to active areas of the development (the Rail Terminal tracks and yard, estate roads, building entrances and service yards) but would not screen the upper parts of buildings. The scale of individual buildings and of the development as a whole would, therefore,

be apparent from a number of viewpoints and to people travelling on the roads through or past the completed development.

- 5.2.19. Although the existing industrial estate is inset into the Green Belt, I do not consider that the built development in the estate and adjoining area has a significant adverse effect on the openness of the surrounding Green Belt land including that within the application site. The estate is relatively compact and, with the exception of the more recent development on the Bericote Site, existing buildings are relatively small in scale and of low height. I do not consider that the openness of the Green Belt is materially affected by other 'urbanising influences' (the ERF facility and its chimney stack, the wind turbines, the canal and the WCML) within the vicinity of the site as the Applicant suggests in section 6.4 of the Planning Statement [APP-252]. Taking all of these factors into account, I conclude that the Proposed Development would cause substantial harm to the openness of the Green Belt.
- 5.2.20. The Applicant accepts that the Proposed Development would encroach on the countryside and so cause harm to that purpose of the Green Belt as set out in NPPF paragraph 134(c). In light of their unnatural appearance in the surrounding landscape, many of the proposed mounds would contribute to that encroachment. This harm would not, in my view, be limited to the effect of the 190 ha or so of built development and hard surfaces as the Applicant suggests.
- 5.2.21. Having considered the evidence submitted, I do not find that the Proposed Development would breach the paragraph 134(b) purpose of preventing neighbouring towns from merging into one another as SSDC contends. It would add considerably to the built area of the Four Ashes Strategic Employment Site, but this would remain an enclave of industrial and commercial development rather than a new settlement and the nearby settlements would retain their individual identities. There would still be a substantial area of Green Belt between the A5 and Penkridge. That part of the development closest to the settlement of Calf Heath would comprise GI within Calf Heath Community Park rather than built development. In the wider context, the proposal would not reduce the width of the Green Belt gap between Wolverhampton and Stafford or that between either of those towns and Cannock.
- 5.2.22. SSDC also suggests that there would also be harm to the paragraph 134(e) purpose of assisting urban regeneration by encouraging the recycling of derelict and other urban land.<sup>14</sup> I recognise the general importance of that role in the context of the West Midlands Region. However, I consider that suggestion to be inconsistent with the Council's acceptance of the 60 ha minimum site size threshold for an NSIP SRFI which is set within the PA 2008 and its agreement, at paragraph 9.10 of the SoCG [REP2-006], that no alternative sites are available that could accommodate a SRFI. If it is not possible to locate the Proposed

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<sup>14</sup> As clarified in responses to ExQ1.3.3 [REP2-049] and 2.3.3 [REP5-049]

Development within the urban area then the development of the SRFI outside of that area would not harm urban regeneration objectives.

## **CONCLUSIONS ON GREEN BELT HARM**

- 5.2.23. I conclude that, in addition to the harm by reason of inappropriateness, the Proposed Development would cause substantial harm to the openness of the Green Belt and significant harm to one of the purposes of including land in the Green Belt as a result of its encroachment into the countryside.
- 5.2.24. Paragraph 2.56 of the NPSNN advises that, due to the locational and operational requirements of SRFIs, the number of locations suitable for this form of development will be limited. Paragraph 5.1.72 states that promoters of SRFIs "*may find that the only viable sites for meeting the need ... are on Green Belt land*". This neither removes the presumption against inappropriate development nor negates the need for very special circumstances to be demonstrated. It does, however, indicate the Government's acknowledgement that, because SRFIs need to be located close to the markets that they are intended to serve and because major urban markets tend to be surrounded by Green Belt, such development may need to be accommodated on Green Belt sites.
- 5.2.25. When considering whether very special circumstances exist, the presumption in favour of granting development consent, set out in paragraph 4.2 of the NPSNN, could potentially be of significance. That presumption is triggered only if, having regard to the detailed policies and protections in the NPSNN and the constraints set out in the PA 2008, the SoS concludes that the Proposed Development would fall within the need established in that document. Hence, it is necessary to assess the level of need for the proposal and the suitability of the site to meet any identified need, any other harm that might be caused, and the potential benefits of the scheme before reaching a conclusion as to whether or not very special circumstances exist.

## **5.3. NEED FOR THE PROPOSED DEVELOPMENT**

### **BACKGROUND**

- 5.3.1. Government Policy in the NPSNN is that moving freight from road to rail has significant benefits in terms of reducing CO<sub>2</sub> emissions and helping to address climate change, reducing congestion on the road network and improving the quality of life. It identifies a number of key benefits of SRFI development including: the increasing role of SRFIs in logistics and as a driver of economic growth (2.42); aiding modal shift, supporting sustainable distribution and rail freight growth and meeting the changing needs of the logistics industry (2.47); generating considerable benefits to the local economy (2.52); contributing to a low carbon economy and helping to address climate change (2.52). Paragraph 2.56 states the Government's conclusion that there is "*a compelling need for an expanded network of SRFIs*".

- 5.3.2. Table 3 of the NPSNN sets out forecasts of rail freight tonnage to 2023 and 2033 for various categories of freight which are sourced from NR's Freight Market Study of October 2013. The NPSNN states that these are considered to be robust and have been accepted by the Government for planning purposes. Paragraph 2.50 states that, while the forecasts in themselves do not provide sufficient granularity to allow site specific need cases to be demonstrated, they confirm the need for an expanded network of large SRFIs across the regions and indicate that new rail freight infrastructure, especially in areas poorly served by such facilities, are likely to attract substantial business, generally new to rail. The national need is reinforced by the Paragraph 4.2 presumption in favour of granting consent for development that falls within the need established in the NPSNN.
- 5.3.3. The Applicant contends that the Proposed Development would play an important role in fulfilling that national need and that the proposal, therefore, benefits from the paragraph 4.2 presumption. These central arguments are supported by detailed evidence of what the Applicant states is a long-standing and pressing need for an SRFI to meet the needs of the Black Country and southern Staffordshire. The Applicant's need case is set out primarily in section 5 of the Planning Statement [APP-252], Updated Market Assessment [REP2-004], Green Belt Update [REP2-010], Note on Compelling Need and Very Special Circumstances at Appendix 2 to their Post Hearing Submissions [REP4-004] and Post Hearing (ISH5) Submissions at D5 [REP6-012].
- 5.3.4. A large number of the RRs and Written Representations question the need for such a facility in South Staffordshire and, in some cases, the wider West Midlands Region. Many IPs suggest that there is adequate provision within the Midlands already and others questioning whether such facilities are required given technological changes in the logistics and distribution sector.
- 5.3.5. The need for the proposed SRFI has been a central issue in the Examination. This reflects the importance of this issue in establishing whether the proposal benefits from the NPSNN paragraph 4.2 presumption, whether the very special circumstances needed for a grant of consent for inappropriate development in the Green Belt have been demonstrated, and whether there is a compelling case in the public interest for the use of the CA powers which the Applicant seeks as part of the DCO. This has been examined through my FWQs and SWQs and at ISH5 which was focused on whether the Proposed Development meets the objectives of a SRFI as set out in the NPSNN.
- 5.3.6. The following paragraphs set out my assessment of the evidence in relation to need and my conclusions on the key elements of the Applicant's need case.

## **NEED AT REGIONAL AND SUB-REGIONAL LEVEL – DEVELOPMENT PLAN EVIDENCE.**

### **APPLICANT’S CASE**

- 5.3.7. The Applicant’s Planning Statement [APP-252], asserts that the need for large sites with the potential for rail connection to meet the needs of a growing logistics sector in the West Midlands Region was identified in the West Midlands Regional Spatial Strategy (RSS) in 2004. In that Statement and their later submissions [REP2-009, REP6-011 & REP6-012] and in responses to my FWQs [REP2-009], the Applicant argues that this need has been confirmed in subsequent studies and that the identified need remains largely unmet. They also argue that the level of need has increased as a result of the past take-up of large warehousing units over the past 10 or so years and that the relevant local planning authorities have failed to address that need in their development plans.

### **EXAMINATION**

- 5.3.8. Stop WMI’s Planning Report [REP2-158] sets out the Group’s representations as to what the various Policy documents say on the issue of need. The Report contends that there is no need for new SRFI as the West Midlands is already well served by such facilities. That view is shared by a number of other IPs including Dr Taylor [REP2-172], J Goodwin [REP2-109] Councillor M Sutton [REP2-170] and Councillor W Sutton [REP2-171].
- 5.3.9. My FWQs included a number of questions about the various studies and reports relied upon by the Applicant. These sought the views of the local authorities and other IPs as to whether these provided an accurate and up-to-date picture on need, insofar as this had been identified in the evidence base for development plans at the Regional and more local level. Responses to those questions were received from the Applicant [REP2-009], SSDC [REP2-049], SCC [REP2-063], Wolverhampton and Walsall Councils [REP2-032] and Stop WMI [REP2-157]. These matters were also examined at ISH5.
- 5.3.10. The Applicant’s evidence on the development plan history [REP2-009, REP6-012 & REP6-011] is supported by the City of Wolverhampton and Walsall Councils [REP2-032 and REP5-044] (as representatives of the local authorities that make up the Black Country)<sup>15</sup> and, for the most part, by SSDC as confirmed in its SoCG [REP2-006]. Cannock Chase Council accepts the need for a SRFI in the north west quadrant of the West Midlands Region [RR-0681] and Stafford Borough Council acknowledges that the WMI proposal would serve to meet an “*existing economic need*” [RR-0993]. Although the RSS referred to the need for Regional Logistics Sites (RLS) the parties agreed at ISH5 [EV-028b] that an RLS would now equate to a site suitable for a SRFI.

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<sup>15</sup> The Black Country comprises the combined administrative areas of the City of Wolverhampton, Walsall, Sandwell and Dudley Councils.

5.3.11. The evidence shows that the 2004 version of RSS proposed a choice of RLS and that the West Midlands Regional Logistics Study Stage Two (2005), identified the area to the north of Wolverhampton, as one of the best regional logistics locations in the Region<sup>16</sup>. An updated Regional Logistics Study of May 2009 (2009 Update) identified a shortfall of land for RLS required by 2026. The Panel Report (2209) on the draft revised RSS identified a requirement of at least 200-250 ha of land for RLS in the period to 2026. It also recommended that consideration and priority should be given to bringing forward land taking account of the following priority order:

*"Utilising the full potential for expansion of the existing RLS at Hams Hall, Birch Coppice and Hortonwood, and*

*..securing provision of new rail-served facilities to serve (a) the needs of the Black Country located in southern Staffordshire and (b) to serve the North Staffordshire conurbation."*<sup>17</sup>

5.3.12. The Panel recommended that RLS should have a rail connection; that the closer any related warehousing is to the rail terminal the better; that a facility in Telford would be remote from some parts of the Black Country; and that, although other sites might be available, there was no justification for amending the reference in the draft RSS policy to the proposed location of a SRFI within southern Staffordshire to serve the Black Country.

5.3.13. SSDC [REP5-049] point to the Panel's finding that an expectation that the 50 ha of land required<sup>18</sup> should be on a single site is unnecessary. However, I consider that conclusion to be inconsistent with the NPSNN which envisages the co-location of the rail terminal with a significant volume of warehousing as a means of encouraging occupiers to make use of rail freight services.<sup>19</sup> NPSNN Paragraph 2.59 says that the need cannot be met by a series of smaller facilities and section 26(3)(b) of the PA 2008 sets a 60 ha minimum site area threshold for a NSIP SRFI.

5.3.14. Although the RSS was not adopted, I consider that weight can be attached to its evidence base. This conclusion is supported by the fact that the adopted Core Strategies (CS) for the Black Country and South Staffordshire recognise the need for RLS/SRFI. This is evidenced in the responses to ExQ 1.1.4 from SSDC [REP2-049] and Wolverhampton and Walsall Councils [REP2-032], and by paragraph 4.2.36 of the Planning Statement [APP-252].

5.3.15. SSCS (adopted in 2012) states that rail freight remains an outstanding issue that should be addressed in a comprehensive study with the Black

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<sup>16</sup> See extract at paragraph 5.2.14 of Planning Statement

<sup>17</sup> See extracts from Panel Report at Wolverhampton and Walsall Councils' response to ExQ2.2.1 [REP5-044] and at Appendix 1 to Applicant's response to SSDC's comments in its Response to Other Parties D2 Submissions [REP3-007].

<sup>18</sup> 50 ha had been suggested to the RSS Panel as the minimum area required for a multi-modal RLS.

<sup>19</sup> Paragraphs 2.44-45, 2.52, 4.83 and 4.86-4.88.

Country. This led to the Black Country and Southern Staffordshire Regional Logistics Study by URS consultants (the URS Study) (2013). The relevant extracts from that Study are included in Section 5 of the Planning Statement [APP-252] and in the SoCG between SSDC and the Applicant [REP2-006].

- 5.3.16. The Study concluded that the requirement of “*at least 200-250ha*” of land for RLS held good. It found that:
- the 2 existing SRFI (Birch Coppice and Hams Hall) have limited development land available;
  - the Hortonwood site in Telford<sup>20</sup> could not meet the needs of the West Midlands due to its location and limited capacity for expansion;
  - that no new RLS land had been brought forward to meet the identified need.
- 5.3.17. In response to ExQ1.2.4, SSDC draws attention to URS’s conclusion that there is a need for a RLS that can serve the Black Country and southern Staffordshire but “*only in so far as they form part of the West Midlands which taken as a region has a need*”. However, at paragraph 7.17 of the SoCG [REP2-006], SSDC agrees that any suggestion that the identified need could be met by a facility remote from the Black Country and southern Staffordshire is inconsistent with the NPSNN paragraph 2.56 requirement that SRFIs “*should be located close to the business markets that they are intended to serve*”. The consensus of the local authority representatives at ISH5 was that this requirement renders that conclusion within the URS Study redundant. It would, therefore, be inappropriate to require any search for a site for a SRFI capable of meeting the needs of the Black Country and southern Staffordshire to extend over the wider Region.
- 5.3.18. The BCCS (adopted 2011) notes (paragraph 2.18) that the requirement is difficult to accommodate due to the Black Country’s tightly knit urban form and lack of suitably large sites. Wolverhampton and Walsall Councils’ response to ExQ 1.1.4 [REP2-032] confirms that there are no suitable sites available in the Black Country. An Issues and Options Paper (November 2017) forms the first stage in the formal review of the BCCS but no draft of the new development plan has yet been published.
- 5.3.19. The URS Study has not moved matters forward in terms of any SRFI/RLS provision within South Staffordshire. The SSSAD (September 2018) states that the issue remains outstanding but that meeting that need would involve development beyond the “*modest extension*” of existing strategic employment sites envisaged under SSCS Policy 7. SSSAD defers the issue to be considered in the new Local Plan to replace the SSCS.
- 5.3.20. Only an Issues and Options Paper for that proposed new plan has been published to date. In response to ExQ2.2.5, SSDC [REP-049] states that that paper does “*not specifically acknowledge the unmet need for an*

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<sup>20</sup> Referred to later in this report as the Telford Rail Freight Interchange Site

*SRFI as, at the time of consultation, the WMI DCO application was already in train,”* but does consider the possible implications of the WMI. SSDC hopes to publish a Preferred Options document in Spring 2020 and to submit the Local Plan for examination by the end of 2021.

- 5.3.21. On this evidence, it can be concluded that no provision has been made in the development plans adopted since the 2009 Panel Report to meet the RLS/SRFI need identified in the RSS evidence base and confirmed in the 2013 URS Study. The Issues and Options Papers give no indication as to how that need might be provided for in emerging development plans.
- 5.3.22. In response to ExQ1.2.5, Wolverhampton and Walsall Councils [REP5-044] advise that the West Midlands Strategic Employment Sites Study of 2015 (2015 Study) is the only regional-wide study of employment land need and supply since the revocation of RSS but that this does not deal specifically with RLS/SRFI requirements. The 2015 Study identified the Black Country and southern Staffordshire as one of 3 areas of highest demand for employment land and an area where there is a small and uncertain long-term supply of such land.
- 5.3.23. SSDC [REP5-049] accepts that the 2015 Study is the most up to date of its kind but says that it was not intended to be a robust assessment of need and demand. I accept that that might be the case but the 2015 Study does indicate an ongoing shortage of large sites to meet strategic employment requirements. The Stage 2 Study (to identify potential opportunities to accommodate future needs) was expected to reach reporting stage in the summer of 2019 but no further information was submitted to the Examination in relation to that work.

#### **Current Scale of Need for SRFI and Logistics Floorspace**

- 5.3.24. The Applicant's Updated Market Assessment [REP2-004] includes a review of how the 200-250ha requirement was calculated and the rate of take up of large warehousing since 2009. It argues that, not only has provision not been made to meet most of the need identified in the Panel Report but that the level of need has increased over the past 9 years. The key conclusions of that updated assessment, as expanded upon in the Applicant's response to ExQ1.2.5 [REP2-009], can be summarised as follows:
- Of the 200-250 ha requirement of RLS provision to 2026, only 54.2 ha has been delivered;
  - the West Midlands Regional Logistics Study on which the RLS forecasts were based identified a gross warehouse new-build requirement of around 3.24 million sq. m, equating to an annual average requirement of 180,000 sq. m;
  - the take up of large warehousing space since 2009 has exceeded the predicted annual average requirement of 180,000 sq. m;
  - as only 54.2 ha of RLS provision has been delivered, there is a deficit of 145-195 ha based on the requirement endorsed in the URS Study;

- in combination, these factors have resulted in a significant deficit in the supply of land for warehousing development; and
- as only about 12.5% of the new warehousing developed since 2009 has been rail-linked or rail-served the Study's intention that all new large-scale warehousing should be rail-served has been undermined.

- 5.3.25. In ExQ2.2.4 I requested that the local authorities should comment on those findings and, in response, SSDC [REP5-049], states that the Council has no evidence to the contrary. Whilst not wishing to comment on the wider matters of take up, Wolverhampton and Walsall Councils [REP5-004] confirm that no rail-linked warehousing has been completed in the Black Country in the period since 2009 apart from the expansion of an existing steel terminal.
- 5.3.26. At ISH5, the local authority representatives agreed that only 54.2 ha of the minimum 200-250 ha RLS land requirement has been brought forward in extensions to Birch Coppice SRFI, located close to Junction 10 of the M42, and Hams Hall SRFI, located close to Junctions 9 of the M42 and T1 of the M6 Toll Motorway. Only 15.78 ha of that land remains undeveloped. Hence, there remains a shortfall of between 145.8 and 195.8 ha of land yet to be allocated against the RLS/SRFI requirement to 2026.
- 5.3.27. The Applicant asserts that only 12.5% (289,000 sq. m) of the new large warehousing developed in the region has been rail-served or rail-connected. I have seen no evidence to the contrary. It is, therefore, fair to conclude that the majority of new large warehousing completed between 2009 and 2018 is likely to have increased lorry-based logistics movements within the Region rather than support Government policy on the transfer of freight from road to rail.
- 5.3.28. The Applicant's Green Belt Update [REP2-012] refers to the Economic Development Needs Assessment (EDNA), recently produced by the Black Country Authorities as part of evidence base for the replacement CS. They say that this provides strong support to their case that there is a large and increasing need for logistics floorspace to help meet the economic needs of the Black Country and a critical shortage of suitable buildings and sites. ExQ2.2.7 sought the views of local authorities on the main conclusions that the Applicant has drawn from the EDNA. The scope and conclusions of the EDNA were also discussed at ISH5.
- 5.3.29. In response to ExQ2.2.2 [REP5-004], and in oral evidence at ISH5, Wolverhampton and Walsall Councils confirmed that the EDNA demonstrates an emerging shortfall of employment land and that logistics floorspace forms a significant part of the identified requirement. The EDNA considers a range of growth scenarios, with the preferred scenario requiring up to 800 ha of additional employment land over the period to 2036. Paragraph 8.6 of the EDNA explains that occupier enquiries are dominated by logistics and manufacturing and that

warehousing (Planning Use Class B8) requirements are forecast to make up around 70% of the overall land requirement (equating to 560 ha).

- 5.3.30. SSDC [REP5-049], accepts the methodology used to calculate the EDNA but questions the need for 800 ha. It states that, based on past development trends, the objectively assessed need would be for 540 ha and that any forecast need over and above this figure (12 ha per annum) is an aspirational figure designed to help meet the vision set out in the Black Country's Strategic Economic Plan (2017). However, in that context I see no objection to the use of the higher, aspirational figure for planning purposes given the continuing need for regeneration in the Black Country and the levels of unemployment referred to in the ES Chapter 14 assessment of Socio-Economic effects [APP-052].
- 5.3.31. Even taking SSDC's concerns into account, the EDNA identifies a requirement for the period to 2036 for between 378 ha (70% of the 540 ha figure) and 560 ha (70% of the 800 ha figure) of land to meet the needs of logistics companies to support economic development in the Black Country. That requirement will now need to be increased because I was advised at ISH5 that, since the EDNA was published, a decision has been made to extend the replacement CS plan period from 2036 to 2038.
- 5.3.32. At ISH5 the Applicant confirmed that the RLS land requirement and floorspace figures used in respect of the identified need for and take up of large warehousing units relate to the West Midlands Region as a whole. These have not been disaggregated to provide an estimate of need within the Black Country and southern Staffordshire sub-region. I note, however, that the RSS Panel recommended that more than one RLS was required and that consideration be given to the provision of facilities to meet the needs of the Black Country (located in southern Staffordshire) and of the North Staffordshire conurbation in that priority order.
- 5.3.33. The EDNA identifies a shortfall of 537 ha against the 800 ha requirement for employment land, taking account of land supply within the Black Country. The Black Country Authorities will, therefore, be seeking assistance from neighbouring local authorities to meet that shortfall. The Black Country's inability to meet its future land requirements for employment and housing development is confirmed in the Black Country Urban Capacity Review (May 2018).<sup>21</sup>
- 5.3.34. Stop WMI's Planning Report [REP2-158] accepts that the Urban Capacity Review identifies an unmet need for an SRFI to serve the sub-region but asserts that this is not supported by evidence either to substantiate that need or to demonstrate that no suitable site is available. In response to ExQ2.2.9, Wolverhampton and Walsall Councils [REP5-044] confirm that the Review is based on a number of other studies and reports and that it identifies a significant shortfall of land for both employment development

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<sup>21</sup> See paragraph 1.11 of Applicant's Post Hearing Submissions [REP6-012] and Wolverhampton and Walsall Councils' response to ExQ2.2.9 [REP5-044] which includes a link to the full report.

and new homes. In response to that same question, the Applicant [REP5-003] states that the Urban Capacity Review provides the most up-to-date assessment of the need for and supply of land for new homes and is founded on the best available evidence base. That assertion has not been challenged by any of the local authorities familiar with that Review.

- 5.3.35. The SSSAD includes 62 ha of employment land allocations over and above SSDC's own forecasts of need to help meet a shortfall in the Black Country to 2026 (plan period of the current BCCS). Given that history and the extent of the Green Belt in South Staffordshire, SSDC members, the PC Collective and other IPs expressed their concerns at ISH5 that the District should again be expected to help meet the anticipated shortfall. SSDC accepts that a request is likely to be made and will need to be considered in the context of the Green Belt review that is underway and the evidence on need and land supply at that stage. SSDC's own EDNA Part 1 has identified a surplus of employment land within the District of around 20 ha over the proposed Plan period to 2037 (SSDC response to ExQ2.2.5).
- 5.3.36. It is too early to form any conclusion as to what contribution might be sought from SSDC to help meet the employment land shortfall within the Black Country. The extent to which SSDC agrees to make any such contribution will, ultimately, be a decision for the Council. However, I consider that there is clear evidence that any contribution will be of particular value because South Staffordshire District is in the same Functional Economic Market Area (FEMA) as 3 of the Black Country Authorities (Wolverhampton, Walsall and Dudley) and Cannock Chase District. The District also has a close travel to work relationship with other authorities in the FEMA.<sup>22</sup>
- 5.3.37. An indication of the importance of SSDC's potential contribution is given in paragraph 2.2.9 of the Black Country Urban Capacity Review. This records a particular shortage of large and accessible high-quality investment sites in the short term and a specific need for large scale, rail-accessible logistics sites. It also indicates that, in the absence of any suitably large sites in the administrative area, the proposed WMI scheme has the potential to satisfy some of this need.<sup>23</sup> Paragraph 8.5 of the Black Country EDNA notes that WMI could contribute to meeting need and providing jobs for Black Country residents, indicating that this contribution could equate to 80-100 ha of employment land.<sup>24</sup>
- 5.3.38. Section 4.4 of the Updated Market Assessment states that, whilst a unit of 25,000 sq. m floor area might have been considered to be a large warehouse in 2009, that is no longer the case. Market demands have changed and operators of Regional Distribution Centres (RDCs) are now frequently seeking buildings of at least 32,480 sq. m, with National Distribution Centres (NDCs) requiring significantly larger buildings. Because of these larger requirements, the site area needed for RLS/SRFI

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<sup>22</sup> Evidence given at ISH5 and SSDC response to ExQ2.2.2 [REP5-049]

<sup>23</sup> Paragraph quoted at paragraph 1.11 of REP6-012

<sup>24</sup> See paragraph 3.11-3.12 of REP6-012 and Appendix 2 to that document

development has increased from what might have been envisaged in the 2009 Update. I have no evidence that these changes in the nature of occupier demand have not occurred.

- 5.3.39. The need identified in the RSS evidence base is also largely supported by the relevant Rail Freight and other Transport Strategy Reports referred to by the Applicant and other IPs.
- 5.3.40. The Freight Market Study 2013, that underpins the forecasts set out in the NPSNN, does not refer to specific sites. However, based on the answers to ExQ1.2.1 received from NR [REP2-032] and the Applicant [REP2-009], I accept that the forecasts do assume a SRFI located within the WCML corridor in Staffordshire. NR's Freight and National Passenger Operators Route Strategic Plan (FNPORSP) (see paragraph 5.5.39 below), includes the West Midlands as one of the locations where new SRFIs are anticipated to support that growth [REP4-029].
- 5.3.41. In ExQ2.2.10, I asked the Applicant to respond to the contention in Stop WMI's Wrong Location Report [REP2-167] that the National Infrastructure Commission's (NIC) 'Future of Freight Report' calls into question the need for the proposed SRFI. The Applicant's detailed response is set out in Appendix 3 to their Response to SWQs [REP5-004]. The extracts from the NIC's report in that note shows that the Report (paragraph 47) concluded that, of the alternative modes emerging and available, *"it is only rail which currently offers a credible alternative for some types of road freight in terms of network coverage, speed and cost of haulage."*
- 5.3.42. Stop WMI [REP2-158] refers to the WMCA's West Midlands Freight Strategy 2016. In response to ExQ2.2.8 and 2.2.16 the Applicant has submitted a detailed note on that Strategy document at Appendix 2 of their Response to SWQs [REP5-004]. Having regard to that evidence, I am satisfied that the Strategy recognises that SRFIs are important employment centres and that Paragraph 6.4.29 of the Strategy states that *"more SRFI leads to more rail freight"*. South Staffordshire District is not part of the WMCA, and the Strategy does not identify specific SRFI proposals. The letter of support for the application received from Transport for West Midlands, at Appendix 2 to the Applicant's D7 submissions [REP7-004], does, however, state that the WMI project is in line with the West Midlands Freight Strategy.

## **MARKET DEMAND**

### **APPLICANT'S CASE**

- 5.3.43. The Market Assessment submitted with the Application has been updated [REP2-004] to include full year supply and demand figures for 2017 and 2018. Oral evidence was also given by the Applicant at ISH2 [EV-017] and ISH5 [EV-028a & b]. This evidence of market demand can be summarised as follow. All section references are to the Updated Market Assessment unless otherwise stated.
- 5.3.44. Intermodal rail freight traffic within Great Britain grew by 29% between 2006 and 2011, with overall road freight having declined by 10% over

the same period (section 4). Table 3 of the NPSNN shows that Network Rail's Freight Market Study (October 2013) estimated a potential increase of 12% per annum in domestic intermodal freight between 2011 and 2033.

- 5.3.45. The need to minimise costs and achieve certainty of delivering goods on time are of major importance for logistics companies when deciding where to locate their distribution centres. The balance between the costs of the primary (transporting goods in bulk from their origin such as a manufacturer or port) and secondary (supplying goods to the end market) legs of their journey is of particular significance. Companies are increasingly aware of the cost benefits of rail freight. This is evidenced, for example, by Tesco's switch to an intermodal delivery strategy and to take a 78,039 sq. m warehouse at DIRFT II with its own intermodal terminal. Marks & Spencers have also taken a large unit at the East Midlands Distribution Centre with its own rail terminal and Asda has utilised rail for a number of years (section 4).
- 5.3.46. Holding, consolidating and distributing goods in mixed loads from an NDC or RDC is the most efficient method of organising supply chains. Demand has been driven by widespread adoption of 'Just in Time' distribution and considerable growth in 'E-Commerce'. Take-up of warehousing has increased substantially to a record level of around 3.4M sq. m in 2016, a 45% increase on the figure for 2010. Demand is also being driven by operators seeking space close to manufacturing hubs to fulfil supply chains in the manufacturing and automotive sectors and combining operations to offer overnight delivery services to customers through a 'hub and spoke' network of distribution centres. (section 4.3).
- 5.3.47. The central location of and excellent motorway network within the West Midlands mean that the vast majority of the UK population can be reached in a 4-hour drive time, making the Region a key focus of demand from logistics companies. The concentration of population also leads to strong demand for sites within or close to the major urban areas which meet the need for 'last mile' distribution of goods. In addition to the need for larger units, operators also increasingly need taller buildings to accommodate greater racking capacity for storing goods (section 4.3).
- 5.3.48. In 2018 total take up of new warehousing nationally reached 3.17M sq. m, a 5% increase on a 3-year rolling average. The supply was only 2.9M sq. m with 54% of units being of poor quality (Grade B or less). There remains a severe shortage of premises nationwide, particularly of the largest units in prime locations (section 5.1).
- 5.3.49. There is strong demand within the West Midlands. Logistics accounts for approximately two thirds of demand but manufacturing is also important. Take up in the Region was 576,200 sq. m in 2016 (a 43% increase on the previous year) and 568,000 sq. m in 2017. The 2018 figure, at 315,900 sq. m was noticeably lower but this reflects the lack of readily available large sites and Brexit uncertainty affecting the manufacturing and automotive sectors (section 5.3).

- 5.3.50. The supply of warehousing fell by 25% over 2016 but has since increased to a total of 564,500 sq. m. This represents only 2.42 years of supply (Table 5.4 of Updated Market Assessment). Only 10 buildings are of Grade A standard and the majority are relatively small in size. There is a severe shortage of the higher quality and larger buildings which logistics operators are increasingly seeking (section 5.3).
- 5.3.51. To assess more local demand, a WMI Market Area has been defined. This includes other locations that an operator might consider alongside WMI when looking for new distribution floorspace close to the Black Country and Greater Birmingham, West Midlands manufacturers, and the high-quality labour pool in the Black Country and South Staffordshire. This Market Area (Figure 6.1 of the Assessment) considers supply and demand for warehousing, irrespective of whether it has the potential for access to rail services. This part of the Assessment has looked at the supply of and demand for units of over 9,290 sq. m as this is envisaged as being the smallest individual unit likely to be developed on the WMI site (section 6).
- 5.3.52. Average take up in the WMI Market Area was 219,902 sq. m per annum between 2012 and 2018, with the average size of individual units transacted being 18,546 sq. m. At the end of 2018, there was a supply of 477,360 sq. m across 32 buildings. Supply had increased in 2018 but the floorspace available equates to a supply of only 2.42 years based on annual average take up over the past 3 years. Only 11,170 sq. m is available within the Black Country Local Enterprise Partnership (LEP) area. There are no rail-connected or rail-served warehouses in the current supply within the Market Area as a whole (section 6.2 and 6.3)
- 5.3.53. Available land with planning permission for B8 use which could accommodate a unit of 9,290 sq. m has also been assessed (Table 6.5). At the end of 2018, the supply was 258 ha over 29 sites with a particularly low provision in the Black Country, as confirmed in the Black Country EDNA. The largest site, at 42.9 ha, falls below the 60 ha minimum for an NSIP SRFI. There are few sites that could provide units of significant scale and the overall amount of land coming forward is insufficient to balance the existing shortage (section 6.4).
- 5.3.54. None of the sites within the land supply have a rail connection. There is an unimplemented planning permission for a rail connection to the Pentalver Container Depot in Cannock, but this does not have on-site warehousing. A site at Chatterley Valley in Newcastle-under-Lyme has potential for a rail connection but, at only 38 ha, is too small to accommodate a SRFI. Birch Coppice and Hams Hall SRFIs lie outside of the Market Area and have very limited land available for development (section 6.4).

### **EXAMINATION**

- 5.3.55. The conclusions of the Updated Market Assessment were examined at ISH5. At the hearing the Applicant provided further explanation of its main conclusions and how these could be related to the development plan evidence of need and other IPs commented on this evidence.

- 5.3.56. In Section 8 of its SoCG [REP2-006] SSDC confirms that the West Midlands Region is experiencing very high demand for floorspace from both the logistics and manufacturing sectors. This is culminating in a critical shortage of employment land and premises and, as at 2018, the supply of warehouse space in the region equated to 0.8 years with the majority of this being of lower quality and relatively small size. It also agrees that there are no rail-linked or rail-served sites or 'big shed' warehouses available in the WMI Market Area. Paragraph 8.8 confirms the Council's view that the WMI Market Assessment "*provides a robust, fair and detailed assessment of the dynamics of the distribution market, assessing the demand for, and supply of, warehouse floorspace and the supply of land which might be available in the context of the proposed WMI Market Area*".
- 5.3.57. As noted above, Wolverhampton and Walsall Councils [REP5-004], have confirmed that the EDNA demonstrates an emerging shortfall of employment land and that logistics floorspace forms a significant part of the identified requirement.
- 5.3.58. The Applicant's evidence on past take up of and the need for large warehouse units and rail-connected or rail-served warehousing is largely unchallenged in the RRs or Written Representations. A number of IPs make general references in their written representations to vacant warehouses and sites in the Black Country and the surrounding area which they suggest could accommodate part of the existing need. However, no substantive evidence was submitted to the Examination to contradict the Applicant's findings as to the low level and generally poor quality of the supply of available buildings or sites that could accommodate large warehouses. Its evidence as to the increasing demand from logistics operator for rail accessible warehousing is supported by NR's written submissions [REP4-029 & REP5-058] and oral evidence given at ISH2 and ISH5.
- 5.3.59. NR advises [REP4-029] that its FNPORSP, dated February 2018, is based on an estimated growth of 15.6% in rail freight volumes over its Control Period 6 (2017-24). This growth is expected to arise principally in bulk haul and intermodal domestic traffic. The realisation of these forecasts is reliant on new SRFIs to accommodate new maritime intermodal services (from port to NDCs) and new interchange to interchange domestic intermodal services (from NDCs to RDCs and stores). This last area is the single most significant potential growth area for modal shift. NR also refers to the Rail Freight Strategy published by the Department for Transport (DfT) in September 2016 which notes the "*criticality of SRFIs in the development of intermodal traffics*" so that the realisation of modal shift is in line with the Government's decarbonisation strategy.
- 5.3.60. At ISH5 the Applicant's rail expert stated that, when proposals for the first SRFIs to be developed were being drawn up, the general understanding was that the use of rail for freight was not viable for distances of less than 482km (300 miles). This has now been disproved with shorter transfer distances becoming more common. For example, IKEA is using 375m long trains to transfer goods from Wakefield Europort

to iPort Doncaster over a distance of only about 160km (100 miles). This assertion is supported by NR's evidence [REP5-058] that the rail competitiveness threshold is reducing across a number of services, particularly where rail freight operators can attract 'backloads' to improve the viability of services. NR states that the greatest potential for securing such backloads arises in the West Midlands, North West and Scotland.

- 5.3.61. A number of IPs including Jeffrey Lefroy MP [REP2-126] contend that improvements in technology in the logistics sector are likely to reduce the need for large scale distribution units. However, the Updated Market Assessment shows there has been a substantial increase in demand for large warehousing floorspace over recent years notwithstanding any such changes.

## **ADEQUACY OF THE EXISTING SRFI NETWORK AND SUITABILITY OF THE PROPOSED SITE**

### **APPLICANT'S CASE**

- 5.3.62. Section 5.5 of the Planning Statement [APP-252] and the Applicant's Post ISH5 Submissions [REP6-012] consider the adequacy of the existing SRFI network and the need for additional provision in the West Midlands. NPSNN (paragraph 2.47) has identified that a network of large SRFIs is key to aiding the transfer of freight from road to rail, supporting sustainable distribution and rail freight growth and meeting the changing needs of the logistics industry. Paragraph 2.54 states that a network of SRFIs is required across the regions to serve regional, sub-regional and cross-regional markets and paragraph 2.56 states the Government's conclusion that the need for that expanded network is compelling.
- 5.3.63. Against that strong policy background significant gaps in an effective network of such facilities remain. The Plan at Figure 20 of the Planning Statement shows that there are 3 principal clusters of existing or proposed SRFIs in the wider Midlands area. These are:
- Hams Hall and Birch Coppice SRFI which are only a few miles apart between Junctions 9 & 10 of the M42 at the eastern edge of the Birmingham conurbation;
  - DIRFT I, II & III located adjacent to Junction 18 of the M1 to the north of Daventry and between the Rugby and Northampton urban areas; and
  - NGRFI and RCSRFI located in close proximity to each other to the south of Northampton's urban area and adjacent to Junction 15 of the M1.
- 5.3.64. Figure 20 also shows a substantial (approximately 120km) gap between the Hams Hall/Birch Coppice cluster and the SRFI at Widnes (with access to the Merseyside conurbation) and Port Salford<sup>25</sup> (with access to the

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<sup>25</sup> Port Salford has planning permission for a tri-modal facility with access to road rail and the Manchester Ship Canal but I was advised at ISH5 that the Rail Terminal has not yet been constructed

Greater Manchester conurbation). This confirms, in quite stark terms, the lack of any existing provision along the M6/WCML corridor between Hams Hall and the North West. The Applicant contends that the application site is well located and ideally suited for the development of a SRFI to help fill that significant gap in the network.

### **EXAMINATION**

- 5.3.65. Stop WMI's Wrong Location Report [REP2-167] questions the need for a SRFI within South Staffordshire and puts forward a number of arguments as to why the application site is considered unsuitable to meet any need that might exist. Other IPs, including Sue Worrall [REP2-183], J Goodwin [REP2-109], Andrew Linney [REP1-013] raise similar concerns. These comments were responded to by the Applicant in their Responses to Other Parties' D2 Submissions [REP3-007] and Responses to SWQs [REP5-003]. The issues about the adequacy of the network of existing and proposed SRFIs in the West Midlands Region was also examined in some detail at ISH5.
- 5.3.66. I agree with the point made by the PC Collective at ISH5 that the size of the gap in the existing network is of limited relevance on its own. However, there are major population centres within this corridor. None of the existing or proposed SRFIs provide for easy access to the concentrations of population and businesses within the Black Country, North Birmingham, south Staffordshire or the North Staffordshire conurbation. I consider that, in light of what is said in the West Midlands Freight Strategy<sup>26</sup> about the WCML being the most important rail freight corridor in the UK, this must be regarded as a significant gap in the network. This gap is substantially larger than that between the existing and proposed clusters along the M1 corridor or M62/M18 corridor between Wakefield Europort and iPort in Doncaster.
- 5.3.67. Many IPs argue that existing provision in the wider Midlands area means that there is no need for the WMI. I do not agree. Evidence submitted by ProLogis to the DIRFT III DCO examination on the operation of the intermodal terminal at DIRFT I<sup>27</sup> shows that, for containers arriving by rail on the primary leg of their journey, the secondary leg by road is concentrated within 15km of DIRFT. This is consistent with the NPSNN requirement that SRFIs be located close to the markets they are intended to serve. It also gives strong support to the Applicant's argument in the Planning Statement that the 3 clusters of existing and proposed SRFIs listed above serve different markets to that which would be served by the WMI
- 5.3.68. Reference has been made by some IPs to paragraph 2.57 of the NPSNN which states that existing, operational SRFIs and other intermodal RFIs are situated predominantly in the Midlands and the North. On my reading, that paragraph is simply stating the factual position at the time

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<sup>26</sup> See paragraph 5.3.43 above

<sup>27</sup> See page 10 of ASA [APP-255] re Need Report submitted to the DIRFT III DCO examination.

the document was prepared. It should not, in my view, be interpreted as indicating that there is no need for further provision in the Midlands. I consider that a clear distinction can be drawn between the markets formed by the major urban areas of the East and West Midlands. At present, the West Midlands is not adequately served by SRFI provision and there is a clear lack of such provision to meet the needs of the Black Country and southern Staffordshire.

## **CONCLUSIONS ON NEED**

5.3.69. Having regard to the above evidence I find that:

- i. There is a long-established need for RLS/SRFI provision to serve the needs of the Black Country and southern Staffordshire.
- ii. The RSS Panel clearly envisaged provision of RLS/SRFI sites in both southern Staffordshire, to serve the needs of the Black Country, and elsewhere, to serve the needs of the North Staffordshire conurbation and in that priority order.
- iii. To date, that need has not been provided for through land allocations in any adopted development plans. Neither are there clear proposals within any documents relating to the proposed replacement development plans for making allocations to meet the identified need.
- iv. Of the minimum 200-250 ha requirement recommended by the RSS Panel, only around 54 ha has been brought forward in the period to 2018 and no new rail served RLS/SRFIs have been developed.
- v. Over that same period, the take up of large (i.e. 25,000 sq. m or above) warehouses has exceeded the level of demand envisaged in the 2009 Update. The large majority of this development has been in locations which have no rail access.
- vi. Given past take up, the remaining balance of the original 200-250 ha requirement to 2026 should be regarded as an absolute minimum indication of the current requirement.
- vii. Looking forward over the plan periods of the replacement development plans,<sup>28</sup> the evidence indicates a requirement of up to 560 ha land for B8 (logistics use) to meet the Black Country economic development need and aspirations, a significant proportion of which will likely have to be provided outside of the Black Country administrative area.
- viii. Taken together, these figures demonstrate a significant level of need for additional logistics floorspace in the Black Country/ southern Staffordshire and a critical need for the provision of rail linked floorspace in the sub-region.
- ix. The strong market demand and severe shortage in the supply of buildings and sites for large warehouses within the WMI Market Area provides further evidence of need for the Proposed Development.
- x. There is a significant gap in the network of existing and proposed SRFIs along the M6/WCML corridor between the West Midlands and the North West. There is also a clear need for a facility to serve the

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<sup>28</sup> To 2037 for the proposed SSDC Local Plan and 2038 for the replacement Black Country Core Strategy.

market comprising the businesses and large population within the Black Country, southern Staffordshire and Birmingham conurbations.

## **5.4. SCALE OF DEVELOPMENT PROPOSED**

### **BACKGROUND**

- 5.4.1. The issue of whether the scale of development proposed is greater than needed to meet the SRFI objectives, as set out in the NPSNN, has been examined through my written questions, at the hearings and in written evidence submitted by the Applicant and IPs. This issue is pertinent to the Green Belt considerations. In simple terms, the larger the development the greater the potential harm to openness and, if a smaller scheme would meet the SRFI objectives, a specific justification for the development of a larger area of Green Belt land may be needed. It is also relevant to this Application because of the principle of proportionality which comes into play when considering the use of CA powers; as a general rule, compulsory acquisition should include only that land required to facilitate the proposed development and no more.

### **APPLICANT'S CASE**

- 5.4.2. The Applicant's case is primarily set out in Appendices 9 & 10 to their response to FWQs [REP2-011], Planning Statement [APP-252] and their Note on Viability at Appendix 1 to their Response to Other Parties' D4 Submissions [REP5-006].
- 5.4.3. The Applicant places reliance on the PA 2008 requirement that NSIP SRFI proposals should have a minimum site area of 60 ha but that neither the Act nor the NPSNN indicates a maximum area. The Applicant argues [REP5-006] that NPSNN paragraph 2.58 indicates that the scale of a SRFI should reflect market demand in the region within which it is being proposed and the changing nature of the rail freight market so as to ensure that the benefits of SRFI development can be realised. They refer to the evidence in the Updated Market Assessment as indicating the scale of need in the Market Area.
- 5.4.4. The Applicant maintains, in paragraph 3.2 & 3.3 of Appendix 1 to their Response to Other Parties' D4 Submissions [REP5-006], that their case that very special circumstances exist such as to justify a grant of development consent does not depend upon any finding in relation to viability. However, they state that viability and deliverability are two reinforcing arguments supporting the scale of development proposed.

### **EXAMINATION**

- 5.4.5. Concerns about the scale of development have been raised by a number of IPs. The PC Collective [REP4-027], in particular, questions why a development of 743,200 sq. m of floorspace and 297 ha site area is needed when the Applicant previously consulted on proposals for a materially smaller scheme which did not include any land to the south of Vicarage Road. The PC Collective also expressed concerns that 40% of

deliveries to and collections from the WMI by road could originate or end outside of the West Midlands Region. The PC Collective argues that this would defeat the object of the SRFI in terms of reducing HGV road kilometres and, hence, calls into question the case for the release of so much Green Belt land.

- 5.4.6. Many IPs suggest that Vicarage Road would form a logical future Green Belt boundary if a smaller scheme was to go ahead. Mr Minton [REP2-127] questioned the proposal to build warehouses which would be suitable for use as NDCs rather than RDCs and whether this would be compatible with how an SRFI might be expected to function.
- 5.4.7. In ExQ1.2.18 & 19 I asked for a specific justification for the development of up to 743,200 sq. m of warehousing and for the inclusion, within the application site, of land to the south of Vicarage Road. The Applicant's response is set out in Appendices 9 & 10 as referred to above. Additional information was also provided in the Applicant's Response to the Inglewood Representation, at Appendix 4 to their Response to Other Parties' D2 submissions [REP3-007], Appendices 1 & 2 to their Post Hearing Submissions at D4 [REP-004] and Note on Viability [REP5-006].
- 5.4.8. ExQ 2.2.28 sought clarification as to what role or roles the warehousing proposed as part of the WMI would be expected to fulfil, and whether the prospect of NDCs serving the whole country from WMI had been taken into account in the Applicant's calculation of the potential savings in HGV road km and carbon savings. The Applicant's response is set out in their response to SWQs [REP5-003]. I accept that, given the site's location in the West Midlands, it is likely to attract both occupiers seeking NDCs as those seeking RDCs and both of these types of operation have the potential to increase the use of rail freight services.
- 5.4.9. A number of objectors have challenged the scale of development proposed on the basis that, even if a need for additional logistics floorspace is identified, there is no requirement that this should be met on a single large site. These and other matters relating to scale were discussed at the CA Hearing and are responded to in Appendix 2 of the Applicant's Post Hearing Submissions [REP4-004]. Matters relating to scale were also discussed at ISH5. I have taken all the evidence presented at the hearings and in the relevant submissions from IPs into account in my assessment of this matter.

### **NPSNN CONTEXT**

- 5.4.10. NPSNN Table 4 indicates that the national need cannot be met through reliance on a larger number of smaller RFIs. Paragraphs 4.88 & 89 require that a SRFI should be large enough to accommodate a number of rail connected or accessible buildings plus rail infrastructure, an operational rail connection, areas for handling and storage of containers and should preferably have capacity for handling more than 4 trains per day and trains of 775m in length. Paragraph 2.58 states that SRFI capacity is needed at a wide range of locations "*to match the changing demands of the market.*"

- 5.4.11. I am satisfied that the 100-150 ha remaining requirement (to 2026) for SRFI development, as identified in the RSS evidence base, should be regarded as a minimum and that priority should be given to provision in South Staffordshire to serve the Black Country and southern Staffordshire. The Black Country EDNA and Updated Market Assessment also demonstrate a large requirement and a very short supply of logistic floorspace and sites suitable for such development in the WMI Market Area. In my assessment, concerns that the WMI proposal seeks to accommodate all of that identified need can be put aside. If developed over a period of about 15 years as envisaged, the 743,200 sq. m proposed at WMI would provide around 50,000 sq. m per year. This would be less than 25% of the annualised average requirement. No site in the identified pipeline could offer the same potential for multi-modal access.
- 5.4.12. Strong evidence was presented by the Applicant and NR at ISH5 that the use of rail is being considered by an increasing number and range of potential customers, and over much shorter journeys than was previously the case. NPSNN states that establishing a network of SRFIs is a key element in meeting changing needs of the logistics industry and supporting sustainable distribution and rail freight growth. Individual SRFIs should, accordingly, be of a scale and form that can respond to and take advantage of those changing demands. For these reasons, I consider that the scale of development proposed is appropriate to meet the identified need and, that in the absence of any suitable existing facilities, it is sensible that the Application should seek to optimise the use of the site for this purpose.
- 5.4.13. Paul Windmill [REP2-181] and other IPs argue that WMI should be developed in stages as DIRFT has been so that the demand for rail freight services and rail accessible warehousing can be market tested. The Applicant's evidence, in response to ExQ2.2.26 [REP5-003], is that there was no proposal or masterplan for a much larger development when DIRFT 1 was planned. In that context its incremental growth, as described in the Applicant's Case Studies at Appendix 1 to their ISH5 Post Hearing Submissions [REP6-012], can be seen as evidence of a growing demand for larger warehouses in an accessible location and the increasing attractiveness of rail freight to a larger number and wider range of users. I consider that, if anything, that experience supports the need to plan for a larger development from the outset.
- 5.4.14. When DIRFT III is completed, the total floorspace at DIRFT will be around 734,200 sq. m, only slightly less than the 743,200 sq. m proposed at WMI. This is also similar to that was proposed in the (now withdrawn) RCSRFI application (approximately 702,000 sq. m) and Hinckley National RFI (850,000 sq. m), but slightly larger than EMGRFI (557,414 sq. m) and NGRFI (557,418 sq. m). These comparisons can be seen in the evidence within Appendix 9 to the Applicant's D2 submissions [REP2-011]. The WMI proposal is at the upper end of the range in terms of proposed floorspace but is smaller than DIRFT (I, II & III combined) and EMGRFI in terms of its total site area. In this context, I do not consider

either the proposed land take or volume of floorspace to be out of proportion with existing and proposed SRFIs in the wider Midlands area.

### **Viability**

- 5.4.15. Although it has now been withdrawn [REP7-036], the objection submitted by Inglewood Investment Company Ltd (Inglewood) to the proposed CA of its land interests was supported by viability evidence from Owen Land & Property [REP2-117 to 120]. This sought to demonstrate that the project would provide more than an adequate return for the developer without the need to acquire those land interests. In subsequently withdrawing its objection to the DCO and proposed CA, Inglewood stated that it no longer relied upon that evidence and invited me to conclude that no reliance should be placed on it. Although the evidence has not formally been withdrawn, so clear a statement from those that submitted it that it should not be relied upon substantially reduces the validity of that evidence. The weight that can be put on it is also reduced because, prior to withdrawing the objection, neither Inglewood nor Owen Land & Property had responded to the detailed critique of that evidence by Savills,<sup>29</sup> the Applicant's expert in these matters, that was submitted at D3.
- 5.4.16. Following my questions at the CA Hearing, the Applicant subsequently set out their position on viability in their Response to ExQ1.1.18 [REP2-011], Appendix 4 to their response to Inglewood's representations [REP3-007], Appendix 2 to their Post Hearing Submissions [REP4-004] and their Note on Viability and Viability Dashboard at Appendix 1 to their Response to Other Parties' D4 Submissions [REP5-006]. The only other expert evidence provided to the Examination on viability is a Note from Carter Jonas, Chartered Surveyors, at Appendix 1 to SSDC's response to my TWQs [REP7-032]. This comments on the Applicant's Viability Dashboard but is primarily concerned with the Author's assessment of risk that the Rail Terminal may not be delivered.
- 5.4.17. The Dashboard shows that the value of the completed Rail Terminal, at £23.7M, would be substantially less than its estimated construction costs of £40.6M (representing just under one third of the total infrastructure costs across the site). This confirms the substantial financial burden of providing the rail infrastructure and the need for these costs to be shared across the warehousing proposed on the balance of the site.
- 5.4.18. The Applicant contended at ISH5 that, although the costs of providing the rail and other infrastructure are broadly the same, development land values for commercial development in the West Midlands are substantially lower than for similar developments along the M1 corridor and in the East Midlands. Carter Jonas agree that development land values are lower than in the M1 corridor and that infrastructure costs are broadly equivalent.

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<sup>29</sup> Annexe 1 to Appendix 4 to REP3-007

- 5.4.19. The Inglewood appraisal adopted a residual valuation approach and recommended that a 10% to 12% return on development costs would be an appropriate return for the developer. However, a 10-12% return on development costs would provide a markedly lower level of return than the 15-20% profit on Gross Development Value (GDV) that PPG advises as being the minimum level that developers should reasonably expect.<sup>30</sup> At the CA hearing I requested Inglewood to provide a justification both for the use of a 'return on costs' approach and of 10-12% as the threshold for an acceptable return. No justification has been provided.
- 5.4.20. In their Viability Dashboard, the Applicant has adopted an 'Internal Rate of Return' (IRR) metric which they argue is more appropriate due to the length of time over which costs would be incurred and revenue would be generated, and because a large part of the significant infrastructure costs would be incurred in the early years of the development. Carter Jonas agree that the use of IRR in these circumstances is understandable and I accept the logic of that approach.
- 5.4.21. The Dashboard shows that, with the phasing broadly as shown in the Indicative Phasing Strategy, the development would produce an IRR of just under 15%. This is at the lower end of the 15-20% range of IRR that Savill's say would represent an acceptable range of return for projects of this nature.<sup>31</sup> At ISH5 the Applicant stated that the WMI development is fundable and viable on this basis but is not in a position where it could suffer any significant increase in cost or loss in value.
- 5.4.22. In their Viability Note [REP6-011] the Applicant asserts that the scheme would not be able to withstand the loss of development value if the Inglewood Land was to be excluded as this would remove around 15% of the total net lettable floorspace from the scheme. It would also remove flexibility. Because the Inglewood land can be served from Vicarage Road it provides an opportunity for the construction of up to 47,000 sq. m of warehousing before the A5 junction roundabout has been completed.
- 5.4.23. The Applicant has responded to my queries as to the costs and valuation assumptions used in the Viability Dashboard. This information is provided in Appendix 1 to their response to my TWQs [REP7-004]. Because of the different approaches taken, it is difficult directly to compare this with the Owen Land & Property appraisal, but I note that the estimated costs of the rail infrastructure, at £40.6M, is close to the £46M estimate provided by Gleeds for Owen Land & Property.<sup>32</sup>
- 5.4.24. In Appendix 4 to the Owen Land & Property submission [REP2-119], JLL advised that the serviced land value of the development (with all infrastructure in place) would be £450,000 per acre whereas Carter Jonas

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<sup>30</sup> Paragraph 018 of Planning Practice Guidance advises that 15-20% of gross development value should be considered a suitable return to developers when considering the viability of development plan policies (ID:10-2018-20190509)

<sup>31</sup> Paragraph 1.2.2 of Annex 1 to Appendix 4 to REP3-007

<sup>32</sup> Appendix 5 in REP2-120

suggest that securing pre-lets would generate land values higher than the £525,000 per acre adopted in the Dashboard. Given the divergence of view between these experts, and the Applicant's assumption of a blend of pre-let and speculative warehouse construction,<sup>33</sup> the estimate of £525,000 per acre does not appear unreasonable.

- 5.4.25. In their report, Carter Jonas contend that the Applicant's assertion, that viability would be significantly damaged if the Inglewood land were to be removed, suggests that the viability of the project is in the balance and that there is a real risk that the Rail Terminal may not be completed. In contrast to that position, Owen Land & Property argued that the scheme, with the Inglewood land included, would result in FAL generating a profit level significantly above what might reasonably be expected. Again, this divergence of views tends to indicate that the Applicant's assessment is not unreasonable.
- 5.4.26. For reasons of commercial confidentiality, a full development appraisal has not been submitted and I note SSDC's concerns that this is the case [REP4-017]. What has been submitted is, however, sufficient for me to conclude that the Viability Dashboard provides a reasonable indication of the likely level of return on the very substantial investment required to undertake the development and the risks that this involves. This evidence does, therefore, provide support for the scale of warehousing proposed as part of the SRFI.
- 5.4.27. The Applicant accepted at ISH5 that a significantly smaller scheme had been contemplated and discussed with SSDC and other stakeholders in 2011 and 2015. They state that this envisaged a development of around 560,000 sq. m of warehousing but assumed that the terminal sidings and unloading pad would be only 400m long. The larger scheme now proposed has been developed in response to changing occupier requirements, in particular the increasing demand for larger warehouse units, and the clearer objectives set out in the NPSNN with regard to the ability to accommodate 775m long trains with minimum on-site shunting. The Applicant also states that the earlier proposals were not developed or tested to the same level of detail as the Application scheme and were put forward without the same level of understanding of development costs and constraints.
- 5.4.28. That evidence was not challenged by other IPs and is supported by paragraphs 5.2.1 to 5.2.3 of the Design and Access Statement (DAS) [APP-268]. This records how the scheme has been developed and refined through the work of that team and in response to comments received at the various stages of public consultation. It explains how detailed proposals for the rail terminal have evolved. I am satisfied that the design has followed the logical process of option development and multiple stages of refinement that might be expected for a scheme of its type and scale. Taken together with the other evidence set out above, I

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<sup>33</sup> Applicant's responses to my questions at ISH5

consider that this provides a sound justification for the scale of development proposed.

## **5.5. CAPACITY OF THE RAIL NETWORK**

### **APPLICANT'S CASE**

5.5.1. The Application proposes that the Initial Rail Terminal should be capable of handling 4 trains per day, in accordance with the requirements of s26 of the PA 2008, and that the Expanded Rail Terminal would be capable of handling up to 10 trains per day. The Applicant's evidence on the capacity of the network to handle the additional freight traffic was initially set out in the Planning Statement [APP-252] and Rail Operations Report [APP-256]. In response to my written questions and submissions made on this matter by other IPs the Applicant has also submitted the following information:

- Applicant's Responses to FWQs [REP2-009];
- Pathing Process Note Appendix 7 in REP2-011;
- Pathing Study at Appendix 8 in REP2-011;
- NR responses to FWQs [REP2-009];
- Applicant's oral evidence to ISH2 and ISH5.

5.5.2. This evidence seeks to establish that there is more than ample capacity on the WCML Loop and the WCML to accommodate the freight traffic likely to be generated by the development with either the Initial or the Extended Rail Terminal in place.

### **EXAMINATION**

5.5.3. Stop WMI, in their Rail Report [REP2-159], and many other IPs including Alan Powell [REP2-141], express concerns about whether there would be sufficient capacity on the railway network for the additional freight train movements required to service the WMI. Many IPs say that the WCML Loop is already congested and that passenger services suffer frequent delays and that the Proposed Development can only make matters worse.

5.5.4. In ExQ1.2.12 to 1.2.17 I sought further evidence as to the capacity of the rail network to accommodate these additional movements without an adverse impact on passenger and other services. These questions also sought clarification on the stage to which the proposals had been worked up in relation to the connections required to the WCML Loop. Responses to these questions were received from the Applicant [REP2-009] and NR [REP2-132]. These matters were examined at ISH2 and ISH5 and supplementary questions for the Applicant and NR were included in my SWQs.

5.5.5. The evidence in the Applicant's Pathing Process Note, at Appendix 7 to their Response to FWQS [REP2-011], and NR's evidence at ISH2 is that decisions on the rail timetable are made by NR under the Network Code. NR must assess all operators' requirements and rights together and

cannot give preference to passenger or freight services. After appropriate discussion and consensus, freight paths that have not been used for 90 days are either completely removed from the timetable or are brought back into the Strategic Capacity category to help provide for future changes to traffic flows.

- 5.5.6. AT ISH2 NR advised that timetables are changed twice yearly, and that the planning of new timetables is an almost continuous process. It is not possible to allocate rail paths for the WMI now or for NR to give the binding commitment that paths will be available that many IPs have called for. Two Timetabling Studies were carried out by external consultants in 2007 and 2017. The April 2017 Study<sup>34</sup> concludes that it should be possible to choose four paths in each direction (North and South) and to increase these to 10 paths in the future based on the (then) current timetable. Contrary to many objectors' expectations, the Study does not suggest that these services would have to run at night but found that the greatest capacity was in daytime hours. The outputs of that Study have been reviewed and agreed by NR as confirmed in its response to ExQ1.2.12 [REP2-132] and in section 3.6 of its SoCG with the Applicant [AS-025]. At ISH2 the Applicant's rail expert and NR representative answered my detailed questions on these studies and agreed that these indicate more than sufficient capacity to accommodate traffic from the WMI.
- 5.5.7. At ISH2 the Applicant explained that infrastructure is available at Rickerscote (Stafford), to the north, and at Bushbury (Wolverhampton), to the south, to enable freight trains to be temporarily 'recessed' to allow faster trains to pass on the line. This is also confirmed in NR's response to ExQ1.2.12 [REP2-132]. Nodal yards, such as that Basford Hall in Crewe, are also available for recessing. The multiple sidings at WMI would provide further capacity for trains to be recessed such that they can join the WCML at their allotted pathing time. Concerns have been raised by Stop WMI [REP2-159] about the lack of passing places on the WCML but NR's representative at ISH2 stated his view that the midpoint location of the application site, between these recessing facilities, makes it an optimal location for the proposed SRFI. This is also agreed by NR in paragraph 3.2 of the SoCG with the Applicant [AS-025].
- 5.5.8. Given the extensive involvement of NR in the Examination and the support that NR has given to the Applicant's Timetabling Study, I consider that the SoS can place considerable weight on the 2017 Study as an indicator that capacity would be available to serve WMI if and when it opens. The May 2019 timetable has also been assessed by NR's Operational Planning Specialist. NR's response to ExQ2.22 [REP5-058] confirms the availability of five Strategic Capacity Paths in each direction on the WCML Loop. As explained by the Applicant's Rail Expert at ISH2, once the SRFI is opened, rail services would grow on an incremental basis and the operator would not be seeking all of the additional paths to serve the Expanded Rail Terminal at one time.

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<sup>34</sup> Appendix 8 to REP2-011.

- 5.5.9. The Applicant's note on the Viability of Rail Services, at Appendix 3 to REP6-012, outlines that the creation of new clusters of SRFIs has led to a new market for rail freight with intermodal services increasingly likely to drop off a part train load at one SRFI when on route to another facility. Together with port related services, this intermodal traffic now forms the single largest component of the rail freight market. Given the evolving nature of those markets, the growth to 10 trains per day would not be wholly dependent on new services being established or on the allocation of new paths for all of those trains.
- 5.5.10. Stop WMI [REP2-159] and other objectors argue that any increase in the use of the WCML for freight services is dependent upon HS2 to release capacity and that the current uncertainty about the HS2 proposals casts doubt on the prospect of securing the necessary rail paths. However, neither the Timetabling Study nor the Applicant's assessment of potential capacity is founded on that assumption as confirmed at page 91 of the Applicant's Response to Other Parties' D2 submissions [REP3-007]. As noted above, NR has confirmed its own assessment of capacity within the existing timetable.

## **CONCLUSIONS**

- 5.5.11. For these reasons, I consider that there would be a good prospect of sufficient paths being available to provide for the 4 trains per day operation of the Initial Rail Terminal as proposed and that there are no good reasons to doubt the potential, over the longer term, to achieve the 10 trains per day capacity of the Extended Rail Terminal. The capacity of the network should not, therefore, be seen as a constraint on the site's development as a SRFI.

## **5.6. MEETING THE NPSNN CRITERIA AND OBJECTIVES FOR A SRFI**

### **BACKGROUND**

- 5.6.1. In accepting the Application for examination, the Planning Inspectorate has concluded, on behalf of the SoS, that the Proposed Development satisfies the minimum criteria prescribed in s26 of the PA 2008 for what constitutes an NSIP SRFI. In reaching a conclusion as to whether or not the Proposed Development benefits from the NPSNN paragraph 4.2 presumption in favour of a grant of development consent it is also necessary to consider whether it meets the requirements and guidance set out in the NPSNN.

### **APPLICANT'S CASE**

- 5.6.2. The Applicant contends that the WMI proposal is fully compatible with the criteria and objectives for a SRFI as set out in the NPSNN and does, accordingly, benefit from the paragraph 4.2 presumption. This case is set out in particular in the Applicant's:
- Planning Statement [APP-252];

- Rail Operations Report [APP-256];
- Plan showing Future Rail Connectivity at Appendix 11 to Applicant's response to FWQs [REP2-012];
- Rail Connectivity Note at Appendix 3 to the Applicant's Post Hearing Submissions [REP4-004],
- Post Hearing (ISH5) Submissions and Appendices 1 & 3 to those submissions [REP6-012 and 013];
- Response to SWQs [REP5-003] and Appendices 5-8 [REP5-004]; and
- Response to TWQs [REP7-004].

## **EXAMINATION**

5.6.3. The various issues relating to whether or not the Proposed Development would fully meet the NPSNN requirements and objectives has been examined by means of written questions and at Examination hearings. ISH5 was focused on a discussion about the extent to which the proposal would meet the SRFI objectives. These matters were also examined in the discussion of the draft requirements at the 3 hearings concerning the draft DCO. My TWQs were concerned mainly with the Applicant's proposed wording of the Rail Requirements and sought the views of the local authorities and other IPs as to whether or not these would secure a development that is fully consistent with the NPSNN.

5.6.4. These matters are discussed under a series of sub-headings.

## **LOCATIONAL CRITERIA**

5.6.5. Following on from my conclusions, in section 5.3 above, about the requirement for a SRFI to meet the needs of the Black Country and southern Staffordshire, I find that the WMI would be close to and have good access to these intended markets and to other parts of the Birmingham conurbation not well served by the existing SRFI network. As set out in the Planning Statement [APP-252] the site has good access to the SRN via the A5, A449 and M6.

5.6.6. The Applicant's evidence, at ISH5, that there are already well-established supply chains along these corridors and the adjoining motorway network is supported by section 2 of the WMCA Freight Strategy 2016.<sup>35</sup> This notes that freight and logistics movements are vital to the West Midlands economy and that the Region is served by a complex network of freight and logistics movements. The site adjoins the WCML Loop which forms part of the WCML and an existing rail freight network that is cleared to loading gauge W10 (paragraph 3.1.2 of the Rail Operations Report). The Freight Strategy also notes that the WCML is the most important rail freight corridor in the UK.

5.6.7. Evidence given at ISH5 and SSDC's response to ExQ2.2.2 [REP5-049] confirms that South Staffordshire is in the same FEMA and Travel to Work Area as most of the Black Country authorities. Section 5.3 of SSDC's LIR [REP2-051] states that a substantial proportion (64%) of South Staffordshire working residents commute out of the District to

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<sup>35</sup> Appended to Mr Walton's D2 submission [REP2-177]

their place of employment. There is, therefore, an economic workforce available to support the Proposed Development.

- 5.6.8. The concerns raised by many objectors that a large proportion of the WMI workforce may need to travel from outside of the District are dealt with in my assessment of the transport and socio-economic impacts in Chapter 6. The Proposed Development does, accordingly, comply with the locational requirements for a SRFI as set out in paragraphs 4.84-4.87 of the NPSNN.

### **TERMINAL DESIGN AND CAPACITY**

- 5.6.9. The Rail Terminal Drawings [APP-239 & 240], Rail Sections [APP-241 to 245] and Rail Operations Report [APP-256] show that the Terminal would allow trains to access and leave the site in both directions and could receive trains of the desired 775m length with minimum on-site shunting.
- 5.6.10. There is a difference in levels between the site and the WCML. However, the Rail Sections confirm that appropriate reprofiling of part of the site to accommodate that difference in levels would enable the required gradients for the new sections of railway track to be achieved. No technical evidence has been submitted to contradict the Applicant's evidence that the Initial Rail Terminal would be capable of accommodating 4 trains per day and that the Extended Terminal would provide additional capacity for up to 10 trains per day.
- 5.6.11. Section 4 of the Rail Operations Report [APP-256] advises that the proposed rail connection and terminal works have secured GRIP 1 & 2 approval and that the previous (now superseded) layout achieved GRIP 3 approval. The Applicant's response to ExQ1.2.17 [REP2-009] and the oral evidence given by NR's representative at ISH2 set out a full explanation of the GRIP approval process. It is clear from that explanation that there is a considerable amount of work and assessment involved in progressing a project to GRIP Stage 2 approval. The fact that the WMI proposals have achieved that approval does, therefore, establish a significant degree of confidence that the proposed layout and connections can be achieved.
- 5.6.12. In its Wrong Location Report [REP2-167], Stop WMI asserts that no (planning) approval should be given for a SRFI unless it has secured GRIP Stage 5 approval. The Applicant and NR were asked in ExQ2.2.21 to respond to that proposition. NR's reply [REP5-059] states that there are a number of requirements of earlier GRIP stages without which, the project could not proceed to GRIP 5 (detailed design). These would include industry consents, signalling design (which require the designer to have a 'monopoly' on the safety critical existing signalling scheme plans), and safety verification which cannot proceed without a consented and approved scheme. As indicated in the Applicant's response [REP5-003], this means that securing planning permission or development consent is effectively a prerequisite for making an application for GRIP 5 approval.

5.6.13. At ISH2 the Applicant was requested to provide evidence as to the GRIP stage that other SRFI projects had reached at the time of making a planning or development consent application. This evidence, as set out Section 1 of the Rail Connectivity Note at Appendix 3 to the Applicant's Post Hearing Submissions [REP4-004], is that no SRFI has secured GRIP 5 approval at the time of making a DCO or planning application. At that stage, EMGRFI had secured GRIP 2 approval and iPort had no GRIP approval in place. There is no requirement in the NPSNN that GRIP approval should be obtained before development consent is applied for or issued. Accordingly, I find that the proposal meets the requirements of paragraph 4.89 in relation to these criteria.

### **RAIL ACCESSIBILITY AND PHASING OF WAREHOUSES**

5.6.14. The main areas of concern raised by IPs over compliance with the NPSNN arises in respect of requirements in paragraphs 4.83 and 4.88 as set out below:

Paragraph 4.83:

*..from the outset, a rail freight interchange (RFI) should be developed in a form that can accommodated both rail and non-rail activities.*

Paragraph 4.88:

*Applications for a proposed SRFI should provide for a number of rail connected or rail accessible buildings for initial take up, plus rail infrastructure to allow more extensive rail connection within the site in the longer term. The initial stages of the development must provide an operational rail network connection and areas for intermodal handling and container storage. It is not essential for all buildings on the site to be rail connected from the outset, but a significant element should be.*

5.6.15. Concerns about the Applicant's commitment to completing the rail infrastructure and delivering a rail terminal as part of the development feature in a large number of the RRs and written representations. These include that of SSDC [REP2-046] which argued that if the WMI proposal is to proceed "it is critical that:

- *there is certainty that the rail connection will be delivered*
- *there is a clear rail delivery programme with detailed timings and that this is evidence based*
- *the rail infrastructure is delivered first"*

5.6.16. These issues were examined in my FWQs [ExQ1.2.20 to 1.2.2]. The Applicant has provided clarification of the proposals in their responses to ExQ1.2.20 to 1.2.23 [REP2-009], and Appendices 11 and 12 to those responses [REP2-012] and in oral evidence at ISH2. They were also a main focus of ISH5 at which evidence was heard from the Applicant, NR, HE, SSDC, Stop WMI and other IPs on these matters. The proposed Rail Requirements, which are the main means by which certainty as to the timing and delivery of the rail infrastructure would be secured, have been examined at the 3 DCO hearings. These were also the main focus of my

TWQs, to which responses were received from a large number of IPs. These submissions and oral evidence have been taken into account in my consideration of these matters as set out below.

- 5.6.17. The construction of the Initial Rail Terminal, including the connections to the main line, is included within Phase 1 (2020-2026) of the Proposed Development as set out in the Indicative Phasing Strategy at Table 4.1 of the ES [APP-020] and Indicative Phasing Plan [APP-024]. However, the Phasing Strategy is only indicative, and the Applicant has always sought a DCO that would permit up to 25% of the warehousing floorspace to be constructed and occupied before the Initial Rail Terminal has been completed and is available for use.
- 5.6.18. The first version of the DCO submitted with the Application [APP-156] included draft undertakings that required the Undertaker (developer) to:
- commence the preparatory work for the Rail Terminal at the same time as the first phase of development;
  - complete the Initial Rail Terminal prior to the earliest of the occupation of more than 187,000 sq. m of warehousing, or the eighth anniversary of the first occupation of more than 47,000 sq. of warehousing, unless otherwise agreed by SSDC;
  - retain, manage and keep the Rail Terminal available for use unless otherwise agreed by SSDC.
- 5.6.19. At the first DCO hearing I questioned the level of certainty that these clauses would provide as to the delivery and long-term retention of the rail infrastructure. Those draft clauses were subsequently replaced by a set of 'Rail Requirements' in Part 2 of Schedule 2 to the revised DCO and these have gone through a number of iterations during the course of the Examination. The Applicant's final proposals in relation to these are incorporated in the final draft DCO submitted at D8 [REP8-005].
- 5.6.20. The Applicant has included an alternative wording for draft Rail Requirement 4 which would provide still greater flexibility in the event that delivery of the rail infrastructure was delayed due to "*matters outside of the Undertaker's control.*" I comment on this alternative wording later in this report. Putting this to one side for the present, the Rail Requirements as drafted require that the Undertaker must complete the rail terminal works prior to the occupation of more than 186,000 sq. m of warehousing or the sixth anniversary of the occupation of more than 47,000 sq. m whichever is the earliest. The Requirements also include the need for the Undertaker to submit to the Local Planning Authority (LPA) regular reports on progress with the rail terminal works and to demonstrate compliance with a number of specific progress milestones.
- 5.6.21. At the close of the Examination, SSDC [REP7-034], Stop WMI [REP9-041] and some other IPs remained of the view that the Application does not meet the tests in paragraph 4.88 of the NPSNN. Many IPs also argue that, if users were to occupy some of the warehouse units before the Rail Terminal is available, they would be likely to establish road-based operations and would have neither the need nor incentive to use rail

freight as and when the Rail Terminal is opened. These concerns have been reinforced by the Applicant's statement, at ISH5, that no rental premium can be put on warehouse floorspace by reason of its location next to a rail terminal, and confirmation that there would be no obligation within the contracts for the sale or lease of warehouses for occupiers to use rail freight services.

- 5.6.22. There is an underlying local concern, as evidenced in many of the RRs, that the Applicant is not committed to the use of rail freight and has proposed the Rail Terminal as a kind of 'Trojan Horse' to secure consent for a large road-based warehousing development in the Green Belt. The number and content of D7 representations confirm that these fears are widely and strongly held by many within the local communities.
- 5.6.23. Through my written questions, and the questions put to participants at ISH2, ISH5 and the DCO hearings (ISH1, 4 & 6), I have fully examined these matters in order to consider and assess the extent to which the Proposed Development would comply with the requirements and policies in the NPSNN and the risk that the DCO sought could enable the construction of a development which would not qualify as a NSIP. A considerable amount of oral and written evidence has been submitted in relation to these matters.

### **Rail Accessibility**

- 5.6.24. The Rail Terminal Drawings [APP-239 & 40] show how sidings could be provided for the units in Development Zone 2. The diagram at Appendix 11 (Future Rail Connectivity Plan) [REP2-012] was submitted in response to ExQ1.2.20 to 1.2.22 and shows how containers could be moved directly to and from the terminal to units in Zones A1 and A2 within the Extended Terminal Layout. At ISH2, the Applicant's Rail Expert also explained that it would be possible, with appropriately designed vehicle crossings of the internal railway track, to provide additional dedicated sidings if these were required. Such arrangements are in place at other operational SRFIs as I saw on my USI to DIRFT. I am, accordingly, satisfied that the buildings in Development Zones A1 & A2 (around 20% proposed floorspace) would be rail-connected.
- 5.6.25. As explained by the Applicant in response to my questions at ISH5, the balance of the floorspace, in Zones A3 to A7, would be rail-served as containers could be moved to and from the Terminal using HGV or Tugmaster vehicles over the relatively short distances involved. This would involve additional loading and unloading operations, but this is standard practice at SRFIs and does not negate the cost benefits to warehouse occupiers of co-location with the Rail Terminal. The use of Tugmasters is a viable proposition as no more than 1km of the journey would be on public highway and the operator could, therefore, benefit from the cost savings that these could provide.<sup>36</sup>

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<sup>36</sup> See Applicant's responses to ExQ1.2.23[REP2-009].

- 5.6.26. When completed, the Initial Rail Terminal would, therefore, provide for a number of rail-accessible buildings as required by paragraph 4.88 and the Extended Rail Terminal would provide “*more extensive rail connection within the site in the longer term*”. The Extended Terminal would not alter the balance between rail-connected and rail-served floorspace, but I do not understand this part of paragraph 4.88 to require that additional buildings should be rail-connected in the way that I have defined it at paragraph 1.1.4 of this report. The increased size and capacity of the Extended Terminal would afford greater opportunities for occupiers to access rail freight services on a cost-effective basis. The underlying objective of encouraging modal shift would be fully supported by that part of the Proposed Development.

### **PHASING CONCERNS**

- 5.6.27. The Appellant’s Viability Dashboard [REP7-004] assumes delivery of the rail connection and Initial Rail Terminal (at a cost of £32.5M) in Years 2-4 after occupation of the first warehouse, and completion of the Extended Rail Terminal (at an additional cost of £8.1M) in Years 7-9 after occupation of the first warehouse. The Rail Requirements as drafted in the Applicant’s final draft DCO [REP8-004] provide for flexibility in the timing of delivery of the Initial Rail Terminal. They do not set any requirement for completion of the Extended Rail Terminal. As the Applicant explained in response to ExQ1.2.25 [REP2-009], timing of this would be driven by the level at which demand for freight rail increases once the Initial Rail Terminal is open.
- 5.6.28. SSDC [REP4-017] argued at ISH2 that the words in the NPSNN should be interpreted on the basis of their simple dictionary definitions. That position is consistent with the Supreme Court Ruling<sup>37</sup> that “*policy statements should be interpreted objectively in accordance with the language used, read always in its proper context*”. If that approach is adopted, it would be appropriate to interpret the words “*initial stages*” and “*from the outset*” to mean from the commencement of any operational activities on the site in order to distinguish these from construction activities.
- 5.6.29. The Applicant’s position [APP-252] is that the completion and occupation of 25% of the warehouse floorspace before the Initial Rail Terminal is operational is compliant with the NPSNN requirements. In support of that position the Applicant places considerable weight on the decision, in January 2016, by the SoS to grant development consent for the EMGRFI against the recommendation of the ExA for that project. The relevant extracts from that decision are quoted in a number of places in the examination documents but it is helpful to set them out in full within this report:

*The Secretary of State does not agree with the Examining Authority that the fact that a proportion of the warehousing would be made available*

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<sup>37</sup> Tesco Stores Ltd v Dundee City Council [2012] UKSC 13 -paragraph 18 of the judgment.

*for use in the period of 3 years during which the rail link was being constructed means that the project would fail to meet the functionality requirements of the NPSNN referred to above. He appreciates that the construction of warehousing and the construction of a new railway will involve different timescales and he considers it entirely reasonable that a commercial undertaking should seek to generate income from the warehousing facilities before the railway becomes operational. The Secretary of State considers that the interpretation of these NPSNN requirements must allow for the realities of constructing and funding major projects such as this. Having regard to the terms of paragraph 4.83 of the NPSNN, he is satisfied that, from the outset, this SRFI is being developed in a form that can (that is, will be able to) accommodate rail activities. He considers further that it is not unreasonable to regard the requirement for rail accessible buildings to be available "for initial take up" as having been effectively met in the circumstances of this project, taking into account the time required for essential earthworks and for subsequent construction of the rail infrastructure, the 30 year period planned for the build-up of rail operations and the limitation on how much warehousing can be occupied before the rail line is operational." (Paragraph 16).*

*The Secretary of State notes that the proposed arrangement at the SRFI is that railborne freight would be transported between the terminal and individual warehouses by roadbased tractors. He considers that this would, at the least, mean that the warehouses would be "rail accessible" or "rail served", even if not directly connected in terms of rail sidings being physically located in close proximity to warehousing units. He considers that the proposed form of connection between warehouses and the rail freight terminal is sufficient to satisfy the objective of this part of the NPSNN, namely to facilitate and encourage the transport of freight by rail." (Paragraph 18)*

*With regard to the risk that a significant part of the development could remain road based, the Secretary of State considers that the requirement for the rail freight terminal to be operational before the occupation of more than 260,000m2 of rail served warehousing gives sufficient assurance that the rail facilities will be delivered as soon as is reasonably practicable in the programme for this development. While he accepts that in a commercial project of this sort there can be no absolute certainty that the rail facilities will be used to their fullest extent, he is reassured that the strong and growing demand for rail freight facilities including SRFIs recognised by the Examining Authority, and as expressed in the NPSNN (paragraph 2.45), means that there are reasonable prospects that as this SRFI is developed it will fulfil its potential for contributing to modal transfer in the freight sector, which is the clear purpose of this application." (Paragraph 24)*

- 5.6.30. The Applicant contends (Planning Statement and oral evidence at ISH2) that, as this was the first decision to be made on a DCO application for a SRFI following the designation of the NPSNN, it is of particular importance in providing clarification on how the SoS and Government intend that the policies and guidance in the NPSNN should be interpreted and applied. At ISH2, SSDC argued that, in determining the EMGRFI

application, the SoS did not apply the Government's own policy in the way that it is written. However, while some may question the EMGRFI decision, it was not subject to any legal challenge and, therefore, stands as a relevant consideration in respect of the current Application.

- 5.6.31. The Applicant has maintained in all of their responses to my written questions and in their oral evidence that the flexibility sought within the Rail Requirements is consistent with the NPSNN and that there is no good reason to withhold development consent on the grounds of any alleged conflict. They have also argued at ISH5 and in their Note on Viability of Rail Services [REP6-011] that the early delivery and occupation of an element of warehousing is required both to render the development viable as a whole, and to maximise the prospects of viable freight rail services being available to occupiers within the first few years of the Rail Terminal becoming available for use. It is, accordingly, helpful to consider these parts of the Applicant's case before forming final conclusions as to compliance with paragraphs 4.83 and 4.88.

### **Viability of Freight Rail Services**

- 5.6.32. The Applicant has submitted a significant amount of evidence, including case studies,<sup>38</sup> as to what stage in the development of operational SRFI the use of rail freight services has commenced and subsequently grown. This evidence is largely unchallenged. Key points of relevance to the issues raised by the EMGRFI decision can be summarised as follows.
- 5.6.33. DIRFT I was one of the earliest SRFIs to be developed. A single warehouse was occupied immediately after the rail terminal opened in 1997. However, the occupier of that first unit (Eddie Stobart) made no use of rail until 2006. Another early occupier (Tesco) only started to run trains to and from its dedicated facility 10 years after the interchange opened. Rail services subsequently expanded as more warehousing has been developed as shown in Figure 1 to Appendix 3 (Rail Connectivity Note) to the Applicant's Post Hearing Submissions [REP4-004].
- 5.6.34. Domestic intermodal services from DIRFT now carry containers on behalf of multiple customers on the same train and Tesco runs trains with store deliveries on the outbound run and backloads from suppliers on the return run. The number of trains per day peaked at 11 in 2008 and has subsequently fluctuated at 9 to 10 per day. DIRFT III will provide a new rail terminal to replace that within DIRFT I which is now too small and considered to be outmoded to meet current operational needs.
- 5.6.35. The planning permission for iPort Doncaster is at Annex F to Appendix 7 of Applicant's Responses to SWQs [REP5-004]. This included a condition requiring completion of the rail infrastructure before any warehousing was occupied. As the Applicant's Rail Connectivity Note at Appendix 3 to their D4 Submissions [REP4-004] shows the Council subsequently agreed to relax that condition to allow some warehousing to be completed and

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<sup>38</sup> Appendix 1 to ISH5 Post Hearing Submission [REP6-012];

occupiers secured to assist with the viability of the rail terminal. At the time the terminal was opened 156,000 sq. m of floorspace (around 27% of the total within the approved scheme)<sup>39</sup> had been built and occupied. The Applicant's evidence at ISH5 shows that within 18 months of the opening, iPort was handling 4 trains per day with 3 of the 4 warehouse occupiers making use of rail. The graph at Figure 2 of Appendix 1 to REP6-012 shows how rapid this increase in services has been compared to the 'first generation' of operational SRFIs.

- 5.6.36. The Applicant argues in Appendix 2 to their Response to Other Parties' Submissions [REP3-007] that the central objective of the NPSNN policies is to maximise the opportunity for logistics companies and other occupiers to use rail freight and that the integrity of the completed development is more important than the phasing of the rail infrastructure. The co-location of warehousing space with the road and rail interchange is important but the opportunity can only be realised if there is sufficient demand to make it viable to run rail freight services. The greater the number and diversity of occupiers (and hence the greater the number of shipping containers to be moved) the greater the likely number of services and variety of destinations that these will serve.
- 5.6.37. The combination of total floorspace and number of occupiers enables a Rail Freight Operator to combine, for example, a half load requirement from one occupier with loads from other occupiers to make a full train load. This works to increase the operator's ability to run full services to a choice of destinations and to achieve the economics of scale needed to make the cost of rail haulage per container more competitive and attractive to potential customers.
- 5.6.38. These issues were explored at ISH2 where I asked whether it is possible to identify a 'tipping point' in terms of the number of occupiers or quantum of floorspace needed to make the commencement of a freight rail service viable. The Applicant's detailed response is set out in the Rail Connectivity Note at Appendix 3 to REP4-004. The conclusions of that note can be summarised as follows.
- The Graph at Figure 1 to that Note identifies a clear relationship between total floorspace and the number of trains per day achieved at DIRFT and suggests that the first services were commenced with about 60 to 70,000 sq. m of warehousing in occupation. However, these were generally smaller floorspace units than would be expected in a SRFI developed today.
  - iPort Doncaster achieved both a start-up and accelerated growth to 4 trains per day with 156,000 sq. m in place and 3 of the 4 occupiers using the rail services. The building footprints at iPort are similar to those envisaged at WMI.
  - EMGRFI is expected to achieve its first rail services when the rail terminal opens in December 2019 with around 232,000 sq. m of warehousing sold or let to end users.

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<sup>39</sup> The Outline Planning Permissions Decision Notice is at Annex F to REP5-004

- Based on this experience it would appear that the effective 'tipping point' for rendering it viable to run the first rail services is approximately 186,000 sq. m with 3 to 4 customers in occupation.

5.6.39. The Applicant's evidence that the rail freight market today is very different to when DIRFT first opened and is still evolving was not disputed by other IPs and I accept that this is the case. Hence, the DIRFT experience of achieving first services with 70-80,000 sq. m of building floorspace occupied is probably of limited assistance now. If that is excluded, the remaining figures for iPort and EMGRFI would give an average of 194,000 sq. m which is close to the Applicant's suggested figure of 186,000.

5.6.40. Although this is a fairly crude, averaging exercise, I consider that the case studies suggest that it would be difficult to establish a viable rail service without any occupiers already in occupation. It seems to me that the experience at iPort and DIRFT shows that any subsequent increase in the number of daily services is likely to be strongly dependent upon the number of occupiers and volume of floorspace in occupation at the SRFI.

5.6.41. I consider, also, that the experience of Eddie Stobart and Tesco at DIRFT indicates that operators who have been running road-based operations for a number of years are likely to switch some or all of their operations to rail if the freight rail services on offer meet their requirements and are cost-competitive. This should, in my view, allay fears that, once established on the site with road-based deliveries only, there would be little or no prospect of early phase occupiers using rail in the longer term. The Applicant has confirmed that there would be no rental premium compared to alternative logistics parks without the prospect of a rail connection. It seems to me that the future availability of rail services within a reasonably short timescale could, therefore, be an important determining factor in some logistics operators choosing a unit at WMI if they have aspirations to make use of rail or wish to be able to offer this option to their customers in the future.

### **Development Viability**

5.6.42. The Applicant's Viability Dashboard and supporting information [REP5-006] show that it would require some £32.5M to complete the rail connection and Initial Terminal. The Dashboard assumes that these works would be completed in Q24 of the development programme (approximately 5.5 years after the first start on construction activity) and in Year 2-4 after occupation of the first warehouse.<sup>40</sup> The Applicant has confirmed that, a requirement to delay delivery (and occupation) of any warehousing until the Initial Rail Terminal had been delivered, would reduce the Internal Rate of Return on the project to around 5.7%. At that level the WMI scheme would not be sustainable in viability terms and could not be funded.<sup>41</sup>

<sup>40</sup> Section 6 of Applicant's Post Hearing Submission in REP6-012

<sup>41</sup> Third bullet of paragraph 6.9 of REP6-012.

5.6.43. I have set out my general conclusions on the Applicant's viability evidence in section 5.4 above and have no evidence that would serve to contradict that conclusion. This accordingly gives further support to the Applicant's arguments about the benefits to delivery of a viable rail freight operation that early occupation of a proportion of the proposed warehousing would bring.

### **Sequencing of Warehousing Development**

5.6.44. SSDC [REP4-017] and Stop WMI [REP4-032] assert that the first phase of warehousing development should be built in the Development Zones closest to the Rail Terminal (Zones A1 and A2) and that phasing of warehousing should be spread out across the site from those zones. They argue that this is the logical way for the site to be developed if the prospects of occupiers using rail freight services are to be maximised. Whilst this may seem a logical manner in which to proceed, the Applicant's position is that this is neither necessary to achieve the NPSNN objectives nor desirable from a commercial point of view. This is set out in the Applicant's Responses to Other Parties D4 Submission [REP5-006].

5.6.45. The Applicant's evidence is that all of the warehousing proposed on the site will be rail-accessible and none will be so far from the Rail Terminal that the distance over which containers would need to be carried would act as a significant disincentive to the use of rail freight. The site layout includes different sized Development Zones with the capacity to accommodate a wide range of unit sizes and configurations. In combination with the Parameters Plan approach, this provides a considerable degree of flexibility to respond to the specific accommodation needs of potential occupiers as and when these are known. I consider that this is clearly in the interests of supporting the viability of the Proposed Development and is consistent with the recognition in the NPSNN (paragraph 2.45) that flexibility is needed when schemes are being developed to allow the development to respond to market requirements as they arise.

5.6.46. The Indicative Phase 1 Proposals would provide for the development of rail-served warehouses in Development Zones A2, A3 and A4a and for warehouses in Zone A2 with potential for a direct rail-connection if this was required by the occupier. In addition, the land within which Development Zone A1 is sited is affected by the SI Group groundwater remediation scheme which is expected to continue until around 2026. As set out in the Remediation Safeguarding Report [APP-096], it would be possible to relocate some of the pipe work and abstraction wells to allow the Initial and Extended Rail Terminals to be constructed and brought into operation. However, the construction of warehousing in Zone A1 could not commence in the Indicative Phase 1 period of 2020-2026 and has been placed in Indicative Phase 3, starting in 2029.

5.6.47. In my judgement this evidence provides a comprehensive and robust response to the suggestion that the development should be phased from the Rail Terminal outwards across the site and I accept that this is neither a practicable nor commercially desirable option for the Applicant to adopt.

## CONCLUSIONS ON COMPLIANCE WITH NPSNN

- 5.6.48. The Applicant intends that the Initial Rail Terminal should be delivered as quickly as possible and has included these works within the Indicative Phase 1 alongside the first warehousing units. However, the flexibility provided by the draft Rail Requirements could mean that the Terminal is not completed until 6 years after the occupation of the first 47,000 sq. m of building floorspace. This might, possibly, be more than 6 years after the commencement of development.
- 5.6.49. With the Rail Requirements as drafted the 'initial stages' of the WMI scheme may not deliver an operational rail network or container storage or handling areas. In addition, up to 25% of the total building floorspace would not be rail-accessible from the outset (i.e. on first occupation) and the site would not be capable of accommodating both rail and non-rail activities from the commencement of operations on the site. Those conditions would be met only at some later stage when the Rail Terminal has been completed and is available for use.
- 5.6.50. If the wording of paragraphs 4.83 and 4.88 is applied on a strict interpretation of the language used the SoS should, in my view, conclude that the proposal conflicts with these specific parts of the NPSNN. It would, however, be open to the SoS to find that it complies with the NPSNN requirements for SRFIs as a whole.
- 5.6.51. The Applicant's evidence as to the conditions needed to establish and operate a viable rail service and on the viability of the development as a whole do, however, support the approach taken by the SoS in the EMGRFI decision that "*the interpretation of these NPSNN requirements must allow for the realities of constructing and funding major projects such as this*". The degree of flexibility provided by the draft Rail Requirements is also consistent with the view expressed in that decision that it is "*entirely reasonable*" that a commercial undertaking should seek to generate income from the warehousing before the railway becomes operational.
- 5.6.52. Allowing for that flexibility, I find that WMI would be developed in a form that is able to accommodate rail and non-rail activities. The rail infrastructure at WMI may not be completed within the first 3 years of works as was anticipated at EMGRFI. However, the draft Rail Requirements in the final draft DCO [REP8-005] provide a much greater incentive for the Undertaker to complete the works at WMI than those included in the EMGRFI DCO. This is because they would:
- only allow up to 25% of the total floorspace to be occupied before completion of the Rail Terminal compared to the 47% figure approved at EMGRFI.
  - put a long-stop date of 6 years after occupation of the first 47,000 sq. m for completion of the Terminal where there was no such stipulation in the Requirements included within the EMGRFI DCO.
  - Incorporate a series of milestones under which the developer would be required to demonstrate that the rail works were being progressed

as quickly as possible. No similar requirements were incorporated within the EMGRFI DCO.

- 5.6.53. I consider that these controls provide for a great deal of confidence that the rail facilities would be delivered as soon as is reasonably possible. There can be no guarantee that either the occupiers of the early phase warehouses or those taking space in later stages of the development would use rail facilities. However, on the evidence submitted, there would be a very good prospect that the SRFI would achieve its potential for contributing to the transfer of freight from road to rail.
- 5.6.54. If the suggested alternative wording of Rail Requirement 4 within the final draft DCO [REP8-005] is rejected as I recommend in Chapter 11 of this report, and the less rigid interpretation of paragraphs 4.83 and 4.88 suggested by the EMGRFI decision is adopted, the Proposed Development does still, in my view, comply with the NPSNN policies and objectives with regard to encouraging modal shift in the movement of freight. I now turn to consider the implications of the additional flexibility that would be given by that alternative wording.

### **ADDITIONAL FLEXIBILITY PROPOSED BY THE APPLICANT**

- 5.6.55. The most significant part of the alternative wording suggested for Rail Requirement 4 in the Applicant's final draft DCO [REP8-005] is that it inserts the words "*unless otherwise agreed by the Secretary of State*" at the end of paragraph 4(1). This 'tailpiece' provides for the possibility that the undertaker could apply for a relaxation of the requirement that the rail terminal works be completed prior to the occupation of more than 186,000 sq. m of warehousing or the sixth anniversary of the first occupation of more than 47,000 sq. m whichever is the earliest.
- 5.6.56. An additional paragraph (2) suggests that this option might be exercised in the event that the works cannot be completed within the specified timescale "*due to matters outside of the control of the undertaker.*" However, the drafting of that paragraph does not, in my view, mean that an application to vary the Requirement could only be made in those circumstances. Paragraphs (3) to (5) set out the process to be followed if the undertaker were to exercise to seek such a variation for that reason.
- 5.6.57. Draft Rail Requirement 6 in the final draft DCO requires that, following their completion, the rail connection and terminal must be managed and be kept available for use "*unless otherwise agreed by the Secretary of State*". The Applicant has not proposed an alternative wording that deletes that tailpiece.
- 5.6.58. Most of the IPs who responded to ExQ3.1.1 considered that the tailpiece to Rail Requirement 4 adds to uncertainty about the delivery of the Rail Terminal and to concerns that the Applicant might be able to build all or a substantial part of the proposed 743,200 sq. m of warehousing without completing the rail connection or Rail Terminal. The potential traffic implications of a delayed delivery of the Rail Terminal is also of concern

to HE [REP7-030] and a number of other IPs who responded to my TWQs. I consider that these concerns are well founded.

- 5.6.59. The Applicant does not argue that very special circumstances would exist for a warehousing development of this scale in the Green Belt if no rail connection was proposed. Rather, their very special circumstances case is founded on the proposal being a SRFI, incorporating both the rail connection and terminal and an appropriate quantum of rail-accessible warehousing in order to help meet the need identified in the NPSNN, as set out in their Green Belt Update at Appendix 3 to their Responses to FWQs [REP2-010]. The delivery of the rail infrastructure is, therefore, critical to the question of whether or not a grant of development consent is justified.
- 5.6.60. In their Green Belt Update at Appendix 3 to their Post Hearing Submissions [REP2-010] the Applicant argues that the timing of the construction of the rail infrastructure is not critical to whether or not very special circumstances exist. I accept that that might be the case but, in light of the legitimate concerns referred to above, I find that certainty that it will be delivered is critical to that consideration. The tailpieces to Rail Requirements 4 and 6 proposed by the Applicant are, therefore, of significant concern as these can only reduce the level of certainty that the rail infrastructure needed to achieve the content and character of a SRFI will actually be delivered.
- 5.6.61. The figure of 186,000 sq. m of warehousing used in the draft Requirements is derived from the acceptance by HE (as the Highway Authority with responsibility for the SRN) and SCC (as the Local Highway Authority with responsibility for the rest of the highway network) of the Applicant's Transport Assessment (TA) at ES Appendix 15.1 [APP-114]. The two highway authorities have accepted in the SoCG [REP2-008] and [REP2-007] that, with the agreed mitigation in place, the traffic generated by the use of up to 186,000 sq. m of warehousing in advance of the completion of the A5/A449 Link Road and the Initial Rail Terminal<sup>42</sup> can be accommodated on the highway network without significant adverse effects.
- 5.6.62. As pointed out in HE's Post Hearing Submissions [REP1-008], beyond that development quantum, the rail terminal forms an integral element of the assessment of the traffic impacts. Importantly, the trip generation and distribution analysis underpinning the TA is based on data collected at comparator sites (DIRFT) which have an active rail connection and terminal and the agreed traffic mitigation package is directly related to the Applicant's assessments including an active rail terminal. The TA does not include an assessment of the effects of more than 186,000 sq. m of

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<sup>42</sup> The 47,000 sq. m figure used in the draft requirements reflects the Highway Authorities' agreement that, within the total ceiling figure of 186,000 sq. m, some 47, 000 sq. m could be served from the new Vicarage Lane junction in advance of the new roundabout junction on the A5 having been completed.

warehousing being brought into use without the rail connection and terminal also having been completed.

- 5.6.63. At D5 the Applicant submitted Technical Note 41 as Appendix 10 to Responses to SWQs [REP5-005] setting out their assessment of what the effects on the highway network might be if more than 186,000 sq. m of warehousing were to be occupied in advance of the rail connection and terminal being available for use. HE [REP7-030] considers that assessment to be inadequate and states that it does not provide for any confidence that there would be no additional impacts on the SRN or additional environmental effects that have not been assessed in the ES. Neither has the assessment in Technical Note 41 been accepted or agreed by SCC.
- 5.6.64. At the close of the Examination the position remains that the potential effects of the development of more than 186,000 sq. m of warehousing without the rail connection and terminal are unknown. Hence, neither I nor the SoS have sufficient information on which to come to a conclusion as to whether or not those potential traffic and environmental effects are acceptable. It would, therefore, be wrong to issue a DCO which would enable more than 186,000 sq. m of warehousing to be constructed and occupied before the Rail Terminal works are completed and the Initial Rail Terminal is available for use.
- 5.6.65. The proposed tailpiece to draft Rail Requirement 4(1) would, not of itself, give consent to a larger volume of warehousing being occupied without the Rail Terminal having been completed but would enable such a change by means of securing agreement from the SoS to vary the wording of the Requirement. Any such request could potentially represent a material modification to the Proposed Development considered in the Examination. A future request, under the tailpiece to draft Rail Requirement 6, to close the Rail Terminal and/or remove the rail connection altogether could potentially be a still more significant modification.
- 5.6.66. If a need for such changes should arise at some future date it would be open to the undertaker to seek a formal variation to the Recommended DCO. An application under that procedure could be subject to an examination process that could ensure that all relevant information is available to the decision maker, that proper consultation and engagement is carried out, and that consideration is given to any evidence submitted by interested parties. In comparison, the seeking of a variation to a Requirement is a relatively informal procedure which would not ensure proper consultation and engagement. I do not consider this to be an appropriate route for the consideration of changes of such potential magnitude.
- 5.6.67. For these reasons, and because of the need for certainty as to the delivery of the rail infrastructure as part of any special circumstances test, I recommend that the proposed tailpieces should not be included in Rail Requirements 4 and 6 and that the Applicant's alternative wording for Rail Requirement 4 should not be accepted. Rail Requirements 4 & 6

as set out in the Recommended DCO at Appendix D to this report incorporate my recommended wording of these Requirements.

## **5.7. ALTERNATIVE OPTIONS AND ALTERNATIVE SITES**

### **ALTERNATIVE OPTIONS**

5.7.1. Many of the RRs suggested that there are a number of existing rail freight interchanges (RFI) which would be capable of satisfying any identified need for such services. In my FWQs I requested the Applicant to provide their written comments on the various facilities that had been referred to in those RRS. These are set out in the Applicant's response to ExQ1.2.7 [REP2-009].

5.7.2. Having regard to those responses and to other evidence subsequently received in relation to some of the facilities mentioned, I am satisfied that none of these existing RFI provide a realistic alternative to the development of a new SRFI to meet the needs of the Black Country and South Staffordshire for the following reasons:

- In respect of DIRFT and East Midlands Parkway the sites are too remote from the Black Country and South Staffordshire to meet the identified need. Those facilities serve different markets and, in the case of East Midlands Parkway, are not located on a line with the minimal W8 gauge clearance advised in the NPSNN.
- The former Freightliner terminal in Dudley closed in 1986 and the railway line serving it has been removed. It is now earmarked for development as part of the Midland Metro tram scheme and is not available for SRFI use.
- There is no evidence of any existing or historic rail connected warehouses in Penkridge.
- Although there is potential for a SRFI in Stoke-on-Trent any such facility would meet the second priority need identified by the RSS Panel of serving the needs of the North Staffordshire Conurbation and not those of the Black Country and southern Staffordshire.
- As noted in RSS Panel Report, the IRFI at Hortonwood in Telford is too remote to serve the needs of the Black Country and southern Staffordshire. In addition, the orientation of the rail network means that journeys by rail from ports in the south and east would take longer than the equivalent road trips, and there are significant constraints to the railway line that serves it being upgraded to W8 loading gauge clearance.

### **ALTERNATIVE SITES ASSESSMENT**

#### **APPLICANT'S CASE**

5.7.3. The Applicant's Alternative Sites Assessment (ASA) [APP-255] was carried out in consultation with the relevant local authorities and the Search Area and methodology for the identification and assessment of site suitability was agreed with those local authorities. The Site Assessment Search Area adopted in the ASA has been informed by the requirements and objectives of the NPSNN, the requirement to meet the

identified need and to fill a gap in the network of existing and proposed SRFIs as well as local environmental, infrastructure and other constraints.

- 5.7.4. This process identified an Initial Search Area which was subsequently refined to take account of the need to avoid nationally protected areas such as AONB; and for the site to be within close proximity (5km) of a railway with a minimum of W8 gauge clearance and of a motorway junction or road of motorway standard. The Initial Search Area (Figure 5) included the administrative areas of the 4 Black Country local authorities, South Staffordshire and Cannock Chase Councils, most of the administrative area of Stafford Borough Council and the western half of that of Lichfield District Council. The rationale for excluding the rest of Lichfield and Tamworth District is set out at paragraph 4.1.7 of the ASA.
- 5.7.5. The refined Search Area, taking account of environmental constraints and proximity to rail corridors and motorway junctions is shown in Figure 10. The Site Assessment Criteria, described in Section 6 of the ASA, include factors such as the ability to access the rail network and the SRN, site size and orientation, relationship with other land uses, planning policy considerations; topography and availability (paragraph 6.1.3). Although not a primary search criterion, consideration was also given to the site's proximity to the centre of market demand in the Birmingham and Wolverhampton conurbation.
- 5.7.6. The initial search for possible sites confirmed the findings of earlier employment land studies that, because it is so densely developed, there are no vacant or allocated sites within the Black Country of the minimum 60 ha size threshold. This has also been confirmed in the emerging evidence base for the replacement BCCS. The initial search identified a long list of 8 possible sites which were assessed against the seven SRFI criteria listed at paragraph 6.1.3 of the ASA. Five of those were taken forward into the Short List of potential sites.
- 5.7.7. The 5 shortlisted sites were assessed in greater detail against the criteria listed in paragraph 8.5.1, with this process including both desk top assessment and site visits. The assessment set out in sections 8.6. to 8.10 of the ASA shows that each of the sites has been assessed in a detailed and consistent manner against the selected assessment criteria.
- 5.7.8. At paragraph 9.1.13 the ASA concludes that the WMI site performs significantly better than the potential alternatives and that none of the sites can be regarded as genuine alternatives. Hence, there are *"compelling reasons to conclude that the WMI proposal represents the only SRFI development option that can meet the identified need"*.

## **EXAMINATION**

- 5.7.9. In ExQ1.2.8 I asked the local authorities to advise me as to what level of consultation and engagement the Applicant had undertaken in the preparation of the ASA and the extent to which its findings were accepted and agreed. In ExQ1.2.9 the local authorities were asked to comment as to whether they were aware of any potential sites that had not been

considered in the ASA. In their response [REP2-009] the Applicant sets out full details as to their engagement with the relevant local authorities in the preparation of the ASA. Wolverhampton and Walsall Councils [REP2-032] confirmed that they had been consulted on the scope and methodology of the ASA and that they agreed its findings as to the absence of a suitable alternative site in the Black Country.

- 5.7.10. SCC [REP2-063] and SSDC [REP2-049] both referred to their respective SoCGs with the Applicant which were submitted at D2. In its SoCG [REP2-006], SSDC confirms its agreement that the ASA provides a fair and accurate assessment of site suitability (paragraph 9.9) and that it demonstrates that there is no other site that offers a viable alternative that better meets the locational criteria. In its SoCG [REP2-007], SCC confirms its agreement that the ASA provides an accurate and fair assessment of the availability and suitability of sites within the area of search. In its RR [RR-0993] Stafford Borough Council also confirms that it supports the conclusions of the ASA that there are no suitable sites within the Borough for a SRFI development.
- 5.7.11. The findings of the ASA have, therefore, been agreed by the host and neighbouring local authorities with none of these having suggested that there is a realistic alternative to meet the accepted need.
- 5.7.12. In ExQ1.2.10 I identified a number of other potential sites for a SRFI that have been referred to in RRs submitted to the Examination and asked that the Applicant should comment on these. Their detailed response is set out in Appendix 6 to their Response to FWQs [REP2-011]. Having reviewed that evidence I am satisfied that these potential alternatives can be ruled out for the following reasons:
- Rugby Sidings, Crewe Sidings and the redundant airfields at High Ercall and Gaydon are all located outside of the Search Area and would not, therefore, be suitable to meet the identified need;
  - Land within the vicinity of the M6 within Wolverhampton and Walsall districts was assessed in the early stages of the ASA and no sites of the minimum 60 ha requirement were identified. This has been confirmed by Wolverhampton and Walsall Councils in their response to ExQ1.2.8 [REP2-032].
- 5.7.13. A number of IPs have made reference to land at Bescot Yard as being a suitable alternative site. This was raised in particular by Christopher Walton [REP2-177] who argued that the WMCA Freight Strategy 2016 and the Black Country Gateway and Walsall-Stourbridge Freight Line Study 2012 indicate support for this site as being suitable to meet the need for rail freight facilities to serve the West Midlands. This assertion was tested in ExQ2.2.16 with responses having been received from the Applicant [REP5-003], Wolverhampton and Walsall Councils [REP5-044] and NR [REP5-058].
- 5.7.14. In their response, Wolverhampton and Walsall Councils explain that the WMCA Freight Strategy made a clear distinction between SRFIs and small Intermodal Rail Freight Interchanges (IRFI). Although Bescot was identified as the most suitable of the sites under consideration for

development as an IRFI it was concluded to have significant constraints, to be of limited size and not to be of a suitable shape for warehousing development. The Applicant's response to ExQ2.2.16 confirms that the Bescot Site was considered in the ASA and found to be too small for a SRFI. NR's response confirms that the site is considered unsuitable for a SRFI and is likely to be developed as a sleeper manufacturing facility. NR also confirmed that neither of the other 2 sites considered in the Black Country Gateway and Walsall-Stourbridge Freight Line Study 2012 was found to be suitable for development as a rail freight interchange

- 5.7.15. The most significant challenge to the ASA has been made by Stop WMI who have taken issue with its methodology and findings in their Wrong Location Report [REP2-167], D4 Submissions [REP4-033] D6 Submissions [REP6-028 & 029], Response to D6 Submissions [REP7-040] and D8 submissions [REP8-063 & 064]. These matters have been responded to by the Applicant in their Responses to SWQs [REP5-003], and Responses to Submissions made by Other Parties at D2 [REP3-007] and D4 [REP5-006] and can be dealt with under the following headings.

#### **Traffic Levels on the M6**

- 5.7.16. In its Wrong Location Report [REP2-167], Stop WMI states that, in the WM Regional Logistics Study, HE advised against locating a SRFI within the busiest parts of the SRN and Stop WMI asserts that the M6 at Gailey is an unsuitable location for this reason. In response to ExQ2.2.11, HE [REP5-046] states that that Study (updated as part of the WM RSS Phase 2 Review in 2009) predates the current policy guidance for HE to deal with development plan making and responding to planning applications in DfT Circular 02/2013 and the recent significant investment in the SRN including converting sections of the M6 into a Smart Motorway. HE is now under a statutory duty to support economic growth and this would include examination in that context of any new SRFI proposals.
- 5.7.17. HE's response also includes a link to correspondence which HE submitted in relation to the Regional Logistics Study and the Black Country and Southern Staffordshire Regional Logistics Study of 2013 in which HE states that, although it supports RLS/SRFI proposals in principle any application would need to be assessed through the normal development control or consenting process. I am satisfied that this is what has been done by HE in their assessment of the WMI application and that this is the correct approach for HE to have taken. Given the need for SRFI development to have good access to the motorway network and SRN there would have been no good reason to exclude sections of the M6 from the Search Area when assessing potential alternative sites.

#### **Agricultural Land Quality**

- 5.7.18. At paragraph 2.3.3 of their Agriculture and Farming Impact Report [REP2-165], Stop WMI is critical of the ASA because they can find no evidence that agricultural land quality has been taken into account in comparing the suitability of potential sites. They point to the NPSNN references to agricultural land quality in support of those concerns.

- 5.7.19. The NPSNN policies with regard to the loss of Best and Most Versatile (BMV) agricultural land are considered more fully in my assessment of the effects on agricultural and soils in section 6 of this report. In responding to Stop WMI [REP3-007], the Applicant accepts that the loss of BMV land is an important consideration but the Applicant believes that it is not of such importance as to be a reason for excluding a site from the list of potential alternatives. It is likely to be one of a number of factors that should properly be taken into account in comparing the merits of potential alternatives but should not, for example, take precedence over the key requirements of achieving a viable rail connection and accessibility to the SRN.
- 5.7.20. Although the nature of agricultural use is taken into account in the detailed assessment of the shortlisted sites, the Applicant accepts that the potential quality of that land was not identified as a specific criterion. Whilst this might be considered to be a potential omission, I note that the assessment criteria were discussed and agreed with the relevant local authorities and that none of these consultees appear to have suggested that this should be included in those criteria.
- 5.7.21. Table 2 of the Agricultural Land Classification (ALC) report [APP-066] shows that 71.1% of the land within the application site is in agricultural use. Just over 58% of the total site area comprises BMV land. There is no Grade 1 land and the majority (41% of the total site area) is classified as Subgrade 3a. There is no equivalent detailed assessment of the other 4 potential sites but one of these (Rugeley Power Station) does not include any agricultural land.
- 5.7.22. In response to ExQ2.5.1 [REP5-003], the Applicant has provided some information which has been sourced from [magic.defra.gov.uk](http://magic.defra.gov.uk) and NE mapping. This suggests that the sites at Dunston and ROF Featherstone have a high (>60%) to medium (20-60%) chance of comprising BMV land and that the site at Cresswell has a medium chance of comprising such land. This would suggest that the proportion of BMV land within those sites might be similar to that within the WMI site although, given the varying site sizes, the area of BMV land that might be lost to development may not be directly comparable. However, the figures from the Department for the Environment, Food and Rural Affairs (Defra) and NE can only provide a broad indication of the likelihood of there being BMV land and it would not, in my view, be reasonable to expect the Applicant to have undertaken a detailed ALC assessment of all of the potential alternative sites.
- 5.7.23. Hence, while I agree that this matter could have been dealt with more clearly in the ASA, I do not consider that the differences in land quality are likely to be determinative in the overall comparison of the candidate sites. Other factors are likely to be of greater significance.

### **Green Belt Designation**

- 5.7.24. In their Planning Report [REP2-158], Stop WMI argue that Green Belt consideration should have featured as a key criterion of the site assessment process, with non-Green Belt sites being treated more

favourably in the ASA. The Applicant's reply to those concerns is set out in their Responses to ExQ2.2.19 [REP5-003].

- 5.7.25. The NPSNN states a strong presumption against the building of SRFIs in the nationally designated locations of National Parks, the Broads and AONB unless it can be shown that there are "*compelling reasons*" for the new capacity and that "*any benefits outweigh the costs significantly*" (paragraph 5.152). Given that strong presumption it is appropriate that the ASA excluded such areas when refining the Initial Search Area. The NPSNN does not afford the same level of significance to the Green Belt.
- 5.7.26. The NPSNN restates the presumption against inappropriate development in the Green Belt (paragraph 5.170) but that is not stated as a "*strong presumption*." Also, the very special circumstances needed to justify such development do not require either that there are "*compelling reasons*" for the proposed new capacity or that the benefits should "*significantly*" outweigh the costs. The relevant test (paragraph 5.178) and NPPF (paragraph 144) is that the potential harm is "*clearly outweighed by other considerations*".
- 5.7.27. In addition to this difference in the test against which any proposal is to be assessed, the NPSNN also recognises that, because of their particular locational requirements, SRFI may need to be located within the Green Belt (paragraph 5.172). There is no equivalent acknowledgement in relation to the possible need for development of SRFIs in National Parks or AONB.
- 5.7.28. Having regard to that evidence, I consider that there are a number of matters to be taken into account when comparing the relative suitability of potential alternative sites. The potential harm to the Green Belt should rightly be considered but it is neither necessary nor appropriate to treat Green Belt designation as a criterion which would lead to a site being excluded for that reason alone. The ASA has taken account of the extent of the Green Belt in its detailed assessment of the shortlisted sites and I consider it to be sufficient in its consideration of these matters.

### **Alternative Sites**

- 5.7.29. At page 14 of its Planning Report [REP2-158] Stop WMI states that the Group does not provide any support for the ROF Featherstone or Dunston sites, but the report does set out some of what the Group considers to be the potential advantages of those alternative sites. Those comments have subsequently been added to, in particular in their D6 and D8 submissions [REP6-028], [REP6-029] & [REP8-063] and the Group has confirmed that it does now favour the ROF Featherstone Site as a preferable alternative to the proposed WMI site. Some IPs, including Mr Clark [REP2-088] and Janis Bradshaw [REP6-032], have suggested that the Dunston site provides a realistic alternative. The Applicant has responded to representations in favour of these potential alternatives in their Responses to ExQ1.2.11 [REP2-009] and ExQ2.2.19 [REP5-003].
- 5.7.30. My conclusions as to the suitability of the other 4 shortlisted sites are set out below.

## **Rugeley Power Station**

- 5.7.31. Although mostly comprising the brown field site of the former power station the 150ha potential site also includes a golf course. A Supplementary Planning Document, jointly prepared by Lichfield and Cannock Chase Councils in 2018, proposes that the site should be redeveloped principally for residential use and assesses its capacity as being for a minimum of 800 dwellings. Although it does not have a development plan allocation as yet, the site's development for a SRFI would most likely require both Councils to find additional land to replace that assumed contribution to their housing land supply.
- 5.7.32. The site has an existing rail access, but this has operational constraints in terms of access for trains of W8 gauge which may be difficult to overcome. The site has an access from the A51 and, therefore, meets the minimum criterion of being within 5km of a Class A road or motorway junction. However, it is not well connected to the SRN, being some 14km from the nearest junctions with the A5 and M6 Toll and still further from those on the M6 and A38. All of the direct routes to the SRN pass through large residential areas and along roads with a large number of direct residential accesses that would be unsuitable as principal routes to and from the SRFI. Together with the distances involved and the likely challenges in securing a satisfactory rail connection, these constraints mean that the site is not a viable alternative location for the proposal.

## **Cresswell**

- 5.7.33. The 280 ha site could accommodate main line access from either direction but the new connection may require grade separation to enable trains to access and leave the slow tracks on either side of the 4-track section of the main line. The site is immediately north of Junction 14 of the M6 and access to and from that junction would be possible via the single carriageway A5013, although there would be some impact to residential properties on the access route. The fall of around 35m across the site would be a significant constraint, resulting in a need for extensive earthworks to be undertaken to create the necessary development platforms for the rail terminal and large warehouses.
- 5.7.34. The River Sow cuts through the potential site and the site's location within the floodplain represents a significant constraint, with a risk of groundwater flooding across approximately half of the site. Bridging over the river corridor to connect the two parts of the site would present a technical challenge as this would need to be done without increasing the risk of flooding. In addition, the need to raise development platforms out of the areas of flood risk would be likely to significantly increase the impact of large-scale warehousing development both in visual terms and on the open and distinctive rural landscape within and to the north, west and south of the site.
- 5.7.35. The desktop studies show a number of heritage and archaeological assets within or close to the site's boundaries. In addition, the site lies within 50m of the Doxey and Tillington Marshes SSSI which the ES has identified as being of year-round ornithological significance and including

habitats of particular importance for breeding and over-wintering birds<sup>43</sup>. The ASA's assessment of these potential constraints as high to medium (archaeology and cultural heritage) and high (ecology) is, therefore reasonable. Taken together with those outlined above, these significant constraints render the site unsuitable as a viable alternative site for a SRFI.

## **Dunston**

- 5.7.36. The potential 225 ha site at Dunston has a frontage of over 2km to the WCML Loop and could, in principle, accommodate main line access from either direction. The site topography could give rise to significant difficulty in establishing an efficient operational connection between new sidings and the rest of the site, but this does not appear to be an insurmountable constraint. The site is within 2km of M6 Junction 13 and it would be possible to provide a satisfactory access to the A449 north to connect with that junction, although there would be an impact on a number of residential properties along the possible route. Unlike the application site, the land at Dunston is almost all in agricultural use with large areas of arable as well as pasture land. Its development for an SRFI would, therefore, result in a substantial loss of agricultural land including, potentially, a significant area of BMV land.
- 5.7.37. The development would be likely to result in adverse amenity effects on nearby residential properties and settlements, but I do not consider that these would be such that appropriate mitigation could not be provided. There would, however, be significant challenges in terms of the likely need to culvert the watercourse and in addressing flooding issues in order to achieve a satisfactory rail terminal connection and development platforms. The site is in multiple ownerships and has not previously been promoted for development. An extensive land assembly process would, therefore, be required.
- 5.7.38. Although not in the Green Belt the site is subject to development plan policies which provide a significant level of protection to the open countryside, including for its landscape value, and which impose strict limits on what can be built. The site lies wholly within South Staffordshire District and it is notable that SSDC has not expressed any support for the site's development as a SRFI at any stage of the Examination. SSDC has also agreed the ASA's finding that no viable alternative to the Four Ashes site is available.
- 5.7.39. The site is relatively low lying with gently rising ground to the west and beyond the motorway to the east. The WCML Loop forms the eastern boundary but is mostly in cutting along this section. As can be seen in the aerial photograph at Figure 19 of the ASA, the site has a strongly rural setting and is comprised of arable and pasture farmland with field boundaries defined by hedges with isolated trees along those boundaries. My observations on my site inspections support the Applicant's conclusion that the site forms part of an open and visually cohesive

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<sup>43</sup> Paragraph 10.98 of ES Chapter 10 [APP-030]

landscape which connects with open farmland to the west, north and south west. Apart from a few isolated farm buildings there are no large or tall buildings or structures within or in close proximity to the site boundary and the landscape has a largely unspoiled, rural character.

- 5.7.40. From public vantage points on School Lane and Long Lane (close to the western edge of the site) passing traffic on the M6 can be seen in the middle distance but these views also encompass the open land beyond the motorway which rises towards the Cannock Chase AONB. The intervening landscape across the site and its immediate environs is of a distinctly rural character, with only a few farm buildings dotted across the open landscape. Views from School Lane to the south are across open and mainly flat pasture, with only small woodland blocks and groups of trees and an intermittent line of trees along the rail corridor. Views from Chase View Lane, a narrow, winding lane forming the eastern boundary of the potential site, are for the most part restricted by tall hedges. The few views available through field gates and other gaps in the hedges are all of a strongly rural character.
- 5.7.41. Having regard to the open character of the landscape and absence of larger tree groups, I agree that it would be very difficult to assimilate a SRFI development within the landscape or to provide effective mitigation of its likely significant adverse landscape effects. That difficulty is compounded by the open views into the site available from nearby settlements and public rights of way and from elevated land to the north and east. The development would be likely to be visible from the AONB, from where it would be seen as a significant intrusion into an otherwise open landscape. Although I note the evidence of many IPs about the landscape and visual impacts of the WMI scheme, I consider that the Dunston site sits within a more sensitive landscape and that it would be very difficult to provide any effective screening or mitigation of the landscape and visual impacts of a SRFI development in this location.
- 5.7.42. In combination with the other potential difficulties identified above, these significant landscape constraints do, in my view, render the Dunston site less suitable than the application site to meet the identified development need, notwithstanding its location outside of the Green Belt.

### **ROF Featherstone**

- 5.7.43. Although centred on the brownfield, former Royal Ordnance site the majority of the potential 120 ha site lies in the Green Belt. The site lies just to the north of the M54 corridor which helps to define the northern edge of the Wolverhampton conurbation. The site does, therefore, have potential advantages in terms of its proximity to part of the market area that the proposed SRFI would serve and to a large population centre from which potential employees might be drawn.
- 5.7.44. The former ROF site (24 ha) is allocated for employment use under the SSCS and the SSSAD has removed a further 12 ha of land from the Green Belt to provide an additional employment allocation to help meet the shortfall of employment land within the current BCCS plan period (to 2026). The CS allocation is for Class B1 and B2 (industrial) and B8

(warehousing and distribution) uses. However, the ROF Featherstone Viability and Delivery Options Study, commissioned by the Council in 2014, recommended that B8 should not be a preferred use unless a major access solution can be secured because of the close proximity of the existing accesses to sensitive receptors. If access has been recognised as so significant constraint for a mixed employment site of some 36 ha then it would be very much more challenging for a B8 development of a site many times larger. Two options for securing a much-improved connection with Junction 2 of the M54 have been considered.

- 5.7.45. The option of a new link road over the A449 and the WCML would require the acquisition of a substantial area of additional land outside of the provisional development site boundary. This would be likely to be prohibitive in cost terms and in terms of its impact on the developable area of the site. The construction of a new road to the south of the motorway is possible but, given the length of road required, is also likely to involve substantial cost. This would also require the acquisition of an extensive area of land outside of the notional development site boundary. The likely need for the road to pass through National Trust land would represent a significant obstacle to the possible use of CA powers to complete that land assembly process. In my view those obstacles would significantly increase the development risk.
- 5.7.46. The site is split by the WCML but there is insufficient space along the site frontage to the railway to accommodate a full length (775m) terminal with direct mainline access as can be achieved at the application site. The alternative solutions would require additional land acquisition and major engineering works including reconfiguration of nearby roads and demolition of properties along Dark Lane or would result in a substandard layout with an excessive railway curve which would be likely to give rise to significant noise impacts.
- 5.7.47. In view of the proximity of residential properties and the adjacent prison complex, this could result in a significant adverse impact on those receptors. Those nearby receptors would also be susceptible to noise and visual impacts from other elements of a SRFI development. The presence of a National Trail through the centre of the site could also present difficulties given the requirements of s136 of the PA 2008 with regard to the protection of PROW.
- 5.7.48. The close proximity of the prison and residential receptors in Featherstone and Coven Heath would require substantial mounding to the site perimeter to provide visual and noise screening. The need for this mounding would significantly reduce the developable area of the site on what is a much more constrained site than the application site. I agree that this would also reduce the developer's ability to achieve an efficient and effective SRFI layout.
- 5.7.49. The site has potential locational benefits in terms of its closer proximity to the population and business centre within Wolverhampton. However, in my judgement, there are very significant constraints with regard to

providing both rail and highway access of the standard required for the development of a viable SRFI. The likely constraints of achieving an optimal rail layout would also militate against the successful operation of a 24-hour rail terminal on the site. The development of the site for a SRFI would not be consistent with the development plan allocation and would likely result in the need for the Councils to identify additional land allocations to meet the mixed employment needs to which the ROF site is intended to contribute. Given the pressure on Green Belt land within the area this is likely to be difficult.

- 5.7.50. For these reasons I find that the ROF Featherstone site would not provide a realistic alternative to the application site and that any SRFI that might potentially be developed would be likely to be materially compromised in terms of its size and layout. This would make such a facility significantly less able to meet the identified need.

## **CONCLUSION ON ALTERNATIVES**

- 5.7.51. Having regard to the findings set out above I conclude that there are no viable alternative rail freight facilities or sites which could meet the identified requirement for a SRFI to serve the needs of the Black Country and southern Staffordshire.

## **5.8. MINERAL RESOURCES**

### **EXAMINATION**

- 5.8.1. A small number of RRs (for example, Staffordshire Sand & Gravel Company and Salop Sand & Gravel Company [RR-0907], Acumix Concrete [RR-0999] and R&J Aggregates Ltd [RR-1027] have expressed concern about the potential loss of the mineral resources within the site. SCC as the Mineral Planning Authority (MPA) for Staffordshire stated in its LIR [REP2-062] that the Proposed Development would affect minerals allocations and a safeguarding area and impact on the planned provision for sand and gravel in Staffordshire. SCC also set out the Council's views on this matter in its D2 Written Representation [REP2-060], Response to ExQ2.1.1 [REP5-053] and Addendum to the SoCG with the Applicant [REP8-017]. The Applicant's evidence with regard to the potential loss of mineral resources within the site is set out in Section 7.2 of the Planning Statement [APP-252], the Mineral Resource Statement (MRS) [REPR-011] and response to ExQ2.1.1 [REP5-003].
- 5.8.2. ExQ.1.1.3 sought SCC's views as to whether or not the Proposed Development complies with the MLP. Their response [REP2-063] was that the proposals are contrary to the MLP in that insufficient evidence has been submitted to demonstrate the existence, quantity, quality and value of the underlying or adjacent mineral resource. SCC considered that this evidence (in the form of a minerals safeguarding statement) is necessary to make an assessment as to whether the material planning benefits of the non-mineral development would outweigh the material planning benefits of the underlying or adjacent mineral.

- 5.8.3. That further evidence, in the form of the Applicants' MRS was submitted at D4. Following its review of that information, SCC has agreed, in section 5 of the Addendum to its SoCG with the Applicant [REP8-017], that this provides a fair assessment of the existence, quantity, quality and value of the underlying mineral resource (paragraph 5.1). Figure 3 of the MRS identifies the 2 areas within the site which are allocated in the MLP for sand and gravel extraction and the plan at Appendix 1 shows that the MLP Safeguarding Area for sand and gravel includes a large portion of the application site.
- 5.8.4. The MRS explains the Applicant's expectation is that the winnable sand and gravel resource within the consented area of Calf Heath Quarry will be worked out by the Spring of 2020 and there would, therefore, be no loss of that resource. This is supported by SCC's Response to ExQ1.1.3 which states the Council's understanding that the permitted reserves would be fully recovered by the end of 2019. The site development would, however, result in the loss of the existing minerals infrastructure on the site and prevent the recovery for commercial use of the remaining resource within the allocated and safeguarded areas.
- 5.8.5. The detailed assessment undertaken in producing the MRS indicates that the workable resource within the two allocated areas is just under 1M tonnes, rather than the 0.75M tonnes estimated in the MLP and that there are 2.73M tonnes of usable sand and gravel within the rest of the site. All of this is considered to be of good quality for aggregate and construction use. However, the combined (3.715M tonnes) resource represents only a very small proportion (2.7%) of the total MLP allocation for sand and gravel in the period to 2030. SCC [REP2-063] confirms that any shortfall in annual production is likely to be made up by other quarries within the area.

## **CONCLUSIONS**

- 5.8.6. The extent and quality of the combined resource within the allocated and safeguarded area together can, in my judgement, be concluded to be an important mineral resource for the purposes of MLP Policy 3. However, in view of the small contribution which the allocated sites would make to the current MLP provision and the availability of alternative sources to make up any shortfall, there would be minimal harm resulting from the loss of the mineral reserve. I agree with the Applicant's conclusion that the material benefits of the Proposed Development, in terms of satisfying a long-standing need for SRFI in the sub region and fulfilling the objectives of national planning policy with regard to achieving modal shift, supporting a sustainable logistics sector and providing economic benefits, would outweigh the material planning benefits of the underlying mineral. The tests set out in Policy 3.3 (b) and 3.5 (b) are, therefore, met and there would be no conflict with the MLP.
- 5.8.7. In relation to this matter it is also important to note that the planned earthworks and construction of the Proposed Development would seek to maximise the effective and sustainable use of the sand and gravel resource within the site as far as this can practicably be achieved. The

MRS details the requirement for suitable fill material in the area of the existing quarry to establish stable development platforms which could use approximately 43% of the sand and gravel reserve within the two allocated areas. Overall, it is estimated that partial working of the allocated area (to achieve the required development platform levels in those areas) could provide up to 51% of the aggregate needs demand for the development and 0.32M tonnes of building grade sand that could be used in the on-site construction.

- 5.8.8. Requirement 14 of the Recommended DCO stipulates that no phase of the Authorised Development may be commence until details have been submitted and approved of the use within the construction works of any sand and gravel disturbed in the construction of that phase. I consider that this Requirement would ensure an effective use of a significant part of the mineral resource and achieve considerable environmental benefits in reducing the volume of materials that would need to be imported during the construction works. This would help to offset any harm that might result from the loss of the mineral reserve.

## **5.9. PUBLIC RIGHTS OF WAY**

- 5.9.1. As part of the Proposed Development the existing Public Footpath (PENK 29) would formally be stopped up to the extent shown with a dashed red line on Sheet 1 of Access and Rights of Way Plans [REP8-027]. No substitute Public Footpath would be provided in its place. At ISH2 I requested that the Applicant should provide a specific justification as to why no substitute path is considered necessary. That justification is set out in paragraphs 6.38 of the revised Explanatory Memorandum [REP8-007].
- 5.9.2. This justification is that no substitute is required because PENK29 does not connect with other footpaths and is effectively a cul-de-sac terminating in the area which is to comprise the Croft Lane Community Park. The provision of permissive footpaths throughout the Community Parks, which, combined with a new public footpath linking the onsite road infrastructure and the canal towpath, will provide extensive accessibility to and throughout the site. This is further explained in the Applicant's response to ExQ2.13.7 (Document 15.1) submitted at Deadline 5.
- 5.9.3. Having considered that justification and the submissions on this matter made by Stop WMI [REP2-164] and other IPs [REP4-039, REP4-044 & REP4-055], I am satisfied that this section of PENK29 does not connect with other PROW and that walkers using it are already required to use other informal routes and footways within the highway to continue their journey to Croft Lane and the canal towpath. This was my own experience when I inspected the path on my USI. At the time of my visit in February 2019, there was little evidence that this section of the PROW is well used.
- 5.9.4. I accept that some local people use this as part of a circular walk [REP2-164] but am satisfied that users would be able to continue to undertake such circular walks by making use of the permissive paths through the

proposed Croft Lane Community Park and the footways to be provided as part of the new road infrastructure. The Applicant has provided a plan at Appendix 14 to their response to ExQ2.13.7 [REP5-005] that shows 3 alternative circular walks that could be taken around the local area following completion of the development providing medium and longer distance options for walkers.

- 5.9.5. The experience of users of those routes would be different for a part of their circular or Figure of 8 walk because of the introduction of a large-scale commercial development within this part of the application site. Overall, there would be increased accessibility to and through the site than there currently is. The proposals include the creation of a new PROW<sup>44</sup> for pedestrians and cycles which would provide a direct connection between the new Link Road and the canal towpath. This would improve access to the canal at this point. Together with this new PROW, the creation of the Community Parks and the Canal Enhancement Scheme (see section 6.3 of this report) would be likely to offset the negative aspects of that change in experience. I do not consider that local people would cease to undertake such journeys.
- 5.9.6. I note the evidence from Mr Brunton [AS0-086 & REP7-058], Terry Rhodes [REP4-055] and Debbie Gibson [REP4-054] that PENK29 has been used as part of a long-distance route (Cross Britain Way) that Mr Brunton devised as a suggested route for charity walks to raise funds for McMillan Cancer Support. This route is noted on the Charity's website and is marked on the Landranger Maps for the area. However, that route is not one of the National Trails listed on the National Trails website which are administered by NE. Users of that route are already dependent upon informal routes to walk from the end of PENK29 to Croft Lane and on roadside footways to reach the canal towpath. Alternative links would be provided as set out in the Applicant's response to Mr Brunton's concerns [REP6-011]. I do not consider that users would be greatly inconvenienced or discouraged from completing the Cross Britain Way for fundraising purposes as a result of the Proposed Development.
- 5.9.7. As explained in paragraph 2.2.5 above, an application has been received by SCC for another claimed PROW, which runs west-east through the site broadly following the line of Gravelly Way, to be added to the Definitive Map of PROW. SCC has provisionally resolved that this should be added to the map but, at the close of the Examination, the formal consultation process had not been completed and no final decision had been taken. I have seen no evidence of use of this claimed PROW but, at the ASI, the route could not be distinguished from the existing Gravelly Way which is an adopted public highway for most of its length. The Recommended DCO has been amended to provide that, if this claimed route is confirmed as a PROW, the Order would authorise its stopping up to facilitate the Proposed Development with no substitute PROW being provided (see paragraph 6.40 of the Explanatory Memorandum).

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<sup>44</sup> See Article 13 and Part 2 of Schedule 5 to the draft Order and Sheet 3 inset of the Access and Rights of Way Plans [REP5-015]

- 5.9.8. I am satisfied that the retention of the claimed PROW would be incompatible with the WMI scheme proposals and that it could not be retained as part of the Proposed Development. The proposals would, however, compensate for any loss of that route through the provision of the footpaths and cycleways to be provided as part of the A5/A449 Link Road and elsewhere within the site and the permissive paths that are proposed.
- 5.9.9. I am satisfied that the loss of these 2 PROW would adequately be mitigated for by the provision of alternative footways and cycleways alongside those new roads which are to be adopted and the creation of permissive paths alongside the privately maintained estate roads and within the proposed GI, the improved access to the canal via a new PROW and the canal enhancement works. The status of those proposed routes as 'permissive' paths might give rise to concerns as to their permanence. However, such concerns are removed by Requirement 22 of the Recommended DCO which specifies that the permissive paths must be implemented and maintained during the operation of the development.
- 5.9.10. Section 136 of PA 2008 provides that an Order granting development consent may extinguish a PROW if the SoS is satisfied either (a) that an alternative PROW will be provided, or (b) the provision of an alternative is not required. I find that the test set out in sub-paragraph (b) of s136 is satisfied in respect of the Proposed Development and recommend that the SoS is able to make the Order on this basis.

## **6. ENVIRONMENTAL AND OTHER EFFECTS**

### **6.1. SCOPE OF ENVIRONMENTAL ASSESSMENT**

6.1.1. The ES was prepared in accordance with the Scoping Opinion [APP-058] issued in October 2016 and is accompanied by a Non-Technical Summary [APP-016] that sets out a summary of what has been assessed and the general conclusions reached. The main part of the ES has 18 Chapters (including two that were updated or revised during the examination) as follows:

Chapter 1	Introduction [APP-017]
Chapter 2	EIA Process and Methodology [APP-018]
Chapter 3	Alternatives and Design Evolution [APP-019]
Chapter 4	Description of the Proposed Development [APP-020]
Chapter 5	Construction and Demolition [APP-025]
Chapter 6	Agriculture and Soils [APP-026]
Chapter 7	Air Quality [REP-027]
Chapter 8	Archaeology (Below Ground Heritage) [APP-028]
Chapter 9	Cultural Heritage (Built Heritage) [APP-029]
Chapter 10	Ecology and Nature Conservation [APP-030]
Chapter 11	Ground Conditions [APP-031]
Chapter 12	Landscape and Visual [APP-032]
Chapter 13	Noise and Vibration [APP-046 & REP2-014]
Chapter 14	Socio-Economics and Human Health [APP-052]
Chapter 15	Transport and Access [APP-053]
Chapter 16	Water Environment and Flood Risk [APP-055]
Chapter 17	Cumulative Effects [APP-056]
Chapter 18	Summary of Residual Effects [APP-057].

Each chapter is supported by various figures and appendices which have their own document references in the Examination Library.

6.1.2. Rather than dealing with the chapters in the order in which they appear in the ES I have considered subject areas generally in the order of their importance to the issues raised during the Examination.

6.1.3. All the main chapters include an assessment of cumulative effects of the Proposed Development with other known committed developments, including the completion of development on the Bericote Site and of the effects of decommissioning of the completed development at some future date. I have not dealt with these in the following sections of the report unless additional significant impacts have been identified in the relevant ES chapters.

### **6.2. TRANSPORT AND ACCESS**

#### **BACKGROUND AND APPLICANT'S PROPOSALS**

6.2.1. The NPSNN notes that the development of national networks can impact on the surrounding transport network and that the consideration and mitigation of such impacts is an essential part of the Government's wider policy objectives for sustainable development (paragraph 5.202). With

specific reference to SRFI proposals (paragraph 5.213) the SoS should ensure that the applicant has taken reasonable steps to mitigate any impacts on the highway network. Development consent should not be withheld if the proposed mitigation is sufficient to mitigate any potential impacts to acceptable levels (paragraph 5.214).

- 6.2.2. Concerns about the impacts of the Proposed Development on the highway network feature in a large number of the RRs and other representations received during the Examination. Many IPs contend that the M6 and other roads around the site suffer from severe congestion and are not capable of absorbing the additional traffic likely to be generated by the development. There are particular concerns about congestion on the A449 and other roads when traffic is diverted off of the M6, at times of planned closure for road works or following an incident, and about the use of minor roads through the local settlements by large volumes of traffic and HGVs.

### **SITE ACCESS PROPOSALS**

- 6.2.3. The proposals include the construction of new roads and improvements to existing roads as shown on the Highway General Arrangements Drawings<sup>45</sup> and are described in Transport Assessment (TA) which forms Appendix 15.1 [APP-114] to ES Chapter 15 [APP-053]. The key elements of this provision comprise the following new infrastructure:

- Access roundabout on the A5;
- access roundabout on the A449;
- access roundabout on Vicarage Road;
- A5/A440 Link Road, between the new roundabouts on the A5 and A449;
- road bridges over the canal and the WCML Loop to carry the A5/A449 Link Road;
- road through the site (Vicarage Road Link) connecting the A5/A449 Link Road with the new Vicarage Road roundabout;
- 3-arm roundabout junction within the site to form the junction between the A5/A449 Link Road and the Vicarage Road Link;

- 6.2.4. Other works to the highway network would facilitate access to the Proposed Development and mitigate potential adverse effects. A full list of these is given in paragraph 4.2.3 of the TA.

- 6.2.5. The new roundabout junctions would form the principal access points, with the Link Road and network of estate roads providing connections between them. The new roundabouts and the A5/A449 Link Road would be adopted as public highway on completion. All other internal estate roads would be retained as private roads to be managed by an Estate Management Company.

- 6.2.6. The scheme would provide alternative access to the businesses that currently gain access from Gravelly Way and a new route into the SI

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<sup>45</sup> Many of the original plans have been revised during the course of the examination – see paragraph 2.2.21 for a list of the relevant drawings.

Group site would be provided. The Protective Provisions in Schedule 13 of the Recommended DCO require detailed proposals for these alterations to be agreed before work commences and that access to these premises is maintained at all times during the construction programme. Alterations to some existing accesses to dwellings fronting the A5 are also proposed.

- 6.2.7. Pedestrian and cycle access would be available via dedicated footways and cycleways at the principal access points and at a number of other places around the site boundary.

### **SITE WIDE TRAVEL PLAN**

- 6.2.8. The four main objectives of the SWTP [AS-039] are:

- Improving sustainable transport services and facilities;
- Promotion and marketing of non-car modes of travel;
- Promoting more efficient car use; and
- Introducing smarter ways of working.

- 6.2.9. A SWTP Co-ordinator, who under the terms of the DCOb would need to be appointed before first occupation of the Rail Terminal or any warehouse unit, would have overall responsibility for co-ordination and delivery of the SWTP. Every occupier with 50 or more employees would be required to prepare and implement an Occupier Travel Plan which would need to be approved in writing by SCC in consultation with HE.

- 6.2.10. The SWTP proposals include personalised travel planning for new employees and measures to encourage the use of public transport. Secure cycle parking and cycle-to-work schemes would encourage cycle use. Flexible working hours and home working for some employees would reduce the number of journeys at peak times. Other measures include a site-wide car sharing portal and the provision of directional information to encourage drivers to use signed routes and avoid local roads through settlements. Electric vehicle charging points would be provided within the development under Requirement 3.

- 6.2.11. The SWTP includes specific targets (Section 9) for achieving modal shift in travel to work journeys. The SWTP Co-ordinator would monitor and report on the success of the measures to a Transport Steering Group (TSG), comprising representatives of the developer, HE, SCC, SSDC and Wolverhampton Council. An Annual Progress Review against the identified targets would be required.

- 6.2.12. The TSG could agree changes to the SWTP and Occupier Travel Plans to ensure that targets are met and would keep those targets under review. A Travel Plan Delivery Group, comprising the SWTP Co-ordinator and occupier representatives, would be established to monitor the effectiveness of the Travel Plans and act as an advisory panel to the TSG. The DCOb includes a requirement for the developer to make payments into a Contingent Traffic Management Fund as the development is progressed. This fund would be available to the TSG and the highway authority to mitigate any unforeseen traffic effects once the development is operational.

## **SUSTAINABLE TRANSPORT STRATEGY**

- 6.2.13. In tandem with the SWTP, the Sustainable Transport Strategy aims to promote a range of suitable, low carbon travel choices and reduce the need to commute by car. This is an important consideration because a significant proportion of WMI employees would need to travel from outside of South Staffordshire.

### **Public Transport**

- 6.2.14. Existing bus services from Wolverhampton to Stafford use the A449 and stop at Gravelly Way close to the site. Service Nos 54 and 54A provide an hourly service in each direction with buses calling at Gravelly Way between the hours of 0559 and 1934 Monday to Friday.<sup>46</sup> The nearest railway station is at Penkridge. This provides access to regular services between Wolverhampton and Stafford and to other regional and national destinations. The railway stations and the route taken by the 54 and 54A bus services are identified on Figure 2 of the SWTP.
- 6.2.15. The Applicant proposes to increase the frequency of the 54 and 54A bus services through the provision of an additional half-hourly service. This would call at relocated and improved bus stops on the A449 and be routed through the site, calling at bus stops on the A5/A449 Link Road and the Vicarage Road Link. It is also proposed to extend bus service hours to provide early morning and late evening services to fit in with the 0600 and 2200 hours shift patterns that many site occupiers are expected to operate.
- 6.2.16. The DCOB requires the Applicant to provide a Bus Service Contribution of £1.09M for improvement of the 54 and 54A services. In response to my questions at ISH3, further information was provided about the calculations used to generate the total sum of that contribution and the period over which it would be available. The Bus Subsidy Calculations, at Appendix 4 to the Applicant's D4 Submissions [REP4-004], have been agreed with SCC as the local Public Transport Authority. The calculations assume a gradual build out of development and a gradual increase in employee numbers over a 15-year period and indicate that the improved 54 and 54A services would become financially self-sustaining by 2029.
- 6.2.17. That outcome cannot be guaranteed, but usage of the services and their viability would be kept under review. In the event that the SWTP is not achieving its public transport targets the TSG would be able to agree additional measures to secure those outcomes and make use of the Travel Plan Contingency Fund if additional subsidy were to be required.
- 6.2.18. The DCOB also provides for a Shuttle Bus Fund of £1.6M to procure shuttle bus services for employees without easy access from their home address to the 54 and 54A bus routes. Figure 3 of the SWTP indicates that three shuttle bus services might be provided to and from the urban areas of Wolverhampton, Walsall and Cannock. The Applicant's response

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<sup>46</sup> Full details of the existing schedules for Monday to Friday and Saturdays are set out at page 5 of the Applicant's Post Hearing submissions in REP4-003.

to ExQ1.4.1 [REP2-009] explains that areas likely to be served by shuttle buses would be those that have been identified as the key urban areas from which 32% of WMI employees are forecast to be drawn.

### **Walking and Cycling**

- 6.2.19. The scheme includes a package of proposals for new cycleways and footways to the A5, A449 and Vicarage Road and for the upgrading of existing routes to enable shared use where possible. Pedestrian and cycle crossing facilities at the new junctions would allow pedestrians and cyclists to cross safely. All estate roads would have 3m wide, shared cycleways/footways and other segregated routes would provide access to the proposed Community Parks and connect the site to the canal towpath to provide accessibility to the wider area. Where footways abut existing highway or roads proposed for adoption these would form part of the adopted highway and would be maintained at public expense. Other pedestrian routes would be 'permissive paths' but Requirement 22 in the Recommended DCO requires that these are retained over the long term.
- 6.2.20. Requirement 15 of the Recommended DCO requires the preparation and approval of a Canal Enhancement Strategy for each relevant phase of development to improve access to the canal and encourage use of the towpath as a pedestrian and cycle route. Full details would need to be agreed with CRT, but possible works are set out in section 7.9 of the Applicant's Design and Access Statement (DAS) [APP-258]. These include upgrading the towpath surface, new pedestrian links between the towpath and the Community Parks, new wayfinding and information signage and enabling canal users to use car parks serving the proposed Community Parks. These measures would provide adequate mitigation for increased usage of the towpath along this section of the canal and some betterment for existing canal users.

### **SITE WIDE HGV MANAGEMENT PLAN**

- 6.2.21. The main purpose of the SWHGVMP [AS-040] is to ensure that HGV traffic to or from WMI does not lead to unacceptable impacts on the local roads and settlements around the site. It would enable occupiers to adopt practices to maximise the efficiency of HGV journeys and facilitate sustainable transport. All occupiers would be required to prepare and implement their own HGV Management Plans, building on the principles set out in the SWHGVMP, which would need to be approved in writing.
- 6.2.22. The main aspects of the SWHGVMP are set out in section 6 of that document and are summarised in paragraph 5.7.3 of the TA [APP-114]. They include the following key elements:
- Promotion of back-loading to make best use of spare capacity on return trips;
  - Vehicle booking schemes under which HGV drivers would be given a specific slot for their arrival at the Rail Terminal or the warehouse they are travelling to;

- Early arrival bays for drivers arriving ahead of their booked time and extended stay bays to enable drivers to take their statutory break if necessary;
- Welfare facilities within each warehouse for HGV drivers;
- Prevention of parking on common estate roads;
- Time limits on HGV parking in the new laybys on the A449;
- HGV routing and signage strategy with the WMI subdivided into 3 zones to assist with HGV routing to and from the SRN<sup>47</sup>;
- Information on roads subject to height, weight or other restrictions on HGV use;
- Variable Message Signs within the WMI to alert drivers to congestion or delays on the highway network.

6.2.23. The SWHGVMP proposes a ban on WMI HGV traffic using the A449 between Junction 13 of the M6 and its junction with the A5 at Gailey Roundabout unless it is for a local journey.<sup>48</sup> Its purpose would be to prevent large numbers of HGV movements through Penkridge town centre and other parts of Penkridge fronting the A449. Having driven that route and inspected the town centre and its environs on foot, I consider the proposed ban to be both desirable and necessary to avoid unacceptable effects on the environment of the town centre and the amenity of its users.

6.2.24. It is anticipated that enforcement would be through the use of Automatic Number Plate Recognition (ANPR) with cameras at accesses to development plots within WMI and on the A449 to the south of Junction 13 and north of Gailey Roundabout. The DCOB requires that this infrastructure be maintained in working order and provides for it to be upgraded and or replaced should better technology become available. Compliance would be monitored by the SWTP Co-ordinator. Where a breach is detected a fine of £500 would be levied on the occupier of the premises that the vehicle was travelling to or from. It would be for the occupier to decide whether to pass the fine onto the transport company involved. Income from fines would be paid into the Contingent Traffic Management Fund and be used for future traffic management measures as determined by the TSG.

6.2.25. The ban would not be enforced when there is a full closure of the M6 between Junctions 12 and 13. It would not be a practical proposition for it to operate at such times because the A449 is a signed alternative route when the motorway is closed. The SWHGMP includes other measures, by means of the vehicle booking system, live traffic information and the availability of stay over bays that would enable drivers to delay their arrival or departure from WMI if there are serious delays on the local network as a result of a motorway closure.

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<sup>47</sup> See SWHGVMP paragraph 6.2.28, Section 7 and Figure 1.

<sup>48</sup> The proposed 'Barred Route' is shown on the plan at Figure 2 of the SWHGVMP.

## **DEMOLITION AND CONSTRUCTION TRAFFIC MANAGEMENT PLAN**

- 6.2.26. The Demolition and Construction Traffic Management Plan [APP-143] seeks to mitigate potential adverse environmental effects associated with construction traffic travelling to or from the site. It includes routing directions, HGV holding areas within the site, wheel washing facilities and procedures for the management of dust and dirt. It also includes measures for the use of shuttle buses, car sharing and public transport to minimise the number of private cars travelling to the site during the construction works.

## **ASSESSMENT OF EFFECTS**

- 6.2.27. The Applicant's assessment of the effects on transport and access is set out in ES Chapter 15 [APP-053] and its associated figures [APP-054] and appendices. Appendix 15.1 [APP-114] comprises the main TA which itself includes a number of appendices [APP-136 to 149]. This is also supported by a number of figures [APP-115 to 129]. Updated versions of the Site Wide Travel Plan (SWTP) [AS-039] and Site Wide HGV Management Plan (SWHGVMP) [AS-040] have superseded those submitted with the application. The TA is also supported by a Sustainable Transport Strategy [APP-136] and a Demolition and Construction Traffic Management Plan (DCTMP)[APP-143]. The TA has been undertaken in accordance with industry accepted methodologies and references and the web-based PPG.
- 6.2.28. The ES advises that regular Transport Working Group meetings, involving WSP (the Applicant's transport consultants) representatives of SSDC, HE and SCC and other parties were held to discuss the transport implications of the WMI proposal. These informed the definition of the study area over which the potential effects were assessed, the assessment methodology, and the mitigation proposed to address potential adverse effects. Chapter 15 summarises relevant policy at the national, regional and local levels before setting out the methodology, baseline characteristics, and a detailed assessment of the potential impacts and residual effects.
- 6.2.29. Subject to the granting of development consent, it is envisaged that occupation of some parts of the development would begin during 2021 and this is adopted as the year at which the potential effects are assessed. As required by DfT Circular 02/2013,<sup>49</sup> relating to development proposals likely to affect the SRN, the TA assumes that the full quantum of development would be provided at 2021. It, therefore, represents a robust assessment of potential effects on the road network as the development is expected to be phased over some 15 years from 2020. Requirement 25 and Rail Requirement 4 in the final draft DCO [REP8-005] also place controls over the quantum of warehousing that can be occupied before key parts of the road and rail infrastructure have been completed.

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<sup>49</sup> The Strategic Road Network and the Delivery of Sustainable Development - Department for Transport Circular 02/2013

- 6.2.30. Under the guidance in DfT's Design Manual for Roads and Bridges (DMRB) it is normal practice to carry out a future year assessment 15 years after the assumed completion of the development. This has proved difficult in this case. In order to assess the full impact at a 2036 scenario, the assessment would need to take account of the DfT's proposals for the M54/M6/M6 Toll Link Road, a committed Road Investment Strategy 1 scheme. At the time that the ES was prepared, three potential routes for this new road had been consulted upon but no decision had been made as to the preferred route. An alternative approach was, therefore, agreed with HE under which the general requirements of the DMRB were met by undertaking a future year assessment of the new roundabout junctions on the A5 and A449, absent the M54/M6/M6 Toll Link Road, to ensure that these continued to operate satisfactorily.
- 6.2.31. In response to ExQ1.2.4, HE [REP-036] advised that a preferred route has now been announced for the M54/M6/M6 Toll Link Road. However, the draft scheme lacks the detailed information necessary to conduct a traffic assessment of the WMI proposals in a future year scenario. An assessment is not possible at present and the alternative test carried out for the two new SRN junctions satisfies HE that these would operate satisfactorily. It should be noted, however, that preliminary work undertaken by WSP indicates that the M54/M6/M6 Toll Link Road would result in improvements in journey times and a reduction in traffic flows along the A460 and A449. Hence, the 2036 junction assessments that have been carried out are likely to represent a worst-case scenario. This is acknowledged in HE's response to ExQ1.2.4.
- 6.2.32. In addition to these 2036 tests in relation to the two new junctions on the SRN, the TA and Chapter 15 includes the following scenarios in the assessment of potential effects:
- 2015 Baseline;
  - 2021 opening year baseline (2021 Do Minimum); this includes all committed developments elsewhere in the Study Area but excludes the Proposed Development;
  - 2021 with Proposed Development (2021 Do Something) including all committed developments and all the Proposed Development.
- 6.2.33. All elements of the new highway, public transport, cycling and walking infrastructure which are described in paragraphs 6.2.5 to 6.2.31 above form part of the Proposed Development. The TA assumes that all this infrastructure is in place at the 2021 assessment year and this 'embedded' mitigation is, therefore, built into the 2021 Do Something Scenario.

### **TRIP CHARACTERISTICS**

- 6.2.34. Because of the specific characteristics of a SRFI early agreement was reached with HE and SCC that it was not appropriate to use conventional

trip databases such as TRICS<sup>50</sup> trip rates for warehouse units. Instead, the trip generation data for the TA is based on traffic surveys at DIRFT, which is one of the most mature SRFIs and was agreed to be of a similar scale to the WMI proposal and in a similar region. The survey work included manual classified counts and a 24-hour numberplate recognition survey to enable both internal and external vehicle movements to be surveyed. Full details of the survey methodology are set out in TA Appendix K [APP-140] and the results of the survey work are described in Section 6.2 of the TA.

- 6.2.35. Those results were used to inform assumptions about the likely modal split of travel to work journeys and the split between HGV trips that originate and end within the site (such as transferring a container between the Rail Terminal and an on-site warehouse) and those with an external starting point or destination. In turn, that data was used to generate estimates of external HGV trips and non-HGV trips at the morning and evening peaks and over a 24-hour period. The TA includes an assessment of the occupation of 186,000 sq. m of floorspace, absent the A5/A449 Link Road and Initial Rail Terminal, and of the whole development with those facilities in operation.
- 6.2.36. Appendix M to the TA [APP-142] explains the gravity model used to predict where employees are likely to travel from and how these trips have been apportioned. The distribution of HGV trips has been informed by calculations undertaken on the basis of DfT Road Freight Statistics 2012. As shown in Table 25 of the TA, these indicate that some 61% of goods coming into and from WMI are expected to be transported from within the West Midlands Region.

## **TRAFFIC MODELLING**

- 6.2.37. The TA used the M54/M6/M6 Toll Link Road SATURN<sup>51</sup> and the South Staffordshire VISSIM<sup>52</sup> traffic models to assess likely impacts on the highway network. Both models have been prepared in accordance with the DfT WebTag guidance and the TA does, therefore, satisfy the requirement as to the standard of assessment set out in NPSNN paragraph 5.207. The list of cumulative schemes included within the models was expanded in agreement with the highway authorities to ensure that all known development commitments were taken into account. It was agreed with the highway authorities that the area covered by the South Staffordshire VISSIM model should form the assessment 'cordon' to be considered in order to identify the highway implications of the Proposed Development.

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<sup>50</sup> Trip Rate Information Computer System, used in transport assessments a standard source of information on likely trip generation of proposed development

<sup>51</sup> Simulation and Assignment of Traffic to Urban Roads computer programme

<sup>52</sup> Verkehr In Städten – SIMulationmodell (Traffic micro-system modelling programme)

## **ASSESSMENT OF IMPACTS**

- 6.2.38. The detailed assessment of impacts is set out in Section 9 of the TA. This focuses on key junctions and road links agreed with SCC and HE and presents the findings of the assessment in terms of the modelled effects on: traffic flows; journey times; vehicle speeds; and queue lengths. Full details of the assessed effects are set out in the TA and ES Chapter 15 and do not need to be repeated in this report. Overall, the results of the assessment show that:
- a. The proposed A5/A449 Link Road would form an alternative connection between the 2 roads to Gailey Roundabout and provide increased resilience to this part of the network as well as providing access to the Proposed Development;
  - b. Local junctions on the highway network would continue to operate satisfactorily and the development would not have a severe impact on the future operation of the SRN and county roads;
  - c. The site accesses and internal road network would operate satisfactorily;
  - d. M6 Junction 12 is able to accommodate traffic changes arising from the Proposed Development and no mitigation works are required;
  - e. The Proposed Development can be accommodated without a material impact on the local and wider transport network.

## **COMMON GROUND**

- 6.2.39. The SoCG with HE [REP2-008] confirms HE's agreement of the highway strategy and mitigation proposals and the findings of the TA with regard to traffic effects. Many of the matters recorded in the SoCG as 'not agreed' have subsequently been agreed. The position with regard to remaining issues arising from the Stage 1 Road Safety Audit is explained in paragraphs 6.2.95-96 below. I deal with HE's remaining concerns re deemed consent and the proposed use of an existing culvert under the A449 in my assessment of the draft DCO in Chapter 11 of this report.
- 6.2.40. The SoCG with SCC [REP2-007] confirms SCC's agreement that the submitted documents define an appropriate and acceptable package of mitigation measures that would fully mitigate the impacts of the Proposed Development (section 9). The Addendum [REP8-017] confirms that the one outstanding matter in the original SoCG has now been agreed.
- 6.2.41. Stop WMI commissioned Milestone Transport Planning to undertake a critical review of the application documents on highways and transport matters. Milestone's report [REP2-161] raised concerns about how shift changes had been taken into account in the assessment which were responded to by the Applicant [REP3-007], but its overall conclusion was that the methodology in the TA is sound and robust.
- 6.2.42. HE and SCC have taken an active role in the Examination, appearing at hearings concerned with transport matters, making written submissions

and responding to my written questions. They have also provided written responses to many of the queries from IPs about the likely effects on the highway network and to IPs' questions about and challenges to the scope and findings of the assessment undertaken by the Applicant. They have not departed from or revised their judgement as to the adequacy of the TA, the adequacy of the mitigation measures proposed, and the absence of severe harm to the operation of the network or to highway safety as a result of the Proposed Development. Substantial weight can, therefore, be placed upon their endorsement of the TA and its conclusions.

## **EXAMINATION**

### **SWTP AND SUSTAINABLE TRANSPORT STRATEGY**

- 6.2.43. The operation and effectiveness of the SWTP and Sustainable Transport Strategy were examined at ISH2 and were also the subject of a number of questions in my FWQs. Stop WMI [REP2-161] questioned the targets set in the SWTP and ExQ1.7.4 sought the views of key parties on whether those targets are sufficiently ambitious. The responses from the Applicant [REP2-009] and SCC [REP2-063] confirm that the targets agreed are considered to be appropriate and that it is best practice to set targets that are deemed to be achievable. In response to another query from Stop WMI, the Applicant [REP5-006] has confirmed that the outputs are not based on the outcomes experienced at i54 as Stop WMI have suggested.
- 6.2.44. Stop WMI queried the Applicant's reference in the SWTP to possible joint working on the travel plan arrangements with i54. In light of the evidence provided in the SWTP and in the Applicant's Response to Other Parties' D4 Submissions [REP5-006], I am satisfied that this is only put forward as a possible, longer-term option and that the effectiveness of the SWTP and Occupier Travel Plans is not dependent upon such joint working. Both developments are, however, served by the 54 bus services and would be likely to benefit from the increases proposed in the operating hours and frequency of those services.
- 6.2.45. I was advised at ISH2 that the i54 bus service, introduced with funding from planning obligations for the i54 South Staffordshire Business Park, has subsequently been withdrawn due to lack of patronage and SCC has redirected that funding to other public transport measures. I do not know the details of why that new service was not successful. However, I consider that that experience demonstrates the need for and value of appropriate monitoring of the Travel Plan measures and for a mechanism, such as the TSG, to agree alternative steps to encourage public transport use. The new i54 bus service appears not to have been a success but there is good evidence within the SWTP of other large-scale developments where the Travel Plans have secured effective outcomes in terms of encouraging travel by non-car modes.
- 6.2.46. Many IPs comment that the existing bus services are not well patronised, but others state that these are important because they run through settlements that have no other public transport. There is considerable scepticism about the benefit of the bus proposals, with many arguing

that most employees are likely to travel by car in preference to public transport. I note those concerns but consider that it is clear from the application documents that the purpose of the SWTP and Sustainable Transport Strategy is to provide employees with a genuine choice of options and incentives to use public transport. It is also clear from SCC's response to ExQ1.7.3 [REP2-063] that the highway authority considers the SWTP target of a 10% reduction in journeys to work by car to be suitably ambitious in the context of the site's location. The SWTP targets would also be kept under review as development is progressed.

- 6.2.47. Although it can only be a forecast, Section 4 of the Sustainable Transport Strategy [APP-136] estimates that 5.5% of the projected 8,500 employees would use the 54 and 54A services; this equates to some 470 employees. In my judgement, this potential level of use would provide a realistic opportunity for a half hourly service to be sustained over the longer term. That number of users would be built up only as various phases of development are completed, and it would be necessary for improvements to the services to be subsidised in the early years of the development. That subsidy is provided by funding secured through the DCOB.
- 6.2.48. I consider that the proposal to upgrade existing services, rather than introduce wholly new ones, has significant merit in maximising the likelihood that these will become sustainable over time. As evidenced in a number of the RRs, the 54 and 54A services are used by commuters and other users outside of peak travel times. The increased frequency and longer operating hours would be likely to further increase patronage by such users; the long-term viability of those improved services would not, therefore, be wholly dependent upon their use by WMI employees. In view of what IPs have said about the limited frequency and operating hours of these services at present, I consider that the proposals would bring wider benefit by providing improved bus services and helping to ensure that these are sustained in the future.
- 6.2.49. Milestone Transport Planning's Report on behalf of Stop WMI [REP2-161] raised concerns about some elements of the Sustainable Transport Strategy and the potential for bus and cycle use as an alternative to private cars for journeys to work. However, the modal share assumptions used in the assessment have been agreed in the SoCGs with HE [REP2-008] and SCC [REP2-007] to be appropriate.
- 6.2.50. The likely operation of the Shuttle Bus Services was examined at ISH2. The areas that it is suggested that the Shuttle Buses would serve have been identified as the key urban areas from which 32% of WMI employees are forecast to be drawn and shuttle bus arrivals and departures would be geared to shift patterns and office working hours.
- 6.2.51. These services are only indicative at this stage and detailed proposals would be decided by the TSG having regard to data from incoming occupiers about where their employees live and their travel needs. At ISH2 SCC explained that the funding arrangement provides for flexibility and control of costs, for example by enabling initial services to be

provided by a taxi or small minibus with enhanced provision being introduced as and when demand increases. This would allow for targeted services to be provided in response to the locational characteristics and travel needs of employee groups who would not otherwise have easy access to public transport.

- 6.2.52. In section 3 of its D2 Written Statement [REP2-021], CRT welcomes the package of measures proposed in the Canal Enhancement Strategy but argues that the Strategy should be extended to cover additional sections of the canal to the north and south of the site. CRT contends that these sections are likely to experience a significant increase in use by cyclists and pedestrians travelling to and from the site and that such usage should be encouraged as part of the SWTP. The Applicant responded to these concerns at ISH2 and I have also inspected parts of the towpath outside of the Order Limits as part of the USIs that I have undertaken.
- 6.2.53. Although these more distant sections of towpath are used by pedestrian and cyclists for recreational purposes, I consider that there is a limited prospect of these becoming regular commuting routes to and from the WMI development.
- 6.2.54. Few pedestrians would be likely to use the towpath over any distance given their need to arrive at work at the requisite time. Height restrictions at many of the bridges and a number of very narrow sections along the towpath's route would discourage cyclists who want to limit their journey time. The lack of lighting would also discourage its use by pedestrians and cyclists as a commuter route during winter months. Some employees may choose to cycle to and from Penkrudge Station, but few would, in my view, opt for the longer and more circuitous route along the towpath when the A449 cycleways provide a much more direct route to the site.
- 6.2.55. I consider that, together with the SWTP requirement that warehouses incorporate secure cycle parking and shower facilities, the cycling and pedestrian provision would ensure that the Proposed Development is accessible by these modes of transport. As indicated on Figure 4 of the SWTP, these new and upgraded routes would connect with a much wider network of cycle and pedestrian routes.

#### **MANAGEMENT OF HGV TRAFFIC**

- 6.2.56. Given the concerns expressed by a number of IPs about the use of the A449 through Penkrudge by HGVs there was general support for a ban to be introduced should WMI receive development consent but scepticism as to how it could be enforced. These matters have been scrutinised in the Examination through ExQ1.7.16 and at the hearings. The Applicant's evidence is set out on page 78 of the TA [APP-114] and in their Post Hearing Submissions [REP4-003]. The detailed arrangements for the operation of the HGV ban are set out in Section 7.5 of the SWHGVMP and Part 2 of Schedule 2 to the DCOB.
- 6.2.57. Having regard to the available evidence, I find the proposed HGV ban to be a practicable and enforceable solution to this potential adverse effect.

The DCOB would ensure that the ban could be implemented and enforced and that both the technology and level of fines would be subject to review to ensure that the ban remains effective over the life of the development. Importantly, the proposed arrangements for the ban on HGVs using the barred route are supported by SCC and HE as an appropriate element of the mitigation package.

- 6.2.58. The Applicant's response to ExQ1.7.16 [REP2-009] shows that there is evidence of HGV bans working effectively in other locations. SCC's response to that question [REP2-063] confirms the Council's view that the use of similar bans is not uncommon and that the ban as proposed in the Application scheme should be enforceable. The recent Howbury Park SRFI appeal at Appendix 5 to the Applicant's Post Hearing Submissions [REP4-005] was dismissed for other reasons but the Inspector who conducted that Inquiry found that similar proposals would be effective for limiting the number of HGVs using Junctions 1A and 1B of the M25 at peak times. I agree with that Inspector that it is unlikely that an HGV driver would choose to incur a fine of £500 (as is proposed in the WMI HGV ban) rather than use the prescribed routes and suffer any delay that might be experienced on those routes.
- 6.2.59. The LIRs submitted by SSDC [REP2-051] and SCC [REP2 -062] set out concerns about problems resulting from HGVs parking in laybys and other locations where they can get off of the road for rest and overnight breaks and the litter and waste that many drivers leave behind. These concerns are shared by a number of those who submitted RRs and I saw the evidence of this anti-social behaviour on my site inspections. I agree that it is important that the WMI scheme should ensure adequate provision for HGV parking such that the Proposed Development would not add to this existing problem.
- 6.2.60. In response to my questions at ISH2, a detailed justification as to the adequacy of the level of HGV parking proposed at the site and, in particular the adequacy of the proposed Early Arrival and Extended Stay parking bays, was provided in Appendix 8 to the Applicant's D4 Submissions [REP4-007]. Full details of the proposed provision are in Table 6.1 of the SWHGVMP. The paragraphs following that table describe how the different bays would be used and operated. In section 9 of the SoCG with the Applicant [REP2-007] SCC agrees that the provision of these 3 different types of bays are an essential part of the package of mitigation measures that has been agreed with the County Council. The SWHGVMP also provides for occupiers to make drivers aware of HGV fuelling stations and truck stops in the surrounding area where longer breaks can be taken.
- 6.2.61. The Recommended DCO includes proposals to restrict that time that HGVs would be allowed to park in the new laybys to be provided on the A449 and, following HE's request at ISH4, the Order would also amend existing Traffic Regulation Orders to prevent HGVs from parking on the highway verge on roads around the site (Article 17 and Part 1 to Schedule 9).

- 6.2.62. I consider that the package of measures proposed, including the provision of early arrival and extended parking bays, vehicle booking systems and information for drivers and restrictions on layby parking, would be sufficient to minimise the risk of that outcome. HE had queried the extent of the changes to the A449 Traffic Regulation Orders that have been provided for in the revised DCO [REP8-053] but I am satisfied that these cover what was intended in the measures proposed by HE.

### **ASSESSMENT OF IMPACTS AND PROPOSED MITIGATION**

- 6.2.63. A number of particular concerns about the potential effects on the road network that arose out of the RRs and other written representations were examined at the hearings and through my written questions. These are considered under the following sub-headings.

#### **Dedicated Junction on the M6**

- 6.2.64. The potential benefits of the SRFI being served by a dedicated junction on the M6 are self-evident. In ExQ1.7.18, I sought information as to whether this option had been considered and, if it had been ruled out, what the reasons for that decision were. Responses to that question were received from the Applicant [REP2-009] and HE [REP2-036].<sup>53</sup> The evidence in those responses demonstrates that this was considered in the early stages of the scheme design but is not a realistic option in this case. As confirmed by HE in their D1 submission [REP1-008], there is a policy presumption in DfT Circular 02/2013 against the construction of new motorway junctions except in a very limited range of circumstances that would not apply to the Proposed Development.
- 6.2.65. In addition, due to the spacing between the existing junctions on this stretch of the M6, there is insufficient room to enable the construction of a new junction that would meet the 'weaving length' between junctions required to enable vehicles to join and leave the motorway safely. A new junction could not be constructed without a significant reduction in highway safety. I am, therefore, satisfied that this could not be achieved.

#### **HGV Use of A5 to the West of Gailey Roundabout**

- 6.2.66. Stop WMI and a number of objectors argue that the section of the A5 between Gailey Roundabout and its junction with the A41 is unsuitable and unsafe for HGV use<sup>54</sup> and that this should be identified as a barred route for HGVs travelling to or from WMI. This is no longer a Trunk Road, but is a classified road and is identified, along with the M54, as a 'preferred' route for HGVs travelling from the M6 towards Telford to discourage their use of other less suitable roads.

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<sup>53</sup> Note that in REP2-036 HE has not strictly followed the numbering of questions as set out in my FWQ [PD-07]. The response to ExQ1.7.18 is listed in HE's response as point number 1.2.16.

<sup>54</sup> See Stop WMI Road Infrastructure Report [REP2-160] and submissions by Anita Anderson, in particular at AS-041REP2-065, REP4-035, REP5-061 and REP6-031]

- 6.2.67. In ExQ.2.6.3 I pointed to the predicted increases in HGV traffic on this route indicated in Table 32 of the TA and requested that the Applicant and SCC provide a written response to those concerns. In its response [REP5-003] the Applicant confirms the findings set out in Table 28 of the TA that predicted peak hour increases in journey times along this link would be insignificant, at no more than 30 seconds per vehicle, and Table 29 which shows that peak hour queue lengths are not forecast to increase as a result of the Proposed Development.
- 6.2.68. ES Chapter 15 concludes that there would be only a minor effect in terms of driver stress and delay, fear and intimidation, and accidents and safety. Those assessments take account of the character of the route and existing conditions along it. These findings have been reviewed and agreed by SCC and the Council has agreed that the assessment does not indicate any requirement for any additional mitigation in relation to this route. In its response [REP5-053] SCC confirms that the findings of the TA in relation to impacts on the A5 have been accepted and agreed by the Council. SCC also state that it should be recognised that the HGVM seeks to promote access to and from WMI via M6 and M54 which should cover trips to and from the Telford Area.
- 6.2.69. I have driven the route in both directions on 2 separate occasions in order to assess its suitability for HGV use. My observations are that, although a single carriageway road, this section is not untypical of very many A roads across the country. For the most part, it passes through a mainly rural area with only a small number of houses and other properties close to the road. The bridge which carries the Shropshire Union Canal over the road has no height restriction warning and the HGV that I followed was able to pass under the bridge without needing to reduce speed or move towards the centre of the road. There are some narrower sections along the route but none that would, in my judgement, not allow two vehicles to pass at an appropriate speed.
- 6.2.70. The close proximity to the road of a number of houses, other buildings and boundary walls along the section passing through Weston-upon-Lizard creates a more enclosed feel to the road corridor at this point. Occupiers of those properties are possibly likely to be more exposed to noise and exhaust emissions from passing traffic because of their close proximity and some sections of pavement in the village are very narrow. These potential amenity and safety issues have, however, been recognised through the imposition of a 40mph speed limit and no overtaking restrictions along the length of this section of the road. These are clearly marked by road markings and regularly spaced roadside signage.
- 6.2.71. As confirmed by SCC, the preferred route for WMI HGVs travelling to or from the direction of Telford would be via the M6 and/or M54 and A449 and HGV drivers would not be directed to use the A5. However, the TA acknowledges that this route would be used by some drivers and has assessed that these journeys would amount to between 8 and 9% of all external HGV trips generated during the AM and PM peak periods.

- 6.2.72. I accept and agree with the findings of the TA as to the likely environmental effects as set out in paragraphs 6.2.67 and 6.268 above. I consider that there is no justification for this section of the A5 to be identified as a barred route as has been suggested. The route is not expected to attract considerable additional HGVs as a result of the Proposed Development. However, if problems are shown to have arisen at some future stage, SCC would have funds available from the Contingent Traffic Management Fund to address those problems as considered appropriate.
- 6.2.73. In response to ExQ2.6.3, SCC [REP5-053] has also advised that the A5 Strategy, which some objectors refer to in support of their concerns, considers only that stretch of the A5 going east from Gailey Roundabout to Milton Keynes and does not apply to the section between Gailey and the A41/Telford.

### **Use of Local Routes**

- 6.2.74. I note the concerns of the PC Collective, in its written submissions [REP4-027] and oral evidence at ISH2, and other objectors about the potential use of various local roads or lanes that pass through the local villages and communities. I saw on my site inspections that many of these routes are unsuitable for heavy use by HGVs and that a significant increase in the use of these routes for rat-running would be undesirable. However, the TA does not predict that there would be a significant increase in their use and one of the key aims of the mitigation package is to discourage or prevent drivers from using these in preference to the prescribed routes.
- 6.2.75. Section 9.11 of the TA records that the Applicant was made aware of such concerns in the early stages of consultation about the Proposed Development. Although the traffic modelling did not suggest that such use was a likely outcome, the potential risks of large numbers of drivers seeking to leave the SRN or primary network and divert to less suitable routes was considered in the TA in some detail.
- 6.2.76. The Journey Time Assessment in that section focuses on the journeys likely to be made by employees coming to and from the site and takes account of likely working hours and shift patterns. That assessment considered all the likely alternative routes that might be used, as shown in Figure 15, and estimated journey times using each of those routes are set out in Tables 42-45. These tables confirm that, with one exception, journey times in both the AM and PM peaks from all the destinations assessed are predicted to be quicker using the primary or signed routes than by using back lanes. The route via Cheslyn Hay is predicted to have the same journey time as the primary route.
- 6.2.77. Given that most drivers are likely to want to complete their journey to work as quickly as reasonably possible, I do not consider that these results suggest any incentive for them to divert onto local roads. As set out in paragraphs 9.11.16 to 9.11.33 of the TA, the potential alternative routes are mainly of a rural character, with sharp bends, narrow sections that do not accommodate 2-way traffic and other features which make them generally unattractive to users who want to make good progress on

their journey. Having observed those characteristics on my USI, I consider that this evidence demonstrates a limited risk that the Proposed Development would result in a significant increase in vehicles using minor roads and lanes around the area. In addition, the proposals provide for the use of these roads to be kept under review after development has commenced and for remedial action to be taken if required.

- 6.2.78. Paragraph 7.3.1 of the SWTP [AS-039] provides for baseline traffic surveys on the local roads identified in Figure 15 which would provide a benchmark against which future changes in traffic levels could be assessed. This would enable an objective assessment of any concerns raised by Parish Councils or other bodies about increased traffic and agreement to be reached with the highway authority as to whether any mitigation is required. The Contingent Traffic Management Fund which would be secured under the DCOB would provide a source of funding for any works agreed to be necessary or desirable. I am satisfied that these measures would provide adequate protection against any significant adverse effects on local roads and communities.

### **Right Turn Ban into Station Drive**

- 6.2.79. New River Retail own the Four Ashes PH on the corner of Station Drive and the A449. They object to the proposed ban on making right turns from the A449 (northbound carriageway) into Station Drive because they fear this would adversely affect the viability of the PH due to a loss of passing trade. Their advisers, Connect Consultants, presented an alternative option of retaining the right turn but of closing Station Drive immediately to the west of the railway bridge. This would prevent the use of Station Drive and Station Road as a route to and from the new Vicarage Road access to the Proposed Development. That proposal was supported by some of the Station Drive residents present at ISH2 when these matters were discussed.
- 6.2.80. Written evidence from New River/Connect on this matter is within their D2 [REP2-134] and D6 [REP6-026] submissions. The Applicant's evidence can be found in Section 5 of the TA [APP-114], Technical Note 42 at Appendix 6 to their D4 Post Hearing Submissions [REP4-007] and Technical Note 45 at Appendix 1 to their D7 submissions [REP7-003]. Having reviewed that evidence, my conclusion is that the alternative option proposed by Connect Consultants is neither a preferable nor an acceptable solution.
- 6.2.81. The route along Station Drive and Station Road is unsuitable for many HGVs because of the height restriction at the railway bridge but is a legitimate and appropriate route for cars and light goods vehicles. It forms an important access for the many businesses within the Four Ashes Industrial Estate. The proposed Right Turn ban would require vehicles approaching on the A449 from the south to perform a U turn via the new A449 roundabout and then turn left into Station Drive in order to continue to Station Road and the Four Ashes Industrial Estate. In my judgement, that would be a minor diversion that could easily be explained by businesses to anyone visiting their premises. Employees or visitors to premises within that estate would still be able to access

Station Drive/Station Road if travelling south on the A449 and to use Station Drive to return to the A449 to travel either north or south from the signal-controlled junction.

- 6.2.82. The suggested alternative of closing Station Drive at the railway bridge would prevent all of those existing movements. In my view, this would be likely to cause considerable inconvenience to businesses within the Four Ashes Industrial Estate and to their employees. It would require those users to make longer and much less convenient diversions compared to those that would be needed with the Right Turn ban in place. The need to divert such a large number of users would increase the risk of vehicles rat-running through the minor roads and lanes that the Applicant's mitigation proposals have been designed to avoid. Connect state that the suggested closure is supported by many of the 16 or so households with properties fronting Station Drive but there appears to have been no consultation with the much larger number of businesses and employees that would likely be affected by that proposal.
- 6.2.83. It is not unusual, when travelling on a dual carriageway, to have to perform a U Turn at the next available junction to access premises on the opposite carriageway. This is a common and increasingly frequent experience as gaps in central reservations are closed for safety reasons. I do not accept Connect Consultant's suggestion that drivers would find the need to perform such a manoeuvre a psychological deterrent or a major inconvenience. For the same reason, I am not persuaded that the proposed Right Turn ban would have the harmful effect on the Four Ashes PH that the objector fears.
- 6.2.84. Customers travelling from the south who are regular visitors to the PH would quickly become aware of the Right Turn ban and are unlikely to be deterred by the need to turn around at the roundabout. For those drivers not familiar with the area who are looking for somewhere to stop for refreshments, the proposed arrangements would arguably make it easier to access the PH safely. At present there is a limited opportunity, on first seeing the PH, to move into the right turn lane at the traffic signals. The proposed new arrangements would provide more time for a driver safely to move across the traffic into the right turn lane on the approach to the new roundabout.
- 6.2.85. In comparison, the closure of Station Drive as proposed, could be more likely to result in a loss of trade from those working in the industrial estate who might otherwise have visited the PH for lunch or on their way home. In my view the Right Turn ban would not be likely to result in a significant loss of trade from vehicles travelling north. In addition, the PH would potentially benefit from the predicted increase in the number vehicles travelling south on the A449 in the peak hour<sup>55</sup> and from the overall increase in the number of people working in the area.

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<sup>55</sup> See Applicant's Response to New River Retail's objection at page 77 of REP3-007

6.2.86. For these reasons, I see little merit in New River Retail's objection and in their alternative proposal. Accordingly, I conclude that there is no need for any revision of the Applicant's proposals for the A449/Station Drive junction.

### **One Way Flow on Crateford Lane**

6.2.87. With the short section of Crateford Lane near to its junction with the A449 made 1-way (eastbound) as proposed, vehicles would still be able to exit the Lane in all directions via the signal control junction but would not be able to access the Lane from the A449. For those familiar with the area the diversion, via Four Ashes Road, is a relatively minor one. Those travelling from the south who are not familiar with that alternative would have to continue on the A449 to Gailey Roundabout and then travel via the A5 and Claygates Lane to access Crateford Lane from the west. Although it may take longer at peak times my assessment is that this diversion would add about 10 minutes to the journey in normal traffic conditions.

6.2.88. The change would inevitably cause some inconvenience, but the impact would mainly be limited to residents of the small number of properties at the eastern end of Crateford Lane. However, those residents are likely to benefit from an overall reduction in the number of vehicles using Crateford Lane. Any inconvenience that they experience would also be outweighed by the benefits derived by removing this route as a potential short cut for westbound traffic between the site and the A5 in order to bypass Gailey Roundabout.

### **Temporary Closures of the M6**

6.2.89. Very many IPs have referred to high levels of congestion and inconvenience to local communities that they say occur when sections of the M6 are closed for planned maintenance or improvement works or as a result of an accident or incident. Having driven the signed diversion route, I have no doubt that these events cause considerable frustration and annoyance to people living close to or needing to use this route to go about their normal daily business. I am aware that the problems are not confined to the A449 but spill over onto local roads as drivers try to avoid queues and congestion.

6.2.90. Many IPs say that events are a frequent and even weekly occurrence. However, HE's evidence in response to ExQ1.7.6 [REP2-036] is that, in the 12 months between November 2017 and November 2018, there were 9 full closures between Junction 12 and Junction 13 for unplanned maintenance work and in each case only one of the carriageways was affected. The duration of the closures was between 3 and 6 hours and, together, these closures equate to only 1% of the time when the motorway would be expected to be open to traffic. HE also advises that there is no requirement under DfT Circular 02/2013 for a TA to take account of the potential degraded operation of the network due to such temporary events and that trying to do so would be fraught with difficulty. It would not, therefore, be reasonable or practical to expect the Applicant to have addressed such events in the TA.

- 6.2.91. The PC Collective [REP7-044] refers to the dismissal, in May 2019, of the appeal relating to the revised Howbury Park SRFI proposal. That submission includes only one paragraph from the Inspector's report, but the full text of the report and decision is within Appendix 8 to the Applicant's D5 submissions [REP5-004]. A review of the full report and decision letter shows that, in making the decision, the SoS had regard to the Inspector's conclusion, at paragraph 15.4.45 of his report, that, during incidents affecting the M25 and Dartford Tunnels, the proposal would be likely to have an impact, albeit a limited one, and to add to the existing severe conditions.
- 6.2.92. In section 15.5 of the report, the Inspector found that key junctions on the local network would be over capacity at 2031 without the appeal scheme and that the proposed development would have a severe adverse effect on the road network under normal (non-incident) conditions. The additional limited impact during incidents affecting the motorway and Dartford Tunnels was, therefore, a secondary rather than a primary reason for the Inspector recommending a dismissal of the appeal on highway grounds. The circumstances relating to the current application are quite different as both HE and SCC agree that the WMI development would not have a severe impact on the highway network. There is no substantive evidence to contradict that conclusion.
- 6.2.93. In addition, the Inspector's report notes that the Dartford Crossing has been closed for 30 minutes or more an average of 300 times each year over recent years and that it can take between 3 and 5 hours for congestion to clear when the crossing has been closed. Although the duration of closures on the M6 may be similar the frequency of events, as shown by HE's evidence, is considerably less than 300 times per year.
- 6.2.94. It would, of course, be undesirable for the Proposed Development to add substantial numbers of HGVs to the network when heavy congestion is being experienced due to a closure of part of the motorway, but measures would be in place to mitigate against that risk. The SWHGVMP [AS-040] advises that there would be appropriate channels of communication to advise the SWTP Co-ordinator and occupiers of planned closures. HGV drivers would be alerted to any unplanned closure through live traffic data. Information would also be disseminated to occupiers and drivers already at the site, including via variable message signs. I consider that, given the statutory driver time restrictions, it would not be in an HGV driver's interest to leave the site only to join a long traffic queue. The HGV parking bays proposed would enable vehicles to be held on site until the congestion has cleared. Due to the site's location there would also be a choice of alternative routes available to drivers who had advance warning of a closure of the M6.
- 6.2.95. In these circumstances and given my conclusions about the absence of any severe impact during normal conditions, I do not consider that development consent should be withheld due to fears about the additional contribution that the Proposed Development might possibly make to congestion on the network on the limited number of occasions when the motorway is closed.

## **Stage 1 Road Safety Audit**

- 6.2.96. HE [REP8-053] has a remaining concern that issues raised in the Stage 1 Road Safety Audit about the pedestrian crossing facilities at the A449 access roundabout had not been fully resolved. Having considered that submission and the Applicant's response [AS-090], I find that this matter could be resolved by a minor relocation of the crossing and that this could be agreed at the detailed planning stage. The need for detailed agreement can be secured through a small amendment to Requirement 3(2) in the final draft DCO as recommended in Chapter 11 of this report.
- 6.2.97. In their D2 submission [REP2-034], HE indicated that there was also an issue in relation to safety concerns identified in the Applicant's Stage 1 Road Safety Audit relating to the operation of the circulatory at Junction 12 of the M6. The Applicant has subsequently responded [REP3-007 & RE5-006] stating that they had submitted further information to HE, including comments on the accident data for the junction, to demonstrate that no mitigation was required. HE's D8 submission [REP8-053] advised that this matter 034 remains unresolved.
- 6.2.98. I had received no further information at the close of the Examination and assume that this matter will require further discussion between HE and the Applicant in due course. However, HE has not objected to the Application on these grounds or intimated that development consent should not be granted because of this outstanding issue. In its SoCG with the Applicant [REP2-008], HE confirms that M6 Junction 12 is able to accommodate the traffic changes resulting from the development and that no mitigation is required.

## **CONCLUSIONS RE TRAFFIC AND ACCESS**

- 6.2.99. Having regard to all the available evidence, I find that the SWTP and Sustainable Transport Strategy provide an appropriate means for ensuring that future employees are provided with a genuine choice of means of travel and for encouraging alternatives to single person car use. The SWTP includes appropriate targets for modal shift and, importantly in view of the scale of the Proposed Development and the length of time over which it would be constructed, also includes appropriate mechanisms for monitoring performance against those targets and initiating remedial actions as necessary. I also find that the measures set out in the SWHGVMP comprise an appropriate and practical set of tools for the effective management of external HGV movements in order to minimise their contribution to congestion and use of unsuitable roads.
- 6.2.100. Having regard to the available evidence, I find the proposed HGV ban to be a practicable and enforceable solution to this potential adverse effect. The DCOB would ensure that the ban could be implemented and enforced and that both the technology and level of fines would be reviewed to ensure that the ban remains effective over the life of the development. Importantly, the proposed arrangements for the ban on HGVs using the barred route are supported by SCC and HE as an appropriate element of the mitigation package.

- 6.2.101. Most of the new highway infrastructure is required to enable the Proposed Development and to mitigate its potential adverse effects. However, the proposed A5/A449 Link Road would also deliver some benefit in that it would provide an alternative connection between the A5 and A449 and provide increased resilience to this part of the network.
- 6.2.102. Both highway authorities have confirmed their agreement that the TA provides a robust assessment of the likely effects on the local network and that they agree its findings. There is no substantive evidence to contradict those conclusions. Accordingly, I find that:
- Local junctions on the highway network would continue to operate satisfactorily and the development would not have a severe impact on the future operation of the SRN and county roads;
  - The site accesses and internal road network would operate satisfactorily;
  - M6 Junction 12 is able to accommodate traffic changes arising from the Proposed Development and no mitigation works are required.
  - The Proposed Development can be accommodated without a material impact on the local and wider transport network
- 6.2.103. The highway impacts of the Proposed Development would, therefore, be reduced to acceptable levels and the requirements in paragraphs 5.213 & 5.214 of the NPSNN in relation to transport and traffic effects are, therefore, met.

### **6.3. AIR QUALITY AND HEALTH EFFECTS**

#### **BACKGROUND**

- 6.3.1. The many references to the potential effects of the WMI proposals on air quality and public health in the RRs and other representations demonstrate that these matters are of considerable concern to local communities surrounding the site. Stop WMI's Health Impact Report [REP2-162] refers to a range of studies and reports about the effects of traffic and air pollution on human health. For the most part, the findings of those studies have not been challenged and the Applicant has not sought to argue that air pollution does not have such impacts. However, the potential effects can properly be considered only by means of an objective assessment against the relevant air quality standards and objectives.
- 6.3.2. The NPSNN recognises (paragraph 5.3) that increased emissions can contribute to adverse impacts on human health and on protected species and habitats. Paragraph 5.4 states that UK legislation sets out ambient air quality objectives and that the EU has established common, health-based and eco-system ambient concentration limit values for the main pollutants which are designed to prevent adverse health impacts. The relevant standards and objectives for key pollutants are set out within Air Quality Standards (Amendment) Regulations 2000 and are reproduced in Table 7.1 of revised ES Chapter 7 [REP7-016].

- 6.3.3. Following revisions made during the course of the Examination (see paragraph 6.3.44 below), the information on the Applicant's assessment of potential effects is comprised in the updated ES Chapter 7 [REP7-016], and updated Appendices 7.2 [REP6-018], 7.3 [REP7-020], 7.4 [REP7-022], 7.6 [REP7-024] and 7.7 [REP-026]. The original Appendices 7.1 [APP-067] and 7.8 [APP-074] have not been revised.

## **ASSESSMENT OF EFFECTS**

- 6.3.4. As with other chapters of the ES, Chapter 7 assesses the potential effects during the construction and operational phases of the development, explains the measures proposed to mitigate those effects and sets out an assessment of the likely residual effects with that mitigation in place.

### **BASELINE CONDITIONS**

- 6.3.5. The main source of existing air pollutants close to the site is road traffic, in particular associated with the main road network. SSDC had previously declared five AQMA due to exceedances of NO<sub>2</sub>, but four of these have been revoked as NO<sub>2</sub> concentrations have met the air quality objective in recent years. The remaining area, AQMA 5 (Oak Farm), was declared due to HGV movements into and out of the New Hollies Truck Stop site that fronts onto the A5, approximately 1km to the east of its junction with Vicarage Road. The application site does not fall within an AQMA.
- 6.3.6. There are 2 AQMAs within Cannock Chase District with the nearest being on the A5 around 3km to the east of the site. The entire administrative areas of Wolverhampton and Walsall Councils have been declared as AQMAs due to NO<sub>2</sub> emissions. All of these Councils have Air Quality Action Plans in place setting out measures to improve air quality.
- 6.3.7. Baseline conditions have been assessed for levels of NO<sub>2</sub>, PM<sub>10</sub> and PM<sub>2.5</sub> using monitoring data available from the local authorities and have also been modelled using Defra mapping of predicted background concentrations. Future baseline concentrations (without the Proposed Development) of these pollutants have been modelled at each of the selected receptor locations for 2021, 2028 and 2036.
- 6.3.8. The future baseline results shown in revised Appendix 7.6 [REP7-024] predict an exceedance of the NO<sub>2</sub> objective at six locations in 2021, with all but one of these being adjacent to the M6. As older vehicles are replaced by new and less polluting ones, concentrations are predicted to decline and to meet the annual mean objective at all six locations by 2036. At all other locations, the annual mean objective is predicted to be met in all assessment years. Annual mean concentrations of PM<sub>10</sub> and PM<sub>2.5</sub> are predicted to be met at all receptor locations under all three future baseline scenarios.

### **CONSTRUCTION EFFECTS**

- 6.3.9. There are a number of residential properties within 20m of the site boundary and both short and longer-term moorings on the canal. These could be affected through dust and NO<sub>2</sub> and PM<sub>10</sub> emissions from HGVs

carrying materials into the site, and from plant and machinery used in construction works. Residential properties and other sensitive receptors (including ecological receptors) close to routes used by construction traffic could also be at risk of potential emissions from those vehicles.

- 6.3.10. Construction phase impacts have been assessed using guidance provided by the Institute of Air Quality Management (IAQM) and all construction effects are classed as temporary. The overall risk of dust impacts in the absence of mitigation is assessed as high, but dust emissions are unlikely to result in significant effects on ecological receptors more than 50m from the site boundary.
- 6.3.11. Because of the proposed 15-year construction programme parts of the site would be operational while construction is continuing in other parts. The dispersion model has predicted the impact of construction traffic at 2021 which is considered to represent a worst-case scenario and the results are shown in ES Appendix 7.5 [APP-071]. The predicted impact on annual mean NO<sub>2</sub> concentrations is negligible at all receptor locations. The impact of construction traffic on PM<sub>10</sub> and PM<sub>2.5</sub> concentrations is also predicted to be negligible at all receptor locations (Tables 7.5.2 -7.5.5 in Appendix 7.5).

### **OPERATIONAL EFFECTS**

- 6.3.12. The operational phase could generate potential air quality effects due to exhaust emissions from vehicles travelling to and from the site, fixed plant and machinery and the movement of forklift and other vehicles in service yards and the Rail Terminal. The potential effects of NO<sub>2</sub> emissions from railway locomotives moving along the railway line and into and out of the Rail Terminal have been screened out of the assessment because the WCML Loop is not identified as experiencing heavy traffic of diesel locomotives and the likely increase in trains movements is less than 1 per hour. The increase in the number of trains on the wider network would be so small as to be considered insignificant.<sup>56</sup>

### **Effects of Increased Traffic**

- 6.3.13. The Air quality assessment has been conducted following the significance criteria of the IAQM Planning Guidance<sup>57</sup> as illustrated at Table 7.7 of revised Chapter 7 [REP7-016]. The assessment is based on the traffic data used in the assessment of traffic effects in ES Chapter 15.<sup>58</sup> An assessment has been made of the likely changes in the level and character of traffic using various routes to and from the site. This has been done in accordance with the guidance in the DMRB. Existing residential properties and other sensitive land uses close to roads that would experience a significant change in traffic levels in connection with the Proposed Development have been considered sensitive receptors.

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<sup>56</sup> See paragraphs 7.713 -7.715 of REP7-016.

<sup>57</sup> Institute of Air Quality Management and Environmental Protection UK. Land-Use Planning & Development Control: Planning for Air Quality v1.2, 2017.

<sup>58</sup> See revised ES Appendix 7.2 [REP7-018].

Receptors have been selected to represent worst-case exposure close to the affected roads.

- 6.3.14. Sensitive ecological areas close to the development or to affected roads have also been considered, in line with IAQM guidance. Some sites have been screened out as being unlikely to experience any significant effects and others are included in the detailed assessment subject to their proximity to the nearest roads and the predicted changes in traffic. The predicted effects have been modelled for 2021, 2028 and 2036. As construction activity would be expected to be taking place alongside first phases of the operational development construction traffic has been taken into account in the assessment.
- 6.3.15. Predicted PM<sub>10</sub> and PM<sub>2.5</sub> concentrations for all receptor locations, arranged by local authority area, are set out in revised Appendix 7.6 [REP7-024]. This shows that impacts are predicted to be negligible at all locations for these two pollutants. Predicted NO<sub>2</sub> concentrations for all receptor locations are in Tables 7.15 to 7.17 within revised Chapter 7 [REP7-016] and are described in paragraphs 7.179-7.1.181 of that chapter.
- 6.3.16. In respect of NO<sub>2</sub> concentrations the results for 2021, with 25% of the Proposed Development complete, show a negligible impact at the large majority of locations and only a slight adverse impact at two locations with regard to the annual mean concentration. There are six locations where predicted concentrations are above the annual mean objective of 40 µg/m<sup>3</sup> with or without the development. However, the development contribution to those levels is negligible at all six locations
- 6.3.17. At 2028, with 50% of the Proposed Development completed, a moderate impact is predicted at two receptors adjacent to the M6 with all other receptors predicted to experience a negligible impact. The development contribution to the moderate impact at those locations is only slightly above the 'negligible' threshold of 0.2 µg/m<sup>3</sup>. Under the 2036 scenario, with 100% of the development completed, the assessment predicts a slight adverse impact at two locations and a negligible impact at all other receptor locations. The two locations shown as experiencing a moderate impact in 2028 are predicted to have only a slight adverse impact in 2036 as the concentrations reduce to below 40 µg/m<sup>3</sup>.
- 6.3.18. The ES uses EPUK<sup>59</sup>/IAQM guidance to assess the likely significant effects on human health from air quality. This uses the results of the quantitative assessment and professional judgment to determine the likelihood of significant effects. This is considered in paragraphs 7.186-7.187 of revised Chapter 7.
- 6.3.19. Overall, the Proposed Development would result in a negligible impact at all but two receptor locations with regards to NO<sub>2</sub>, PM<sub>10</sub> and PM<sub>2.5</sub> concentrations. Two locations are predicted to have negligible, moderate and then slight adverse impacts for annual mean NO<sub>2</sub> concentrations for

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<sup>59</sup> Environmental Protection UK

the three modelled scenarios, with the development predicted to add a maximum of 0.3 µg/m<sup>3</sup> to the existing baseline concentrations in those scenarios. This illustrates that the vast majority of the impact is due to the baseline concentrations. Whilst a moderate impact may be considered significant in isolation, at these two receptors the impact is temporary and may not actually occur depending on how quickly development traffic builds up. In addition, over the period 2021 to 2036, concentrations at the two receptor locations are predicted to reduce significantly such that, in the 2036 scenario, they are below 40 µg/m<sup>3</sup>.

- 6.3.20. The Proposed Development would not increase the number of receptors where air quality would be expected to exceed the air quality objectives and would not, therefore, increase the number of receptors which are exposed to poor air quality. The Proposed Development would not introduce new receptors into a location of poor air quality. Overall impacts on air quality are not considered to give rise to a significant effect on human health.
- 6.3.21. No significant impacts were predicted in terms of the change in annual mean concentrations of NO<sub>2</sub> at any of the modelled locations at Belvide Reservoirs and Doxey and Tillington Marshes SSSIs in 2021 and 2026. That was also the case for the 2036 modelled scenario at Doxey and Tillington Marshes but, at Belvide Reservoirs, the predicted impact could not be classed as insignificant and this effect was, therefore, considered more fully in ES Chapter 10 (Ecology) which is discussed in section 6.5 of this report.

### **MITIGATION OF AIR QUALITY EFFECTS**

- 6.3.22. The revised Outline Demolition and Construction Environmental Management Plan (ODCEMP) [REP5-035] includes a range of best practice measures for the control of dust during construction works. These would be carried forward as necessary and appropriate into the detailed Demolition and Construction Environmental Management Plan (DCEMP) to be submitted and approved for each phase of development under Requirement 4 of the Recommended DCO. Each phase would also be required to implement a Dust Management Plan that has been approved by SSDC. Paragraph 9.8 of the ODCEMP provides for a pre-construction dust survey and for monitoring of dust levels to be undertaken during the construction works.
- 6.3.23. The Travel Plan measures discussed in section 6.1 of this report are expected to reduce the number of vehicle movements and levels of congestion resulting from the Proposed Development. These would also provide mitigation by reducing potential vehicle emissions to air.

### **RESIDUAL EFFECTS**

- 6.3.24. Revised ES Chapter 7 concludes that, with the mitigation provided through the ODCEMP and Requirement 4 in place, the potential dust impacts of construction works on residential receptors adjacent to the site and at the canal moorings and towpath would be negligible to slight. Overall air quality effects resulting from construction and operational

traffic on receptors adjacent to the site and the road network are assessed as being negligible to slight.

- 6.3.25. The assessment concludes that there would be no increase in the number of receptor locations which exceed the relevant human health air quality objectives as a consequence of the Proposed Development and that it would not result in new receptors being introduced into an area of poor air quality. The impact of the development is, therefore, insignificant in terms of its effect on human health. The requirements of the Air Quality Directive and Standards and NPSNN paragraph 5.13 are met because the Proposed Development would not lead to a zone or agglomeration becoming non-compliant and would not delay a noncompliant zone or agglomeration achieving compliance.
- 6.3.26. Because of the close proximity of the AQMAs a Compliance Risk Assessment [REP7-073] has been carried out in accordance with Defra guidance IAN 175/13. This concludes that the Proposed Development would not prevent the UK achieving compliance with the EU Limit Value for NO<sub>2</sub>.
- 6.3.27. The transfer of freight from road to rail expected to result from the WMI development is anticipated to reduce HGV movements on a regional scale by 50.6M HGV km each year. ES paragraph 7.232 states that this, in turn, is predicted to lead to annual reductions of 6,126kg in Nitrogen Oxide (NO<sub>x</sub>), 5,976kg of PM<sub>10</sub>, and 3,117kg of PM<sub>2.5</sub>. The operational development would, accordingly, result in a beneficial impact on air quality at a regional scale.

## **COMMON GROUND**

- 6.3.28. The findings and conclusions of the revised Chapter 7 assessment have been agreed and accepted by SSDC as local authority with responsibility for monitoring and managing air quality within South Staffordshire. SSDC had commissioned an independent review of ES Chapter 7 (see paragraph 6.3.40 below). In its D4 submission [REP4-017] and paragraph 1.4 of Appendix H to those submissions [REP4-026], SSDC confirms that the air quality assessment has been subject to sufficiently adequate scrutiny to enable the Council to conclude that the Proposed Development would not result in significant adverse air quality effects in South Staffordshire District and that air quality objectives are unlikely to be exceeded.
- 6.3.29. SSDC had identified local air quality effects as a potential negative effect of the Proposed Development in paragraphs 6.1.1 and 6.8.1 of its LIR [REP2-051]. However, the Council's acceptance of the findings and conclusions of the air quality assessment is recorded in the above documents and in section 15 of the SoCG [REP2-006].

## **EXAMINATION**

- 6.3.30. Section 1.8 of my FWQs set out a number of detailed questions about the current national policy on air quality standards, the assessment of effects and potential impacts on both human receptors and ecological interests.

Responses to those questions were provided by the Applicant [REP2-009] and SSDC [REP2-049].

- 6.3.31. Having reviewed that information, I consider that the assessment is compliant with the NPSNN paragraph 5.7 requirement that an air quality assessment should describe the existing situation (baseline) and forecast air quality and any significant effects, including residual effects, taking into account the impact of traffic generated by the development.
- 6.3.32. ExQ1.8.8 sought further information about the moderate adverse (and thus significant) effect of road traffic emissions in terms of the 24-hour PM<sub>10</sub> objective which the assessment had predicted at Receptor 7a, which is within Walsall District close to the M6. I asked whether any additional mitigation was proposed in respect of that effect. The Applicant initially indicated that no mitigation was required [REP2-009] but HE [REP2-036] stated that further consideration should be given to this matter. This was discussed at ISH3.
- 6.3.33. In their response to FWQs [REP2-032] Wolverhampton and Walsall Councils stated that the Councils were unable to provide a detailed response on Air Quality matters due to staffing issues. This was of concern because these districts would be affected by traffic generated by the development and have area wide AQMAs. Whilst recognising the Councils' difficulty I considered it necessary to have their views as to compliance. At ISH3 the Applicant was asked to liaise with those Councils to see whether they would be able to provide more information. In ExQ2.7.1 I expressly requested that the two Councils should, if possible, provide a response as to the general compliance of the Proposed Development with the NPSNN and the predicted moderate adverse impact on Receptor 7a.
- 6.3.34. Following the examination of this matter at ISH3, the Applicant's Post Hearing Submissions at Appendix 9 [REP4-007] included a remodelling of the PM<sub>10</sub> predicted concentrations at Receptor 7a and concluded that the predicted impact at this receptor would not be significant.
- 6.3.35. Walsall Council's D5 submission [REP5-044] confirmed that the Council has considered the revised modelling of the predicted PM<sub>10</sub> concentrations at Receptor 7a as set out in the Applicant's Post Hearing Submissions. The Council confirmed that the original evidence was subject to a high degree of error but that the modelled impacts have since been corrected. The Council, therefore, is satisfied that no additional mitigation is required in relation to the potential air quality impacts at Receptor 7a.
- 6.3.36. In response to ExQ1.8.9, SSDC advised that the Council had commissioned Air Quality Consultants Ltd (AQCL) to carry out an independent review of the original Chapter 7 [APP-027] and the supporting information [APP-067 to 074] on air quality. At ISH3, I requested that SSDC should provide the AQCL Report to the Examination and the Council agreed to do so. Copies of AQCL's reports to the Council

and related correspondence with Ramboll, the Applicant's air quality consultants, were submitted at D4 [REP4-023 to 026].

- 6.3.37. This information showed that AQCL had initially expressed concern about the modelling in the assessment and that the results produced showed NO<sub>2</sub> levels far in excess of those monitored by SSDC. The had also raised concerns regarding the verification of the air quality model used by the Applicant. The Applicant subsequently undertook remodelling of pollutant receptors in the District and presented the results to SSDC. AQCL had some remaining, minor concerns about the modelling but considered that these would not affect the outcome of the assessment. Hence, the conclusions of the revised modelling and assessment were not disputed.
- 6.3.38. SSDC confirms, in section 15 of the SoCG [REP2-006], that the Council is satisfied that the overall impact of the development within its area will not be significant. However, in its response to ExQ1.8.1 [REP2-049], SSDC stressed that this response related only to the modelled effects within South Staffordshire District.
- 6.3.39. It was apparent from the information submitted by SSDC, that the Applicant has accepted that the original air quality modelling had resulted in significant over-estimations of NO<sub>2</sub> levels at some receptors (along motorway corridors) and in significant under-estimations of NO<sub>2</sub> levels at other receptors (along other road corridors). I noted that AQCL's concerns about the accuracy of the modelling related also to the predicted concentrations of PM<sub>10</sub> and PM<sub>2.5</sub>. However, with the exception of Receptor 7a, there had been no reassessment of the modelling results for receptor locations in Walsall and Wolverhampton.
- 6.3.40. Given the degree of variation between the original and revised modelled results for receptors in South Staffordshire, I was concerned that the results for other roadside receptors outside of South Staffordshire might also need to be remodelled. In ExQ3.2.1 I requested that the Applicant should undertake a full revision of ES Chapter 7, with revised results for all receptor locations. I asked that this information should be presented in the same level of detail as that set out in Tables A to L in Appendix 1 to Ramboll's Response to South Staffordshire District Council Review-REV3 dated 3 April 2019 [REP4-026 & REP4-007]. The Applicant provided this updated version of Chapter 7 and the related appendices at D7 [REP7-016; REP7-018; REP7-020; REP7-022; REP7-024 & REP7-026].
- 6.3.41. ExQ3.2.2 requested that Wolverhampton and Walsall Councils should comment on that revised assessment. Wolverhampton Council [REP8-051] confirmed that it has reviewed the updated assessment and concludes that the Proposed Development would be unlikely to result in air quality objectives being exceeded in Wolverhampton and that the effect on the AQMA would not be significant. Walsall Council [REP8-056] advised that the predicted levels of NO<sub>2</sub> at relevant receptors in Walsall are significantly below the annual mean and that the Proposed Development would not affect the compliance status of Walsall. No comments were received from Dudley Metropolitan Borough Council [REP8-052].

- 6.3.42. Having previously opted not to register as an IP, Public Health England submitted a letter at D7 [REP7-031] indicating a wish to review any information received in response to my request for further information about air quality modelling for receptors outside of South Staffordshire. The Applicant's D7 submissions were published in the Examination Library, but no further communication was received from Public Health England. It can, therefore, be assumed that they have no concerns about the effects of the Proposed Development on human health.
- 6.3.43. Stop WMI's Health Impact Report [REP2-162] refers to various local reports and documents such as the South Staffordshire Sustainable Community Plan and SSDC's Air Quality Status Report 2018. I accept that these reports demonstrate that the Council and local communities are concerned about the effects of poor air quality on human health. However, these do not replace the Air Quality Standards referenced in the NPSNN and against which the Proposed Development must be assessed.
- 6.3.44. The agreed results of the updated Chapter 7 assessment do not support Stop WMI's assertion [REP3-013], that it is inevitable that air quality limits in the vicinity of the site will be exceeded if the development goes ahead. Hence, there is no reason, either now or on the basis of the predicted air quality impacts of the Proposed Development, for the Council to declare the area in which the site is located an AQMA.
- 6.3.45. Many IPs are concerned about the effects of increased traffic on air quality but no technical evidence has been submitted to contradict the findings of the updated assessment. A number of nearby residents are concerned about the potential effects of dust from construction activities but the ES and Section 9 of the ODCEMP [APP-060] demonstrate that there would be adequate measures in place to minimise such effects.
- 6.3.46. In response to ExQ1.8.10 [REP2-009], the Applicant confirmed that monitoring in relation to construction dust impacts would be carried out as described in Table 9.1 and paragraphs 9.8 and 9.9 of the ODCEMP. This would be secured by Requirement 4 in the Recommended DCO. The results of the dust monitoring will be used to confirm that the dust mitigation measures are effective. The procedures for the monitoring will be part of the Dust Management Plan to be included as part of the DCCEMPs to be approved by SSDC. In addition, as confirmed by SSDC in its response to ExQ1.8.5 [REP2-049], the Council would retain its powers to take action against any statutory nuisance arising from the construction or operation of the development<sup>60</sup>.
- 6.3.47. In REP2-009, the Applicant advised that monitoring of operational air quality effects is not proposed as no significant effects are predicted. This was explored further in my questions to the Applicant at ISH3 but I am

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<sup>60</sup> Having initially included a 'standard' article within the draft DCO which would have given the undertaken protection against actions of statutory nuisance the Applicant agreed during the course of the examination that this should not be included.

satisfied that, with services and access roads properly surfaced and maintained, there would be limited risk of dust impacts to nearby receptors.

## **CONCLUSIONS ON AIR QUALITY**

- 6.3.48. Having regard to all the evidence on these matters, I find that the Proposed Development would not result in significant adverse effects on air quality and human health. It would not lead to a zone or agglomeration which is currently compliant with the Air Quality Directive becoming non-compliant nor affect the ability of a non-compliant area to achieve compliance within the most recent timescales reported to the European Commission.
- 6.3.49. The requirements of NPSNN paragraphs 5.10-5.15 are, therefore, satisfied. In addition, the proposal would deliver significant air quality benefits at the regional scale by means of reducing the number of HGV journeys on the regional road network.

## **6.4. NOISE AND VIBRATION BACKGROUND**

- 6.4.1. The NPSNN (paragraph 5.186-187) recognises that excessive noise can have wide ranging impacts on the quality of human life and health and can have an adverse effect on wildlife and biodiversity. Paragraph 5.189 sets out what should be included in a noise impact assessment as part of an ES. Paragraph 5.193 states that developments must be undertaken in accordance with the statutory requirements for noise and that due regard should be given to relevant sections of the Noise Policy Statement for England 2010 (NPSE), the NPPF and associated Planning Practice Guidance (PPG) on noise.
- 6.4.2. Paragraph 5.195 states that the SoS should not grant development consent unless satisfied that the proposals will meet the following aims:
- Avoid significant adverse impacts on health and quality of life from noise as a result of the new development;
  - Mitigate and minimise other adverse impacts on health and quality of life from noise from the new development; and
  - Contribute to improvements to health and quality of life through the effective management and control of noise where possible.
- 6.4.3. The NPSNN discusses the likely requirement for mitigation of adverse effects and paragraph 5.199 states that, for most national network projects, the relevant Noise Insulation Regulations will apply. *“These place a duty on and provide powers to the relevant authority to offer noise mitigation through improved sound insulation to dwellings with associated ventilation to deal with both construction and operational noise.”* There are Noise Insulation Regulations in place for both roads and railways that could be relevant to a SRFI proposal.

6.4.4. The NPSE seeks to promote good health and quality of life through the effective management of noise within the context of Government policy on sustainable development. Paragraph 2.18 explains the need for consideration of the economic benefits of the activity under examination to be integrated with proper consideration of the adverse environmental effects. This should avoid noise being treated in isolation, "i.e. *not focusing on the noise impact without taking into account other relevant factors*".

6.4.5. The NPPF (paragraph 180) states that planning policies and decisions should mitigate and reduce to a minimum potential adverse effects relating to noise from new development and "*avoid noise giving rise to significant adverse impacts on health and the quality of life.*" Footnote 60 to the NPPF refers the reader to the Explanatory Note to the NPSE for further information as to how this test is to be applied. That note explains that there are established concepts that are currently applied to noise impacts. These are:

NOEL – No Observed Effect Level

This is the level below which no effect can be detected and, hence, no detectable effect on health or the quality of life.

LOAEL – Lowest Observed Adverse Effect Level

At this level an adverse effect can be detected.

SOAEL – Significant Observed Adverse Effect Level

This is the level above which significant adverse effects on human health and quality of life occur. These definitions are broadly repeated in the PPG.<sup>61</sup>

6.4.6. Paragraph 005 of PPG states that exposure above the SOAEL causes a material change in behaviour such as keeping windows closed. The planning process should be used to prevent this effect occurring by use of appropriate mitigation. It refers to changes in the design and layout of the development as a possible means of mitigation, and paragraph 008 includes the option of noise insulation where the impact is on a building. At the highest extreme, noise exposure would cause extensive and sustained changes in behaviour without the ability to mitigate the effect of noise. At this stage "*the impacts on health and quality of life are such that, regardless of the benefits of the activity causing the noise, this situation should be prevented from occurring*".

6.4.7. The SOAEL threshold should accordingly be used when considering whether or not noise from the Proposed Development would result in "*significant adverse impacts*" on health and quality of life. Such impacts should be avoided through appropriate mitigation. It is only if noise

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<sup>61</sup> Planning Practice Guidance paragraph 003 – ID:30-003-20190722

impacts reach an unacceptable level that cannot be mitigated that development should be prevented. As noted in the ES a “significant” adverse impact for the purposes of the NPSNN does not directly equate to a significant effect in EIA terms<sup>62</sup>.

## **EXAMINATION DOCUMENTS**

- 6.4.8. An Addendum to ES Chapter 13 Noise and Vibration was submitted during the Examination to take account of additional background noise monitoring agreed with SSDC. The main assessment of potential effects is now comprised in Chapter 13A Addendum [REP2-014] although this needs to be read together with the original Chapter 13 [APP-046]. This is supported by a number of figures [APP-046 to 051] and technical appendices. These are:
- Glossary of Terminology [APP-108]
  - Standards and Guidelines [APP109]
  - Full Survey Results in 3 volumes [REP2-015 to 017]
  - Construction Assessment [APP-111]
  - Operational Noise Assessment Information [APP-112]
- 6.4.9. Of importance also is the Bespoke Noise Insulation Scheme (BNIS) agreed between the Applicant and SSDC, the implementation of which would be secured through the DCO. The BNIS is based upon the statutory noise insulation schemes for roads and railways established through the Noise Insulation Regulations but is tailored to meet the circumstances of the Proposed Development. In particular, it adopts lower noise thresholds for eligibility for noise insulation than those in the statutory schemes.

## **ASSESSMENT OF EFFECTS**

- 6.4.10. The baseline assessment is informed by the original background noise surveys and those undertaken in June and July 2018. Locations for the background surveys were agreed with SSDC and are identified in ES Figure 13.1A. As shown in Table 13A.1, the principal existing noise sources are traffic noise with passing trains also being audible at locations within a few hundred metres of the WCML Loop. At the northern end of the site there was intermittent noise from the quarry and other sources recorded were bird song and the rustling of leaves. Full details of the recorded background levels are set out in Tables 13A.2 to A.12. In accordance with guidance in British Standard 4142:2012 these levels have been converted to  $L_{A90}$  values as representative background sound levels to be used in the assessment.
- 6.4.11. Vibration monitoring locations were positioned close to the boundary of the site with NR land in the rail corridor to assess the vibration effects of passing trains.

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<sup>62</sup> See paragraph 13.91- 52 of ES Chapter 13 re SoS Decision in respect of the Thames Tideway Tunnel DCO

- 6.4.12. The assessment has been informed by an operational noise survey at a rail freight terminal in Widnes considered to be representative of the operations likely to take place within the WMI terminal. Technical Appendix 13.4 [APP-111] details the plant and equipment expected to be used in the construction phase and the predicted sound power levels of this equipment. The assessment of noise and vibration effects from construction traffic is based on traffic data provided by WSP. Typical source noise levels for the operational activities at the completed development are set out in Table 13.25. Appendix 13.5 [APP-112] provides further details of how these levels have been calculated.
- 6.4.13. For the purposes of the assessment the SOAEL is taken to be the background sound level +10dB or a façade level of 66dBA  $L_{Aeq\ 16\text{hours}}$  (daytime) and 62dBA  $L_{Aeq\ 8\ \text{hours}}$  (night-time) whichever is reached first. The Unacceptable Adverse Effect Level (UAEL) is taken to be a façade level of 75dBA  $L_{Aeq\ 16\ \text{hours}}$  (daytime) and 69dBA  $L_{Aeq\ 8\ \text{hours}}$  (night-time). These levels have been determined on the basis of the known insulating performance of the secondary glazing system required by the Noise Insulation Regulations of 1975 and 1996 and the target noise criteria inside dwellings of 40dB daytime and 35dB night-time derived from BS8233:2014.
- 6.4.14. There are a large number of potential sensitive receptors in residential properties along the A5 and the A449, on Station Drive and in Calf Heath to the south/south-east of the site, and on and around Croft Lane to the north of the site. Users of moorings on the canal and the Canal towpath are identified as potential sensitive receptors. In the Chapter 13 Addendum, receptors to the west of the site along Crateford Lane and to the north of the site, around Harrisons Lane were added to the list in the original Chapter 13. The extent of the moorings on the canal was updated in line with information provided by CRT.

#### **DEMOLITION AND CONSTRUCTION EFFECTS**

- 6.4.15. The calculations for assessing effects during the construction phase have been undertaken for two different scenarios:
- An 'average' case where all construction plant is assumed to be working at the approximate centre of the site under construction; and
  - A 'worst' case where construction plant is assumed to be working at that part of the site closest to the receptor under consideration.
- 6.4.16. Construction working hours would be controlled under the DCEMP for each phase that would need to be submitted and approved under Requirement 4 of the Recommended DCO. Hence, existing noise levels are taken to be as measured during the daytime with the existing ambient level, rounded to the nearest 5dB, being adopted as the assessment criterion for each receptor. In accordance with BS5228:2009 & A1:2014, where the existing ambient level is lower than 65dB, a daytime criterion of 65dB has been applied. This applies to all receptors except one for which a 70dB criterion has been adopted.

- 6.4.17. The predicted construction noise levels are shown in Table 13A.24, with those predicted to exceed the relevant 65dB or 70dB criteria highlighted. The 65dB criterion is likely to be exceeded at a number of locations when works are closest to the site boundary, with some receptors experiencing levels as much as 31dB above the criterion level. The 70dB criterion at Wood View is likely to be exceeded by 10dB when works are closest to the site boundary.
- 6.4.18. These levels are predicted to result in a high adverse impact which, in combination with the high sensitivity of these as residential receptors, would result in a major adverse effect on the properties concerned. As each of the selected receptors is representative of a number of residential properties, a large number of properties would potentially experience these significant adverse effects.
- 6.4.19. In the absence of mitigation, high adverse impacts are predicted at the northern and southern canal mooring receptors and along the towpath for 3 phases of the construction programme, resulting in a moderate adverse effect on these receptors. High adverse impacts are predicted at Calf Heath Reservoir but, in view of the low sensitivity afforded to the reservoir as an outdoor recreational space, this would result in a minor adverse effect which is not significant in EIA terms.
- 6.4.20. Increases in daytime road traffic noise as a result of construction traffic are predicted to be less than 1dB along all the roads assessed. Notwithstanding the high sensitivity of residential receptors along those routes, the assessment predicts either no or a minor adverse effect on such properties. As changes in vibration mirror those in traffic noise, but at lower levels of annoyance, no adverse vibration effects on those properties is predicted.

### **CONSTRUCTION VIBRATION EFFECTS**

- 6.4.21. The assessment shows that the construction works could generate perceptible levels of vibration at some receptors where works are taking place close to the site boundary. Only a small number of receptors are within the 20m distance of the boundary within which such effects are likely and the potential effect on these properties is assessed as moderate adverse.

### **PROPOSED MITIGATION**

- 6.4.22. Details of the proposals for mitigation of the effects of construction noise are set out in the ODCEMP which has also been updated during the course of the examination [REP5-035]. Requirement 3(2)(o) in the Recommended DCO requires that the detail of any acoustic fencing be submitted and approved by the LPA, prior to the construction of each phase of development. However, these measures alone may not provide adequate mitigation for potential significant effects on residential receptors. The BNIS, therefore, includes eligibility criteria for noise insulation resulting from construction operations.

- 6.4.23. ES paragraphs 13.196 to 13.198 indicates that approximately 50 properties could be eligible for noise insulation during the construction phase. The actual number would not be known until a final assessment is carried out prior to construction works when the details and likely duration of those works are much clearer. At ISH3, the Applicant confirmed that those properties that benefitted from noise insulation under the BNIS in the construction phase would be very unlikely to experience significant adverse noise impacts in the operational phase of development.

### **OPERATIONAL EFFECTS**

- 6.4.24. The assessment of operational effects assumes that the proposed landscaped bunds to the boundaries of the various development zones have been constructed and are providing acoustic screening as intended. It also assumes the use in the construction of buildings of a cladding material with a high sound reduction performance than is typically used. The use of this material would be secured through Requirement 21. Initial calculations have been undertaken on the basis of the Illustrative Masterplan [APP-205 to 209] but, where the layout could be made worse within the defined parameters (in terms of the relationship with the nearest receptor), the layout has been adjusted to arrive at a reasonable worst-case scenario. Details of these adjustments are set out in paragraph 13.245 of Chapter 13.
- 6.4.25. Operations within the completed development are likely to involve HGV and Tugmaster movements, loading and unloading of trains and HGVs with gantry cranes, reach-stackers and other forklift trucks and noise from within the warehouse units. The ES assesses the likely sound rating level at each of the identified receptors and compares these to the relevant background levels in Table 13A.19. This shows a range of effects, with some receptors experiencing only a negligible impact but others experiencing levels up to 20dB above background level, which would equate to a high adverse impact. Other receptors are identified as experiencing a moderate adverse effect.
- 6.4.26. BS4142:2014 advises that contextual matters should be taken into account when determining the overall magnitude of potential impacts. These matters can include whether the property affected incorporates design features that provide noise insulation and acoustic screening. The BNIS accordingly provides an appropriate means to address the potential major adverse effects identified in the numerical assessment. Paragraphs 13A.97 to 13A.9 identify over 100 residential properties that might be eligible for noise insulation under the BNIS due to operational noise effects. However, the assessment only considers the representative sample of receptors set out in Figure 13A.2 of the Addendum. The assessment of eligibility that would be carried out under the terms of the BNIS before works commence would need to include all residential receptors that might be affected.
- 6.4.27. With noise insulation provided through the BNIS, the BS4142:2014 internal noise criteria would be met at all residential properties. Daytime external noise levels (for example in gardens) would meet the upper

threshold of 55dB set out in BS8233:2014 and the World Health Organisation Guidelines at all the residential locations assessed. The BNIS would, therefore, reduce the major adverse effects identified in the numerical assessment to moderate adverse effects. These would still be significant in EIA terms.

### **Calf Heath Reservoir**

- 6.4.28. The assessment predicts high adverse impacts at Calf Heath Reservoir but, as this area is afforded only a low sensitivity, the resulting effect would be minor adverse and not significant in EIA terms.

### **Maximum Operational Noise Levels**

- 6.4.29. The assessment has considered the maximum noise levels likely during the operational phase, for example during loading/unloading operations or when a container is being moved within the stacking area. The maximum levels are predicted to exceed the 60dB façade level set out in World Health Organisation guidelines at a small number of residential receptors. All of these would be eligible for noise insulation under the BNIS and, with that insulation in place, internal noise levels within those properties would be comfortably below the 45dB criterion. No adverse effects are, therefore, likely.
- 6.4.30. As the development would be phased over about 15 years, parts of the completed development would be in operation while construction works are taking place, sometimes in close proximity to areas that have been completed and are occupied. The assessment of these potential in-combination effects has concluded that the effects are unlikely to be any greater than the construction effects in isolation.

### **Operational Vibration Effects**

- 6.4.31. Vibration effects from HGVs using the service yards and roads are possible but are considered unlikely if those areas are properly maintained and kept free of potholes. The same would apply to operations within the Rail Terminal. The risk of adverse effects is also reduced because the nearest receptors would be beyond the 200m limit over which vibration effects are likely to be detectable. Overall, the vibration effects are assessed as negligible.

### **Off-Site HGV Movements**

- 6.4.32. The assessment of potential noise impacts from additional HGV movements on the highway network is set out in Table A13.5.5 in Technical Appendix 13.5 [APP-112]. This shows that predicted levels would exceed the daytime and night-time criteria at a small number of properties in both 2021 and 2036. More detailed, receptor specific calculations have been carried out for those properties. The results of those calculations (Tables 13.31 and 13.32) show that the predicted level would be less than 3dB at all but 1 of the locations in 2021, resulting in a minor adverse effect. One property, White Farm, would experience a level of 3.1dB in the night-time level at 2021 but this would reduce to

2.7dB by 2036. The higher of those numbers would result in a moderate adverse effect on that receptor.

- 6.4.33. As in respect of the construction assessment, vibration effects on sensitive receptors due to increase traffic levels are considered unlikely.

### **Off-Site Railway Noise and Vibration**

- 6.4.34. The assessment of the effects of noise and vibration assumes that the Rail Terminal is used to its planned capacity of 10 trains per day and with 3 trains arriving or departing at night-time. The largest predicted increase in noise levels at the notional trackside receptor used in the assessment, at +0.4dB (Table 13.35), would not result in an adverse effect. No properties have been assessed as being eligible for noise insulation under the statutory scheme for railways.

- 6.4.35. The railway vibration assessment uses background levels measured at the two monitoring points close to the railway corridor and adds the effect of all 10 trains per day passing those points to provide a worst-case assessment. Table 13.36 shows that the potential effect can be classed as a low adverse impact.

### **SUMMARY OF RESIDUAL EFFECTS**

- 6.4.36. Table 13.428 sets out the Applicant's summary of residual effects taking account of the proposed mitigation including the BNIS. The likely significant effects are:

- Short-term moderate to major adverse effects at receptors closest to the site when construction works are taking place close to the site boundary;
- Possible moderate adverse effects at two receptors from construction vibration;
- Moderate adverse effects from operational noise at a number of receptors around the site but the BNIS should provide internal noise levels that meet the guidelines for residential properties;
- Increases in traffic on roads around the site are predicted to lead to moderate to major adverse effects in 2021 but these are expected to reduce by 2036.

None of these effects would constitute an unacceptable level of impact having regard to the guidance in the NPSE Explanatory Note and PPG.

### **COMMON GROUND**

- 6.4.37. The methodology for undertaking the assessment was agreed with SSDC prior to the work being undertaken. SSDC subsequently commissioned Hepworth Acoustics consultants to undertake an independent review of the Chapter 13 assessment and their report was submitted at D4 [REP4-019 & 020]. With the benefit of that independent advice SSDC concluded, in section 14 of the SoCG [REP2-006], that the methodology used in the assessment is appropriate and accords with the relevant guidance and that a thorough noise and vibration assessment has been undertaken.

6.4.38. Section 14 of the SoCG records SSDC's agreement to the principle of using the BNIS to control internal sound levels and that this provides appropriate mitigation for noise effects of the Proposed Development. The full terms of the BNIS have subsequently been agreed as part of the signed DCOB [REP8-020 to 024]. At ISH3, SSDC stated that, provided the BNIS is implemented as envisaged, it would serve to reduce potential adverse effects on residential receptors from significant adverse to moderate adverse.

6.4.39. **EXAMINATION**

6.4.40. The BNIS has been subject to extensive discussions between SSDC and the Applicant over a considerable period of time and has been revised and amended further during the course of the Examination. The manner in which it would be operated and implemented was examined at ISH3 and further clarification and detail has been provided in the subsequent written submissions. Following the discussion at ISH3 the Applicant produced a draft of a Non-Technical Summary of the BNIS which would be made available to potentially affected parties if the DCO is granted. This draft forms Appendix 9 to the Applicant's D4 submissions [REP4-008].

6.4.41. Stop WMI raised a number of queries about the operation of the BNIS in section (C) of their D4 submissions [REP4-032] and the Applicant responded to these comments in their Response to Other Parties' D4 submissions [REP5-006]. Based on that evidence I am satisfied that:

- The updated baseline survey required as part of BNIS will comprise a series of measurements at locations to be agreed with SSDC but the existing baseline cannot be portrayed as a noise contour plot since it will comprise a number of diverse and diffuse sources, many of which cannot be modelled. However, future noise assessments under the BNIS could include noise contour plots if SSDC requires this.
- As no significant lighting or air quality effects have been predicted in the ES, there is no need for the BNIS or an equivalent scheme to deal with these matters. However, I was advised by the Applicant's acoustic expert at ISH3 that any noise insulation installed at properties qualifying for such treatment under the BNIS would be likely to include mechanical ventilation so that windows can be kept closed.
- The periods set in the BNIS for an interested person to confirm that they wish to proceed, for them to decide whether they wish to receive a Noise Insulation Payment, and for using that money to install the necessary insulation are reasonable to enable the effective operation of the BNIS.

6.4.42. In response to another IP's concerns about potential noise disturbance from the Rail Terminal [REP4-036], the Applicant [REP5-006] has explained that, in addition to the assessment carried out before construction, the BNIS includes 3 assessment windows throughout the life of the project. Hence, although adverse noise effects from the rail operations have not been predicted, the BNIS would enable households

experiencing problems to be picked up and assessed in one of the later windows and to benefit from the BNIS at that stage if unacceptable noise levels are found to be occurring. Requirement 21 sets out an agreed protocol for dealing with noise complaints. In addition, SSDC would retain its powers, under the Control of Pollution Act 1974 and the Environmental Protection Act 1990, to take appropriate action to stop or modify any operational activities that are considered to be resulting in unreasonable noise impacts.

- 6.4.43. In ExQ1.9.5 I sought clarification as to the likely duration of the worst-case impacts from construction works, as ES Table 13.24 shows that some receptors could experience noise limits above the 65dB criterion in more than one phase of development. In their written response [REP2-009], and orally at ISH3, the Applicant has confirmed that the worst-case scenario assumes all construction plant working on that phase of development being in use at the same time in close proximity to the site boundary and that this is an unlikely event. It is unlikely that plant would maintain such a location for more than a few days or possibly a week before moving elsewhere. Hence, the worst-case scenario would only occur on an intermittent basis while, for example, landscape mounds are being constructed at the site boundary, and would be of a short duration of possibly a week. I am satisfied that that would be the case.
- 6.4.44. In ExQ1.9.6 I raised a concern about an apparent inconsistency between ES Technical Appendix 13.2 [APP-109] and ES paragraph 13.360 about the way the effects of vibration from traffic had been assessed. In response the Applicant confirmed that there is an error in the Technical Appendix and that paragraph 13.360 sets out the correct approach. The Applicant provided assurance that the assessment had been carried out in compliance with the DMRB and this has not been questioned by any other IPs. I also sought confirmation that the notional receptor used to calculate the effect of railway noise and vibration is representative of the nearest receptors to the WCML Loop. In response to ExQ1.9.7, the Applicant confirmed that this was the case and SSDC [REP2-049] stated its view that the small increase in freight movements would have a negligible effect on noise levels.
- 6.4.45. In Ex1.9.10 I noted that ES paragraph 15.4.35 states that buildings within Development Zone A7 should be single aspect so the building would provide noise attenuation from loading and servicing activities to the nearest receptors. However, no provision had been made in the draft Requirements for this. This has now been rectified by means of Requirement 3(7) in the Recommended DCO.
- 6.4.46. CRT [REP2-021] raised concerns about potential noise impacts on users of the canal moorings near to Gailey Marina and more generally on users of the canal and towpath. CRT is concerned that significant adverse effects might discourage users from visiting and staying on this stretch of the canal and that such an outcome could, over the longer term, affect the viability of businesses that provide services to users of the canal and CRT's revenue stream. These concerns were explored at ISH3 and in my FWQs.

- 6.4.47. There was some initial confusion as to the nature of the moorings, but CRT has confirmed, at ISH3 and in its written submissions [REP2-041 & REP4-015], that there are 10 moorings to the south of Gailey Marina which are available to users on a 12-month licence. These are not residential moorings and users have to provide evidence of a permanent address, but no limit is placed on the number of nights that users can spend on their boat while it is moored in this location. There is also no restriction on the licence being renewed by a user at the end of the 12-month term.
- 6.4.48. I accept that these can be distinguished from other, much shorter-term moorings elsewhere along the Gailey to Hatherton Marina section of the canal and that users of these moorings are likely to spend more time on this part of the canal than other boat owners. They may choose to sleep on their boats overnight on a reasonably regular basis but, given that they are also likely to use their boats for cruising along the canal network, I consider that this would still be an occasional night-time use which can be distinguished from a permanent residential property. Having considered the evidence from the Applicant and CRT, it is, in my view, reasonable that the ES should treat these as quasi-residential rather than residential receptors and should apply a lower level of sensitivity to them in the assessment.
- 6.4.49. Two mooring locations, including those available on a 12-month licence, are predicted to have rating levels of more than 8dB above background levels at night-time; this would result in a moderate adverse impact. Following the discussion at ISH3, I accept that it would be impractical to include canal boats in the BNIS given that different boats would be moored at different times. I also accept that secondary glazing may not achieve the desired internal levels because of the much less substantial superstructure of a canal boat compared to a residential building. Mitigation of these moderate impacts would, therefore, be dependent upon the acoustic screening provided by the landscape mounds proposed between the canal and Development Zones A4a and A4b.
- 6.4.50. Given the nature of its use, it is appropriate to apply the BS8233:2014 criterion of 55dB for external noise as the relevant criterion for users of the towpath. The assessment predicts that this criterion could marginally be exceeded at the towpath receptor close to Gravelly Way, but the rating level would be unlikely to be more than 56db. This would result in a moderate adverse effect.
- 6.4.51. The assessment treats all users of the towpath as transient and I agree with CRT [REP2-021] that this may not be an accurate description to cover the wide range of users. On my site inspections I observed cyclists and runners passing through the area relatively quickly, but also saw people taking a more leisurely stroll along the towpath and anglers who perhaps are likely to occupy their chosen spot for many hours at a time. However, the nature of such use is likely to be both temporary and intermittent and does not warrant the high sensitivity afforded to residential and other more sensitive receptors. The moderate adverse effect predicted reflects the medium sensitivity afforded to these

receptors and is a reasonable assessment of the level of effect in EIA terms. I was also advised by the Applicant at ISH3 that these predicted effects are based on a rating level and that actual noise levels experienced are likely to be lower rather than higher than the rating level.

- 6.4.52. Submissions were made by Mr Williams [REP2-178, REP4-050, REP5-063, REP6-036, REP7-122 & REP8-072] about the potential effects on residents living close to the A449 of additional traffic travelling through the various junctions on that route between Station Drive and the M54. My observations on my USI were that, although there are residential properties close to some of these junctions, neither their proximity nor their orientation to the carriageway suggests that they are significantly more vulnerable to noise or other adverse effects from road traffic than other properties fronting the A449 that have been considered in the assessment.
- 6.4.53. Mr Williams's principal concerns were addressed in the Applicant's Responses to Other Parties' D2 Submissions [REP3-007]. This confirmed that the relevant guidance in DMRB and the DfT's Memorandum on the Calculation of Road Traffic Noise advises that noise calculations should be based on average speeds and should ignore any speed changes due to junctions. That guidance has been followed in the assessment. The potential effects of noise from traffic have been assessed using the methods set out in the DMRB and indicate that, for the majority of roads, there would be a minor adverse effect, with increases in traffic noise of less than 3dB which is not significant in EIA terms.
- 6.4.54. Properties along the southern section of the A449 were not among the small number of properties identified as being likely to experience an increase of more than 3dB and there is no reason to conclude that the effect on those properties would be significant. The noise impact assessment is based on predicted traffic flows and mitigation measures agreed by SCC and HE. Having regard to that evidence, I find that there is no justification for the alterations to the A449 junctions that Mr Williams has proposed.

## **CONCLUSIONS ON NOISE AND VIBRATION**

- 6.4.55. Moderate adverse effects of vibration from construction works may be experienced by some residential receptors but these would be temporary and short-term. The BNIS, which would be operated in both the construction and operational phases of the development, would result in a scheme which meets the policy requirements set out in paragraphs 5.194-196 of the NPSNN. In particular:
- Significant adverse effects on health and quality of life would be avoided;
  - A range of measures are proposed to mitigate the adverse effects of noise;
  - The BNIS would ensure a satisfactory internal environment for all residential properties in closest proximity to the site.

- 6.4.56. The Proposed Development would not achieve an improvement in health and quality of life through the effective management of noise. However, paragraph 5.195 of the NPSNN states that this should be achieved where possible and does not set this as a specific test of acceptability. Accordingly, I consider that the requirements of the NPSNN are met insofar as noise and vibration effects are concerned.

## **6.5. ECOLOGY AND NATURE CONSERVATION**

### **BACKGROUND**

- 6.5.1. Paragraph 5.22 of the NPSNN requires applicants to ensure that the ES clearly sets out any significant effects on designated sites, protected species and habitats and shows how the proposal has taken advantage of opportunities to conserve and enhance biodiversity. As a general principle, development should avoid significant harm to biodiversity and, where significant harm cannot be avoided, appropriate compensation measures should be sought (paragraph 5.25). The SoS should not grant development consent for development that would result in the loss or deterioration of irreplaceable habitats, including ancient woodland and veteran trees, unless the national need for and benefits of the development in that location clearly outweigh the loss (paragraph 5.32).
- 6.5.2. Development consent should not normally be granted if development is likely to have an adverse effect on a Site of Special Scientific Interest (SSSI) (paragraph 5.29). In making decisions, the SoS should also give due consideration to regional or locally designated sites. However, given the national need for new infrastructure, these designations should not be used in themselves to refuse development consent.

### **ASSESSMENT OF EFFECTS**

- 6.5.3. The potential effects on ecology and nature conservation interests are considered in Chapter 10 of the ES [APP-030]. This is supported by the following documents:
- Ecology Baseline Report [APP-087]
  - No Significant Effects Report [APP-089]
  - Framework Ecological Mitigation and Management Plan [REP5-033]
  - Letter of No Impediment [APP-091]
  - Plan showing Designated Sites [AS-003]
  - Plan showing the proposed Farmland Bird Mitigation Area [AS-004]
  - Legend for Map showing Nature Conservation Sites and Species [AS-005]
- 6.5.4. In accordance with standard practice, a confidential report has only been made available to NE and SCC as the key consultees in relation the potential effects on protected habitats and species.
- 6.5.5. The Framework Ecological Mitigation and Management Plan (FEMMP) sets out the measures proposed to mitigate potential adverse effects and to ensure effective management of the new habitats to be provided. The FEMMP has been revised to provide more detailed information and clarity

on the mitigation and management proposals. The version that accompanied the application has been superseded by that submitted at D5 [REP5-033].

- 6.5.6. The implementation of measures in the FEMMP is secured through Requirement 11 of the Recommended DCO. This also requires that a detailed Ecological Mitigation and Management Plan (EMMP) for each phase of the development be prepared and approved before works commence. This would incorporate and build on the principles and requirements set out in the FEMMP insofar as they are relevant to the phase of development concerned.
- 6.5.7. The assessment of potential impacts takes into account the embedded mitigation to be delivered as part of the Proposed Development, including the retention and enhancement of existing habitats and features, the extensive GI proposed across the site including the 2 Community Parks and wildlife corridor, bat roosting enhancements, new nesting bird habitat, ecologically friendly infrastructure design and the proposed off-site Farmland Bird Mitigation Area.

#### **DESIGNATED SITES**

- 6.5.8. There are no internationally or nationally designated nature conservation sites within or directly adjacent to the application site. The Four Ashes SSSI lies approximately 140m to the south but this is designated for its geological rather than ecological value. Two other SSSIs, further from the site, have been assessed for air quality impacts because of their proximity to roads likely to be affected by traffic from the Proposed Development. These are:

- Belvide Reservoir SSSI-notified for its breeding and overwintering bird populations; and
- Doxey & Tillington Marshes SSSI-notified for breeding wild birds snipe, and for its fen, marsh and swamp wetland habitats.

The location of these sites in relation to the application site is shown in Figure 10 [AS-003].

- 6.5.9. There are three Special Areas of Conservation (SAC), which are classified as 'European Sites,' located within 10km of the site. These are the Cannock Chase SAC, Motte Meadows SAC and the Cannock Extension Canal SAC.

#### **HABITATS AND SPECIES RECORDED AT THE SITE**

- 6.5.10. The active quarry and dominance of agricultural land as the principal land use reduce the habitat value of the site but the surveys have identified a range of habitats. These include pastoral and arable farmland, ephemeral ditches and several ponds, hedgerows, woodland, improved and semi-improved grassland, scrub and trees.
- 6.5.11. The Arboricultural Assessment [APP-105] recorded 11 trees assessed as 'true' veteran trees and a further 25 which have potential to become 'future' veterans. There is a single specimen of a Native Black Poplar, but

this is in a very poor structural condition with large amounts of dead and damaged limbs and branches.

- 6.5.12. Bat surveys conducted at the Site recorded ten of the 12 bat species known to be present within Staffordshire, with evidence of feeding and community activity and 6 on-site roosts. The bat assemblage was assessed as being of importance at a District (South Staffordshire) Level. The assemblage of badgers was assessed as being of importance at a Local (Four Ashes/Gailey) Scale.
- 6.5.13. Evidence of otters was mainly confined to the canal corridor and no otter holts were recorded. The otters in the landscape were assessed as important at a District Level. The surveys found evidence of amphibians including a small population of great crested newts, smooth newts, common frog and common toad. The great crested newt and common toad populations were assessed as being important at a Site Level. No reptiles were recorded.
- 6.5.14. Sixty-two species of birds were recorded including 12 species of principal importance, 10 Red List species and 12 Amber List species.<sup>63</sup> Breeding and overwintering species of farmland birds are the most prominent bird groups. Nesting species recorded included swallow and house sparrow and important populations of birds were noted at the reservoirs to the north east of the site. The farmland bird assemblage of birds of known conservation concern, listed under s41 of the Natural Environment and Rural Communities Act 2006, or listed in the Staffordshire Biodiversity Action Plan was assessed as important at County Scale. The assemblage of all other birds of conservation concern was assessed as important at a Local Scale.
- 6.5.15. A number of invertebrate species were recorded, with 8 species identified as nationally scarce and 1 group of species being of County importance. Overall, the invertebrate assemblage was assessed as being of importance at a Local Scale.
- 6.5.16. The ES recognises that there could be significant adverse effects on the various species and habitats present on the site. It sets out the range of mitigation measures proposed, the large majority of which would comprise embedded mitigation to be delivered as part of the Proposed Development. The assessment of effects takes account of that embedded mitigation as identified in the GI Parameter Plans and described in the FEMPP. Table 10.10 of the ES sets out a full list of the embedded mitigation measures and how these would be secured.

### **Effects of Site Clearance and Construction**

- 6.5.17. Table 10.11 of ES Chapter 10 provides a summary of the residual effects of site clearance and construction works on the principal habitats within

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<sup>63</sup> The UK Biodiversity Action Plan 1994 is no longer operative but s41 of the Natural Environment and Rural Communities Act transposes the habitats and species from UKBAP into a List of Species and Habitats of Principal importance.

the site. Taking account of the embedded mitigation, the development is expected to have a positive impact in overall terms, with net gains in all of the main habitats as detailed below:

- 1.27 ha increase in the area of semi-improved grassland;
- An increase of 1.837km in the total length of hedgerows;
- An increase of 18.53 ha in the area of woodland;
- An increase of 783 in the number of individual trees although there would be a net decrease of -56 in the number of tree groups.
- An increase in the number of ponds by a minimum of 10.

- 6.5.18. The ES emphasises that any loss of habitat would be spread over the duration of the works, from about 2020 to 2035, and that new GI including the Community Parks would be provided within that phased programme to ensure that new habitats are established before existing ones are removed.
- 6.5.19. The ES concludes that, allowing for the embedded mitigation, the loss of semi-improved grassland habitat would not be significant. There would be a temporary effect on the hedgerow habitat as new planting matures. This is not considered to be significant and there would be a biodiversity net gain for hedgerow and broadleaved woodland habitats. There would be a net gain in the overall number of individual trees, but 7 of the 11 veteran and 5 of the 25 future veteran trees would be lost as would the single Native Black Poplar. These losses would be significant at the Local scale.
- 6.5.20. The net impact on open water habitat would be a permanent, beneficial effect that would be significant at the Local Scale. The development would result in the permanent loss of ponds and terrestrial habitat suitable for amphibians, but the net effect is assessed as being low. The impact on nesting birds would be limited by ensuring that clearance of vegetation only takes place outside of the breeding season but there would be a permanent and irreversible loss of approximately 192 ha of mixed farmland and woodland habitat. With all the mitigation measures in place, there would be an adverse effect of only Local significance for farmland birds and other birds of conservation concern.
- 6.5.21. The partial loss of habitat for invertebrates would be a permanent and irreversible effect. The surveys indicate that these habitats are largely populated by common and localised species and that their habitats are readily replicable and present in equivalent nearby habitats in the Study Area. The overall effect on invertebrates is considered to be adverse and significant at a Site but not at a Local Scale.
- 6.5.22. Six on-site roosts, used by Soprano pipistrelle, Natterers and Brown long-eared bats, would be lost, resulting in a direct, permanent adverse effect that is significant at the Local Scale. Their removal would require a European Protected Species Mitigation Licence from NE. NE has already issued a Letter of No Impediment [APP-091] confirming that there should be no impediment to the issuing of that licence. In that letter, NE conclude that the proposals "*are considered to maintain the Favourable*

*Conservation Status of the bat assemblage and populations present on the site”.*

- 6.5.23. There may be other roosts or at least trees with cavities suitable for roosting in that part of the wood to be felled, although no roosts were identified in the survey. The Letter of No Impediment covers the possible need for a licence for the removal of roosts in this area and for temporary disturbance to bats in the off-site roosts during felling or new planting works. No significant effects are predicted in relation to any other bat roosts in the vicinity of the site.
- 6.5.24. Where possible, the proposals retain areas identified as being of importance for foraging and commuting. They seek to strengthen these by providing a new wildlife corridor between Calf Heath Wood and Calf Heath Reservoir and other commuting corridors with bat hop-overs where these are crossed by estate roads. The overall effect on the bat assemblage on or using the site is considered to be significant at a Local but not a District Scale.
- 6.5.25. For some protected species, these were noted as being of local significance. Due to the measures and standard procedures to be applied during the construction works no significant impacts are predicted. In response to ExQ1.10.26, NE [REP2-040] and SCC [REP2-063] confirmed that they had reviewed the confidential report, that this provides an adequate assessment of the potential effects and that the mitigation proposed by the Applicant would be sufficient to offset any significant harm to this species.
- 6.5.26. Because they are largely nocturnal no direct disturbance to otters is expected to arise from construction, but the works could result in the loss or fragmentation of their habitat. With the planting of new woodland to approximately 150m of the canal corridor and the proposed enhancement of other areas of habitat, a small net gain in suitable habitat would be secured, leading to a beneficial change for otters but this would not be significant in EIA terms. The effect on other mammals, including polecats, hedgehogs and harvest mice, is not considered to be significant.

### **Operational Effects**

- 6.5.27. The operational phase could give rise to adverse effects on designated sites through air quality impacts from the additional traffic using the road network. The ES concludes that there would be no significant adverse effects on the SSSIs identified in the baseline. As set out more fully in Chapter 8 of this report, the Applicant’s NSER concludes that the Proposed Development is unlikely to result in significant effects on any of the SACs either alone or in combination with other plans or projects. Those findings have been agreed with NE.
- 6.5.28. The Gailey Reservoirs Local Wildlife Site (LWS), close to the northern boundary of the site, is designated primarily for its water bird interest. The ES found that no significant noise, visual effects or other disturbance from rail freight, warehouse operations or other activities on the site are

likely to be experienced at the Upper or Lower reservoirs. Accordingly, there would be no adverse effect on the LWS overall. No direct impacts on Calf Heath Bridge LWS are predicted. With the mitigation proposed in ES Chapter 16 (Water and Flood Risk), there would be no significant effect on water quality or habitats on the canal which runs through that LWS. No significant effects are, therefore, predicted.

- 6.5.29. The ES considers a range of potential on-site activities that might affect the retained and new habitats within the site and concludes that there would be no significant effects on these. As the farmland would already have been removed, the operational effects on farmland birds would not be significant. Any operational effects on other bird species would be offset by the removal of severance effects, habitat creation and improvement and there would be a significant beneficial effect on water birds at the Local level.
- 6.5.30. The creation of new habitats and their long-term management through the FEMMP provisions would lead to an improvement in habitat value for invertebrates and a long-term, beneficial effect at the Local scale. In relation to the operational effects on bats in terms of roosting impacts, foraging impacts, lighting and noise impacts and the risk of collision with vehicles on the roads near to the site the ES concludes that there would be a permanent, adverse effect on the assemblage of bats on or using the site that would be significant at the Local Scale. The mitigation measures would, however, ensure that the roosting resource is maintained and that habitats suitable for foraging and commuting bats are retained on the site.
- 6.5.31. Mammal underpasses would be constructed to allow them to cross under roads surrounding the site but there would be an increase in traffic and human disturbance. The overall effect on protected mammals in the operational phase is considered to be significant at the Local Scale. The effect on otters and other mammals is assessed as not significant.
- 6.5.32. Mitigation at the operational stage would primarily comprise the ongoing management of retained and new habitats provided in the construction phase. A summary of residual effects is set out in ES Table 10.13. This shows that significant residual effects arise only at a Site or Local scale, with the Local Scale effect being most notably on farmland birds. These adverse effects would be balanced by the provision of new and enhanced habitats which provide benefits to a range of wildlife and address local and national biodiversity action plan targets.

## **COMMON GROUND**

- 6.5.33. The SoCGs with NE [REP1-003] and SCC [REP2-007] confirm that the scope and methodology of the ecological surveys are appropriate and accord with recognised guidance. NE agrees that all issues relating to protected species and habitats have been addressed, that the mitigation measures are appropriate, and that the ecological enhancement measures outlined in ES Chapter 10 (and the FEMMP) accord with relevant guidance and would have a positive effect on biodiversity.

- 6.5.34. In its SoCG, SCC agrees that the proposals retain the most ecologically important part of Calf Heath Wood, along with a significant number of on-site ponds, trees and hedgerows. It agrees that the on-site mitigation and GI would provide biodiversity benefits, including a net gain in terms of native woodland, semi-improved grassland and hedgerows, and that the Community Parks would provide real ecological benefit. It also accepts that the proposal to set aside land outside of the site to provide a mitigation for farmland birds would provide appropriate mitigation for the effects on those birds.

## **EXAMINATION**

- 6.5.35. Based on my review the RRs and other written representations, I identified a number of issues relating to the Chapter 10 assessment of effects and proposed mitigation measures. These were raised in written questions and discussed at ISH3. They have been responded to both in written responses and in amendments made to the FEMMP. Responses to IPs' concerns about the effects on wildlife and conservation have also been provided by the Applicant in their written responses to Other Parties Submissions [REP3-007 & REP5-006].
- 6.5.36. Stop WMI's Environment and Ecology Report [REP2-163] suggested that brown hares and water voles might be present in and around the site but the Applicant has confirmed that no evidence of their presence was found in the ecological surveys. There are references in a number of the RRs and other submissions to the value of the site for various animals and birds, but I do not consider that these identify the site as being of significance for any species that has not been detected in the ecological surveys.
- 6.5.37. Stop WMI raised concerns about the potential effects of the Proposed Development on a number of these species and their habitats, in particular due to fragmentation of habitats and wildlife corridors and the effects of increased traffic movements, and about the likely value of new habitats within the proposed Community Parks. I consider that these issues have been satisfactorily addressed in ES Chapter 10

## **AIR QUALITY EFFECTS ON BELVIDE RESERVOIR SSSI**

- 6.5.38. The SoCG with NE stated their agreement that the development would not generate significant air quality effects at the SSSIs (paragraph 6.1.1). However, their RR [REP1-003] identified a need for clarification on the likelihood of cumulative effects with other projects and whether any additional mitigation might need to be deployed. Clarification as to the position was, therefore, sought.
- 6.5.39. In response to ExQ1.10.3 [REP2-040] and in their written representation [REP2-038], NE confirmed that agreement had now been reached on this matter and that they are satisfied that the absence of significant adverse effects on the Belvide Reservoir and Doxey and Tillington Marshes SSSIs is suitably evidenced. In light of the Applicant's approach to provision of GI and blue (water) infrastructure within the Proposed Development, NE agree that there is no need for separate enhancement or net gain

measures in relation to the SSSIs.<sup>64</sup> These areas of uncertainty have, therefore, been resolved.

### **POTENTIAL EFFECTS ON GAILEY RESERVOIRS LWS**

- 6.5.40. Paragraph 10.202 of the ES acknowledged that noise from construction activities near to Calf Heath Reservoir (which forms part of the LWS) would be likely to cause temporary disturbance. ExQ10.1.5 sought clarification as to what the duration of these effects might be and whether NE and SCC accepted the ES conclusion that the conservation status of birds using the LWS would not be affected. In response, the Applicant accepted that construction activities in Development Zones A4 and A5 could generate high noise levels at Calf Heath Reservoir but advises that these should lessen as the mounding and screening is put in place. These temporary effects could last over for a number of years.
- 6.5.41. As the assessment in ES Chapter 13A Addendum (Noise and Vibration) reported predicted noise levels at the reservoir that might exceed the 70dB threshold, above which changes in the behaviour of birds might be expected, this issue was explored further in the Examination. In response to ExQ2.9.2, the Applicant [REP5-003] advised that the upper levels of predicted noise in Table 13A16 of the Addendum represent a worst-case scenario in which all construction plant is assumed to be in use in that part of the site in closest proximity to the receptor concerned. Such works would be expected to be limited in frequency and duration, for example earthworks near the receptor that might take less than a week to complete. The 'average case' predictions, within which the plant is assumed to be at the centre of the site, are considered to be more representative of likely noise impacts. It would be the intention to construct screen mounds as early as possible in each phase to provide noise screening from the construction works.
- 6.5.42. Only 1 of 3 reservoirs within the LWS would be affected by construction activities and the wider network of local nesting, foraging and roosting sites would be available even if part of Calf Heath Reservoir was experiencing such short interval impacts. Given the availability of that wider habitat, the conservation status of the water birds using the LWS would be maintained. The EMMP for this phase would establish any detailed sensitivities with regard to the timing or nature of the works. It is not considered that any specific commitment to the timing of construction works is required.
- 6.5.43. Further information was sought about the risk of noise, air quality or other pollution to the Gailey Reservoirs LWS in ExQ1.10.5 and ExQ2.9.3. and further changes were subsequently made to the FEMMP. This now includes a specific commitment (paragraph 3.2.3) that the pollution prevention measures set out in the ODCEMP [APP-060] would be implemented in full to ensure that the site is managed to prevent

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<sup>64</sup> See paragraphs 5.3.5, 5.3.11 & 5.3.22 of REP2-038.

pollution or risk to surface and groundwater resources including the reservoirs.

- 6.5.44. I am satisfied that these issues have been resolved and that the ES finding, that there would be no adverse effect on the conservation status of the water birds using the LWS, is supported by appropriate evidence.

### **EFFECT ON BATS**

- 6.5.45. In response to ExQ1.10.24, SCC [REP2-063] raised concerns about the effects of artificial lighting within the development on the commuting corridors that bats depend on and on the effectiveness of the bat hop-overs. Stop WMI [REP2-163] questioned the suitability of bat boxes as a means of providing adequate mitigation for the loss of existing bat roosts.
- 6.5.46. In response to ExQ1.10.24, the Applicant confirmed that all measures identified in the Lighting Strategy and Lighting Impact Assessment [APP-106] as being necessary for the protection of bats are incorporated in the FEMMP. This also sets out parameters for the design of lighting in the hop-over locations. The FEMMP has been updated to refer to the current, 2018 version or any subsequent update of the Bat Conservation Trust Guidelines on Bats and Artificial Lighting. Revised draft Requirement 19(3) in the Recommended DCO specifies that the highways lighting in the vicinity of the bat hop-overs must be in accordance with the principles set out in the FEMMP. In response to ExQ2.9.11, SCC [REP5-053] confirmed that it is satisfied that these amendments meet the Council's concerns.
- 6.5.47. The Applicant has confirmed [REP5-006], in response to Stop WMI's query, that the mitigation scheme in the FEMMP includes fewer bat boxes than originally envisaged. This amendment was made in response to NE's comment that the overuse of bat boxes could change the balance in the species present on the site. As agreed with NE the mitigation measures reflect the bat assemblage recorded on the site as a whole including the more common species. This concern has, therefore, been addressed.

### **POTENTIAL EFFECTS ON OTTERS AND OTHER MAMMALS**

- 6.5.48. I sought clarification as to why the potential effects of water pollution on otters had not been assessed in Chapter 10 and this issue has been dealt with satisfactorily. In response to ExQ1.10.9(ii), the Applicant confirmed that the ODCEMP sets out all measures to be taken to avoid any pollution of the canal or other water bodies and, in response to ExQ2.9.4, that no flushing of the site drainage system, which could potentially cause accidental pollution of the canal, is proposed. There would, accordingly, be limited risk of pollution of the canal where otters were observed in the ecological surveys. Given the large territories that they occupy, otters are unlikely to be solely dependent upon the canal for feeding.
- 6.5.49. The Applicant has confirmed, in response to ExQ1.10.10, that the other mammals identified in the surveys are not especially sensitive to noise effects. They are present in the ES baseline where the site is subject to

noise from the working quarry, railway line and roads. The SoCG with the NE [REP-003] confirms that NE is satisfied that there is no need for potential effects on these species to be assessed within the ES.

### **LOSS OF WOODLAND**

- 6.5.50. There are concerns among some IPs about the loss of a significant part of Calf Heath Wood. However, my observations on the ASI confirmed the Applicant's assertion that the part of the woodland to be felled primarily comprises block planting of conifer rather than deciduous trees. As noted at paragraph 10.232 of ES Chapter 10, this planting does not fit within the UK Biodiversity Action Plan description of a Lowland Mixed Deciduous Woodland and is, accordingly, of limited ecological value.
- 6.5.51. As is agreed by SCC in its SoCG with the Applicant [REP3-007], the proposal would retain the most ecologically important part of the woodland and provide for the planting of new deciduous trees to its boundary. Together with the future management proposals, these works would create new areas of woodland habitat and increase the habitat value of the retained woodland. Overall, the proposals would deliver a biodiversity net gain for native broadleaved woodlands.

### **VETERAN AND FUTURE VETERAN TREES**

- 6.5.52. In ExQ1.10.19 I set out my concern that the draft FEMMP did not clearly identify the veteran and future veteran trees to be retained or include the specific protection measures recommended in the Arboricultural Assessment. In response, the FEMPP has been revised to include a list of the veteran and future veteran trees to be retained and a new plan identifying the location of these trees. Paragraph 3.3.2 confirms that measures to protect these trees would be put in place in accordance with the recommendations in the Arboricultural Assessment. Paragraph 3.6.1 (third and fourth bullets) confirms that a Veteran Tree Management Programme would be produced for the long-term care and management of both the true and potential veteran trees to be retained.
- 6.5.53. I consider that these amendments would maximise the prospects of ensuring the long-term survival of the true veteran trees and that the 20 future veteran trees would achieve a transition into veteran trees in future years. The loss of 7 veteran trees remains an adverse effect of some significance given the protection that these are afforded in the NPPF (paragraph 175(c) and the NPSNN (paragraph 5.32). However, that loss would be offset by the management of the 20 future veterans which would otherwise be unlikely to occur. It would also be outweighed by the benefits of the Proposed Development. I therefore find that the proposal would not conflict with paragraph 5.32 of the NPSNN or with paragraph 175(c)<sup>65</sup> of the NPPF.

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<sup>65</sup> Paragraph 175 (c) states that development that would result in the loss of veteran trees should be refused unless there are 'wholly exceptional' reasons. Footnote 58 clarifies that wholly exception reasons might exist in respect of an

## **MITIGATION FOR LOSS OF NATIVE BLACK POPLAR**

- 6.5.54. Although the Arboricultural Assessment states that the loss of the single Native Black Poplar on the site could satisfactorily be mitigated, it was not clear from the application submission how this would be achieved. I sought further information in ExQ1.10.18. In response [REP2-009], the Applicant has confirmed that agreement has been reached with a plant nursery contractor to take cuttings and seeds from the existing tree and to grow these on for a number of years.
- 6.5.55. Changes have also been made to the FEMMP (paragraph 3.7.2) to require the approval of a mitigation strategy detailing the measures to be taken to secure the propagation of new trees and the planting of these in appropriate locations and the necessary after care to ensure their successful growth. I am satisfied that these measures would ensure the best prospects for sustaining the presence of Native Black Poplar on the site and would, thereby, contribute to the site's biodiversity.

## **MITIGATION FOR LOSS OF FARMLAND BIRD HABITAT**

- 6.5.56. In ExQ10.22 I sought clarification as to why off-site mitigation for the loss of farm bird habitat is needed and how this meets the mitigation hierarchy, as well as further information about the protection that would be given to the off-site mitigation land. The Applicant [REP2-009] has confirmed that approximately 2.5 ha of mitigation for farmland birds would be provided on-site within the proposed Calf Heath Community Park. Two areas, as shown on Figure 3.5 of the FEMMP, would be sown with a seed crop particularly suited for this purpose and would be managed by periodic harrowing or ploughing. Public access to these areas would be restricted.
- 6.5.57. The main mitigation for farmland bird habitat loss would be through the enhancement and future management for at least 15 years of 12 ha of farmland, which lies approximately 1km to the south of the site as shown on Figure 3.4. The enhancement would include a buffer to Saredon Brook, wider headlands and wider margins and the future management would include the use of seed mixes designed to be of benefit to farmland birds. A specific EMMP for this area would be submitted for approval before works commence.
- 6.5.58. Having regard to the support for this mitigation from NE and SCC, I am satisfied that these two strands together would provide adequate mitigation for the loss of the farmland bird habitat within the site and that this mitigation can be secured by means of the Bird Mitigation DCOB which has been submitted [REP8-019].

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NSIP proposal where the public benefit would clearly outweigh the loss of the habitat.

## **PHASING OF ECOLOGICAL MITIGATION WORKS**

- 6.5.59. One of the key concerns raised in SCC's D2 written representation [REP2-060] and by a number of IPs was about the phasing of the new GI and other ecological mitigation and how this would fit with the removal of existing habitats across the application site. If not properly co-ordinated, there could potentially be a decline in species populations while new habitats become established and this could, in turn, have a permanent adverse effect. These matters were examined in ExQ1.10.17 and at ISH3. Further clarification and certainty has been established through the Applicant's Response to FWQs [REP2-009] and the amendments made to the FEMMP.
- 6.5.60. This evidence shows that, although final phasing details are not known, the ES has sought to identify a worst-case approach where appropriate. However, the timing of or triggers for the delivery of key elements of the mitigation, including Croft Lane Community Park, Wildlife Corridor and southern section of Calf Heath Community Park are set out in the FEMMP. These would be secured by means of Requirements 11 and 17 of the Recommended DCO.
- 6.5.61. Section 3.5 of the revised FEMMP sets out both key principles for new habitat creation to provide clarity as to the form and quality of the habitats to be created and a number of commitments with regard to the early creation of habitats. These include, for example, a commitment that the new 100m wide wildlife corridor be planted prior to any development being commenced in Development Zones A4a or A4b and that the southern part of Calf Heath Community Park would be completed in advance of the felling of a proportion of Calf Heath Wood.
- 6.5.62. The SoCG Addendum [REP8-017] confirms SCC's agreement that the updated FEMMP and the provisions of Requirements 11 and 17 comprise an appropriate mechanism for securing ecological enhancement and mitigation (paragraph 3.2) and to the phasing and timing of the proposed mitigation (paragraph 3.4). The concerns with regard to the proposed phasing of the ecological mitigation have, therefore, be addressed.

## **OVERALL NET GAIN IN BIODIVERSITY**

- 6.5.63. In its D2 written representation [REP2-060] SCC noted that, although ES Table 10.1 shows net gains in most habitats following the proposed mitigation and enhancement works, the ES does not consider the greater importance of established as opposed to new habitats. SCC referred to the now widespread use of biometrics, such as the one developed by Defra, as a more accurate way of making a reasoned comparison between pre- and post-development situations. The Council also suggested that, if a biometric calculation was used, the assessment would be likely to find an overall net loss of species rich hedgerow habitat.
- 6.5.64. This query was explored in ExQ1.10.14 and has been the subject of further discussion between SCC and the Applicant. This has resulted in the Applicant agreeing an additional financial contribution, secured

through the DCOB, towards the enhancement of LWS in the vicinity of the site. With this additional measure in place, SSC has agreed that the package of ecological mitigation measures is acceptable as confirmed at paragraph 3.5 of the Addendum to the SoCG [REP8-017].

## **CONCLUSIONS**

- 6.5.65. ES Chapter 10 provides a full and robust assessment of the potential effects of the Proposed Development on important ecological features and has been carried out in accordance with the relevant guidance. Its findings have been agreed with and are supported by NE and SCC. The proposals incorporate significant embedded mitigation in relation to the potential effects on habitats and species, with additional mitigation being secured through the FEMPP, the Requirements within the Recommended DCO and the Bird Mitigation Obligation [REP8-019].
- 6.5.66. Site clearance and construction works would result in the loss of 79% of the semi-improved grassland on the site and a direct adverse and permanent effect, but this would largely be mitigated by the creation of species rich habitats. Although there would be a net gain in terms of most habitats across the site, the loss of 7 veteran and 5 future veteran trees and of the single Black Poplar would be a significant adverse effect. The construction phase would lead to other adverse effects that are significant at the Local Scale, including the permanent loss of six bat roosts, a temporary effect on bats using the site for foraging and commuting and the loss of habitat for farmland and other birds of conservation concern. The partial loss of structure of the habitat for invertebrates would result in a significant adverse effect at a Site Scale.
- 6.5.67. With all mitigation in place during the operational phase, significant residual effects are predicted only at a Site or Local scale with the principal effect being on farmland birds. These effects would be balanced by the provision of significant areas of new and enhanced habitat which would be managed for its ecological and biodiversity value over the long term. There would be a wider range of habitats at the operational stage than currently exists and the new habitats to be created would address local and national biodiversity targets.
- 6.5.68. The Proposed Development would avoid significant harm to biodiversity, and adverse effects would broadly be balanced by an overall enhancement in the bio-diversity and long-term management of retained and new habitats on the site. The loss of a small number of veteran trees would be a significant disbenefit but this loss would be outweighed by the need for and benefits of the proposed SRFI. Appropriate mitigation measures would be put in place to try and ensure that the 20 future veteran trees to be retained on the site grow to full maturity. The Proposed Development does, accordingly, comply with the requirement set out in paragraphs 5.24-5.26, 5.28-5.29 and 5.31-5.35 of the NPSNN.

## **6.6. HABITATS REGULATIONS ASSESMENT**

- 6.6.1. The Proposed Development is one that has been identified as giving rise to the potential for Likely Significant effects (LSE) on European sites and, hence, is subject to HRA. A separate record of considerations relevant to HRA has been set out in Chapter 7 of this report.
- 6.6.2. Documentation relevant to HRA, as required by section 4.22 of the NPSNN have been considered and taken into account in reaching the conclusions and recommendations set out in this Recommendation Report. Project design and mitigation proposals included in the ES and secured in the Recommended DCO have been fully considered for HRA purposes.

## **6.7. AGRICULTURE AND SOILS**

### **BACKGROUND**

- 6.7.1. At paragraph 5.168, which applies to all National Network NSIPs, the NPSNN states that applicants should take into account the economic and other benefits of BMV land. Where significant development of agricultural land is necessary, applicants should seek to use areas of poorer land in preference to that of a higher quality. Paragraph 5.176 requires that the decision taker should take into account the economic benefits of BMV land but does not say that applications should be refused if the proposal would result in the loss of such land. The paragraph also states that applicants should seek to minimise any impacts on soil quality.
- 6.7.2. It is also relevant to note the specific advice on SRFIs, at Paragraph 4.84, that, because of their particular locational requirements, "*it may be that countryside locations are required for SRFIs.*" The Applicant contends that most countryside locations are likely to include a significant element of agricultural land and this is true of that part of south Staffordshire which lies to the north of the Black Country and Birmingham conurbation.

### **ASSESSMENT OF EFFECTS**

- 6.7.3. The effects of the Proposed Development on Agriculture and Soils are considered in Chapter 6 of the ES [APP-026] which is accompanied by an ACL Report [APP-066]. The Applicant has also provided further evidence in their Responses to Other Parties' D2 Submissions [REP3-007] and to FWQs [REP2-009].
- 6.7.4. The ALC Report [APP-066] was prepared on the basis of desktop study of published information, consultation with statutory and other bodies and detailed land classification and soil survey over 2016-2017. This involved examination of the soils physical properties at 182 locations as shown on Figure 6.1. Table 6.8 shows the results of this analysis and is summarised below.

ALC Grade	Area (Ha)	% of Site
Grade 1 (Excellent)	0	0
Grade 2 (Very good)	51.1	17.2
Subgrade 3a (Good)	121.9	41.0
BMV (Grades 1,2 & 3a)	173.0	58.2
Subgrade 3b (Moderate)	38.2	12.9
Non-Agricultural	85.7	28.9
Total	296.9	100.0

- 6.7.5. The agricultural quality of the 12 ha of land to be used as the farmland bird mitigation area has been separately assessed as being all Subgrade 3a.
- 6.7.6. Most agricultural land within the site is owned by the Monckton family and is either farmed as part of the Somerford Home Farm holding or let out on tenancies or annual grazing licences. Details of the agricultural holdings under which the land is held and farmed are in Table 6.9. This shows that one area of land (Parcel M) has been entered into an Agri-environmental scheme managed by Defra, but that this forms a relatively small part of the much larger 682 ha of land within holding that is within Entry Level Stewardship as part of that scheme. The 12 ha area of the Farmland Bird mitigation area is also part of that scheme.
- 6.7.7. All of the potential effects on agriculture and soils are likely to be experienced in the construction phase of development with no additional effects likely at the operational stage.

### **AGRICULTURAL LAND**

- 6.7.8. The Proposed Development would have a permanent adverse effect on agricultural land by reason of the removal of 211 ha from agricultural use and the loss of 173 ha of BMV land. There is no mitigation for the loss of agricultural land, since it would be permanently lost. The loss of BMV land would result in a permanent, major adverse effect at a national level and the loss of the subgrade 3b land would result in a permanent minor adverse effect at national level. However, as Grade 2 and 3 land is widespread across South Staffordshire, it is likely that any large greenfield site within the District would include a significant amount of BMV land.

- 6.7.9. Development would be phased over a 15-year period and all agricultural land would remain in agricultural use until it is needed. Access to that land would be agreed with the farmers and tenants concerned. All agricultural production and grazing would cease at the start of the final phase of development.

### **AGRICULTURAL HOLDINGS**

- 6.7.10. The loss of around 82 ha or approximately 12% of the 682 ha Somerford Home Farm holding is assessed as being a permanent, moderate adverse at a local level but would not threaten the viability of the holding. The extinguishment of five holdings/land parcels, including land at Heath Farm, is assessed as being a permanent, minor adverse effect. The use of 12 ha of land for off-site farmland bird mitigation is assessed as having a negligible effect on agriculture, agricultural holdings and soil resources.

### **SOIL RESOURCES**

- 6.7.11. Topsoil and subsoil resources on the site were identified in the ES as sensitive receptors and, without effective management and mitigation, the construction works could have a significant adverse effect on the quality of these resources. Mitigation is provided by means of a Soil Resource Plan as outlined in section 6 of the ODCEMP [APP-060]. Details of the management of soils (Soils Resource Plan) would be required for each phase of development and this would be secured by means of Requirement 4(k) in the Recommended DCO. The Soils Resource Plans would be prepared in accordance with Defra's Construction Code of Practice for the Sustainable Management of Soils (2009).

### **COMMON GROUND**

- 6.7.12. The SoCG with NE [REP1-003] confirms NE's acceptance that the loss of BMV land is unavoidable given the development proposals and agreement that land should be kept in agricultural use for as long as possible while the development is progressed. Paragraph 5.1.26 confirms their agreement that a Soils Resource Plan should be prepared for each phase of development. Each Plan should be based on specific proposals and should include final soils volumes to be managed to ensure that soils are recovered, stored and re-used in the GI in a manner which best ensures that their quality is not damaged.

### **EXAMINATION**

- 6.7.13. In its Agriculture and Farming Impact Report [REP2-165], Stop WMI argued that the Applicant had failed properly to consider the loss of BMV land and had had no regard to the Agriculture Bill 2017-2019. A number of other IPs raised concerns about the loss of BMV land and the effect both on the farming businesses using that land and on the wider farming economy in South Staffordshire. These matters were raised in ExQ1.5.1 to 1.5.3 and the Applicant provided a detailed response to those questions [REP2-009].

- 6.7.14. This confirmed that the permanent loss of 173 ha of BMV land had been identified as having a major adverse effect notwithstanding that land would be taken out of agricultural use only when it is needed for the development. They also pointed to paragraph 4.1.25 of the SoCG with NE which confirmed NE's agreement that approximately 18.45% of South Staffordshire District comprises Grade 2 land which is higher than the national average. The majority (69.4%) of agricultural land is Grade 3 which is also above the national average. Hence, the presence of BMV land within the site is to be expected as these grades are widespread within the District.
- 6.7.15. The Applicant accepted that the loss of 173 ha of BMV land would cause a reduction to the value of the local agricultural economy but stated that this effect would be over a number of years so users would have time to adjust to those changes. I am satisfied that this would be the case. They also accepted, in response to ExQ1.5.3 [REP2-009], that, although the future post-Brexit position is uncertain, there may be a need for the local agricultural economy to adjust to or establish new markets over the mid to long term. Having regard to that response, I consider that there may be some uncertainty on these matters but that no evidence has been submitted to demonstrate that such uncertainty would be made significantly worse as a result of the Proposed Development.
- 6.7.16. NE [REP2-038] had identified the need for further information on soil resources and Stop WMI had asserted, in their Agricultural and Farming Impact Report [REP2-165], that the Applicant had not identified any effects on soil quality and had failed to minimise any adverse impacts. In response to ExQ1.5.4, the Applicant advised that the ES Chapter 6 [APP-026] considers topsoil and subsoil as a valuable resource available for re-use on site in a sustainable manner. This states that the quality and quantity of soil should be maintained by implementing appropriate techniques for stripping, storing and re-use. This approach will be adopted in a Soil Resource Plan (SRP), as per Section 6.0 of the ODCEMP, to be secured through the DCO.
- 6.7.17. That has been provided for by the wording of Requirement 4(k) in the Recommended DCO. I am satisfied that this approach is consistent with Defra's Construction Code of Practice for the Sustainable Use of Soil on Construction Sites 2009.

## **CONCLUSIONS**

- 6.7.18. I note the evidence as to the proportion of agricultural land within South Staffordshire that falls within the Grade 2 and 3 classifications. I accept that any greenfield site brought forward for the development of a SRFI in this part of the Sub-Region is likely to include a significant proportion of BMV land. I am satisfied that this issue has adequately been assessed and that the selection of a site, within which some 29% of the total site area does not comprise agricultural land, acts to reduce the total loss of BMV land. However, having regard to paragraph 5.168 of the NPSNN, the loss of 173 ha of such land is a significant adverse effect of the Proposed Development which cannot be mitigated.

- 6.7.19. There would be some adverse effect on agricultural land holdings, but I accept the Applicant's evidence that this would have a minor to moderate effect at the local level. The further details of soils management to be submitted and approved under Requirement 4 provide adequate mitigation to avoid a significant adverse effect on soils.

## **6.8. LANDSCAPE AND VISUAL EFFECTS**

### **BACKGROUND**

- 6.8.1. The NPSNN requires that applicants undertake an assessment of the likely significant landscape and visual impacts of proposals, taking account of relevant local policies based on landscape character assessments, and considering both construction and operational impacts (paragraphs 5.144 & 5.145). Developments should be carefully designed and, having regard to operational and other constraints, the aim should be to minimise harm to the landscape, providing reasonable mitigation where possible and appropriate (paragraph 5.149).
- 6.8.2. Great weight should be given to conserving landscape and scenic beauty in nationally designated areas such as AONB. The duty, under the Countryside and Rights of Way Act 2000, to have regard to the purposes of such designations applies when considering applications for projects outside such areas, but which may have impacts on them. The aim should be to avoid compromising the purposes of designation through sensitive design. However, the fact that a proposed project will be visible from within a designated area should not in itself be a reason for refusing consent (paragraphs 5.150-5.155). The SoS will have to judge whether the visual effects on sensitive receptors, such as local residents, outweigh the benefits of the development (paragraph 5.158).

### **ASSESSMENT OF EFFECTS**

- 6.8.3. Landscape and visual effects are considered in ES Chapter 12 [APP-032] which is supported by a series of figures [APP-032 to 049] and technical appendices [APP-092 to 107]. The assessment has been carried out in accordance with the Guidance for Landscape and Visual Impact Assessment, GLIVIA 3 of 2013.<sup>66</sup> Lighting effects are assessed in the Lighting Strategy and Lighting Impact Assessment at Appendix 12.8 [APP-106]. The following figures are of particular assistance in understanding the existing character and appearance of the site and its immediate surroundings, and the potential visual and landscape effects of the Proposed Development:

- 12.6 [APP-038] Aerial and Oblique Aerial Photographs;
- 12.7 [APP-039] Photo Viewpoint and Photomontage Locations;
- 12.9 [APP-040] Photo Viewpoints;
- 12.9 [APP-041] Zone of Theoretical Visibility;

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<sup>66</sup> Guidance for Landscape and Visual Impact Assessment GLIVIA 2013, Landscape Institute and Institute of Environmental Management and Assessment.

- 12.10 [APP-042] Visual Receptors;
- 12.11 [APP-043] Illustrative GI Plan;
- 12.12 [APP-044] Illustrative Landscape Cross Sections;
- 12.13 [APP-045] Photomontages;
- Additional Canal Photomontages and Canal Viewpoints and Locations at Appendices 16 & 17 to Applicant's Responses to FWQs [REP2-013].

6.8.4. The site and its wider context encompass 3 different National Character Areas (NCA) and 2 Landscape Character Types (LCT) identified within the Staffordshire Planning for Landscape Change 1996-2011. The ES has also taken account of the Landscape Sensitivity Assessment Study for Employment Allocations for South Staffordshire published in 2015. The site falls within 3 of the Land Cover Parcels (LCP) identified in that study.

6.8.5. The landscape within the site dates largely from Parliamentary enclosures in the late 18<sup>th</sup> and 19<sup>th</sup> centuries but enclosure boundaries have been degraded by subsequent development, infrastructure and agricultural practices. The quality of the historic landscape character has, therefore, been eroded to a significant degree. The southern part of the Cannock Chase AONB lies approximately 3km to the east of the site at its nearest point (Figure 12.3), and a Grade II Registered Park and Garden, Chillington, lies 1.7km to the south west of the site.

6.8.6. The local landscape context comprises a mix of land uses, influences and characteristics. The road and rail infrastructure are major influences on its character and the landscape is a mix of farmland, small settlements and industry, interspersed with woodlands and other minor roads. The quarry, Four Ashes Industrial Estate, the SI Group Site and the ERF building and stack also influence the local landscape.

6.8.7. A full Arboricultural Assessment [APP-105] has identified and categorised individual trees, tree groups and woodland within the site. The dominant species is English Oak, mostly planted along field boundaries or within woodland blocks. Overall, the surveyed tree cover was assessed as being largely in a good physical and structural condition. The site occupies a relatively flat and low-lying position within a broader and gently undulating landscape, with more distinctive and higher ground to the east at Cannock and Cannock Chase and more varied elevated and rolling land to the west beyond Brewood. There is a gentle fall across the site from east to west, with some localised variations.

6.8.8. The ES has identified a large number of landscape and visual receptors which are identified in Figures 12.9 [APP-041] and 12.10 [APP-042]. A series of representative viewpoints is presented in Figure 12.8 [APP-040].

## **CONSTRUCTION EFFECTS**

6.8.9. Good practice in terms of the siting of compounds, lighting and signage to minimise visual and landscape effects would be adopted in the construction phase and this has been taken into account. Where possible, screen mounding would be provided prior to development on an adjacent plot. However, in most instances the construction of the mounds would

be related to the formation of development platforms and the cut and fill strategy across the site. Some works would, therefore, need to take place before mounds can be formed in a number of locations.

- 6.8.10. The works would involve the phased removal of some of the existing woodland and cut and fill is expected to result in development platforms up to 3m above or below existing ground levels. The screen mounds would be between 3m and 8m high but would not be of a uniform height or section. The landform would also be changed as a result of the loss of farmland and the removal of trees and hedgerows within the site and the subsequent construction of roads, buildings and other infrastructure. These changes would result in a moderate/ major adverse effect on each of the three LCPs identified in the South Staffordshire Study but would not have a significant effect on the NCAs or LCTs.
- 6.8.11. The construction works would influence views to and from the nearest part of the AONB. The works would have only a minor adverse effect on the identified special qualities of the AONB and a moderate adverse visual impact on users of Shoal Hill Common. The effect on the landscape character of the canal is assessed as moderate/ major adverse. The effect on the landscape character of the site would be moderate to major adverse, with a moderate effect on landform and a moderate/major adverse effect on woodland, trees and hedgerows.
- 6.8.12. The visual effects in the construction phase would vary, with the greatest impacts likely to be on receptors in closest proximity to the works. These are likely to be greatest in the early stages of each phase when earthworks are taking place before the formation of screen mounds. The detailed effects are listed in the Visual Effects Table in Appendix 12.6 [APP-104]. The effects would be minor to moderate/major adverse depending upon the location of each property relative to the proposed working areas.
- 6.8.13. There would be a moderate/ major adverse effect on canal and towpath users and for users of PROW in the surrounding area. The effects would be moderate adverse (from more elevated views from the south) and minor adverse from other vantage points. Users of Calf Heath Reservoir are expected to experience a moderate/ major adverse visual impact. Lighting effects during the construction phase are expected to be negligible to moderate adverse.

#### **OPERATIONAL EFFECTS**

- 6.8.14. The assessment of operational effects is based upon the completed development but does not take into account the subsequent maturing of the new landscape and planting proposed. The assessment is also based on the parameters set out in the Parameters Plans with regard to the maximum building sizes and heights which these specify for each of the Development Zones.
- 6.8.15. Within these parameters the actual building heights would be determined by occupier requirements and may not be at the maximum heights shown on those plans. In addition, in response to ExQ1.0.4, the Applicant

[REP2-009] has cited examples of buildings at DIRFT and EMGRFI which are not of a uniform height but include a high bay section to between 33% and 50% of their building footprint, with the rest of the buildings being considerably lower. The Applicant states that this arrangement is not unusual and considers it likely that only a minority element of buildings in Zones with a maximum 30m height parameter would be constructed at that height.

6.8.16. Specific mitigation is described within section 7 of the DAS [APP-258] which sets out a number of principles with regard to the siting and design of buildings in order to minimise their visual and landscape impacts. Of particular relevance to these effects is the indicative colour palette (page 90) for use in external cladding to the walls and roofs of the proposed buildings.

6.8.17. The development is not predicted to have a significant effect on any of NCAs or LCTs within which the site lies. A separate assessment of the effect on each of the three LCPs identified in the South Staffordshire Study has been made as follows:

LCP FAE01: the land in the western part of site between the WCML Loop and the A449

This area would change from predominantly farmland and playing fields to one dominated by the development including the Rail Terminal. Most of the trees and hedgerows to the A449 boundary would be retained but others within the site would be lost. New landscape mounds and woodland would be provided along the eastern side of the A449 and to the north of the playing fields and rear of properties on Station Drive.

LCP FAE02: covering much of the central part of the site, including part of the canal, Calf Heath Wood and Calf Heath Reservoir

Direct impacts include the loss of farmland and the quarry and the removal of approximately 66% of Calf Heath Wood and other trees and hedgerows. The remainder of the wood would be retained and there would be substantial new planting including the Croft Lane Community Park.

LCP FAE03: encompassing land to the south and south east of Vicarage Road

The impacts would include the loss of farmland, trees and hedgerows and the presence and influence of the development on the landscape. Some trees and hedgerows would be lost, but others would be retained and there would be a significant area of new GI within the Calf Heath Community Park.

The changes in all three LCPs would result in a moderate/major adverse effect on the landscape.

6.8.18. Chapter 12 notes that views from Shoal Hill and other elevated positions at the southern end of the AONB are an important quality of this part of

the designated area and that, where present, these views are generally expansive, varied and active in character. The ES considers that the development would have no more than a minor adverse, indirect effect on the special qualities of the Open Hills and Heaths Landscape Character Area (LCA) which forms this part of the AONB. There would be a negligible effect on the other LCAs within the AONB.

- 6.8.19. From Shoal Hill, the upper parts of some of the new buildings would be seen above the existing woodland and trees in those views; these would not be screened in elevated views by new planting. Where visible, the development would be seen in the context of other active and industrial developments and would not break the skyline. The proposed design and colour treatments for the upper elevations and roofs of the buildings are outlined in section 7 of the DAS [APP-258] and the Indicative Colour Palette on page 90 of that document. The proposed external treatments would help to reduce their impact. Higher parts of the gantry crane might be visible at around 5.5km from the Toposcope at the top of Shoal Hill. The effects on views from Shoal Hill are assessed as being moderate adverse.
- 6.8.20. The screen mounding would lead to changes to the landscape character of the canal corridor, but built development would be set back, by at least 70m, behind large areas of GI and Croft Lane Community Park. The presence of existing large industrial and commercial buildings within that corridor would moderate the nature of the resultant change. The new bridge over the canal would have the most noticeable direct effect, but careful attention would be paid to the design of this. A package of environmental improvement works would be delivered through the Canal Enhancement Strategy as outlined in section 7.9 of the DAS. Overall, the effect on the landscape character of the canal is considered to be moderate adverse.
- 6.8.21. It is considered that the site is well contained in landscape character and visual terms to the east and south west, but more open and connected to the landscapes to the north and north west. It is influenced by the existing industrial and commercial development and by the major roads around the site. The Proposed Development would replace that mixed character with a site dominated by new buildings and related development, but this would be set within a robust framework of landscape corridors and green spaces<sup>67</sup>. The magnitude of change to the site's landscape character is assessed as being high but not adverse. There would, however, be minor/moderate effects on the site's landform and its woodland, trees and hedgerows, taking account of the new woodland and other planting proposed.
- 6.8.22. The predicted visual effects of the completed development are set out in full in Appendix 12.6 [APP-104]. Taking account of the mitigation provided through the siting and detailed design of the buildings, the

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<sup>67</sup> Figure 66 within the DAS [APP-258] provides an 3D aerial view of the Illustrative Masterplan.

screen mounds and other landscaping proposed, the assessment predicts moderate/major adverse effects at:

- Properties at Gailey Marina and Croft Lane;
- a small number of properties on the A5;
- a small number of properties on the A449, with a major adverse effect on a single residential property fronting directly onto the road (Receptor 15);
- a small number of properties at Station Drive with the clearest views of the site;
- four properties on Vicarage Road and Straight Mile.

The effect on other properties with potential views of the completed development is assessed as moderate adverse at worst, with most properties experiencing a minor adverse effect.

6.8.23. There would be a moderate adverse effect on views from that part of Croft Lane that abuts the site and a minor/moderate adverse effect on views from the A5, with the most open view being from close to Junction 12 across the reservoir. Minor/moderate adverse effects are expected on views from parts of the A449, Vicarage Road and Straight Mile. A moderate/major adverse effect would be experienced by users of the canal and towpath near to Gravelly Way, but this would be reduced in other parts of the canal corridor. For users of PROW in the broader landscape the visual effects would be minor/moderate adverse. All other visual effects assessed are considered to be minor/moderate adverse or less.

6.8.24. The landscaping and visual effects of the development would reduce over time as new planting becomes established. This can be seen in the Year 15 photomontages [APP-045] from a number of the identified viewpoints. Views from the nearest residential receptors would become more filtered, particularly in the summer. This would result in many of the moderate adverse effects being reduced to minor or minor/moderate effects over time. A summary of residual effects is set out in Table 12.2.

### **LIGHTING EFFECTS**

6.8.25. A Lighting Impact Assessment was provided as ES Appendix 12.8 [APP-106] which also sets out the key components of the Lighting Strategy for the Proposed Development. This seeks to minimise light spill to the surrounding area and upward sky pollution and to ensure appropriate levels of illumination on the site. With the measures outlined in the Lighting Strategy in place, the night-time effects on visual receptors are predicted to be negligible to moderate adverse on completion of the development.

### **COMMON GROUND**

6.8.26. In its SoCG with the Applicant [REP2-007], SSC agrees that the Landscape and Visual Assessment is appropriate in its scope and methodology and has been carried out in accordance with GLIVIA3. The Council agrees that the assessment of construction effects has been

undertaken on a worst-case basis and that the effects would vary for receptors during the construction phase. It also agrees that there is very limited intervisibility between the site and the AONB and that only a small number of viewpoints in its south-western portion afford views into the site. Within those views the site stretches across the landscape in the middle distance.

- 6.8.27. The SoCG with Natural England [REP1-003] confirms NE's agreement as to the appropriateness of the scope and methodology used in the assessment. NE agrees that the construction works would have a moderate adverse effect on available views from Shoal Hill. NE is satisfied that the statements made in the DAS would be sufficient to ensure that the visual effects on the statutory purposes of the AONB would be mitigated as far as reasonably possible. None of the colours in the indicative colour palette, nor the proposed patterning on the indicative elevations in section 7 of the DAS facing south and south east, would cause NE concern in terms of mitigating the potential visual effects on the AONB.

## **EXAMINATION**

- 6.8.28. Concerns about the landscape and visual effects of the proposal feature in a large number of RRs and other representations. Particular concerns about the effect on views from the AONB at Shoal Hill in Cannock have been raised by the PC Collective [RR-0714, REP1-021 & REP4-027], and the Shoal Hill Joint Committee [RR-1324, REP2-149] who consider that the Proposed Development would have a significant adverse visual impact on the setting of Shoal Hill Common. CRT [REP2-021] is concerned about the visual impact on the canal corridor, particularly in early phases of construction before screen mounds are in place.
- 6.8.29. The LIR submitted by SSDC [REP2-051] identifies visual impacts as a negative effect of the Proposed Development and says that this would be seen from public viewpoints including roads/footways, the canal towpath and the PROW (PENK49) that passes through the site. Section 11 of the SoCG with SCC [REP2-007] recorded that agreement had not yet been reached with the Applicant as to the relationship of finished floor levels, bund heights and existing ground levels; the adequacy of the DAS for post consent decision making; and the Lighting Assessment's approach to addressing the impact on landscape.
- 6.8.30. SCC's LIR [REP2-062] provides detail about the landscape of the site and landscape character of the wider area (section 8) and states that the development would be a significant visual intrusion into the flat rural landscape of this part of Staffordshire. SCC notes that the scale of the development and the height and bulk of individual buildings would be significantly larger than existing development in the vicinity of the site and that, while the landscaped mounds would screen lower elevations and service yards, the mounds themselves would be visually intrusive in the short term.

- 6.8.31. The LIR also identified a number of local visual receptors that would be adversely affected and set out concerns about the available information on lighting within the development. It questioned the ES assessment of a minor adverse effect on views from Shoal Hill Common at dusk.

#### **USE OF LANDSCAPE SENSITIVITY ASSESSMENT STUDY**

- 6.8.32. I asked about the suitability of SSDC's 2015 Landscape Sensitivity Study as an input into the assessment of landscape impacts in ExQ1.12.1. In response, SSDC [REP2-049] confirmed that the Council considers the Study to represent an accurate and up-to-date account of the landscape character of the site and its environments, taking sufficient account of the District level landscape character insofar as this is relevant to the site.
- 6.8.33. At ISH3, the Council commented that the Study did not envisage commercial development on the scale of that proposed at WMI and the Applicant responded to that potential concern. Based on that evidence, I am satisfied that the ES uses this as one of a number of inputs into the landscape assessment and that its authors have made their own judgement as to the capacity of the landscape to accommodate the WMI proposals. An assessment of the factors affecting the sensitivity of the LCPs in relation to the Proposed Development has been undertaken in accordance with GLIVIA3 as set out in Appendix 12.5 [APP-103].

#### **EFFECT ON THE AONB**

- 6.8.34. At the request of the PC Collective and other IPs, the ASI [EV-11] followed the path from road level at Cocksparrow Car Park up Shoal Hill and down again to the Shoal Hill Tavern. This enabled me to view the site and wider landscape context from these paths and from the Toposcope (Viewpoint 32) at the top of the hill. I also made my own inspection, on USI4 [EV-021], from the Toposcope at dusk to assess the current levels of artificial illumination within the view from this point and the likely effects of the proposed development.
- 6.8.35. From that public vantage point, there are expansive and long-distance views to Wenlock Edge and the Wrekin and, weather permitting, to the Cleve Hills in Shropshire in the far distance. The broad valley floor occupies the central portion of that view, with higher ground rising beyond the application site. The extent of the site is broadly defined by the Gailey Reservoirs at its eastern edge and the ERF building and stack at its western edge. At the time of my visit, these features were slightly more discernible than they are in the existing view photograph from Viewpoint 32 [APP-040]. The long elevation of the recently constructed Gestamp Tallent building on the Bericote site is clearly visible in that view.
- 6.8.36. The Proposed Development would spread across the full width of the site as seen from Shoal Hill and the overall scale of the development would be apparent in that view. However, I agree that it would be seen in the context of other buildings and structures within this section of the view, including the Bericote development, the industrial estate and the ERF

building and stack. As noted in ES Chapter 11, the new buildings would not break the skyline and, although they would not be screened in this elevated view by the new planting, they would be seen against the green backdrop of woodland and trees. This can be seen in the Photomontages from Viewpoint 33 [APP-045].

- 6.8.37. The Gestamp Tallent building is prominent in this view in large part because of the use of a light-coloured cladding to its roof and elevation that stands out against that green backdrop. It would be possible to mitigate the visual impact of the new WMI buildings in views from Shoal Hill to a significant degree through the use of more suitable colours, such those shown in the indicative colour palette and indicative designs for the south and south-east facing elevations within the DAS [APP-258]. With that mitigation in place, I consider that the ES conclusion, that the effect on views from the AONB would be moderate adverse, is reasonable.
- 6.8.38. At and after dusk, most of the central part of the view from the Toposcope (within which the site is located) is already affected by illumination. Street lighting is visible across much of that view and there are various groupings of street and other artificial lighting at varying distances from the viewer. The red warning lamps to the top of the ERF stack stand out and the moving lights of traffic also feature in this view. The view is much as shown in Figure 2 of the Lighting Strategy and Lighting Impact Assessment [APP-106], except that the Gestamp Tallent building on the Bericote site has been completed since that photograph was taken. The lighting to the elevation of that new building is particularly bright and, because of the length of that elevation, extends over quite a distance within the central portion of the view.
- 6.8.39. Overall, my judgement is that the site and its immediate context could not be described as a dark sky environment when seen in this view. The illumination levels to the Gestamp Tallent building demonstrate that there would be potential, if lighting is handled poorly, for there to be a very significant impact on night-time lighting levels in this central portion of the view. This would be very harmful to views from Shoal Hill. At ISH3, SSDC advised that the effects of lighting had been considered when planning permission was granted for the Bericote development.
- 6.8.40. The officer report was subsequently submitted by SSDC to the examination [REP4-051]. This notes that the Council's Ecology Officer had reviewed the External Lighting Report for the application and had recommended the inclusion of a condition requiring the submission of an external lighting plan to minimise the effect on bats. NE also raised the issue of the effect of external lighting on views from Shoal Hill. CRT is reported as having raised concerns about the impact of external lighting on the canal corridor. However, the main body of the report does not identify external lighting as a key issue in the decision and does not explain how any adverse effects would be mitigated.
- 6.8.41. The Applicant in the WMI Application has recognised that appropriate control of lighting, so as to minimise adverse effects, is an important consideration in the Examination. They have produced a Lighting

Strategy which sets out how appropriate mitigation would be achieved. The success of that strategy lies in how it is applied at the detailed design stage. However, together with the provisions in Requirement 19 in the Recommended DCO, it provides an appropriate basis for minimising the adverse effects of lighting within the scheme. With that mitigation in place, artificial lighting from the Proposed Development would be more muted than that of the Bericote scheme. The effect on the view from Shoal Hill would, in my judgment, be moderate adverse or less.

### **VIEWS FROM SHARESHILL**

- 6.8.42. At the request of the PC Collective, I visited the Church of St Mary and St Luke in Shreshill as part of USI3 [EV-020] to view the site from the churchyard and the public footpath that runs from it. Although not seen from the churchyard itself the site is visible from the first field boundary along the public footpath. From this point, the ERF roof and stack and the electricity pylons are visible in the middle distance as is the upper part of the new buildings on the Bericote site. These features are set within a wider landscape of predominantly farmland and woodland. Although the service yards and lower parts of the proposed buildings would be screened, upper elevations would be seen in the views available from this footpath and would increase the extent of urbanising elements in that view. Mitigation would be provided by the use of appropriate colour treatments to those elevations and there would be woodland and trees in that same view. I consider that the ES assessment of a moderate adverse effect from this viewpoint is, therefore, a reasonable one.

### **LIGHTING ASSESSMENT**

- 6.8.43. In the Addendum to the SoCG [REP8-017], SCC has confirmed that it is now satisfied that the Lighting Assessment's approach to addressing the impact on landscape is acceptable. The addendum also states that, following the amendments made to draft Requirement 19, the mechanism for controlling future lighting design is agreed.
- 6.8.44. Concerns have been raised by IPs about the potential effects of lighting on the amenity of the residents of nearby properties, with particular concern about the lighting on the proposed gantry cranes [REP4-036]. In response [REP5-006], the Applicant points to Requirement 19 in the draft DCO which sets out key constraints to be applied to the lighting such that all forms of lighting would be minimised and designed to avoid light pollution outside of the site. Lights would be mounted on the underside of the cranes to illuminate the working area beneath and the movement of the cranes would be comparatively slow. Even at their extreme positions, the cranes would be sufficiently far away from the nearest residential properties to avoid any light pollution.
- 6.8.45. SSDC has signed an Addendum to its SoCG with the Applicant [REP5-040] which confirms that the findings of the Lighting Strategy and Lighting Impact Assessment, that there would be no nuisance or loss of amenity impacts for any receptor, are agreed. SSDC has no objection to the Proposed Development on the grounds of lighting from an environmental health perspective.

## **FINISHED FLOOR AND BUND LEVELS**

- 6.8.46. Concerns were raised by SCC [REP2-060] and CRT [REP2-021] about the relationship between proposed site/ landscape bund levels and existing site levels. The Applicant has responded to those concerns by submitting revised GI Parameters Plans [REP5-019 to 023] which clarify these relationships and provide a greater understanding of the landscape and visual effects of the Proposed Development. In the Addendum to the SoCG [REP8-017], SCC has confirmed that this relationship is now clear and acceptable. Further clarification has been provided in the revised GI Parameters Plans. In its response to ExQ2.13.4 [REP5-043] CRT suggests that the heights for the landscaped bunds should be set as part of the DCO. CRT also proposes that the bunds should be put in place at the start of the development (paragraph 4.2.20 of the SoCG).
- 6.8.47. Whilst this might be desirable, I agree with the Applicant that it is not a practicable proposition. This is because the landscaped bunds should be related to the final levels of the Link Road and development platforms, which can be determined only as part of the detailed scheme design. The detailed relationship of the bund to the canal towpath would need to be addressed and considered as part of the approval of those details, but it would not be practical for this to be fixed as part of the Recommended DCO. I consider that, subject to the constraints of the cut and fill strategy, there would be every incentive for the developer to form the proposed bunds as early as possible in each development phase to avoid complaints from nearby receptors and possible nuisance action from SSDC.

## **ADEQUACY OF THE DAS**

- 6.8.48. SCC's concerns [REP2-060] as to whether the DAS would provide a robust basis for future decision making at the detailed approval stage have been the subject of further discussions between the Council and the Applicant. These have been addressed through amendments to the draft Requirement 3. This amendment provides for the formal review of the design principles of the DAS following the completion of 186,000 sq. m of warehousing. This would allow, for example, for these to be updated to take account of any new design guidance relating to the AONB or the wider area within the site is located. The SoCG Addendum [REP8-017] confirms that SCC is satisfied that the DAS would now provide adequate coverage for post-consent decision making.

## **CONCLUSIONS**

- 6.8.49. The construction works would involve the removal of significant areas of existing vegetation with a resultant adverse effect on the local landscape. However, these works would be phased over a 15-year period, with parts of the site being kept in agricultural use for as long as possible and new woodland and other planting being carried out before some areas of vegetation are cleared. The changes, would, therefore be significant but gradual over a long period.

- 6.8.50. The completed development would represent a very considerable change in the local landscape, transforming this from an area of mixed use and character into one which is dominated by large commercial buildings distributed across a very large site. I agree with SCC that the Proposed Development would be a significant intrusion into a mainly flat and rural landscape which would have a significant urbanising effect. I would assess the effect on the local landscape as major adverse. However, I agree that the site is well contained both in visual and landscape terms. For these reasons, there would not be a significant effect on the landscape character of the wider LCTs and NCAs.
- 6.8.51. The development of a SRFI on any greenfield site would be likely to result in very significant changes to the landscape. In this case extensive mitigation would be provided by means of GI covering some 36%<sup>68</sup> of the total site area. This would be provided in a mixture of landscape mounds, native woodland, tree and hedge planting, planting to development plots and two Community Parks. This strategy would ensure that the development would be sited within a robust landscape framework as shown in the Illustrative GI Plan [APP-043] and aerial view of the Illustrative Masterplan at Figure 66 of the DAS [APP-258]. Together with appropriate control over detailed building design, this landscaping could provide for a very high quality of development in the completed scheme. As it matures, the new planting would also serve to soften the landscape and visual effects of the development. However, given the length of time that the landscaping might take to reach maturity, the proposal would be likely to have a major adverse effect on the local landscape.
- 6.8.52. Some residents and other sensitive receptors in close proximity to the site boundary would be likely to suffer significant adverse visual effects during the early stages of construction, when earthworks are taking place in advance of the landscape mounds being in place. However, those impacts would be temporary and, once the mounds have been formed, most of the remaining construction activity would be screened from view. Also, because of the phased nature of the development, it is unlikely that any group of receptors would be affected for extended periods of time.
- 6.8.53. My observations on my site inspections support the ES conclusions that views from some properties at Gailey Wharf, Croft Lane, the A5 and other roads on the site perimeter would be changed significantly, with the new development appearing in what are currently views over open land. The proposed landscape mounds would screen the lower parts of buildings and activity within the service yards, but upper sections of buildings would be seen. These views would become more filtered over time but would have a moderate/major adverse effect for many years. Although the landscape mounds would foreshorten views and from the rear of many of these properties I am satisfied, from my observations on my site inspections, that they would be sufficiently far away such that they would not significantly affect the amenity of those residents.

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<sup>68</sup> Paragraph 3.5.51 of the Planning Statement [APP-252].

- 6.8.54. The completed development would be visible in views from Shoal Hill but would be seen in the context of other built development and against a backdrop of woodland and trees. With appropriate control at the detailed design stage, the DAS and draft Requirements in the Recommended DCO provide the potential for a muted form of the development which would considerably mitigate the effect in these distant and elevated views. The Lighting Strategy provides the opportunity for night-time lighting impacts to be minimised, such that the Proposed Development would not add significantly to the existing light sources in the central portion of the view from Shoal Hill. For the reasons set out above, I agree with NE that the effect on views from the AONB would be moderate adverse. I consider that this would also be the case in respect of views at dusk and the night-time. I agree that there would be no significant effect on the LCAs comprised within the AONB or on the statutory purposes of the AONB.
- 6.8.55. The Proposed Development would have a major adverse effect on the landscape at the local level and moderate to major adverse visual effects on a number of nearby residential receptors. However, I consider that the Applicant has sought to mitigate those impacts so as to minimise harm as far as possible. I also consider that the visual effects on these sensitive receptors would be outweighed by the considerable economic and other benefits of the Proposed Development.
- 6.8.56. The requirements of paragraphs 5.149-5.161 of the NPSNN with regard to landscape and visual impacts are, accordingly, met.

## **6.9. ARCHAEOLOGY AND CULTURAL HERITAGE BACKGROUND**

- 6.9.1. Policy relating to archaeology and the historic environment/cultural heritage is set out in paragraphs 5.120-5.142 of the NPSNN. These state that consideration should be given to designated and non-designated heritage assets and that the applicant should undertake an assessment of the potential effects on such assets and their settings. In decision-making, the SoS should take account of the significance of any asset that might be affected and give weight to the asset's conservation; the more important the asset the greater the weight that should be given.
- 6.9.2. If the Proposed Development would result in less than substantial harm to a designated heritage asset that harm should be weighed against the public benefits of the development (paragraph 5.134).

### **ASSESSMENT OF EFFECTS**

- 6.9.3. ES Chapter 8 [APP-028] deals with below ground archaeology and is accompanied by a number of supporting documents [APP-075 to 79] including an Outline Scheme of Investigation [APP-079]. Cultural or built heritage effects are considered in ES Chapter 9 [APP-028] and its various appendices [APP-080 to 086].

## ARCHAEOLOGY

- 6.9.4. The archaeological baseline has been assessed by means of desk-based assessment, a LiDAR assessment to establish the location of archaeological features across the site, and a Detailed Gradiometer Survey to detect any detectable anomalies that may indicate the presence of below ground features.
- 6.9.5. That assessment shows little direct archaeological evidence within the site boundary but does indicate that most of the principal archaeological periods are present. ES Appendix 8.1 records the possible presence of a ring ditch and linear feature, provisionally dated to the Neolithic period, and possible Iron Age enclosures, some 440m south of the site.
- 6.9.6. The site's location to the south of Watling Street (A5) gives rise to significant evidence from the Romano-British period including 3 scheduled ancient monuments (SAM) clustered approximately 750m to the north of the site. The site itself includes 2 farm complexes, Heath Farm and Woodside Farm, likely to have been established in the 19<sup>th</sup> Century. Undated features in the wider Study Area may date from the Neolithic/Bronze Age, the medieval or post-medieval periods or later ridge and furrow agricultural activities. In general, archaeological potential is higher in the north and west of the site and lower towards the south and east.
- 6.9.7. Groundworks in the construction phase have considerable potential for direct impact on below ground features and any loss of damage would be likely to be permanent and irreversible. The loss of features from the Romano-British or earlier periods would be of moderate to major significance. Loss of features from later periods would be less significant. It is not expected that the operational development would have any adverse effects on features of archaeological value or interest.
- 6.9.8. An indicative set of mitigation proposals is set out in the Outline Scheme of Written Investigation [APP-079] which has been agreed with Historic England and SCC. Implementation of the measures would be through detailed schemes of investigation to be prepared and approved before commencement of works in each phase that might affect below ground features. The need for these schemes to be prepared and implemented is secured through Requirement 8 of the Recommended DCO. The site has been categorised into three broad categories of potential for survival of archaeological remains and the detailed schemes would be tailored to reflect that agreed potential.
- 6.9.9. Impacts can be mitigated by means of preservation of remains in situ where they are of particularly high importance and sensitivity. The baseline assessment has not identified any likelihood of such remains within the site. Where assets of lesser importance are found, preservation by record would be provided by a range of techniques including full or sample excavation or an archaeological watching brief, assessment and reporting of the results and dissemination of that information to SCC and other relevant bodies.

## CULTURAL HERITAGE

- 6.9.10. ES Chapter 9 uses the term 'heritage receptor' to describe a designated heritage asset (e.g. a statutorily listed building) or non-designated asset (such as a building listed only at the local level or in the Staffordshire Historic Environment Record). Receptors have been identified within a 3km radius of the application site as it is considered that the Proposed Development would not be likely to affect the setting of any heritage asset beyond that distance.
- 6.9.11. The identified heritage assets within the site boundary are:
- Staffordshire and Worcestershire Canal Conservation Area;
  - Heath Farm - non-designated asset locally listed as Grade B;
  - Woodside Farm - non-designated asset;<sup>69</sup>
  - Gravelly Way Bridge - non-designated asset;
  - Straight Mile Farm - non-designated asset;
  - Historic Landscape Character - non-designated asset;
  - Historic Hedgerows - non-designated asset.
- 6.9.12. In addition to those parts of the Canal Conservation Area which fall outside of the application boundary a number of other heritage assets lie within 3km of the site as listed in Table 9.2. These include:
- Five Romano-British SAM to the north of the A5;
  - Gailey Wharf-locally listed (Grade A) wharf, basin and crane;
  - Round House-Grade II Listed Building fronting the A5 at Gailey Wharf;
  - Wharf Cottage-Grade II Listed Building fronting the A5 at Gailey Wharf;
  - Gailey Lock and Bridge-locally listed (Grade A) canal lock and bridge built as part of the canal.
- 6.9.13. Other canal bridges (Long Moll's, Calf Heath and Deepmore bridges) and some, more remote farmhouses are all locally listed. There are also listed churches in Brewood (Grade I), Shareshill (Grade II\*) and Stretton (Grade II\*). Somerford Hall, 1.5km from the site, is listed Grade II\* and Chillington, 1.7km from the site, is a Grade II\* Registered Park and Garden. The receptors are shown on the map at Appendix 9.2 [APP-081].
- 6.9.14. Paragraphs 9.127 to 9.306 set out a full description of each receptor, their significance and value and their level of sensitivity. The surviving hedgerows on the site are deemed to be important hedgerows under the Hedgerow Regulations 1997, but they are not intact and are typical examples of their age and type. They have been found to be only of low heritage value.

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<sup>69</sup> Woodside Farm and the subsequent non-designated assets listed do not appear on the local list but are recorded in the Staffordshire Historic Environment Record.

## **CONSTRUCTION EFFECTS**

- 6.9.15. The assessment of effects has had regard to the parameters plans and indicative design information set out in the DAS [APP-258], particularly in respect of the screen mounds and landscaping. The ODCEMP [APP-060] has been used to establish the minimum environmental controls that would be in place during the construction phase.
- 6.9.16. All construction impacts have been treated as less significant because they are temporary and there would be no physical change to assets and their historic fabric. There is potential for some disturbance to users of the Canal Conservation Area from noise and construction activity but, other than on Saturday mornings, construction would not take place at weekends or on Bank Holidays when use of the canal and towpath might be expected to be at its greatest. No significant effect is, therefore, predicted.

## **OPERATIONAL EFFECTS**

- 6.9.17. Two redundant pipe-bridges and a redundant footbridge over the canal would be removed. CRT agrees in its SoCG with the Applicant [REP7-131] that these changes would have a beneficial effect on the Canal Conservation Area. The other direct effect would result from the proposed new road bridge over the canal at Gravelly Way to carry the A5/A449 Link Road. This would also have potential to affect the setting of the non-designated heritage asset of a historic canal bridge (Bridge 72).
- 6.9.18. Construction of the new bridge would not involve changes to the canal or towpath and the bridge would not impede the passage of canal boats. The bridge design principles accord with guidance prepared by CRT. The detailed design would be approved at a later stage and would need to be agreed both with CRT and SCC as the highway authority which would adopt the Link Road. There are no significant concerns that the design would be out of keeping with the character of this part of the canal corridor.
- 6.9.19. The effect of the bridge on the experience of canal users would be limited by reason of its location on a relatively short section between two bends in the canal. It would not be seen in longer distance views nor curtail mid to long distance views of the canal. The existing Gravelly Way Bridge blocks views of the adjacent historic bridge (Bridge 72) when travelling south. The new bridge would affect views from the existing Gravelly Way bridge but, as this is a relatively modern addition to the canal corridor, this does not form part of its historic character.
- 6.9.20. The ES states that this section of the Canal has a mixed setting of industrial development and open rural landscape. It also notes that the experience of the Conservation Area is a kinetic one as an observer moves along the corridor either on a boat or the towpath. Taking account of these factors, the effect on the heritage value of this stretch of the Conservation Area is assessed as of medium magnitude because:

- The change to the setting would be discernible but screening would minimise this impact and the extent to which the development is noticeable from within the Conservation Area;
- the industrial character of the Proposed Development is dissimilar to the open land at the south of this section but similar to the development already in its setting to the south of Gravelly Way;
- the new road bridge would be discernible;
- the loss of open landscape setting between Gailey Wharf and Gravelly Way would remove an element of the baseline;
- the removal of the later industrial infrastructure which crosses the canal would benefit the character and appearance of the Conservation Area.

6.9.21. The ES considers that the overall effect on this section of the Conservation Area is minor adverse. This would represent some but less than substantial harm to the setting and significance of the heritage asset. The section that would be affected represents only a small part of the 74km long, linear Canal Conservation Area. The setting and character of the Conservation Area as a whole is varied as the canal runs through a wide variety of different landscapes. The effect on the setting and significance of the Canal Conservation Area as a whole would be negligible.

6.9.22. The setting of the Round House is considered to be tightly defined by the canal and wharf area and the A5 to the north, although the site forms part of its wider setting. Some views of development in Zone A4 may be possible from the property, but the wider setting is already influenced by other buildings and structures and traffic noise. Landscaping to the south and east would limit the extent of intervisibility between the building and the new development. The GI within the Croft Lane Community park would enhance the character of the setting on the west side of the canal. The overall effect on the building's setting is considered to be negligible.

6.9.23. The settings of Wharf Cottage, Gailey Wharf, Gailey Lock and Bridge are similarly defined by the canal and wharf area. The site is within their wider setting but that setting is influenced by later built development and traffic noise. The impact on these assets would be negligible.

6.9.24. Given its low heritage value, the loss of Heath Farm house is assessed as a minor adverse effect and the ES notes (paragraph 9.383) that consent has already been granted for the demolition of that building. The loss of Woodside Farm would have a negligible effect.

6.9.25. In addition to the embedded mitigation in the design of the GI and buildings, the ES identifies the Canal Enhancement Strategy as providing mitigation for adverse effects on the heritage value of the Conservation Area. This would reduce the effect on this section of the Conservation Area to the low end of the minor adverse effect identified in the assessment.

## **COMMON GROUND**

- 6.9.26. In the SoCG Addendum [REP8-017], SCC agrees that the Outline Scheme of Written Investigation [APP-079] is consistent with the requirements of the NPSNN. In its main SoCG [REP2-007], SCC supports the general findings of the assessment. SCC agrees the need for further investigative works within the phased development of the WMI and that the Outline Scheme provides an acceptable and achievable mechanism for addressing that requirement and the scope of further archaeological investigations.
- 6.9.27. The SoCG with Historic England [AS-024] states that Historic England supports the phased approach set out in the Outline Scheme of Written Investigation. This provides a measured and appropriate response to archaeological concerns based on the full knowledge of expected impacts at the detailed design stage.
- 6.9.28. The SoCG with Historic England also confirms Historic England's agreement that the built heritage assessment has been carried out in accordance with best practice and is sufficient to understand the effects. Historic England agrees that the only direct effects would be on the Conservation Area, Heath Farm and Woodside Farm but, as they would be less than moderate adverse, these would not be significant in EIA terms. The indirect effects on the setting of the Conservation Area and heritage receptors within the Gailey Wharf area are agreed not to be significant in EIA terms. The harm to the setting and significance of the Conservation Area is agreed to be less than substantial.
- 6.9.29. In its SoCG, SCC also agrees that the built heritage assessment is appropriate and accords with best practice. SCC agrees that there would be some but less than substantial harm to the heritage value of the Canal Conservation Area as a result of the changes to its setting. The direct effects on the Conservation Area, Heath Farm and Woodside Farm are agreed not to be significant.

## **EXAMINATION**

### **ARCHAEOLOGY**

- 6.9.30. Although the ES advises that impacts on archaeological assets can be mitigated by means of preservation of remains in situ where they are of particularly high importance and sensitivity, the baseline assessment has not identified any likelihood of such remains within the site. At ISH3 I sought views as to the likelihood, during construction, of finding a below ground feature of such importance that it should be left undisturbed. Following further discussion between SCC and the Applicant, the Addendum SoCG [REP8-017] confirms their agreement that the presence of any asset of major significance is a low possibility.
- 6.9.31. In ExQ1.11.15 I sought clarification as to the extent to which historic field patterns within the site have been degraded by subsequent agricultural workings. I accept the Applicant's response [REP2-009] that the site is divorced from the wider landscape context and is not an intact

historical agricultural landscape. My observations on my site inspection were that remaining evidence of ridge and furrow agriculture is both limited and intermittent.

## **CULTURAL HERITAGE**

- 6.9.32. CRT has raised particular concerns [REP2-021] about the effect of the Proposed Development on the setting of the Canal Conservation Area and the listed buildings and structures within Gailey Wharf. A number of other IPs have raised concerns about the effect on these assets and concerns were also raised about the potential effect on the Grade I listed Church of St Mary and St Chad in Brewood.
- 6.9.33. The potential effects on the Conservation Area and individual assets in and around Gailey Wharf have been fully explored in the Examination. These were discussed at ISH3 and specific issues were raised in my FWQs. The responses to FWQs from the Applicant [REP2-009] and CRT [REP2-023] are of particular relevance to these issues. I made my own assessment of the character and appearance of the Canal Conservation Area and the assets within Gailey Wharf on the ASI and my USI. The location of the proposed new road bridge for the A5/A449 Link Road was also considered carefully as part of the ASI.
- 6.9.34. CRT and the Applicant have different views as to the character of the section of the Canal Conservation Area within and immediately adjoining the site. CRT [REP2-021] argues that, whilst there are urban influences in the surrounding area, this section of the canal corridor retains a strong rural character. In response to CRT's representation the Applicant [REP3-007] refers to the SCC's Staffordshire and Worcestershire Canal Conservation Area document (1997) which states that:
- "the stretch of canal between Gailey and Wolverhampton is the most deeply scarred by modern industry. Nevertheless, it possesses reaches of tranquil beauty which are perhaps thrown into prominence by the contrasting industrial squalor, the most prominent of which is the refinery complex of the Midlands- Yorkshire Tar Distillery [now the SI works]."*
- 6.9.35. The Applicant's own assessment is set out in paragraphs 9.140-147 of ES Chapter 9. This concludes that;
- The section is not an intact or especially attractive component of the CA as a whole, and therefore makes a minor contribution to the heritage value of the CA in its entirety."*
- 6.9.36. I have taken those differences of opinion into account in making my own assessment of the character and appearance of the Conservation Area and the effects of the Proposed Development on its setting. I have been assisted in that assessment by the additional viewpoints and photomontages that were provided by the Applicant in Appendix 16 to their responses to FWQs [REP2-013] at my request.
- 6.9.37. I consider that the Round House, Wharf Cottage, Gailey Wharf, Lock and Bridge form an attractive group of heritage assets comprising a complete

set of canal architecture. These assets have value both individually and as a group and, because of their strong heritage character, make an important contribution to the setting of this part of the canal. Visitors to the canal are likely to spend more time in and around the Wharf than in other parts of this section of the canal because of its strong heritage character and appearance.

- 6.9.38. That strong heritage character is, however, limited to a relatively small area and is offset to some degree by the unkempt character of the boat storage and repair yard and the generally poor-quality and temporary appearance of the buildings and open parking area on the eastern bank of the canal. In addition, there is no great sense of tranquillity at Gailey Wharf because of the noise from traffic on the A5.
- 6.9.39. Moving south from the Wharf the character of the canal is, for a short section, dominated by rear boundaries of houses on Croft Lane and the commercial, canal related uses on the eastern bank. Beyond those features, it takes on a mainly rural character, enclosed by canal-side trees and vegetation with occasional views of open fields beyond. The photographs of the existing views from Additional Viewpoint I (SE & NE) [REP2-013] capture that rural character but, even on this section, traffic noise from the M6 is audible.
- 6.9.40. On rounding the bend in the canal, the Bericote development comes into view and becomes more apparent on the approach to the Gravelly Way Bridge. The viewer is aware of the scale of the new buildings and associated storage tanks and also of activity within the service yards and parking areas as these are not well screened from the canal. Views of traffic crossing Gravelly Way bridge reinforce the sense of moving into a more industrial and commercial stretch of the canal.
- 6.9.41. The long straight section, running between the Bericote development and the SI Group site, has a mainly industrial character. This is added to by the pipe and pedestrian bridges over the canal and the warning sign to boat users not to stop along this section. Noise from passing trains is clearly audible at the towpath. After Calf Heath bridge the north side of the canal abuts open fields but views to the south in the first section are dominated by industrial uses including the ERF building. Beyond that point the canal is enclosed by mature hedges and trees to both banks and regains its rural character. However, this section is still affected by background noise from the motorway.
- 6.9.42. My observations lead me to conclude that, although retaining a rural and relatively tranquil character for short sections, the setting of that part of the canal which passes through and immediately adjacent to the site is heavily influenced by past and more recent industrial and commercial development. This gives it a quite different character and appearance to that of the other sections of the canal that I saw on my site visits.
- 6.9.43. The effect of the buildings in Development Zone A4 would be reduced by reason of the 100m set back from the canal and the use of a natural colour palette to their elevations. Because of their length and height

these buildings would, nevertheless, be visible from Gailey Wharf. With reference to the photomontages in ES Figure 12.13 [APP-045], that from Viewpoint 2 shows that the development would have a strong visual presence from this location at Year 0 when the new planting is complete. Its effect would be considerably softened by Year 15, but I would assess the effect on the visual setting of this part of the Conservation Area as moderate rather than minor in the intervening period. The Proposed Development would not alter the heritage value of the group of buildings and structures nor significantly add to noise levels within this area.

- 6.9.44. In the section between Gailey Wharf and the bend in the canal, the photomontages (SE and NE) from Additional Viewpoint I [REP2-013] show that, at Year 0, the open fields in glimpsed views through and between the canal side vegetation would be replaced by new landscape mounds and planting with the upper elevations of the new building(s) appearing in the background. At Year 15 the new landscaping would effectively screen the buildings from view from the canal and towpath.
- 6.9.45. The photomontage from Additional Viewpoint J [REP2-013], looking east, shows that a user travelling north along the canal or towpath would have a clearer view of the new buildings both ahead and to the side of the canal at Year 0 but that these would also be largely screened from view at Year 15. As the photographs were taken in March it is likely that the canal-side vegetation would provide additional screening when fully in leaf. In addition, a person travelling north will have just passed through the very industrial setting along that section between the Bericote development and the SI Group site before these new buildings and landscape mounds come into view.
- 6.9.46. Moving south between the two bends, a user of the canal may get some views of the new buildings in Zone A1 and of activity within Zones B and C including the movement of gantry cranes, but these would be seen intermittently from a relatively short section of the canal. I do not fully accept that the cranes would not be inconsistent with the character of the canal but agree that this section is less sensitive to change than that to the north.
- 6.9.47. Users of the canal between Calf Heath and Long Moll's Bridges would be aware of the buildings in Development Zone A7. However, as shown in the photomontages from Viewpoint 7 [APP-045], the open field immediately to the north of the canal would be retained and the buildings would be seen at some distance. Beyond that first field, the canal would be abutted by GI within the Croft Lane Community Park. The GI Strategy provides that the design of the 2 Community Parks should preserve and enhance the special interest of the canal.
- 6.9.48. In summary, while I consider that the visual effect of the Proposed Development on the setting of Gailey Wharf would be more pronounced than indicated in Chapter 9, I accept the ES conclusion that there would be a medium magnitude of effect on the heritage value of the section of the Canal within the site and its immediate environs. Having received the further clarification provided by the Applicant at ISH3 and in response to

ExQ1.11.1 [REP2-009], I also accept the low value rating applied to the Conservation Area as a heritage receptor.

- 6.9.49. I consider that, overall, the effect on the setting and significance of this part of the Conservation Area would be minor. This is a very short section of a much longer and very diverse, linear Conservation Area and I find that the effect of the Proposed Development on the significance of the Canal Conservation Area as a whole would be negligible. Both of these effects would be less than substantial and would be outweighed by the public benefits of the Proposed Development. I agree that the new bridge would not have a significant adverse effect on the significance or setting of this part of the Conservation Area.
- 6.9.50. CRT [REP2-021] has suggested that the existing Gravelly Way Bridge (Bridge 72A) should be removed when the new Link Road bridge has been completed because this would have a heritage benefit in terms of opening up views of the adjacent traditional canal bridge (Bridge 72). I agree that this would result in a positive heritage benefit but consider that this would be outweighed by the wider benefit of retaining the bridge as a segregated crossing for pedestrian and cyclists. Bridge 72 is not suitable for use as a pedestrian and cycle bridge for safety reasons as outlined in the Applicant's response to CRT's D2 Representation [REP3-007].
- 6.9.51. I have carefully considered the likely effects on the individual heritage assets within the Gailey Wharf area and agree that their settings are quite tightly defined. There may be some intervisibility between these assets and parts of the new development, but any adverse effects on that wider setting would be offset to some degree by the new GI within Croft Lane Community Park. I accept the ES conclusion that the effect on these assets would be negligible.
- 6.9.52. I made my own external assessment on my site inspections of the heritage assets comprised in Heath Farm and Woodside Farm. Based on those observations, I accept the conclusions of the ES that the loss of Heath Farm house would have a minor adverse effect and that the loss of Woodside Farm would have a negligible effect. I also accept the ES findings in relation to the other designated and non-designated assets. Having visited the Church of St Mary and St Chad in Brewood, I consider that this is too far away from the Proposed Development for its setting to be encroached upon by the Proposed Development.

## **CONCLUSIONS**

- 6.9.53. ES Chapter 8 provides an appropriately robust assessment of the likely presence of below-ground archaeology. It has found no evidence of features of such importance and value that the Proposed Development should not take place or should be significantly modified. The Outline Scheme of Investigation and the phased approach which it establishes for further investigation, recording and dissemination of information as phases of the development proceed have been agreed with Historic

England and SCC. These provides an appropriate response to the likely presence of features of value.

- 6.9.54. ES Chapter 8 provides an appropriate assessment of the heritage value of the built heritage assets within the site boundary and a 3km radius of the site. Direct effects on heritage assets would be limited and would not be significant in EIA terms. The indirect effects include some harm to the setting of the Canal Conservation Area, but this would be less than substantial and would be offset by the public benefits of the Proposed Development. Appropriate mitigation for potential adverse effects would be secured through the embedded mitigation, the Canal Enhancement Strategy and the historic building recording at Heath Farm and Woodside Farm prior to their demolition.
- 6.9.55. The requirements of paragraphs 5.120 to 5.142 of the NPSNN are, therefore, met.

## **6.10. SOCIO-ECONOMIC EFFECTS AND HUMAN HEALTH BACKGROUND**

- 6.10.1. The NPSNN states that, over recent years, rail freight has become an important driver of economic growth (paragraph 2.42) and that the Government's vision is for a low carbon sustainable transport system that is an engine for economic growth (paragraph 2.53). Paragraph 2.52 recognises that SRFIs can provide considerable benefits for the local economy, including the creation of many new job opportunities, and contribute to the enhancement of people's skills and use of technology. The Applicant relies upon the economic benefits of the Proposed Development as part of its very special circumstances case to justify a grant of development consent in the Green Belt.
- 6.10.2. These issues have been important in the Examination because many IPs question whether the Four Ashes site is a sustainable location for the proposed WMI because a large proportion of the projected 8,500 employees would have to commute from outside of the District. Some IPs challenge the 8,500 new job figure as an unrealistic assessment of the potential number of jobs that would be created. Concerns have also been raised about the potential effects of the Proposed Development on the local tourist industry, local businesses and local clubs and societies. There is particular concern about the potential effect on sailing conditions at Calf Heath Reservoir and the consequential threat to the viability of Greensforge Sailing Club (GSG) that uses that reservoir.

## **ASSESSMENT OF ECONOMIC EFFECTS**

- 6.10.3. The Applicant's assessment of socio-economic effects is set out in ES Chapter 14 [APP-052]. This was accompanied by a separate study of the Wind Effects on Sailing [APP-113]. Of key importance to these matters are the Employment Skills and Training Plan Framework (ESTPF) and the obligations included in Schedule 3 of the DCOB [REP8-005] with regard to employment, skills and training. In addition to implementing the ESTPF which has been agreed, these obligations require that incoming

occupiers of warehouses in the WMI development draw up their own Employment, Skills and Training Plan (ESTP) and submit this for approval before the construction and occupation of that warehouse. A full copy of the ESTPF is appended to the Applicant's D1 submissions [REP1-002] and to the final DCOB [REP8-020].

- 6.10.4. The ESTPF and DCOB provide for the appointment of a Brokerage Co-ordinator to run the Brokerage System. This would capture all job and training opportunities at the construction and operational stages, advertise these through appropriate channels, and seek to ensure that local candidates have full access to these opportunities and are given appropriate assistance in applying for them. Full details of how the system would operate are given in Figure 5.1 of the ESTPF.
- 6.10.5. A WMI Employment Fund, with an initial funding of £1.7M, would be established to support these or any other initiative supported by an Employment Fund Steering Group. There would also be a Contingency Employment Fund, with a further £1.5M of funding, which could be triggered during the operational phase to introduce additional initiatives if monitoring shows that the agreed targets, for example for recruiting employees from the pool of unemployed people, have not been met. The ESTPF ties in with the SWTP so as to ensure that people who wish to take employment and training opportunities at WMI can access sustainable forms of transport for their journey to work.

#### **METHOD OF ASSESSMENT**

- 6.10.6. The assessment considers the existing baseline and the potential effects of the development at the following spatial scales:

**Local Scale:** comprising the five Census Wards of Brewood & Coven, Penkridge South East, Huntington & Hatherton, Cheslyn Hay North & Saredon, and Featherstone and Shareshill;

**District Scale:** South Staffordshire;

**LEP Scale:** The area covered by the South Staffordshire Local Enterprise Partnership (SSLEP);

**TTWA Scale:** The WMI Travel to Work Area;

**National Scale:** England and Wales.

- 6.10.7. The TTWA for the WMI was defined by means of a gravity model for use in the TA and has been agreed by HE and SCC. The geographical extent of this area, the Local Area and the area covered by the South Staffordshire LEP is shown in Figure 14.1 within Chapter 14. The assessment has considered effects on the construction workforce across the West Midlands Region as whole because the most up to date information on trends in the construction industry, from the Construction Industry Training Board (CITB), is collated on a regional basis. Effects on

recreation and amenity receptors are considered at a more localised level.

### **BASELINE CHARACTERISTICS**

- 6.10.8. Population statistics at each of the identified spatial scales are set out in Tables 14.2 & 14.3. At the 2011 Census, the population of the TTWA, was just under 3M, with 20% being under 16. The TTWA has a labour force (economically active population) of just under 1.3M (Table 14.4) with unemployment being relatively high at 5% compared to 4% nationally.
- 6.10.9. At 2011, South Staffordshire District, with an economically active population of 80,720, had some 64% of its labour force in employment and a relatively low level of unemployment at 3%. More recent Annual Population Survey Data for 2017-18 estimates the unemployment level in the District to be 4.8%<sup>70</sup> which is above the national average. SSDC's LIR (section 5) confirms that only 35.7% of working age residents living in South Staffordshire work in the District (the lowest proportion of all the districts in Staffordshire), with some 28,134 residents commuting outside of the district to work. The main destinations for such work are Wolverhampton, Walsall, Dudley and Birmingham and the main method of travel to work is by car (80%).
- 6.10.10. Tables 14.9, 14.10 and 14.12 show a total of 1.185M people working in the TTWA, with 14% of these working in manufacturing and 7% in transport and haulage. There has been an increase in the numbers employed in the logistics sector between 2009 and 2015. Data from the CITB shows that total employment in the construction industry in the Region in 2016 was 181,510 and that, by 2020, that total is forecast to grow to 190,130. The construction workforce is highly mobile with 40% of workers having travelled more than 50 miles to a job.
- 6.10.11. The baseline assessment looks at wage data and the health profile of the population within South Staffordshire. It includes information which shows high levels of deprivation within Wolverhampton, Walsall, Dudley and Sandwell to the south and within parts of Stoke-on-Trent to the north. As with the other chapters of the ES, Chapter 14 considers the effects of the demolition and construction works and of the operational phase of the development.

### **ECONOMIC EFFECTS**

- 6.10.12. The CITB tool estimates that the construction workforce required to complete the development over the projected 15-year build period would equate to 4,500 person years of employment. This is based on an 'infrastructure' model and may be an overestimate of the level of employment required for delivering the warehousing buildings. The average number of construction workers on site is predicted to be 230 per month and the peak level is not expected to exceed 1,000.

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<sup>70</sup> See paragraph 3.2 of Appendix 9 in Document REP5-005

- 6.10.13. Specialist contractors required to undertake some of the work may bring staff from elsewhere, but the ES estimates that up to 80% of the construction employees would be sourced from the West Midlands Region. The Region had some 211,620 people employed in construction and related trades in 2016 and there is good evidence that this is a highly mobile workforce. For this reason, no estimate has been made of how many South Staffordshire District residents would be employed in the construction works, but the ESTPF includes measures to open up these opportunities to local people. The effect on construction employment is assessed as a temporary but long-term minor beneficial one at the District, SSLEP and Regional level.
- 6.10.14. Based on ONS Statistics on Supply and Use in the UK economy, the direct GVA generated as a result of the construction activity would be £198M. The multiplier effects, via the supply chain and labour market benefits, would generate a further £415M of additional GVA over the 15-year period. This is considered to be a temporary, long-term minor beneficial effect at a District and at the SSLEP level.
- 6.10.15. On completion, the Proposed Development is expected to support some 8,550 additional jobs. This estimate has been generated using a job density of 87 sq. m of building floorspace for each job, as explained in the Statement of Economic Benefits [APP-254]. Figure 14.5 in ES Chapter 14 shows that approximately 40% of the jobs would be higher skilled, managerial, engineering and technical and skilled jobs and in administrative and customer service roles.
- 6.10.16. The ES states that the number of jobs likely to be generated should be assessed in the context of the baseline data. This shows that there are 700 people in the Local Area and 77,900 in the TTWA who already work in the logistics sector and could, therefore, have appropriate skills and experience, and 31,669 unemployed residents in the TTWA who are seeking work and receiving unemployment benefits. In this context, the employment impact at the operational stage is assessed as being a permanent, major beneficial effect at the TTWA level and a negligible effect at all other levels.
- 6.10.17. Wider operational benefits include a total of £427M of GVA generated locally every year. However, the effect of this at each of the spatial scales has been adjusted to take account of potential displacement effects; for example, where a new development takes market share, labour, land or capital from existing businesses. The ES states that such displacement is unlikely at the Local level since the WMI would be a unique offer in the local context but would be more likely at the SSLEP and TTWA levels, reducing direct GVA to around £364M per year. Allowing for indirect and induced GVA (via the supply chain) of £364M the total GVA benefit to the TTWA is estimated to be an additional £684M each year.
- 6.10.18. The ES acknowledges that the directly generated GVA is relatively small in the context of the economy of the SSLEP as a whole but states that it would represent a substantial contribution from a single development.

The Proposed Development would also result in economic effects that are in line with local, regional and national policies on economic development and growth. The development would, therefore, result in a major beneficial economic effect at a Local, District and SSLEP level and a minor beneficial effect at the National level.

## **COMMON GROUND**

- 6.10.19. In its LIR [REP2-051], SSDC states that the Proposed Development would deliver economic benefits at the local, regional and national levels. The Council accepts the estimate of 8,550 on-site jobs and says that the development would also support 8,100 jobs through induced and indirect employment. The on-site jobs would consist of a mix of entry level opportunities through to management and technical roles and the Council states that there is a large pool of potential labour supply at the appropriate skill levels. If supported by an appropriate ESTPF, this labour pool should support the scale of growth at WMI including residents who are unemployed and those who are not currently economically active but want a job. The Council also notes that the development would generate some £16.2M annually in business rates that could be spent on sustaining local services. The LIR does not identify any negative economic effects.
- 6.10.20. In the SoCG, SSDC agrees that the TTTWA represents the outer limit from which most employees would be likely to be drawn from but the ESTP has a particular focus on providing employment opportunities for people living within 10 miles of the site. SSDC also accepts the construction estimate of 4,440 person years and that there would be an additional 4,500 one-year jobs created in the supply chain.
- 6.10.21. SCC's LIR [REP2-062] indicates the Council's acceptance that the Proposed Development would be likely to generate over 8,000 jobs although the exact number will not be fully clear for some time. It states that the scale of the development and the low levels of unemployment in South Staffordshire make it uncertain where all of the employees would travel from. The LIR notes the importance of the ESTPF working in tandem with the SWTP and Sustainable Transport Strategy in ensuring sustainable access to these opportunities for local people. Whilst the LIR is more cautious about the 8,500-job estimate, SCC has agreed this estimate in the SoCG [REP3-007]. In the SoCG, SCC also agrees that a suitable labour pool is available to support the WMI development.

## **EXAMINATION – ECONOMIC EFFECTS**

- 6.10.22. The suitability of the site in terms of accessibility to a reasonably sized labour market was explored in ExQ1.4.1. The Applicant provided a comprehensive response in their Responses to FWQs [REP2-009]. This confirmed that unemployment in South Staffordshire is not as low as the 1% level suggested by some IPs and noted that the 'Claimant Count' figure does not include other potential employees that might be looking for work but not claiming any benefit or who do not meet the definition of unemployed or claimant. The response also referred to the high

proportion (64%) of the South Staffordshire working age population that currently commutes out of the District for work.

- 6.10.23. In their combined responses to my FWQs [REP2-032], Wolverhampton and Walsall Councils confirm their intention that a high proportion of the WMI employment opportunities could be filled by people living in the Black Country which has a number of significantly deprived areas, some falling within the 10% most deprived in the UK. Having regard to those responses and the evidence provide by SSDC and SCC in the SoCGs, I am satisfied that there would be an adequate labour pool to support the Proposed Development without a significant adverse effect on the ability of existing businesses to fulfil their employment needs.
- 6.10.24. In ExQ1.4.7 and 2.4.1, I sought clarification as to the nature and extent of the Quod research used to support the calculation of the likely number of permanent jobs and the range of roles that might be available. The Applicant has responded to these queries [REP2-009 and REP5-003]. In light of that response, I consider that the potential job estimates have been informed by an appropriate number and range of data sources so as to provide for robust predictions. The research has not been subject to any peer review. However, the methodology used is set out in Appendix 1 to the ESTP and this includes a section which describes the assumptions underpinning that research and its limitations, and the areas of uncertainty in any such assessment. A number of other queries about the methodology used in the assessment, as set out in my FWQs (1.4.3-1.4.14), have all been satisfactorily addressed in the Applicant's responses to FWQs [REP2-009].
- 6.10.25. In his D2 submission [REP2-141], Mr Powell set out a detailed critique of the Applicant's forecast of jobs and the likelihood of these being filled, given other demands on available labour supply, and a number of other concerns about the reliability of the claimed economic benefits. The Applicant's response to those detailed comments is given in Appendix 9 to their Response to my SWQs [REP5-005].
- 6.10.26. That note advises that the capacity of the labour market within the TTWA to support the Proposed Development has been considered in Section 6 'Testing the TTWA Outcome' of Appendix 2 to the ESTPF [REP1-002]. This confirms that the outcomes of the gravity model, which predicts where employees would be drawn from, are plausible and sustainable. Nearly 1 in 5 employees are expected to live in South Staffordshire District which accounts for only 1.93% of the working age population. Given the scale of the development and the current high level (64%) of commuting out of the District for employment, I agree that that shift does not seem unrealistic or likely to have a disruptive effect on the labour market.
- 6.10.27. Mr Powell's concerns about the inability of the labour pool to meet the WMI's employment needs have been adequately responded to in Appendix 9 to the Applicant's Response to my SWQs [REP5-005]. These concerns are not shared by SSDC which takes the opposite view in its LIR. Appendix 9 also responds to Mr Powell's comments about the

Amazon unit in Rugeley, providing evidence that this has a significantly higher job density (of 50 sq. m per job) than the 87 sq. m per job density used in the Chapter 14 assessment. This does not suggest that the likely job numbers at WMI have been overestimated. As noted above, these figures have been accepted by the relevant local authorities as realistic.

- 6.10.28. In response to concerns raised by Mr Powell and a number of other objectors, Appendix 9 also sets out evidence from the British Property Federation that the mechanisation and modernisation of the logistics sector is supporting a growth rather than a decline in the number of people employed in the sector. Technological advances are also increasing the skills levels needed by employees and changing the low skills perception of the storage and distribution sector.
- 6.10.29. Also, in Appendix 9 (paragraph 4.5) to their Response to SWQs [REP5-005] the Applicant accepts that it is possible that substantial levels of automation over the long term could reduce the number of people required to operate logistics hubs. However, there is a high level of uncertainty as to what effect this might have and what its impact on employment levels in the sector might be. I agree with that analysis and that, for the present, projections can only sensibly be made on the basis of current evidence. I also note the evidence from the British Property Federation, reported at paragraph 4.2 of Appendix 9, that the overall increases in demand within this sector have led to a doubling in the numbers employed in warehousing and storage between 2009 and 2017. Based on this evidence, I do not consider the estimates of total job numbers or of how these jobs might be split by skills and experience to be unrealistic.
- 6.10.30. This conclusion is supported by the letter of support submitted by the Campaign for Better Transport [REP2-087]. This states that the typical job mix on SRFI developments is 35% administration/managerial, 50% skilled and semi-skilled, and 15% managerial/technical.
- 6.10.31. In response to ExQ1.4.6 [REP2-049], SSDC confirmed its agreement that the TTWA is appropriate for assessing the likely travel to work area for potential employees. Both SCC [REP2-064] and Wolverhampton and Walsall Councils [REP2-032] have confirmed that they were consulted on the definition of the TTWA and that they agree that this represents a reasonable area over which to assess the likely travel to work area for employees
- 6.10.32. In response to ExQ1.4.18 [REP2-032], Wolverhampton and Walsall Councils advise that the ESTPF is based on Wolverhampton's Wolves@work model. Wolverhampton Council considers this to be a highly regarded, innovative and demand-led model that partners with the Department for Work and Pensions and their clients. The model ensures that both geographical areas and target groups can be prioritised when trying to fill employment opportunities. The Councils state that the ESTPs would include a clear monitoring framework to enable outputs for people and businesses to be tracked and for intelligence to be gathered that can

be used to ensure that the programme meets the future needs of employers.

- 6.10.33. Accordingly, the ESTPF would enable the job and training opportunities to be targeted on areas of deprivation and target population groups so as to maximise the benefits for Black Country residents. The terms of the ESTPF have been agreed by SSDC and SCC as part of the negotiations of the DCOB. This is confirmed in the SoCGs [REP2-006 and REP2-007] and its implementation would be secured through the DCOB.
- 6.10.34. All of the Councils represented at ISH4 confirmed that the DCOB does not introduce significantly different obligations to ones that have been tried and tested in respect of other major developments, although not on the scale of the WMI scheme. I am, therefore, satisfied that the DCOB and ESTPF would together provide a robust mechanism for ensuring that the job and training opportunities provided by the Proposed Development are accessible to all those that might wish to apply for them, and for maximising the economic and social benefits that those new employment opportunities would bring.
- 6.10.35. There was no serious challenge to the claimed wider economic benefits of the Proposed Development. However, the letter of support from the Campaign for Better Transport [REP2-087] refers to estimates from the British Property Federation that each employee generates some £58,000 GVA annually and that this is expected to rise to £75,000 by 2035. Those figures are somewhat higher than the £49,945 per employee used in the ES. This suggests that the ES has adopted a relatively cautious figure for this part of the assessment of potential benefits.

## **ASSESSMENT OF RECREATION AND AMENITY EFFECTS**

- 6.10.36. The baseline assessment identifies a number of recreation and amenity receptors and local businesses that might potentially be affected (Tables 14.17 & 14.18). The assessment of effects takes into account the embedded mitigation to be provided by means of the proposed GI including new areas of open space and pedestrian/cycle routes which would be accessible to the public (paragraph 14.194).
- 6.10.37. ES Chapter 14 considers that the potential for recreational and amenity effects of the Proposed Development consists primarily of the indirect effects arising from the direct effects identified in other chapters of the ES; for example, in relation to transport, noise and vibration, landscape and visual and heritage effects and effects on air quality. Each of these is considered in turn and a summary of the overall recreation and amenity effects is presented in paragraphs 14.241-14.245 (construction phase) and paragraphs 14.324-14.326 (operational phase).
- 6.10.38. Paragraph 14.241 concludes that, on balance, the recreation and amenity effects experienced by residents and visitors in the construction phase are likely to be intermittent. These would be mitigated to a large extent by the extensive provision of landscaping and by noise and traffic

mitigation measures introduced as part of the development. As the development would be phased, no individual receptor is likely to experience the effects of construction works over the full construction period. The effects on individual receptors are likely to be intermittent and short term (paragraph 14.326).

- 6.10.39. No recreational activity is expected to be prevented and the Community Parks would result in a substantial uplift in publicly accessible open space for recreation and amenity use. On balance, the net effect on the construction phase is assessed as temporary, short-term minor adverse at a Local level and negligible at all other levels. For the operational phase, the net effects on recreation and amenity are assessed as permanent and minor adverse.

## **EXAMINATION OF RECREATIONAL AND AMENITY EFFECTS**

### **Effects on Users of the Canal and Canal Towpath**

- 6.10.40. CRT [REP2-021] raised a number of concerns about the potential indirect effects of the Proposed Development on existing and future users of the canal as a result of direct landscape and visual, heritage and noise impacts on those users. CRT is also concerned that those effects could result in the level of use of the canal being reduced with a consequential adverse impact on the various businesses who provide services to those users and who, for the most part, occupy CRT owned sites or premises.
- 6.10.41. Clearly any downturn in their trade could lead such businesses not to renew their tenancy or lease and lead to a reduction in CRT's revenue over the longer term. As that revenue is needed to fund the maintenance of the canal network, this is a significant area of concern. Paragraph 7.2 of their D2 submission stated that CRT are seeking to include wording in the protective provisions to indemnify the Trust against any financial loss sustained in the event the CRT's tenants/licensees should terminate their agreements because of a loss of business.
- 6.10.42. These issues were discussed at ISH3 and were explored in my written questions. CRT's principal concerns are set out in their RR [RR-1155], D2 [REP2-021 & 023], D4 [REP4-015] and D5 [REP5-043] submissions. The Applicant has provided responses on these various matters, in particular in their Responses to Other Parties' D2 [REP3-007] and D4 [REP-5-006] Submissions. A signed SoCG between the Applicant and CRT was submitted at D5 [REP5-041].
- 6.10.43. In paragraph 6.4.33 above, I set out my conclusion that receptors at the canal side moorings that are available on a 12-month licence would experience a moderate adverse noise impact as a result of the Proposed Development. These moorings might be used for overnight stays more regularly than other moorings, but this would still constitute an occasional night-time rather than a residential use. I do not consider that this moderate level of impact would be likely significantly to affect the

extent to which the moorings are use or to act as a major deterrent to boat users from renting these moorings.

- 6.10.44. At ISH3 the Applicant's acoustic expert advised that, in respect of other users of the canal and towpath the outdoor criterion for external noise could marginally be exceeded at one of the towpath receptors close to Gravelly Way. The actual noise level experienced is likely to be lower rather than higher than the rating level on which the assessment is based. In my view, that moderate noise impact at this receptor would be unlikely to discourage most boat and towpath users who, for the most part, are passing through, rather than staying for any length of time in this section of the canal. It is possible that greater disturbance might be caused to anglers who are likely to stay at their chosen location for longer periods. However, I consider that their likely response would be to move to another spot on the canal, rather than not to fish there at all.
- 6.10.45. The character of the canal corridor would be changed as a result of the new landscaped mounds. These would not be unattractive nor out of keeping once the planting becomes established (see 15-year photomontages referred to in section 6.9 above) and the GI within the Community Parks would be designed to respect the character of the canal. As set out in section 6.9 of this report, the new buildings would be set back from the canal by a significant distance. Only partial and filtered views of the upper parts of the buildings are likely to be available at some points along the canal corridor. Overall, I do not consider that these changes are likely to have a significant effect on the use of the canal and towpath for recreational purposes. Any adverse effect would, in any event, be offset by the works within the Canal Enhancement Strategy, the linking of the towpath into the new paths, cycle routes and Community Parks provided as part of the development.

#### **Effect on Greensforge Sailing Club**

- 6.10.46. Greensforge Sailing Club has use of the Calf Heath Reservoir for sailing under the terms of a licence from CRT, which had 20 years remaining as at February 2019. The Sailing Club's D1 submissions [REP1-016] sets out details of its history and membership and of the use of the reservoir by the Sailing Club and other users. Key points of note are that the Sailing Club is a not-for-profit organisation which has used the reservoir as its base since 1974. It currently has 40 active sailing members and a further 30 social members. Recreational sailing takes place every weekend between March and December and on Wednesday evenings in the summer period.
- 6.10.47. The Sailing Club secured Royal Yachting Association (RYA) Training Centre status in 2013 and provides training for novice and more experienced sailors. The Club also works with 2 Sea Scout groups and a Sea Cadets group who also provide training to young sailors, and with people with limited physical capabilities of all ages. The reservoir is also used occasionally for other sports such as canoeing and kayaking, and the Blackfords Angling Society has the benefit of the fishing rights around the reservoir under a separate licence with CRT.

- 6.10.48. ES Chapter 14 acknowledges that there would be potential for significant changes in the speed and direction of wind, resulting from the Proposed Development, to affect the wind conditions on Calf Heath Reservoir and its use for sailing. A desk-based assessment of the likely effect of the proposed buildings and screen mounds in Development Zones A4a and A5a on wind conditions was submitted as an appendix to Chapter 14. This report [APP-113] concluded that there would be changes in wind direction for 30% of the time but for the majority of time there would be little or no effect on wind direction or speed.
- 6.10.49. These conclusions were not accepted by the Sailing Club which was critical of the report [REP1-016] In ExQ1.14.5 -1.14.9, I asked a number of questions about the methodology, scope and findings of that assessment. At ISH3, I encouraged further dialogue between the two parties to see if agreement could be reached or if the issues between them could be narrowed. I requested that the parties should seek to agree a SoCG.
- 6.10.50. The Applicant subsequently produced two further reports, comprising a Calf Heath Reservoir Wind Assessment [REP4-013] and a Sailing Quality Analysis of Calf Heath Reservoir [REP4-012]. The Wind Assessment was produced by RWDI consultancy and uses Computational Fluid Dynamics software for visualising wind flow patterns. The findings of this assessment have then been used by Wolfson Unit to undertake the Sailing Quality Analysis. GSC provided a written response [REP5-055] to these reports which includes reference to a meeting between member of the Sailing Club and the Applicant's consultants.
- 6.10.51. As is clear from the subsequent submissions on behalf of GSC [REP7-035, REP7-066 & REP7-111], and from the Applicant in Appendix 11 to their D6 submissions [REP6-011] and Appendix 2 to their D8 submission [REP8-016], there remain very significant differences between the parties concerning the robustness of the Applicant's assessments and their conclusions.
- 6.10.52. A 'travelling draft' SoCG, which is attached as Annex 1 to Appendix 2 to the Applicant's D8 submission [REP8-016] was prepared but had not been agreed at the close of the Examination. GSC maintains its objection to the application. It fears that the Proposed Development could have a very significant adverse effect on sailing conditions and that this could threaten the long-term viability of the Club.
- 6.10.53. I accept that an objective or scientific approach to modelling the likely effects of the Proposed Development should generally be preferred. However, given that the wind rose data used in the assessment is from Birmingham airport, which is some distance from the site, I am surprised that those undertaking the assessment did not consider it necessary or useful to visit the reservoir to make their own assessment of localised conditions or to carry out some local monitoring of wind direction and speeds, at least to provide a sense check in relation to the wind rose data. It is also surprising that the experience and local knowledge, that some long-standing GSC members have of wind conditions at the

reservoir, should apparently be dismissed as 'anecdotal' evidence as recorded in the note of the meeting held in May 2019 which is at Appendix 1 to GSC's D5 submission [REP5-055].

- 6.10.54. Having reviewed all of the evidence, I have some concerns about the assumptions used and inputs into the Wind Assessment Report. For example, I do not understand why the modelled building heights were higher than those shown on the Parameters Plans [AS-047 to 061] when those plans also define the maximum and minimum changes in ground level. For the reasons set out by GSC in their D5 submission, I am not convinced that the modelled heights represent a worst-case scenario in relation to the deflection of winds from the SSE to W directions. I am also concerned that the 'steady state' conditions assumed in the report do not reflect real conditions at the reservoir, and that insufficient consideration has been given to the effects of turbulence caused by the proposed buildings and mound. However, I agree with the Applicant that the various sources of evidence referred to by GSC relate mainly to conditions suitable for wind turbines rather than to sailing.
- 6.10.55. As the Wind Assessment Report provides the primary input into the Sailing Quality Report, any concerns about methodology and approach will also call into question the findings of that second report. However, I also have concerns about the Sailing Quality Report's focus on conditions for novice sailors and apparently limited consideration of what the effects might be for the wide range of abilities of the GSC members.
- 6.10.56. Putting those concerns to one side, the Sailing Quality Report finds that the average sailing quality across the reservoir would reduce from 19.7% to 16.5% (Configuration 2) or 15.6% (Configuration 3). The report records this as a reduction of -3.2% and - 4.1%. However, as noted by GSC, the relative impact compared to the baseline position would be 20.8% ( $19.5 - 4.1 \times 100$ ) in respect of Configuration 3. It seems to me that this is a much clearer presentation of the likely effect than that used in the report. The report concludes that both development options would result in local or point reductions in sailing quality which are 'significant' (i.e. in excess of -15%) and that these significant reductions would affect between 11.3% and 13.5% (depending upon the configuration) of the useable sailing area of the reservoir.
- 6.10.57. The Report asserts that sailing will still be possible in the affected areas. However, I consider that this may be of small comfort to members of the Club if the quality of their sailing experience is materially changed. The Report also concludes that Configuration 2 would have a lower impact than Configuration 3; this can be seen from the figures both in this report and the Wind Assessment Report. These findings provide a strong indication that a layout with the long elevation of buildings running roughly east-west (Configuration 3) would have a more significant impact than buildings with their long elevations running roughly north-south. Despite these findings the Applicant has not proposed any amendment to the Parameters Plans that would rule out the more harmful configuration. The Applicant argues that there is a need to retain maximum flexibility to respond to occupiers' needs.

- 6.10.58. Taking those findings into account, I find that the Sailing Quality Report's conclusion, that the overall effect on sailing conditions would be 'modest,' is questionable. The existing sailing conditions on the reservoir may not be ideal compared to an area of open water with no tree cover. Nevertheless, GSC's evidence as to its sustained and increasing membership, the level of usage and activity on the reservoir, and the GSC's accreditation by the RYA all serve to indicate that the reservoir currently provides a very useful and well used resource both for recreational sailing and for training of novice sailors.
- 6.10.59. Given the stated findings of the assessments and my concerns about the approach and methodology used in them, I am unable to conclude that there would not be a significant adverse effect on sailing conditions on Calf Heath Reservoir. However, even in that scenario, the impact would most likely be one of a reduced sailing quality rather than making sailing impossible across the majority of the reservoir. In those circumstances, it would be likely that further adjustments could be made in the way that the reservoir is used in order to continue sailing. I accept that some novice and more experienced sailors might be discouraged from continuing their membership and move to another club or facility, but I am far from certain that there would be a significant risk to the Club's long-term future.
- 6.10.60. There can, at this stage, be no greater certainty as to what the potential effect on sailing conditions would be because no detailed proposals for the landscape mounds or buildings within Development Zones A4a and A5a are yet available. The initial Wind Effects on Sailing Assessment submitted with the application [APP-113] recommended that appropriate measures to reduce the effect of the development on wind conditions would be to limit the extent of landscaping to the south west and west of the reservoir and to reduce the height and massing of buildings in this location. It also proposed that, once the detailed siting and massing of buildings is known, a wind tunnel test be conducted in order to measure the changes in wind speed, direction and turbulence around the reservoir.
- 6.10.61. In response to ExQ1.14.6 [REP2-009], the Applicant advised that they had instructed the Computational Fluid Dynamic modelling because it was considered that a wind tunnel test would typically consider a single, fixed and final layout and would not comprise a comparison with baseline conditions. As the baseline conditions have now been assessed, it would seem that a further assessment, including a wind tunnel test, could sensibly be out at the detailed design stage to ensure that potential adverse effects on sailing conditions on the reservoir are minimised.
- 6.10.62. I therefore recommend that, if development consent is granted, the SoS should consider the imposition of an additional Requirement within the DCO. This would require that the submission of detailed proposals for the construction of landscaped mounds immediately to the south or west of the reservoir, and for the erection of buildings in Development Zones A4a and A5a, be accompanied by a detailed assessment of the likely effects on wind conditions on the reservoir and details of how any potential

adverse effects are to be mitigated. My suggested wording for this additional Requirement is set out in Chapter 11 of this report and in the Recommended DCO at Appendix D.

6.10.63. I am conscious that a draft Requirement along these lines was not discussed at the DCO hearings and that the views of the parties have not, therefore, been canvassed. If the SoS is minded to accept this recommendation, it will be for them to consider whether comments should be sought on the proposed Requirement but I think it worthy of consideration. The absence of any such Requirement may not justify the withholding of development consent, but its inclusion could assist in securing a more favourable outcome for the Sailing Club and in minimising the recreational impact of the Proposed Development.

6.10.64. The erection of the landscaped mounds within Development Zones A4a and A5a would provide screening to Calf Heath Reservoir in terms of adverse noise impacts from the operational development but would themselves be visually screened by the existing woodland to the south of the reservoir. Hence, I do not consider that adverse effects on users of the reservoir would be caused by these new mounds.

#### **Other Recreational Users**

6.10.65. I consider that there are no good reasons to conclude that the Proposed Development would have a significant adverse effect on other clubs and groups identified in the baseline assessment. Although an existing and a claimed PROW would be lost, alternative routes would be available for local walks and there would be improved access to the canal towpath which would also benefit from the works proposed in the Canal Enhancement Strategy. I note the scepticism of many objectors as to the value of the Community Parks but consider that these would provide attractive local areas of greenspace which would easily be accessible to local communities.

#### **ASSESSMENT OF EFFECT ON BUSINESSES/ HUMAN HEALTH**

6.10.66. The ES does not anticipate any adverse effects on other businesses and no evidence has been submitted to show that there would be any such effects. With the large number of employees and other visitors to the Proposed Development, it is possible that some local businesses would experience increased patronage and benefit. The overall effect on local businesses is, therefore, likely to be neutral. In view of my findings about the effect on users of the canal, I do not consider there would be likely to be a significant effect on those local businesses that provide services to boat owners and other canal users or on CRT's long-term revenues.

6.10.67. Chapter 14 also reviews the potential effects on human health arising indirectly as a result of the various environmental effects assessed in other chapters of the ES. It concludes that no such effects are likely. I am satisfied that the likely direct effects on human health have been

adequately considered in the other chapters of the ES, as set out above, and that no significant indirect effects would be likely to arise.

## **CONCLUSIONS ON SOCIO-ECONOMIC EFFECTS AND HUMAN HEALTH**

- 6.10.68. I am satisfied that the DCOB and ESTPF together provide a robust mechanism for maximising the economic and social benefits that the employment opportunities generated by the Proposed Development would bring. Although a significant proportion of the workforce may have to travel from outside of South Staffordshire, the SWTP and Sustainable Transport Strategy would work alongside the measures in the ESTPF to ensure that people wanting to take job and training opportunities could access the WMI in a sustainable way. The range of employment opportunities would provide potential for reducing the substantial number of South Staffordshire residents who are currently commuting out of the District for work. Although SSDC raised a concern in its LIR about additional pressure for new housing in the District no evidence has been submitted to substantiate that concern.
- 6.10.69. The Proposed Development would result in very significant benefits in supporting construction employment in the West Midlands and generating over £60M direct and indirect GVA as a result of that construction activity. Although final figures cannot be known at this stage, the estimate of up to permanent 8,500 jobs is supported by the relevant local authorities who also agree that a range of employment opportunities would be created. The evidence shows that there should be no significant concern as to the availability of an adequate pool of labour to fill those new jobs. In addition, the completed development would generate over £680M annually in direct and indirect GVA and more than £16M each year in business rates.
- 6.10.70. Overall, the Proposed Development would have a moderate level of impact on users of the canal-side moorings but that this would not act as a major deterrent to users from renting these moorings. The changes to the setting of the canal are not likely to have a significant effect on the use of the canal and towpath for recreational purposes. Any adverse effect would be offset by the Canal Enhancement Strategy, the linking of the towpath into the new paths, cycle routes and new Community Parks. For the reasons set out above, however, I am unable to conclude that there would not be a significant adverse effect on sailing conditions on Calf Heath Reservoir and its use by GSC. I have therefore recommended a new Requirement to address this which the SoS may wish to consider as an appropriate mitigation route.
- 6.10.71. I see no grounds for concluding that there would be a significant adverse effect on businesses that provide services to boat owners or on any other businesses in the local area or that indirect effects on human health.

## **6.11. GROUND CONDITIONS**

### **BACKGROUND**

- 6.11.1. The NPSNN states that the SoS should be satisfied that development consent can be granted taking full account of environmental impacts (paragraphs 4.48-4.56) and the effects of ground instability should be considered by the Applicant (paragraphs 5.116-5.119).

### **ASSESSMENT OF EFFECTS**

- 6.11.2. These matters are considered in ES Chapter 11 [APP-031] which is accompanied by a series of appendices [APP-092 to 097]. The assessment considers the existing baseline conditions on, below and adjoining the site and the effect of the Proposed Development on the following receptors:

- Controlled waters including groundwater, the canal and reservoir, the River Penk and other local watercourses;
- Human health of construction workers, site users, site maintenance workers, nearby residents, off site workers (e.g. in the Industrial Estate) and members of the public.

The assessment also has regard to the ongoing remediation scheme on the SI Group land and part of the application site.

- 6.11.3. The majority of the site comprises agricultural land or quarry use. There has been no appreciable past industrial use but the south and south west of the site is close to the SI Group chemical works site. Part of that land and part of the application site is subject to an ongoing groundwater remediation scheme under the terms of a permit issued by the EA.
- 6.11.4. The underlying geology mainly comprises sandstones and the sandstone and glacial deposit below the site are defined as Principal and Secondary aquifers respectively. There are 2 historic areas of landfill close to the southern boundary and the nearby Four Ashes Pit SSSI is designated for its geological interest.
- 6.11.5. The assessment of effects assumes (paragraph 11.60) that the package of measures outlined in the ODCEMP [APP-060] will be put in place during the construction works and that each phase of development would have a detailed DCEMP which would be prepared and approved before works commence. It also assumes that the embedded mitigation described within the Remediation Safeguarding Report [APP-096] would provide satisfactory mitigation in relation to any works that might affect the ongoing remediation scheme on the SI Group land and part of the site. With this mitigation in place, no significant construction effects are predicted on controlled waters or human health.
- 6.11.6. In the operational phase, the potential for site workers and others to come into contact with residual contaminants in areas of soft landscaping

could be mitigated by ensuring a layer of clean topsoil through the Soil Resourcing Plan. The risk of migration of any ground gases and vapour into buildings would be mitigated through appropriate measures in accordance with UK guidance and standards.

## **COMMON GROUND**

- 6.11.7. The SoCG with the EA [AS-026] confirms the EA's agreement that the scope of the land contamination assessment is appropriate and that this does not indicate any significant effects with regard to controlled waters. The EA also agrees that the Remediation Safeguarding Report comprises suitable and appropriate mitigation measures to ensure that the Proposed Development would not significantly alter, constrain or jeopardise the ongoing remediation works.
- 6.11.8. No significant concerns have been raised about the effect of the Proposed Development on ground conditions.

## **CONCLUSIONS**

- 6.11.9. ES Chapter 8 includes an appropriate assessment of the likely effects on groundwaters, human health and other potential receptors. Its findings have been agreed by the EA insofar as its regulatory interests are concerned. No evidence has been submitted to the Examination that seriously questions or contradicts the ES findings that no significant effects would arise.
- 6.11.10. Accordingly, I conclude that there is no evidence to suggest that there would be any adverse effects on ground conditions or controlled waters and that the requirements of the NPSNN in this regard are satisfied.

## **6.12. DRAINAGE AND FLOOD RISK**

### **BACKGROUND**

- 6.12.1. Paragraph 5.92-97 of the NPSNN set out the circumstances in which national network applications should be accompanied by a Flood Risk Assessment (FRA) and what that assessment should take into account. The SoS should be satisfied that proposed developments would not increase flood risk elsewhere and that reasonable steps have been taken to avoid, limit and reduce the risk of flooding to proposed infrastructure and others (paragraph 5.102).

### **ASSESSMENT OF EFFECTS**

- 6.12.2. The Water Environment and Flood Risk are considered in Chapter 16 of the ES [APP-055] and 3 technical appendices to that chapter. These comprise a FRA [APP-150], a Water Framework Directive Assessment (WFD Assessment) [APP-151] and a Site Wide Surface Water Drainage Strategy (SWSWDS) [APP-152]. That Strategy forms a critical component of the embedded mitigation with regard to the potential for the development to increase the risk of flooding elsewhere.

- 6.12.3. As shown in Figure 3 of the FRA and WFD Assessment, the water environment in relation to the application site includes the canal and reservoir, the River Penk and a number of other smaller watercourses. The site is underlain by the 2 aquifers referred in section 6.11 of this report. The site is situated in Flood Zone 1 and the risk of tidal and fluvial flooding is, therefore, low. Some parts of the site may be susceptible to surface water flooding in discrete areas and a small part is at a very low risk of flooding from the reservoir.
- 6.12.4. Because of the presence of made ground, shallow groundwater and underground groundwater Source Protection Zones, infiltration of surface water runoff to the ground is not an option. The SWSWDS, therefore, proposes that surface water runoff be drained to the River Penk and the canal by means of a sustainable drainage system (SuDS) which divides the site into four catchment areas to make best use of existing and proposed site levels. Surface water runoff rates would be restricted to greenfield rates with storm water attenuation to accommodate a 1 in 100-year storm plus a 40% allowance for climate change. Attenuation would be provided in the form of detention ponds and swales within the proposed GI.
- 6.12.5. Provided that the measures within the ODCEMP are applied throughout the construction phase, the construction effects on construction workers, site users, downstream receptors, all components of the water environment, water supply and sewerage infrastructure would all be negligible and, hence, not significant in EIA terms.
- 6.12.6. The assessment of operational effects on site occupants and users, downstream receptors, the proposed development and buildings, all components of the water environment, water supply and sewerage infrastructure concludes that all these receptors would also be negligible. Accordingly, there would be no increase in flood risk to water environment receptors and no additional mitigation is required.

## **COMMON GROUND**

- 6.12.7. In the SoCG with the Applicant [REP2-007], SCC, as the lead local flood authority, agrees that the site is situated in Flood Zone 1 with less than a 0.1% annual probability of tidal/alluvial flooding. The Council also agrees that the Proposed Development offers the opportunity to regularise and control drainage across the site so as to restrict runoff rates to greenfield rates including an allowance for climate change. The SoCG with the EA [AS-026] confirms the EA's agreement that there are no fundamental concerns with the foul drainage proposals for the scheme and that the SWSWDS should pose no risk to meeting WFD objectives within the relevant catchments.

## **EXAMINATION**

- 6.12.8. Some of the RRs raised concerns about existing flooding issues in Brewood. In response to ExQ1.13.5 [REP2-009], the Applicant has confirmed that Brewood is located on a separate tributary of the River

Penk and is not considered to be a sensitive receptor in relation to flood risk associated with the development. I accept that response and that there would, accordingly, be no potential for adverse flooding effects on Brewood as a result of the development.

- 6.12.9. The SWDS requires consent from CRT to discharge surface water drainage into the canal. An application for this consent and for a new culvert to be constructed under the canal was made in March 2019. CRT has confirmed, in response to ExQ2.12.1 [REP2-023], that the information received from the Applicant has enabled CRT to agree the principles of the discharge subject to a maximum rate of flow. Hence, there are no technical reasons for the application not to be approved.
- 6.12.10. The SWDS proposes to make use of an existing drainage culvert under the A449. This has been objected to by HE at ISH4 and in its Post Hearing Submissions [REP4-016]. HE states that that the culvert is for highway drainage and that putting additional flows through it could result in additional maintenance being required at HE's expense. HE accepted at ISH6 that, on acquiring ownership of the adjoining parts of the application site, the Applicant would benefit from riparian owner rights to discharge surface water into the culvert. However, they argue that these rights only apply when the land is in its existing use and condition. Notwithstanding the Applicant's commitment to limit run-off rates to existing greenfield rates plus a climate change allowance, HE argues that the riparian rights would not apply to the completed development.
- 6.12.11. The Applicant maintains that it would be entitled, as a matter of law, to use the existing culvert as part of the SWSWDS and, for the reasons set out in Appendix 1 of their Post Hearing Submissions [REP6-013], that that right is not negated because of a change in the use of the land. This matter remains a point of dispute between those parties that may only be resolved through future negotiations and possible arbitration or legal process.
- 6.12.12. That issue is for the parties to resolve between them and is not for determination as part of any decision on the DCO. However, the SoS needs to be satisfied, when granting development consent that includes CA powers, that there would be no likely impediments to the implementation of the Proposed Development. In my judgment, that risk could be removed by making a minor amendment to the description of Works Nos 6 and 7 in Schedule 1 to the draft DCO to include an authorisation to construct a new culvert under the road should one be required. The draft wording of additional provisions to Works No. 6(u) and 7(r) have been set out in italics in the final draft DCO [REP8-005].

## **CONCLUSIONS**

- 6.12.13. For the reasons set out above, the SoS can be satisfied that the development would not increase flood risk elsewhere and that reasonable steps have been taken to avoid, limit and reduce the risk of flooding to proposed infrastructure and others, in accordance with paragraph 5.102 of the NPSNN.

## **6.13. WASTE MANAGEMENT**

- 6.13.1. Table 5.2 in ES Chapter 5 (Construction and Demolition) [APP-025] sets out estimates of the likely volumes of construction waste generated by the Proposed Development which have been calculated using the BRE<sup>71</sup> SmartWaste Tool. The total waste volume is predicted to be approximately 102,652 cubic metres (m<sup>3</sup>) which the ES states is considered to be a reasonable worst-case estimate.
- 6.13.2. The majority of this waste would be from hard materials which would be re-used on site, with granular materials used for sub-base construction and as inert fill and soils and organic compounds being used in the GI. Hard materials would represent about 63% of all construction wastes and, of those materials that would need to be exported from the site, timber used for pallets, concrete shuttering and other general construction would form the largest category at over 8,000 tonnes. All materials that cannot be re-used in the construction works would be removed from site for recycling.
- 6.13.3. Section 11 of the ODCEMP [APP-060] states the intention that a Site Waste Management Plan should be developed by the contractor to define roles and responsibilities for waste management and minimisation and sets out the principles that should form the basis of such a Plan. It also confirms that waste management should be undertaken in accordance with the Waste Hierarchy Requirement and that, where waste must be disposed of, the contractor would aim to divert at least 50% of this waste from landfill. The Site Wide Waste Management Plan would also establish monitoring and documentation responsibilities, such the effectiveness of the Plan can be assessed. Requirement 4 of the Recommended DCO stipulates that the DCCEMP to be approved for each phase of development should include details of construction waste management including controlled wastes.
- 6.13.4. The Operational Waste Technical Note [APP-061] considers the Staffordshire Waste Local Plan and Annual Monitoring Report and has been prepared following discussions between the Applicant and SCC as the Waste Disposal Authority. The report concludes that there is sufficient capacity available locally in recycling and disposal facilities to manage the likely operational waste from the WMI development. Requirement 29 of the Recommended DCO states that no warehouse, rail terminal or community park may be brought into use until a waste management scheme for that part of the development has been submitted to and approved by the LPA and that the approved scheme shall, thereafter, be implemented and maintained for the duration of the operation of that part of the development.

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<sup>71</sup> Building Research Establishment.

## **CONCLUSIONS ON WASTE MANAGEMENT**

- 6.13.5. Taken together, this evidence demonstrates that effective means would be put in place for the management of the construction and operational wastes likely to be generated by the Proposed Development in accordance with paragraph 5.43 of the NPSNN.

## **6.14. CLIMATE CHANGE**

- 6.14.1. The site is within Flood Zone 1 and is accordingly at a low (1 in 100 years) risk of tidal/alluvial flooding, although a small part is assessed at being at risk of reservoir flooding. The SWSWDS [APP-152] has been prepared on the basis that surface water runoff rates would be restricted to existing greenfield rates plus a 40% climate change allowance. Hence the storm water attenuation to be provided on the site would have sufficient capacity to accommodate the expected 1 in 100-year storm plus an additional 40% of surface water runoff.
- 6.14.2. There has been no challenge to this basis of assessment. Accordingly, I accept that an appropriate allowance for climate change has been incorporated within the assessment.

## **6.15. CARBON**

- 6.15.1. The UK Government has a commitment to cut greenhouse gas emissions by 100% by 2050, with planning policy at all levels providing strong support for development which helps the transition to a low carbon future and to limit climate change. The NPSNN (paragraph 2.35) recognises that rail transport and SRFIs have a particular role to play in delivering significant reductions in pollution, including CO<sub>2</sub>, at a national level. By contributing to the national need for network of SRFIs, the Proposed Development would assist in meeting the Government's objectives with regard to carbon reduction.
- 6.15.2. Section 11 of the Planning Statement [APP-252] sets out evidence as to the carbon savings which have been achieved by existing SRFI and rail freight operations which has not been challenged during the course of the Examination. Section 11.5 states that it is not possible with a high degree of accuracy to calculate the amount of carbon which the WMI proposal would save. However, the Applicant's conservative assessment is that the Proposed Development would save around 50M HGV km each year at maturity. This in turn would result in substantial savings in carbon emissions.

## **6.16. PUBLIC UTILITIES**

- 6.16.1. Cadent Gas submitted a RR in respect of the Application but this was subsequently withdrawn prior to the commencement of the Examination as explained in paragraph 1.4.23 of this report.
- 6.16.2. At Deadline 4, South Staffordshire Water submitted a representation in respect of the application [REP4-030]. In this representation SWS submitted a holding objection to the Application, stating that it had not

been provided with sufficient information and plans to assess the likely effects on its underground and overground assets. Following further exchanges of information with the Applicant, this holding objection was withdrawn at D8 [REP8-062], with South Staffordshire Water confirming that the protective provisions in Part 10 of Schedule 13 to the draft Order were acceptable to them.

- 6.16.3. No written representations were received from other public utilities and I am satisfied that the interests of the utility companies would be adequately safeguarded by means of the protective provisions set out in Schedule 13 of the Recommended DCO.

## **6.17. BENEFITS OF THE PROPOSED DEVELOPMENT**

### **APPLICANT'S CASE**

- 6.17.1. The Applicant has submitted a Statement of Economic Benefits [APP-254] which sets out the benefits which they consider the Proposed Development would deliver. The benefits of the proposal are also set out in section 16 of the Planning Statement [APP-252]. The key benefits asserted by the Applicant can be summarised as follows.

### **INVESTING IN THE NATIONAL NETWORK OF SRFIS**

- 6.17.2. The WMI development would provide in excess of £100M of private investment into national infrastructure and contribute to economic growth at the national and regional scale. It would help to meet the national need for a network of SRFIs to support the Governments' rail freight and sustainable transport objectives. The proposal would allow rail to be used to best advantage to undertake long-haul journeys and minimise HGV road miles. This would help reduce congestion and the costs associated with that.

### **SUPPORTING ECONOMIC GROWTH IN THE REGION AND SUB-REGION**

- 6.17.3. The proposal would make a significant contribution to remedying a long-established deficit in modern warehousing and logistics provision in the West Midlands and the Black Country. It would increase investor confidence in the area and support major investment initiatives being promoted by the local authorities and the LEPs. It would also support the SSCS objectives of harnessing the opportunities that the District has to offer by encouraging business growth and increasing employment opportunities.
- 6.17.4. The Rail Freight Terminal would be an open access terminal that would be accessible not just to WMI occupiers but to other businesses across the region, providing them with the opportunity to benefit from rail freight services.

### **CREATING JOBS**

- 6.17.5. WMI would create an estimated 8,500 jobs which would represent 17% of the new jobs target set by the SSLEP. These would be across a range

of skilled, semi-skilled and entry level positions and would serve to reduce unemployment in some of the Black Country's most deprived areas and reduce the level of out-commuting from South Staffordshire District for employment. Construction employment would be provided for a period of 15 years which would equate to up to 4,500 person years of employment in the sector. The ESTPF would ensure that access to all employment and training opportunities is opened up as widely as possible and that priority groups and areas can be targeted.

### **GENERATING VALUE AND REVENUE**

- 6.17.6. WMI would provide significant economic benefits in itself and also act as catalyst for growth. The construction works are expected to generate £169M in direct GVA and a further £155M in indirect GVA over a 15-year period. The figures for the completed, operational, phase are estimated to be £320M (direct) plus £364M (indirect) additional GVA per year generated in the TTWA. The completed development is also expected to generate approximately £16.2M each year in business rates paid to the local authority which would help to sustain and support local services.

### **ENVIRONMENTAL BENEFITS**

- 6.17.7. The Applicant estimates that, when completed, the Proposed Development would result in a reduction of some 50M annually in HGV km on the national road network and would make a direct contribution to reducing greenhouse gas emissions from transport.

### **HIGHWAY AND TRANSPORT BENEFITS**

- 6.17.8. Most of the highway infrastructure to be provided is needed to provide satisfactory access to the WMI and capacity to accommodate the traffic likely to be generated. However, the A5/A449 Link Road would deliver a degree of public benefit by providing a new connection between these two main routes which would offer an alternative to Gailey Roundabout and, thereby, add resilience to the SRN.
- 6.17.9. Some local benefit would be derived by means of the provision of a turning area for HGVs at the railway bridge on Station Drive, the likely reduction in the use of Station Drive and Station Road at peak times and the likely reduction in the use of Crateford Lane for 'rat running' at busy times. There is also potential for some benefit to existing users of the 54 and 54A bus services and the communities that they serve as a result of the proposal to increase the frequency of the services and extend the hours of their operation.

### **EXAMINATION**

- 6.17.10. These claimed benefits have been assessed primarily through the examination of the Applicant's need case, and of the likely transport, socio-economic and environmental effects of the Proposed Development as set out in the preceding sections of this chapter.
- 6.17.11. For the reasons set out in section 5.3. I find that the WMI proposal would help to meet the national need for a network of SRFIs to support the

Governments' rail freight and sustainable transport objectives and accept that this would be a significant benefit of the proposed development. This would support the Government's objectives with regard to the transfer of freight from road to rail and result in a significant annual reduction in HGV km on the national road network.

- 6.17.12. Although some IPs have sought to question the number of permanent jobs that would be created by the Proposed Development, I am satisfied that these forecasts provide a reasonable estimate of the likely employment benefits and that they are based on sound evidence. The employment and economic benefits claimed by the Applicant have been accepted and agreed by SSDC in its LIR [REP2-051] and SoCG [REP2-006] and by SCC in its LIR [REP2-062] and SoCG [REP2-007] and are supported by evidence from the Campaign for Better Transport [REP2-087].
- 6.17.13. HE and SCC agree that the A5/A449 Link Road would provide additional resilience to the highway network and deliver some public benefit. Given the references in a number of IRs to incidents of HGVs trying to turn on Station Drive because they cannot pass under the railway bridge there, would, in my judgment be some local benefit to be derived from the Right Turn Ban on the A449 and provision of an HGV turning facility as proposed. Based on the evidence submitted to the Examination, I consider that there would also be some reduction in the use of Station Drive and Station Road at peak times and a likely reduction in the use of Crateford Lane for 'rat running' at busy times. There is also potential for some benefit to users of the 54 and 54A bus services and the communities that they serve as a result of the increased frequency and extended hours of operation of these services.
- 6.17.14. The Planning Statement suggests that the provision and future management of the Community Parks and habitats would also provide public benefits. However, based on the assessment of potential environmental effects, I consider that these measures are primarily required as mitigation for the potential adverse effects of the Proposed Development and should not be regarded as positive benefits.

## **7. FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING AND OTHER ISSUES**

### **7.1. INTRODUCTION**

- 7.1.1. In this chapter of the report I set out my findings with regard to the overall balance between the harm that would result from the Proposed Development and the public benefits that it would provide and my conclusions with regard to the very special circumstances test. I also set out my conclusions with regard to the extent that the Proposed Development complies with the provisions of the NPSNN.

### **7.2. HARM RESULTING FROM THE PROPOSED DEVELOPMENT**

#### **GREEN BELT HARM**

- 7.2.1. For the reasons set out in section 5.2 of this report I find that the WMI proposal would constitute inappropriate development in the Green Belt. In addition to the harm by reason of inappropriateness, the Proposed Development would cause substantial harm to the openness of the Green Belt and significant harm to one of the purposes of including land in the Green Belt as a result of its encroachment into the countryside. In accordance with paragraph 5.178 of the NPSNN, the SoS should attach substantial weight to harm to the Green Belt when considering whether development consent should be granted.

#### **OTHER HARM**

- 7.2.2. In paragraph 5.8.6, I find that there would be some harm resulting from the loss of the allocated and safeguarded sand and gravel reserve within the site but that the harm would be minimal. The potential to re-use a significant proportion of the sand and gravel beneath the site in the construction works would ensure the effective use of much of that resource and avoid the need to import an equivalent volume of material from elsewhere. I consider that little weight should be attached to the loss of the remainder of the mineral reserve.
- 7.2.3. There is potential, during the construction phase, for moderate to major adverse noise effects on residential and other receptors closest to the site when works are taking place close to the site boundary and moderate vibrations effects on 2 receptors. However, these effects would be temporary and short term. The BNIS would ensure that noise inside dwellings would meet the desired levels, although a number of residential receptors around the site's perimeter would experience moderate adverse noise effects from the operational development. Increases in traffic on roads around the Proposed Development may lead to moderate to major effects on some residential receptors at the 2021 future assessment year, but noise levels are expected to reduce below the relevant noise criterion by 2036. None of these effects would give rise to

an unacceptable level of impact and the harm in terms of noise and vibration effects would, therefore, be limited.

- 7.2.4. There would be some harm to the bat assemblage on the site and to habitats suitable for invertebrates and farmland birds. This would be significant only at a site or local scale and would be balanced by the provision of new habitats and the other mitigation proposed. The loss of semi-improved grassland and other habitats would largely be offset by the creation of new, species-rich habitats and there would be a net gain in most habitats across the site. However, in view of the protection afforded to veteran trees in the NPSNN and NPPF, significant weight should be given to the loss of 7 true veteran and 5 future veteran trees as a result of the development. Although it is unavoidable if the Proposed Development is to go ahead, the permanent loss of 172ha of BMV agricultural land must also be regarded as disbenefit of significant weight.
- 7.2.5. The overall scale of the Proposed Development and the size and height of individual buildings envisaged would represent a significant intrusion of a large commercial development into a mainly flat and rural landscape. Notwithstanding that it would be set within a robust and carefully considered landscape framework, the proposal would cause significant landscape harm at a site and local level.
- 7.2.6. Adverse visual impacts on nearby residential and other receptors from the construction works would be short lived and landscaped bunds would screen operational areas and the lower part of buildings from view. However, the construction of the bunds within the existing open views across the site and the views of upper parts of buildings that would be available would result in a moderate harm to those receptors. The harm to views from the AONB would be moderate and there would be no adverse effect on the landscape character or statutory purposes of the AONB.
- 7.2.7. For the reasons set out in section 6.9 of the report, I find that some minor, and less than substantial, harm would be caused to the setting of the Canal Conservation Area. As required by paragraph 5.134 of the NPSNN, this harm should be weighed against the public benefits of the Proposed Development.
- 7.2.8. My conclusion, within section 6.10 of the report, is that that the proposal would not be likely to have a significant adverse effect on the use of the canal and towpath for recreational use or on other recreational and leisure uses or on the clubs and organisations engaged in those activities. However, for the reasons set out in that section, I am not able to conclude that there would not be an adverse impact on sailing conditions on Calf Heath Reservoir and on the recreational sailing and sail training activities of GCS. Although this remains a possible rather than a certain outcome of the Proposed Development, I consider that the risk of such harm should be given significant weight in the SoS's decision.

## **7.3. NEED FOR AND BENEFITS OF THE PROPOSED DEVELOPMENT**

### **NEED FOR AN SRFI**

- 7.3.1. Having regard to the evidence examined in section 5.3 above, I find that there is a long-established and unmet need for RLS/SRFI provision to serve the needs of the Black Country and southern Staffordshire. The evidence on the take up of large warehousing since 2009 and the EDNA's assessment of how much land is required to meet the Black Country's economic development needs together demonstrate a significant level of need for additional logistics floorspace in the sub region and a critical need for the provision of rail linked floorspace to meet the needs of that sector. Strong market demand and a severe shortage in the supply of large warehouse buildings and sites within the WMI Market Area provide further evidence of need for the Proposed Development.
- 7.3.2. There is a significant gap in the network of existing and proposed SRFIs along the M6/WCML corridor between the West Midlands and the North West and a clear need for a facility to serve the market comprising the businesses and large population within the Black Country, southern Staffordshire and Birmingham conurbations. I am satisfied that there would be sufficient capacity on the rail network to support the 4 trains per day operation of the Initial Rail Terminal and, over the longer term, to achieve the 10 trains per day capacity of the Extended Rail Terminal. For the reasons set out in section 5.4, I am also satisfied that the Applicant has provided a sound justification for the scale of development proposed.
- 7.3.3. In section 6.3, I find that the Proposed Development accords with the locational criteria set out in paragraphs 4.84-4.87 of the NPSNN and with the design and functional criteria specified in paragraph 89. I have given careful consideration to whether or not the proposal satisfies the other key criteria for an NSIP SRFI with regard to the accessibility that the warehouse occupiers would have to rail freight services and the proposed phasing of the rail infrastructure and Initial Rail Terminal. For the reasons set out in paragraphs 5.6.16 to 5.6.18 I have concluded that:
- Approximately 20% of the warehousing floorspace the proposed within the WMI scheme would be rail-connected with the balance being rail-served;
  - When completed, the Initial Rail Terminal would provide for a number of "*rail accessible*" buildings as required by paragraph 4.89 of the NPSNN and the Extended Rail Terminal would provide for "*more extensive rail connection within the site in the longer term*" although this would not change the balance between rail-connected and rail-served floorspace.
- 7.3.4. As set out in the subsequent paragraphs within section 5.6 I find that the phasing allowed for in the draft Requirements would not ensure that the "*initial stages*" of the Proposed Development would deliver an operational rail network or a site which is capable of accommodating rail and non-rail

activities “*from the outset*”. If the wording of paragraphs 4.83 and 4.88 of the NPSNN are applied on a strict interpretation of the language used in those paragraphs I consider that the SoS should conclude that there is a conflict with those part of the NPSNN.

- 7.3.5. The Applicant places great weight on the manner in which the NPSNN policies were interpreted and applied in the SoS’s decision to grant development consent for the EMGRFI against the recommendation of the ExA for that project. Whilst the weight to be given to that decision is a matter for the decision maker, it has not been challenged in the courts and is, therefore a material consideration.
- 7.3.6. Within that decision, the SoS states that “*the interpretation of these NPSNN requirements must allow for the realities of constructing and funding major projects such as this*” and that it is “*entirely reasonable*” that a commercial undertaking should seek to generate income from the warehousing before the railway becomes operational. In my judgement, the approach indicated in those statements is consistent with the evidence submitted to the Examination as to the conditions needed to establish and operate a viable freight rail service as part of an SRFI development.
- 7.3.7. As set out in paragraphs 5.6.43 and 5.6.44, I consider that the controls provided for in the Requirements, as I propose that they should be worded in the Recommended Order at Appendix D, would provide a strong incentive for the Applicant to complete the rail infrastructure and Rail Terminal and a great deal of confidence that these works would be completed as quickly as possible.
- 7.3.8. Hence, if the Applicant’s suggested alternative wording for Rail Requirement 4 is rejected as I have recommended, and the less rigid interpretation of NPSNN paragraphs 4.83 and 4.88 suggested by the EMGRFI decision is adopted, the SoS can in, my view, conclude that the Proposed Development complies with the policies of the NPSNN and its underlying objectives in respect of SRFI projects. Even if the conclusion is reached that there is some conflict with the wording of paragraphs 4.83 and 4.88 it would still be open to the SoS to find that the proposal accords with the NPSNN policies and requirements as a whole. For these reasons, my overall conclusion is that the Proposed Development would meet the need for SRFI as identified in the NPSNN.

## **ALTERNATIVE SITES**

- 7.3.9. I have considered the Applicant’s ASA and the additional evidence received from the Applicant and other IPs as to possible alternatives to the application site. For the reasons set out in section 5.7 of this report, my conclusions on this matter are that there has been full consideration of possible alternative sites to accommodate the identified need for an SRFI to serve the Black Country and southern Staffordshire and that this assessment has satisfactorily demonstrated that no suitable alternatives are available.

## **BENEFITS**

- 7.3.10. My assessment of the potential benefits of the Proposed Development is set out in section 6.17 above and concludes that WMI would provide significant economic benefits including:
- Supporting employment in the construction sector over the 15-year construction phase and creating an estimated 8,500 permanent jobs;
  - The generation of £169M in direct GVA and a further £155M in indirect GVA over the construction phase;
  - The generation of an estimated £320M (direct) plus £364M (indirect) additional GVA per year generated in the TTWA when the development is completed.
  - The generation of approximately £16.2M each year in business rates paid to the local authority which would help to sustain and support local services.
- 7.3.11. The Proposed Development would result in a significant reduction in HGV km (estimated at 50M HGV km annually) with a consequential reduction in carbon emissions. The A5/A449 Link Road would provide a degree of public benefit by means of adding resilience to the SRN. I also find that there would be some local benefit resulting from the proposed turning area for HGVs on Station Drive, the likely reduction in the use of Station Drive and Station Road at peak times and the likely reduction in the use of Crateford Lane for 'rat running' at busy times. There is also potential for some benefit to users of the 54 and 54A bus services and the communities that they serve as a result of the proposal to increase the frequency of the services and extend the hours of their operation.

## **7.4. CONCLUSIONS ON COMPLIANCE WITH THE NPSNN**

- 7.4.1. Subject to my comments as to the strict interpretation of the wording within paragraphs 4.83 and 4.89 of the NPSNN, I am satisfied that the Proposed Development meets the NPSNN requirements and objectives with regard to the development of SRFI projects and that it would fall within the need for such national infrastructure that is established by the NPSNN. I also conclude that the WMI proposal does benefit from paragraph 4.2 presumption in favour of granting development consent.
- 7.4.2. I find that the SWTP and Sustainable Transport Strategy provide an appropriate means for ensuring that WMI employees have a genuine choice of means of travel and alternatives to single person car use. I also find that the measures in the SWHGVMP comprise an appropriate set of tools for the management of HGV movements in order to minimise their contribution to congestion and use of unsuitable roads.
- 7.4.3. Both highway authorities agree that the TA provides a robust assessment of the likely effects on the local network and agree its findings and there is no substantive evidence to contradict those conclusions. Accordingly, I find that the development would not have a severe impact on the future operation of the SRN and county roads and can be accommodated without a material impact on the local and wider transport network. The highway impacts would be reduced to acceptable levels and the requirements of

NPSNN paragraphs 5.213 -5.216 in relation to the transport and traffic effects are, therefore, met.

- 7.4.4. For the reasons set out in section 6.3 of this report, I consider that the Proposed Development would not result in significant adverse effects on air quality and human health. It would not lead to a zone or agglomeration which is currently compliant with the Air Quality Directive becoming non-compliant nor affect the ability of a non-compliant area to achieve compliance within the most recent timescales reported to the European Commission. The requirements of NPSNN paragraphs 5.10 - 5.15 are, therefore, satisfied. In addition, the proposal would deliver significant air quality benefits by reducing the number of HGV journeys on the regional road network.
- 7.4.5. Moderate adverse effects of vibration from construction works may be experienced by some residential receptors but these would be temporary and short-term. The BNIS would be operated in both the construction and operational phases of the development and would result in a scheme which meets the policy requirements set out in paragraphs 5.193-5.196 of the NPSNN. In particular:
- Significant adverse effects on health and quality of life would be avoided;
  - A range of measures are proposed to mitigate the adverse effects of noise;
  - The BNIS would ensure a satisfactory internal environment for all residential properties in closest proximity to the site.
- 7.4.6. The Proposed Development would avoid significant harm to biodiversity, and adverse effects would be balanced by an overall enhancement in the bio-diversity and the long-term management of retained and new habitats on the site. The loss of a small number of veteran trees would be a significant disbenefit but this loss would be outweighed by the need for and benefits of the proposed SRFI. There would be no significant effects on any European Sites, SSSIs or other designated sites.
- 7.4.7. With regard to the effect on habitats and species, significant residual effects in the operational phase would generally be at the Site or Local scale (notably on farmland birds) or while habitats develop. This is balanced through the provision of significant new and enhanced habitat, maintained in the long term which would provide benefits to a range of wildlife and which would be in positive habitat management for the duration of the operational phase. The habitats created would address local and national biodiversity action plan targets. The requirements of paragraphs 5.25-5.29 and of 5.31-5.38 of the NPSNN are, accordingly, satisfied.
- 7.4.8. The loss of 172ha of BMV agricultural land would be permanent and cannot be mitigated. However, I am satisfied that the issue of the use of BMV agricultural land has adequately been assessed in the ES and that the selection of a site, within which some 29% of the total site area does not comprise agricultural land, acts to reduce the total loss of BMV land as required by NPSNN paragraph 5.168. Soils on the site would be

appropriately managed for re-use in the GI so as to minimise impacts on soil quality in accordance with that same paragraph.

- 7.4.9. The mineral reserve beneath the site would be lost to commercial working but as much as possible of the sand and gravel in areas to be excavated would be re-used within the construction works. Hence, no conflict would arise with NPSNN paragraph 5.169.
- 7.4.10. For the reasons set out in section 6.8 above, I find that there would be a moderate adverse effect on views from the AONB both during daytime and at dusk/night-time. There would be no significant effect on the LCAs comprised within the AONB or on the statutory purposes of the AONB. The Proposed Development, accordingly, complies with NPSNN paragraph 5.154 and, although it would be visible from the southern edge of the AONB this is not in itself a reason for refusing consent (paragraph 5.155).
- 7.4.11. Overall, the Proposed Development would have a major adverse effect on the landscape at the local level and would result in moderate to major adverse visual effects on a number of nearby residential receptors. However, the outline proposal has been carefully designed, with appropriate safeguards being provided through the DAS and Requirements, so as to minimise harm as far as possible. I consider that the visual effects on these sensitive receptors would be outweighed by the considerable economic and other benefits of the Proposed Development. The requirements of paragraphs 5.157-5.158 of the NPSNN are, therefore, satisfied.
- 7.4.12. The ES provides a robust assessment of the presence of below-ground archaeology and has found no evidence of features of such importance and value that the Proposed Development should not take place or should be significantly modified. The Outline Scheme of Investigation and the phased approach which it establishes for further investigation, recording and dissemination of information provide an appropriate response to the likely presence of features of value.
- 7.4.13. The ES also provides an appropriate assessment of the heritage value of the built heritage assets within and near to the site. Indirect effects include some harm to the setting of the Canal Conservation Area, but this would be less than substantial and would be offset by the public benefits of the Proposed Development. The requirements of paragraphs 5.120 to 142 of the NPSNN are, therefore, met.
- 7.4.14. The Proposed Development would result in very significant economic benefits in both the construction and operational phases. The potential direct and indirect effects on human health have been considered in accordance with paragraph 4.79-4.82 and no significant effects have been identified. I accept and agree with that conclusion.
- 7.4.15. ES Chapter 8 includes an appropriate assessment of the likely effects on groundwaters, human health other potential receptors and its findings have been agreed by the EA insofar as its regulatory interests are

concerned. No evidence has been submitted to the examination that seriously questions or contradicts the ES findings that no significant effects would arise. Accordingly, I conclude that there would be no adverse effects on ground conditions and that the requirements of the NPSNN in this regard are satisfied.

- 7.4.16. For the reasons set out in section 6.12 of this report, the SoS can be satisfied that the Proposed Development would not increase flood risk elsewhere and that reasonable steps have been taken to avoid, limit and reduce the risk of flooding to proposed infrastructure and others in accordance with paragraph 5.102 of the NPSNN.

## **7.5. THE PLANNING BALANCE**

- 7.5.1. Section 104 of the PA 2008 requires that NSIP applications should be determined in accordance with the relevant NPS where one has been designated. That situation applies to SRFI proposals.
- 7.5.2. For the reasons set out above, I find that the application proposal is compliant with the NPSNN. It would fall within the need for SRFI benefits established in the NPSNN and the presumption in favour of a grant of development consent is, therefore, triggered. In respect of the WMI application, that paragraph 4.2 presumption in favour of consent must be considered in the context of the paragraph 5.170 presumption against inappropriate development in the Green Belt. As acknowledged by the Applicant, the Proposed Development would constitute inappropriate development in the Green Belt and development consent should only be granted in very special circumstances.
- 7.5.3. The Proposed Development would cause harm by reason of inappropriateness, the substantial harm to the openness of the Green Belt and the harm caused to one of the purposes of the Green Belt. In addition, I have found that the proposal would result in;
- A minimal level of harm in terms of the loss of the mineral reserve within the site;
  - Limited harm in terms noise and vibration effects;
  - Harm of significant weight due to the loss of a small number of veteran and future veteran trees;
  - Significant landscape harm at the site and local level and moderate visual harm to nearby residential receptors and on views from part of the AONB.
  - Minor and less than substantial harm to the setting and significance of part of the Canal Conservation Area;
  - Potential significant harm to sailing conditions on Calf Heath Reservoir and the use of that facility for sailing purposes.
- 7.5.4. The NPSNN requires that substantial weight should be given to any harm to the Green Belt and I consider that, taken together, the other elements of harm should also attract significant weight. However, I find that the Green Belt and other harm would clearly be outweighed by the national and regional need for the proposed SRFI and the substantial public benefits of the Proposed Development as outlined above. I therefore

conclude that the very special circumstances needed to justify a grant of development consent for inappropriate development in the Green Belt have been demonstrated in accordance with paragraph 5.170 of the NPSNN and paragraph 144 of the NPPF.

- 7.5.5. With reference to paragraph 5.134 of the NPSNN, I conclude that the less than substantial harm to the setting and significance of the designated heritage asset comprised in the Canal Conservation Area would also be outweighed by the public benefits of the proposal.

## **CONFORMITY WITH THE DEVELOPMENT PLAN**

- 7.5.6. For the reasons set out in section 5.8. above I find that the Proposed Development would not conflict with the MLP for Staffordshire. No conflict with the Staffordshire and Stoke-on-Trent Joint Waste Local Plan was asserted in either of the LIRs or in the other submissions from the relevant local authorities. For the reasons set out in section 6.13 above, I am satisfied that the ODCEMP and Requirements 4 (1) and 29 of the Recommended DCO would ensure that adequate provision is made for the effective management of waste during both the constructional and operational phases of development.
- 7.5.7. The Green Belt policies within the SSCS (CP1 and GB1) seek to protect the Green Belt from inappropriate development but GB1 provides that development which is acceptable under the relevant national policy will be allowed. As I have found that very special circumstances have been demonstrated such as to satisfy the NPSNN and NPPF policy tests the requirements Policy GB1 are also met in this regard.
- 7.5.8. Although some nearby residents would be affected by noise, vibration, air quality and visual impacts, appropriate mitigation would be provided such that there would be no conflict of Policy EQ9 with regard residential amenity or E10 with regard to public health. The SWSWDS includes appropriate adaptation for climate change and the Proposed Development has been designed so as to minimise environmental impacts in compliance with CP3.
- 7.5.9. Policies CP11 and EV11 seek to ensure that accessibility will be improved and transport choice widened by ensuring that new development is well served by a choice of transport modes, including public transport. These requirements will be satisfied through the implementation of the SWTP and Occupier Travel Plans and the Sustainable Transport Strategy.
- 7.5.10. The application site is not within any landscape designation and I have found, in paragraph 6.8.50 above, that the site is well contained in landscape and visual terms. Hence, although there would be some localised landscape harm, I do not consider that this would give rise to a conflict with Policy EQ4 in terms of harming intrinsic rural character and local distinctiveness or with the Policy EQ1 objective of conserving the District's natural assets.
- 7.5.11. In response to ExQ1.1.2, SSDC [REP2-049] states that Policies CP7 and EV1 provide no policy support for the Proposed Development as the site

lies outside of the designated Strategic Employment Site and the proposal does, therefore, give rise to a conflict with those policies. However, that conflict is, in my view, clearly outweighed by the national need for a network of SRFI established in the NPSNN and the benefits of the WMI proposals.

## **8. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT**

### **8.1. INTRODUCTION**

- 8.1.1. The SoS is the competent authority for the purposes of the Habitats Directive<sup>72</sup> and the Habitats Regulations.<sup>73</sup> Regulation 63 of the Habitats Regulations states that, if an application proposal is likely to have a significant effect on a European Site designated under the Habitats Regulations (either alone or in-combination with other plans or projects), the competent authority must undertake an appropriate assessment of the implications for that site in view of its conservation objectives

### **8.2. PROJECT LOCATION**

- 8.2.1. The Site is approximately 10 kilometres to the north of Wolverhampton and immediately west of Junction 12 of the M6 in South Staffordshire. The Site is broadly bound by the A5 road to the north (from Junction 12 to the Gailey Roundabout), Calf Heath reservoir, the M6, Stable Lane and Woodlands Lane to the east; Station Drive, Straight Mile and Woodlands Lane to the south; and the A449 (Stafford Road), from the Gailey Roundabout to Station Drive to the west. The south-eastern area of the Site is bisected by Vicarage Road.
- 8.2.2. The Site is not located within or adjacent to any designated European Site.

### **8.3. HRA IMPLICATIONS OF THE PROJECT**

- 8.3.1. The Applicant provided a No Significant Effect Report (NSER) entitled 'West Midlands Interchange: No Significant Effects Report' [APP-089] with the DCO application. The SoS considered that the information provided in the NSER was sufficient to accept the application for Examination on August 2018 [PD-001].
- 8.3.2. The Proposed Development is not connected with or necessary to the management for nature conservation of any of the European designated site(s) considered within the Applicant's NSER assessment.
- 8.3.3. The Applicant's NSER assessment identifies European sites within 10km of the Proposed Development confirming that those are the relevant European sites for the assessment. This Approach has been agreed with Natural England as documented within the SoCG [REP1-003]. The SoCG also confirms an agreed position that the NSER includes appropriate

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<sup>72</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as codified) (the 'Habitats Directive').

<sup>73</sup> The Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations').

evidence to determine the effects of the Proposed Development on European sites alone and in combination with other plans and projects.

8.3.4. The Applicant's NSER [APP-089] identifies three European designated sites located within 10 kilometres (km) of the Proposed Development. All three sites are designated as Special Areas of Conservation (SAC). They are as follows:

- Cannock Chase SAC-approximately 7.4km to the north east;
- Mottey Meadows SAC-approximately 7.5km to the west north west;
- Cannock Extension Canal SAC-approximately 10km to the east.

8.3.5. The NSER addresses the potential impact pathways from the Proposed Development to the European sites. The impact pathways identified include: direct physical impact; impacts resulting in habitat loss, fragmentation and displacement; noise impacts resulting in disturbance; impacts to water quality and hydrological connectivity and impacts to habitats from changes in air quality due to increased traffic numbers. Impacts are assessed alone and in combination with the other known plans and projects. No concerns were raised by IPs during the Examination about the scope of the Applicant's in-combination assessment.

## **8.4. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS (LSE)**

8.4.1. The Applicant's NSER concludes that the Proposed Development is unlikely to result in significant effects on any European site either alone or in-combination with other plans or projects. The findings of the assessment are based on the fact that:

- 1) there would be no direct physical impact, habitat loss, fragmentation or displacement at any of the European designated sites due to the distance between the Proposed Development relative to those sites;
- 2) no noise impacts are anticipated due to the distance between the Proposed Development relative to those sites. Although Mottey Meadows SAC and Cannock Extension Canal SAC are closer to major transport routes, none of the habitats and plants (*Lurionium natans*) listed as qualifying features are vulnerable to disturbance effects from noise;
- 3) there is no direct or indirect hydrological connectivity between the application site and Mottey Meadows SAC and Cannock Chase SAC. There is limited hydrological connectivity between the application site and the Cannock Extension Canal SAC. However, this SAC is sufficiently distant from the Proposed Development that any accidental spillage would be so diffuse that it is unlikely to generate changes in water quality at the SAC;

- 4) the air quality modelling has demonstrated that impacts to air quality from increased traffic generated by the Proposed Development would not be so great as to result in a likely significant effect on any of the relevant European sites.

8.4.2. The assessment in the NSER has been undertaken without reference to any mitigation measures being in place and the conclusions reached have been agreed by NE. No evidence has been submitted to the Examination which would contradict those findings.

## **8.5. HRA CONCLUSIONS**

8.5.1. I have had regard to the information provided in the application, with specific reference to the ES and the NSER. I have taken into account information received during the Examination including the SoCG. I am content that the SoS has sufficient information available to discharge the statutory obligations under the Habitat Regulations.

8.5.2. I am also content that the evidence demonstrates that the Proposed Development would not result in any likely significant effects on European sites, even when the precautionary principle is applied and, on the basis that there is no reasonable remaining scientific doubt. I therefore consider that the Proposed Development would not generate any Likely Significant Effects to European sites and that there is no requirement under the HRA for an appropriate assessment to be carried out. NE's agreement that no appropriate assessment is required is set out at paragraph 5.1.7 of the SoCG between the Applicant and NE [REP1-003].

## **9. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT**

### **9.1. INTRODUCTION**

9.1.1. The statutory framework for deciding NSIP applications where there is a relevant designated NPS is set out in s104 of PA2008. The SoS must decide the application in accordance with any relevant NPS, with exceptions. Paragraph 4.2 of the NPSNN states that:

*“Subject to the detailed policies and protections in the NPS, and the legal constraints set out in the Planning Act, there is a presumption in favour of granting development consent for national networks NSIPs that fall within the need for infrastructure established in the NPS.”*

9.1.2. Paragraph 4.3 of the NPSNN states that:

*“In considering any proposed development, and in particular, when weighing its adverse impacts against its benefits, the ExA and the Secretary of State should take into account:*

- its potential benefits, including the facilitation of economic development, including job creation, housing and environmental improvement, and any long-term or wider benefits;*
- its potential adverse impacts, including any longer-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts”.*

9.1.3. My conclusions on the case for the granting of development consent are based on an assessment of those matters which I consider are both important and relevant to the decision, as well as the submitted LIRs, as required by s104 of PA2008. I have drawn on the analysis of planning considerations in Chapters 5 to 7 and the Habitats Regulation Assessment in Chapter 8 above.

### **HRA CONSIDERATIONS**

9.1.4. The Proposed Development would not result in any likely significant effects on European sites, even when the precautionary principle is applied, and on the basis that there is no reasonable remaining scientific doubt. Hence, there is no requirement under the HRA for an appropriate assessment to be carried out.

### **EIA CONSIDERATIONS**

9.1.5. The Proposed Development is Environmental Impact Assessment (EIA) development. The submitted Environmental Statement, as supplemented by material submitted during the Examination, has provided an adequate assessment of the environmental effects of the Proposed Development. This is sufficient to define the Rochdale Envelope for it and, as referred to within the Recommended Development Consent Order (dDCO), to secure its delivery within that envelope.

## **9.2. THE PLANNING BALANCE**

9.2.1. I consider that the Proposed Development complies with the criteria for SRFIs as set out in paragraphs 4.83 to 4.89 of NPSNN. The need for the scheme has been sufficiently made out. I also consider that the proposal benefits from the presumption in favour of grant of development consent set out in paragraph 4.2 of the NPSNN.

9.2.2. The Proposed Development would cause harm by reason of inappropriateness, substantial harm to the openness of the Green Belt and the harm to one of the purposes of the Green Belt. In addition, I have found that the proposal would result in;

- A minimal level of harm in terms of the loss of the mineral reserve within the site;
- Limited harm in terms noise and vibration effects;
- harm of significant weight due to the loss of a small number of veteran and future veteran trees;
- Significant landscape harm at the site and local level and moderate visual harm to nearby residential receptors and on views from part of the AONB.
- Less than substantial harm to the setting and significance of part of the Canal Conservation Area;
- Potential significant harm to sailing conditions on Calf Heath Reservoir and the use of that facility for sailing purposes.

9.2.3. With reference to paragraph 5.134 of the NPSNN, I conclude that the less than substantial harm to the setting and significance of the designated heritage asset comprised in the Canal Conservation Area would be outweighed by the public benefits of the proposal.

9.2.4. The NPSNN requires that substantial weight should be given to any harm to the Green Belt and I consider that, taken together, the other elements of harm should also attract significant weight. However, I find that the Green Belt and other harm would clearly be outweighed by the national and regional need for the proposed SRFI and the substantial public benefits of the Proposed Development as outlined in Chapter 7 above. I therefore conclude that the very special circumstances needed to justify a grant of development consent have been demonstrated.

## **9.3. OVERALL CONCLUSION ON THE CASE FOR DEVELOPMENT**

9.3.1. In the ExA's judgement, the strategic benefits of the Proposed Development of contributing to an expanded network of SRFIs to assist in achieving and promoting modal shift of freight from road to rail, and thereby playing an important part in the move to a low carbon economy, are such that they outweigh the adverse impacts identified above in relation to the construction and operation of the Proposed Development.

9.3.2. No HRA effects have been identified and there is no reason for HRA matters to prevent the making of the Order.

# 10. COMPULSORY ACQUISITION AND RELATED MATTERS

## 10.1. INTRODUCTION

- 10.1.1. The draft DCO contains powers of CA of land, minerals interests and rights over land and for the extinguishment, interference or overriding of existing rights over land as set out in Part 5 of the draft Order in Articles 23 to 38. Articles 35 and 36 provide for the TP and use of land for carrying out and maintaining the Authorised Development.
- 10.1.2. The Applicant's Land Plans<sup>74</sup>, Book of Reference (BoR) [REP8-009] and Statement of Reasons (SoR) [REP8-011] set out the scope of the CA powers sought within the draft Order and the justification for their use. Some amendments have been made to these plans and documents to add to or amend details of ownership and other legal interests where these have been clarified through the Applicant's ongoing discussions with APs.
- 10.1.3. Negotiations to secure acquisition of the necessary land and rights have been progressing throughout the course of the Examination but no further acquisitions have been completed such as to enable the interests concerned to be excluded from the BoR and Land Plans. The Applicant has made one significant amendment to the Land Plans and BoR to remove the dwelling (farmhouse) at Straight Mile Farm from the proposed CA although the CA still includes land which forms part of the farm.
- 10.1.4. Amendments to the BoR have also been made to confirm that the relevant mineral rights would be acquired as part of the proposed CA where the draft Order provides for the CA of the freehold interests of the land (coloured pink on the Land Plans) or for the acquisition of Staffordshire Sand and Gravel's tenancy and other rights in respect of the active quarry (hatched pink) and the access to the quarry (tinted orange). Article 29 of the draft Order provides that the Mineral Code would apply to all other land included in the proposed CA. This has the effect of exempting the existing minerals under the land concerned from being automatically acquired as part of the CA. This addresses the situation where the owner may wish to work the minerals but also provides the owner with the ability to seek compensations if they are unable to work the minerals as a result of the Proposed Development.<sup>75</sup>
- 10.1.5. Following these amendments, the relevant plans and documents relating to the proposed CA and the Applicant's justification for the use of CA powers are:

- Part 5 of the draft Order [REP8-005];

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<sup>74</sup> With the amendments made during the Examination the Land Plans now comprise Examination Documents APP160 to 162 and REP8-047& 048.

<sup>75</sup> See paragraphs 6.78-80 of the Explanatory Memorandum [REP8-007].

- Land Plans Key Plan [REP8-047];
- Land Plans Sheets 1-3 [APP-160 to 162];
- Land Plans Sheet 4 [REP8-048]
- Land Plans Sheets 5 -12 [APP164 to 171];
- Book of Reference [REP8-009];
- Statement of Reasons [REP8-011];
- Funding Statement [APP-006];
- Planning Statement [APP-151];
- Statement of Economic Benefits [APP-254];
- Alternative Sites Assessment [APP-255]; and
- Updated Market Assessment [REP2-004].

## **10.2. THE REQUEST FOR CA AND TP POWERS**

- 10.2.1. Article 7(2) of the Recommended DCO restricts the CA powers to FAL unless the SoS subsequently consents to the transfer of those benefits of the Order. FAL is, therefore, the undertaker for the purposes of the proposed powers of CA.
- 10.2.2. There is no Crown Land or special category land within the Order Limits.
- 10.2.3. Article 23 provides that the undertaker must not exercise any power conferred by Articles 24 to 28 or 33 to 36 unless a guarantee or alternative form of security has first been put in place in respect of the undertaker's ability to pay all necessary compensation expected to arise from the exercise of those powers. The form of security provided must be approved by the local planning authority before the CA powers are exercised and Article 23(5) requires that the security be kept in place for a period of 15 years from the date on which the relevant power is exercised.
- 10.2.4. The making available of this security is an important consideration in safeguarding the right of APs to appropriate compensation if and when the CA powers are exercised. The article follows the wording of equivalent articles in other DCOs that have been made. The 15-year period set out in Article 23(5) is reasonable given the requirement in Article 30 that the CA powers must be exercised within 5 years from the date on which the Order comes into force.
- 10.2.5. Article 24 provides for the CA of land required for, to facilitate or that is incidental to the Authorised Development. Article 25 provides for the CA of existing rights and for creation and acquisition of new rights listed in Schedule 11. These articles allow for the extinguishment of all rights that are inconsistent with the carrying out and use of the Authorised Development. Together with Schedule 12, Article 25 sets out the circumstances under which those whose rights are affected by the provisions within the article may seek compensation. Schedule 12 incorporates modifications to the compensation and compulsory purchase enactments under the Compulsory Purchase Act 1965.
- 10.2.6. Article 26 provides for the right of certain APs, where only part of the property is proposed to be acquired, to serve notice on the undertaker to

indicate that they are able and willing to sell the whole property and the procedures to be followed if and when such a 'counter notice' is served. This provides an appropriate level of protection for owners who might otherwise suffer an unacceptable severance of their property. Article 27 provides that all private rights over land that is subject to CA should be extinguished from the date of acquisition or the date of entry onto the land, whichever is the earlier. This is necessary to ensure that the land is free from such restrictions.

- 10.2.7. Article 28 provides that any authorised activity carried out by the undertaker on land within the Order Limits is authorised by the Order regardless of whether it would involve an interference with an interest or right in the land concerned or a breach of a restriction to the use of that land. However, this does not authorise any interference with the rights of statutory undertakers in relation to access for laying down or maintaining apparatus for the purpose of carrying on their undertaking. The article includes provisions for compensation to be claimed by those whose rights are interfered with. Article 29 incorporates the Mineral Code into the draft Order but, as explained above, this does not apply to the plots of land coloured pink, hatched pink or coloured orange on the Land Plans.
- 10.2.8. Article 30 confirms that standard 5-year period for the exercise of PA 2008 CA powers is to be applied. Article 31 explains how the provisions of the Compulsory Purchase Act 1965 are to be modified in relation to the CA powers within the Order and Article 32 states that the Compulsory Purchase (Vesting Declarations) Act 1981 applies as if the Order was a compulsory purchase order.
- 10.2.9. Article 33 authorises the undertaker, subject to the protective provisions set out in Schedule 13, to extinguish the rights of statutory undertakers and operators of the electronic communications code network within the Order Limits and to replace, renew, alter or supplement apparatus belonging to those parties if necessary. Article 34 provides that the undertaker is authorised, subject to certain restrictions, to enter into the subsoil of or airspace over any street within the Order Limits as required for the purposes of the Authorised Development.
- 10.2.10. Article 35 sets out the proposed powers for the temporary use of land for the carrying out of the Authorised Development and Article 36 sets out the proposed powers for the temporary use of land for the future maintenance of the Authorised Development. Article 35 sets the maximum period of TP of any land at 1 year unless a further notice is served on the owner. Article 36 authorises TP only "*for so long as may be reasonably necessary*" to carry out the necessary work. Both articles require that the undertaker remove all temporary works and restore the land to the reasonable satisfaction of the owner at the end of the TP. Owners and occupiers of land affected by TP would be entitled to compensation.
- 10.2.11. Article 37 provides that, where a street is stopped up as part of the Authorised Development, the rights of any statutory undertaker in respect of any apparatus within that street would be maintained subject

to the specific provisions within the article. This safeguards the interests of statutory undertakers and provides for the costs of any removal, alteration or replacement of apparatus necessary as a result of the stopping up to be recovered from the undertaker. Article 36 is a standard, 'no double recovery' article within DCOs which seeks to prevent a situation in which an affected person might claim compensation under the terms of the Order as well as under any other enactment, contract or rule of law.

### **10.3. THE PURPOSES FOR WHICH LAND IS REQUIRED**

- 10.3.1. Under the draft Order all land shown coloured pink on the Land Plans is subject to the CA of the freehold, leasehold, tenant and/or occupier interests and acquisition of mineral interests as well as any third-party rights or creation of new rights pursuant to Article 35. The pink land includes a small number of plots within the existing adopted highway where acquisition is needed to enable the land to be used for the Authorised Development once the highway has been stopped up. Other land within the area of the proposed alternative access arrangements for businesses in Gailey Park is to be acquired to ensure that the title is 'cleansed' of any covenants of restrictions that prevent its use for this purpose.
- 10.3.2. In relation to the land shown tinted blue on the Land Plans the proposed CA is limited to the creation of new rights and the power to override existing rights where they are inconsistent with the Authorised Development. An example of this is where rights are needed to undertake the proposed undergrounding of the 132kv electricity cables and erection of the new 132kv tower and, thereafter, to gain access to maintain that apparatus.
- 10.3.3. In respect of the land tinted green, the proposed CA is limited to seeking powers to acquire existing rights or to override or extinguish such rights where necessary to undertake the Authorised Development. The land shaded yellow (parcels 87a and 87B) is where TP is sought to enable the erection of the new electricity pylon/tower to the north of the A5 (Works No. 9a). The land hatched black and tinted orange is land which is subject to Staffordshire Sand and Gravel's tenancy and extraction rights or minerals interests which need to be acquired to facilitate the redevelopment of that land.
- 10.3.4. Some other parcels of land which are not proposed to be subject to CA are included in the BoR. These include:
- Land over which the Applicant has secured voluntary agreement and does not intend to acquire any new or existing rights;
  - Land which is existing adopted highway over which the Applicant only proposes to carry out highway works; and
  - Land which is owned by NR or the CRT which the Applicant has agreed not to CA and which is to be the subject of separate agreements with those parties.

These are included in the BoR because there are interests in the subsoil and these persons are, therefore, interested in the land in accordance with the PA 2008 and the Infrastructure Planning (Prescribed Forms and Procedure) Regulations 2009. Those interests would not be affected by the Authorised Development.

10.3.5. Part 2 of the BoR also lists all of those persons considered to fall within 'Category 3' as defined in s57 of the PA 2008. A person is within Category 3 if the Applicant thinks that, if the Order as sought were to be fully implemented, the person would be entitled to make a 'relevant claim' as a result of:

- the implementation of the Order;
- the Order having been implemented; or
- the use of the land once the Order has been implemented.

A 'relevant claim' in respect of this draft Order includes claims for injurious affection of land arising from the development, the depreciation of the value of land by physical factors caused by the use of public works. Section 152(3) of the PA 2008 does not apply because the Applicant is not seeking to include a defence against statutory nuisance within the DCO.

10.3.6. The parties listed in Part 2B of the BoR have been identified as part of the Applicant's assessment of noise effects arising from the Proposed Development. This identified one receptor (The Villa on the A5) that might be entitled to a claim under the Noise Insulation Regulations.

## **10.4. LEGISLATIVE REQUIREMENTS**

10.4.1. CA powers can only be granted if the conditions set out in s122 and s123 of the PA 2008 are complied with. Section 123 requires that one of three conditions is met by the proposal. The condition in s123(2) is met because the application for the DCO included a request for CA of the land to be authorised.

10.4.2. Section 122(2) requires that the land must be required for the development to which the DCO relates or is required to facilitate or is incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate.

10.4.3. Section 122(3) requires that there must be a compelling case in the public interest, which means that the public benefit derived from the CA must outweigh the private loss which would be suffered by those whose land is affected. In balancing public interest against private loss, the CA must be justified in its own right. This does not mean that the CA can be considered in isolation from the wider consideration of the merits of the project. There must be a clear need for the project to be carried out and consistency and coherency in the decision-making process.

10.4.4. A number of general considerations have to be addressed as a result of the relevant guidance or in accordance with legal duties on decision-makers. These are that:

- all reasonable alternatives to CA must be explored;
- the Applicant must have a clear idea of how it intends to use the land and demonstrate that funds are available to complete the acquisition; and
- the purposes stated for the CA are legitimate and sufficiently justify the interference with the human rights of those affected.

## **10.5. THE APPLICANT'S JUSTIFICATION FOR THE USE OF CA POWERS**

10.5.1. The Applicant's justification for the use of CA is set out principally in the SoR but this document refers to other documents listed in paragraph 10.1.5 above in support of that justification. Paragraph 3.19 explains that the Applicant has, through voluntary agreement, secured control over the freehold interest in the majority of the main site area required for the Authorised Development. This has been secured by virtue of Piers Monkton's involvement as one of FAL's partners and through negotiations and agreements reached with other freehold owners.

10.5.2. At the time of making the application, the Applicant was in discussion with the remaining owners and occupiers with a view to concluding voluntary agreements for the acquisition of their interests, with each agreement being drafted to take account of the specific circumstances of those owners and occupiers. Those discussions have continued over the course of the Examination and, as requested in my FWQs, the Applicant has submitted a CA Status Report on the progress made with these various negotiations. The most recent of those reports [APP-014] summarises the position reached at the close of the Examination.

10.5.3. As confirmed in that Status Report and sections 3.19 to 3.23 of the SoR, Heads of Terms have now agreed in respect of a substantial proportion of the interests that need to be acquired to facilitate the development. However, the Applicant has felt it prudent to retain all of those parcels within the proposed CA where acquisition has not been legally completed, so as to provide protection against any default or delay in completing these acquisitions. Where Heads of Terms have been exchanged the Applicant has given an undertaking not to exercise CA powers if the voluntary agreement is completed.

10.5.4. The table at section 3.26 of the SoR sets out a summary of the reasons for which the land and/or rights comprised within the various plots is required. This includes cross references to the Works Plans as relevant, but it should be noted that the CA of some land or rights is needed to carry out more than one of the identified Works listed in Schedule 1 of the draft Order. Although negotiations with owners and occupiers are continuing, CA will be required to ensure that the remaining interests can be acquired in the event that those negotiations are not successful and also due to a significant number of unknown interests in the Order Land.

- 10.5.5. With reference to the s122 of the PA 2008 paragraph 4.2 of the SoR states that all of the land is required for the Authorised Development or is required to facilitate or is incidental to the development and that the Applicant has a clear idea of how they intend to use the land as set out in detail in section 3 of that document. As there is no common land or open space land within the Order Limits there no land is required in exchange and s 122(2) is, therefore, complied with.
- 10.5.6. In relation to s122(3) the SoR states that the Proposed Development is brought forward in response to the need for new SRFIs nationally and the specific need for such a facility to serve the Black Country and southern Staffordshire. Sections 4.8 to 4.30 set out a summary of the conclusions of the Planning Statement with regard to: the long standing and urgent need for the Proposed Development; the suitability and locational advantages of the application site to meet that identified need; the economic and other benefits that the proposal would secure; and the lack of a suitable alternative site.
- 10.5.7. Having regard to that evidence the SoR concludes that there is a compelling need for the CA because the public benefits of the Proposed Development would substantially outweigh the private loss that would be suffered. The test within s122(3) of the PA 2008 is, therefore, satisfied. The table in section 5 of the SoR addresses the key considerations arising from CLG Guidance on the use of CA powers<sup>76</sup> and sets out the reasons why the Applicant contends that all of this guidance is complied with as follows:
- The Applicant has considered all reasonable alternatives, both through the ASA and through their efforts to acquire all of the necessary land and rights by agreement.
  - The application documentation demonstrates that the proposed interference with private rights is for a legitimate purpose and that it is both necessary and proportionate;
  - The Applicant has a clear idea how the land is to be used;
  - The Funding Statement shows that there is a reasonable prospect that the requisite funds for the acquisition will be available;
  - Regard has been had to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights. Whilst the beneficiaries of the interests in the Order Land would be deprived of those interests this would be done in accordance with the law. The Applicant is satisfied that the CA does not conflict with Convention Rights and will be proportionate because there is a compelling case in the public interest that outweighs the interference with private rights.

## **10.6. EXAMINATION OF THE CA AND TP CASE**

- 10.6.1. The Inglewood Investment Company Limited (Inglewood) submitted a formal objection [REP2-114 to 120] to the proposed CA of their land, immediately to the north and south of Vicarage Lane which is comprised

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<sup>76</sup> Planning Act 2008: procedures for the compulsory acquisition of land  
September 2013

within Plots 101,102,103,111,112 & 113 as shown on the Land Plans. Representations were also received from Mr Anthony Powell and Mr James Powell [REP2-142 & 143] which I took to constitute an objection to the CA of land at Croft House and Croft Lane which is owned by Mr Anthony Powell and other family members and is partly occupied by MMS Gas Power (a family owned business) which is comprised in Plots 52 to 55 inclusive on the Land Plans.

- 10.6.2. In views of those objection I decided to hold a CA Hearing on 5 June 2019 to consider the concerns of these APs and to hear the response to those concerns from the Applicant. Representatives of Inglewood and the Powell family were expressly invited to attend but the hearing was also open to other APs or IPs with an interest in the proposed CA.

### **Inglewood Interests**

- 10.6.3. Subsequent to the CA hearing the Applicant made amendments to the BoR and the draft Order to confirm that the mineral rights owned by Inglewood would be acquired alongside the acquisition of the Company's freehold interests. This satisfied Inglewood's concerns that they would not be properly compensated for the loss of those rights. Following further discussion between the parties, Inglewood confirmed at D7 [REP7-036] that terms for the disposal of their interests to the Applicant had been agreed and that the Company's objection to the proposed DCO and inclusion of CA powers in respect of their land has been withdrawn.

### **Powell Family and MMS Gas Power Interests.**

- 10.6.4. At the CA hearing I examined how the legal interests in the various land parcels were held by the family, the basis on which Croft House and the land used by MMS Gas Power is occupied, and the nature of the MMS Gas Power business and its operational needs. I received a report from Mr Powell and from the Applicant as to the negotiations that had taken place between the parties and the current position both with regard to the agreement of Heads of Terms for the acquisition of the legal interests and for securing the relocation of the business. I also inspected the land concerned as part of the ASI.
- 10.6.5. Further negotiations have continued between the parties since the CA Hearing. Paragraph 3.19.5 of the SoR confirms that these are still continuing with a view to completing a voluntary agreement. In his last submission before the close of the Examination [REP7-102], Mr Anthony Powell advised that Heads of Terms had been agreed in principle for the acquisition of Croft House and the land occupied by MMS Gas Power. However, as formal documentation was still awaited, Mr Powell remained concerned that this might not accurately reflect the family's requirements and understanding of what had been agreed. Mr Powell accordingly maintains an objection to the proposed CA of these interests until such time as a formal agreement has been reached.
- 10.6.6. As shown on the Works Plans, part of Plot 52 falls within Works No. 3 comprising the proposed development of rail-served warehousing with

Development Zone A3. The balance of that plot and the land within Plots 53-55 fall within Works No. 6 comprising structural landscaping within the proposed Croft Lane Community Park. Having regard to the information set out in the SoR and my observations made on the ASI, I am satisfied that these important components of the Proposed Development could not be delivered without the inclusion of these plots. In the absence of a completed and binding voluntary agreement for their acquisition the CA of the land and rights comprised in Plots 52-55 is, therefore, necessary for the carrying out of the Authorised Development.

- 10.6.7. At the CA hearing I was advised that agreement had been reached as to the acquisition of Croft House but that the Powell family wished to have one agreement that dealt both with the acquisition of the land interests and the assistance that the Applicant would provide in securing a satisfactory relocation of the MMS Gas Power business. This is understandably a concern because the business provides the livelihood for family members and other employees. At the hearing Mr James Powell informed me that he had identified 3 potential alternative sites within the local area that he considered would be suitable as a relocation site although one of these 3 would be his preferred option.
- 10.6.8. The Applicant's adviser informed me that the Heads of Terms that had been put to the family included a commitment that the Applicant would work with the family to secure the satisfactory relocation of the business and a binding obligation for the Applicant to acquire any site that is agreed by the parties to be appropriate for that relocation. The Heads of Terms include an agreed area of search for an alternative site and flexibility for a site that is larger than the existing site to be acquired if necessary.
- 10.6.9. Although no final agreement is yet in place, I consider that there is a strong prospect that the business can satisfactorily be relocated and that this can be effected at an early stage if and when a suitable site is agreed upon. The compensation paid would include appropriate disturbance payments to cover the cost of the business relocation. As Croft House is occupied by a non-family member on a short-term tenure that part of the proposed acquisition does not present any significant relocation issues.

### **Straight Mile Farm**

- 10.6.10. As originally submitted, the draft Order proposed to acquire all of the land at Straight Mile Farm (Plot 117) including the farmhouse. However, the house was to be retained as a dwelling and Works No. 11 (now deleted in the Applicant's final draft DCO) were intended to provide that dwelling with a revised residential curtilage/garden and new boundary treatments. The Applicant explained that these works reflected the terms of a voluntary agreement that had been put to the owners of the property which would allow them to stay in occupation of the farmhouse for the remainder of their lives.

- 10.6.11. No objection to the proposed acquisition of this land as received in the RRs or within the D2 written representations. The owners did not submit a request to speak at a CA hearing by the D2 date of 5 April 2009 for the receipt of such requests and did not attend the CA hearing on the 5 June. The first representation concerning the proposed CA of Straight Mile Farm was submitted at D4 [REP4-049] by Jamie Wilkes who is the son of the owners and occupiers of that property. This representation confirmed that the Applicant had made an offer to acquire the land by agreement and for the occupiers to remain in occupation of the farmhouse. However, it suggested that the owner had felt pressurised into agreeing to the Applicant's offer and had concerns about the valuation of their interests.
- 10.6.12. The Applicant's response in Appendix 2 to their D5 submission [REP5-006], advised that, to date, their contact had been with the owner's agent and solicitor whose fees the Applicant had agreed to pay, and that, until seeing the D4 representation, they had understood that the principles of the proposed voluntary agreement had been accepted and agreed by the owners. In response to ExQ3.8.3 the owners' son confirmed [REP7-123] that his parents no longer agreed to the terms proposed by the Applicant and that they wished to maintain an objection to the proposed CA of their land on the lines set out in Mr Wilkes' D4 submission.
- 10.6.13. Following the breakdown of those negotiations the Applicant decided that the best course of action is to remove the farmhouse and its immediate curtilage from the proposed CA such that acquisition is proposed only in relation to the grazing land. This reduces the area of land to be taken from just over 43,000 sq. m to just under 38,000 sq. m as indicated in the revised BoR and shown on revised Sheet 4 of the Land Plans [REP8-048]. The table within the revised SoR confirms that part of the grazing land is required for the erection of rail-served warehousing within Development Zone A7b (Works No. 3) and part for the southern pylon works (Works No. 9b) with the remainder being required for structural landscaping included the formation of screen bunds and Calf Heath Community Park (Works No. 6).
- 10.6.14. In section 5.4 of this report I accepted the Appellant's arguments that it is appropriate to include land to the south of Vicarage Road within the Order Limits so as to achieve an appropriate scale of development. I also accept that the landscape bunds and GI within the proposed Community Park, as shown on Sheet 4 of the GI Parameter Plan [REP5-023], form key components of the mitigation of potential noise, visual and ecological impacts of the Proposed Development. I am, therefore, satisfied that the land at Straight Mile Farm which is proposed for CA is needed to facilitate the construction and use of the Authorised Development. With the exclusion of the farmhouse and its immediate residential curtilage the extent of the proposed CA is also proportionate in that the draft Order seeks to acquire what is needed for the development and no more.
- 10.6.15. In his D4 representation, Mr Wilkes does not object to the Proposed Development but does express concerns that landscape bunding would

be placed within view of the house. As shown on sheet 4 of the GI Parameter Plans [REP5-023] the bund would be a significant distance from the rear elevation of the house, beyond both the residential curtilage and an area of other landscaping within the proposed Community Park. Given that degree of separation and the relatively modest height (4.5m maximum) of the bund proposed in this location it would not be overbearing or oppressive in views from the rear of the dwelling but would be required to provide noise screening.

- 10.6.16. The other issues raised in Mr Wilkes' submission are mainly concerned with the valuation of the land, the loss of income from the grazing land and the value of the mineral interests. All of these are matters which should properly form part of the negotiations as to the level of compensation that might be due to the owners and occupiers and are not relevant to the decision as to whether the CA of this land is justified. For the reasons set out above I am satisfied that the land is needed for the Authorised Development. Whilst the private rights of the owner to retain ownership of the grazing land would be breached that would be for good reason and would be proportionate and under Human Rights Act considerations. The public interest in securing the implementation of the Authorised Development would, therefore, outweigh the private loss to the owners and occupiers.

## **10.7. SECTION 127 REPRESENTATIONS**

- 10.7.1. NR submitted a formal representation at D2 [REP2-130] which made reference to s127 of the PA 2008. This refers to road and rail access points which are located within Plots 14 and 18 as shown on the Land Plans and access steps to the railway line which are located at the junction of plots 21 and 61. All of these accesses are key to the NR's undertaking. The BoR expressly excludes from the proposed CA "*those interests held or reputed to be held by Network Rail*" in column 1 which sets out the extent of the land or right to be acquired in respect of plot references 21. However, it does not do so in relation to the other plots (14,18 & 61) where no NR interests are listed. NR's representation states that these access and steps rights would be extinguished without replacement as a result of the operation of Article 28 of the draft Order.
- 10.7.2. NR also referred to other aspects of the Proposed Development that would affect its undertaking including the track possessions needed to construct the rail infrastructure, the removal of the existing footbridge and the construction of the new bridge over the WCML Loop to carry the A5/A449 Link Road. NR stated that, in order to comply with its Network Licence, it requires that any land and/or rights required for the scheme should be dealt with by private treaty via a series of templates. It also advised that, unless NR's standard protective provisions are included in the Order, the granting of development consent allowing the Applicant to acquire rights over and above the network would harm NR's ability to undertake its obligations as a statutory undertaker. Section 127 of the Act is, therefore, engaged.

- 10.7.3. As will be seen from Section 5 of this report, NR has taken an active role in the Examination and has expressed its support for the Proposed Development in all of its written and oral evidence. NR has also referred to its policy of encouraging SRFI development in order to meet its own targets for rail freight traffic and of its duty to allocate rail capacity to freight and passenger services on an even-handed basis.
- 10.7.4. Both the Applicant and NR have previously confirmed their expectation that a formal agreement would be entered into between the parties which would address all of NR's concerns and that the protective provisions to be included in Schedule 13 would also be agreed. NR's submission at D8 [REP8-058] advised that the necessary agreements had not been finalised by the end of the Examination. It is for this reason, and to protect its interests as a statutory undertaker, that the submission states that NR's original S127 representation still stands. In its D8 submissions [REP8-018] the Applicant indicated that their discussions with NR are at an advanced stage and expressed confidence that agreement would be completed shortly.
- 10.7.5. As set out in Chapter 11 of this report, I agree that, until such time as a formal agreement between the parties has been completed, the risk remains that the granting of development consent could interfere with NR's ability to carry out its undertaking and fulfil its statutory duties and responsibilities. However, as suggested by NR, I consider that these concerns can satisfactorily be addressed by means of including additional Requirements within the Order to safeguard the access and steps rights and by bringing the protective provisions in Part 1 of Schedule 13 more in line with NR's standard provisions. I have recommended in Chapter 11 that those changes should be made.
- 10.7.6. Although s127(5) of the PA 2008 is engaged, NR's access and other rights would adequately be protected by means of these changes. Hence, the proposed CA can be granted consent without serious detriment to the carrying on of the undertaking in accordance with s127(6)(a).
- 10.7.7. No other s127 representations have been received.

## **10.8. CONCLUSIONS**

- 10.8.1. The Applicant has already secured control of the major part of the area proposed for built development, but a large part of the overall application site is subject to the request for CA powers in one form or another. Although negotiations for the acquisition of those interests and rights by agreement have progressed no further acquisitions have been formally completed to enable the removal of the land parcels concerned from the BoR and Land Plans.
- 10.8.2. I am satisfied that all of the land and rights included in the proposed CA are required in order to carry out or facilitate or are incidental to the Authorised Development and that the proposed TP is necessary for the completion of the underground cabling and pylon works and the future maintenance of that apparatus. The Applicant has adopted a

proportionate approach in defining the extent of the Order Land and the individual plots and are not seeking to acquire freehold interests where the need could be met through the acquisition or extinguishment of rights. Section 122(2) of the PA 2008 is, therefore, complied with.

- 10.8.3. The Applicant has fully considered potential alternatives to the development of application site for the proposed SRFI through the ASA and this has been scrutinised as part of the Examination. The ASA's findings are accepted and supported by the relevant local authorities and I have concluded, in section 5 of this report, that no suitable alternative site is available. Within the SoR and the CA Tracker Reports<sup>77</sup> the Applicant has clearly demonstrated the attempts that have been made, over a period of 3 or more years, to negotiate the acquisition of the various land interests and rights by voluntary agreement and the significant progress that has been made in agreeing Heads of Terms or the principles of an agreement in many of those negotiations. Hence, I am satisfied that all reasonable alternatives to the use of CA power have been explored. Although Heads of Terms have been agreed with regard to a significant proportion of the land and rights yet to be acquired that does not take away the need for CA because the Authorised Development must be planned and carried out without the risk of one or parties preventing it from being delivered.
- 10.8.4. The Applicant has demonstrated a robust case as to the need for the proposed SRFI both nationally and within the sub-region. Although the proposal is in outline form at this stage, Schedule 1 to the draft DCO, the Works, Parameters and other Plans together demonstrate a clear idea of how the overall site would be developed and how different areas of land within the Order Limits would contribute to the overall development including the GI and other mitigation works. The CA powers sought are, therefore, consistent with the guidance that the land must be required for a legitimate purpose, that there must be a clear idea as to how the land is to be used and that the proposed CA must be proportionate.
- 10.8.5. In ExQ1.16.11 I asked a series of questions about the Applicant's Funding Statement and the Applicant's response is set out in their response to FWQs [REP2-009]. I have also examined the estimated costs and the Applicant's ability to fund the Proposed Development as part of my consideration of the viability evidence submitted by the Applicant and other parties. The estimated costs of acquiring all the interests included in the proposed CA is £22.19M (paragraph 5.1 of the Funding Statement) which represents approximately half of the total land acquisition estimate of £43.8M and a much smaller proportion of the total development costs of over £196M as set out in the Viability Dashboard submitted at D5 [REP5-006]. The cost of the CA does not appear disproportionate in the context of the overall development costs and paragraph 5.4 of the Funding Statement confirms that this would be funded by the Applicant.
- 10.8.6. Having considered that evidence, I find that there is a reasonable prospect of the requisite funds for the proposed acquisition and for taking

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<sup>77</sup> REP3-006, REP6-008 & REP8-014

the Proposed Development forward becoming available and that this part of the guidance is satisfied. Additional protection is provided by means of Article 23 of the Recommended Order which requires a guarantee or surety of the funds to meet the likely compensation costs before any CA is exercised.

## **10.9. HUMAN RIGHTS ACT**

10.9.1. In the SoR the Applicant has set out their evidence with regard to Article 1 of the First Protocol to the European Convention on Human Rights. I have also had regard to Articles 6 and 8 in respect of those parties affected by the proposed CA and TP:

- Article 1 covers the rights of those whose property is to be compulsorily acquired and whose peaceful enjoyment of their property is to be interfered with;
- Article 8 protects the rights of the individual to respect for private and family life; and
- Article 6 entitles those affected by the project to a fair and public hearing by an independent and impartial tribunal.

10.9.2. Having considered that evidence I am satisfied that, in relation to Article 1 and 8 of the First Protocol, the interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest. In relation to Article 8, all objections made to the proposed CA have either been resolved by the Applicant or, where not resolved, objectors have had the opportunity to present their objections at the CA hearing. Although the owners of Straight Mile Farm did not avail themselves of that opportunity their written objection has been taken fully into account.

## **10.10. RECOMMENDATION ON THE INCLUSION OF CA POWERS IN THE ORDER.**

10.10.1. For the reasons set out in this chapter of the report I am satisfied that all of the land and rights proposed for CA is required for the Authorised Development, or to facilitate the development or is incidental to it. I recommend that, if the SoS concludes that development consent should be granted, there is a compelling case in the public interests for the inclusion within the Order of the CA powers as sought by the Applicant.

# **11. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS**

## **11.1. EVOLUTION OF THE DRAFT ORDER**

- 11.1.1. The draft Order [A-008] submitted with the Application was replaced by an amended version submitted in December [AS-014] which I accepted into the Examination. The Application also included an Explanatory Memorandum [APP-010], a draft DCOB [APP-156] and a draft Bird Mitigation Obligation [APP-151]. These documents were discussed at the first DCO hearing (ISH1) on 27 February and my FWQs also included questions about the draft Order.
- 11.1.2. Following that hearing, revisions were made to the draft Order [REP3-003] and an updated draft of the DCOB [AS-037] was also submitted. These were examined at the second DCO hearing (ISH4) on 5 June and an additional question on the draft Requirements was included in my SWQs issued on the 19 June.
- 11.1.3. Further revisions were then made to the draft Order [REP5-007] and Explanatory Memorandum [REP5-010] and amended drafts of the DCOB [REP5-037] and Bird Mitigation Obligation [REP5-028] were submitted by the Applicant. These formed the basis of the discussions at the third DCO hearing (ISH6) on 11 July. The Applicant subsequently submitted a further revised draft Order [REP6-003] and Explanatory Memorandum [REP6-009] at D6. My TWQs, issued on 30 July, were primarily concerned with the draft Rail Requirements but also sought clarification on Article 2 and Schedule 2 within the draft Order.
- 11.1.4. The final draft of the Order was submitted at D8 [REP8-005], together with a revised Explanatory Memorandum [REP8-007] and draft DCO Validation Report [REP8-004]. The completed and signed DCOB [REP8-020 to 024] and Bird Mitigation Obligation [REP8-019] have been submitted in electronic form and in hard copy.
- 11.1.5. The number of revisions made to the draft Order during the course of the Examination reflects the discussions held at the three ISH concerned with the draft DCO and the willingness of the Applicant to respond to my questions and queries and to comments and suggestions made by IPs who participated in those hearings. The final documents submitted by the Applicant at D8 accordingly represents the outcome of the Examination insofar as those discussions are concerned
- 11.1.6. The detail of the changes made to the draft Order since the start of the Examination and the reasons for those changes are set out in a series of DCO Changes Tracker Documents<sup>78</sup> which have been submitted alongside the revised drafts. The last of these [REP8-003] was submitted alongside the final draft Order.

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<sup>78</sup> Documents REP3-005, REP5-009, REP6-005 & REP8-003

## **11.2. GENERAL MATTERS**

- 11.2.1. A good number of matters have been agreed with those IPs with assets that might be affected by the Proposed Development, with the local authorities and other bodies that would be likely to have an involvement in the implementation of the Order if development consent is granted, and with other IPs with specific concerns or interests in the potential effects of the WMI proposals. These agreed matters are incorporated within the final draft Order and Explanatory Memorandum.
- 11.2.2. In terms of its overall structure the draft DCO comprises 48 articles set out in Parts 1-6 of the draft Order, which provide the principal powers for carrying out the Authorised Development including CA powers. There are 14 schedules, many of which are also subdivided into separate parts. Schedule 1 specifies the range of works included in the authorised and associated development. Schedule 2 sets out requirements for controlling the development. Schedules 3-12 set out details that clarify the scope of specific articles and Schedule 13 includes a series of protective provisions in favour of a number of organisations and bodies whose assets might be affected by the Proposed Development.
- 11.2.3. The most significant change made to the draft articles during the course of the Examination is the deletion of an article (previously Article 42) which would have provided the undertaker with a defence against proceedings in respect of statutory nuisance. This was removed by the Applicant following their discussions with SSDC about the potential dust effects on residential receptors near to the site, particularly during the construction phase of development. The removal of that article means that the local authority would, if necessary, be able to exercise its statutory powers to address dust or other nuisance arising from the construction or operation of the Proposed Development. A number of other articles have been refined or changed mainly to add further clarity rather than to alter their purpose.
- 11.2.4. Following my questions and the discussions at ISH1, the provisions which seek to secure the delivery of the rail infrastructure were moved from the draft DCO into the draft Order. These and a number of the other draft requirements have undergone subsequent review and change over the course of the Examination. The protective provisions in Schedule 13 have been revised and updated as the Applicant's discussions with the relevant bodies have progressed and areas of agreement have been reached.
- 11.2.5. The Examination has considered the appropriate balance to be struck between the need for certainty as to the scale and form of development proposed and its potential effects and the Applicant's desire, in accordance with the NPSNN, to retain flexibility within the detailed design and layout to respond to commercial requirements and adapt to changing market demand. The principal plans accompanying the draft Order, pursuant to Regulation 5(2) of The Infrastructure Planning (Applications, Prescribed Forms and Procedure) Regulations 2009 are:

- **Works Plans** identifying the area for the different works described in Schedule 1;
- **Access and Rights of Way Plans** which identify new and altered means of access, stopping up of streets and roads, stopping up of footpaths and new footpaths, bridleways, cycle tracks and diversions;
- **Parameters Plans** which identify the parameters with which the works must comply;
- **Highway General Arrangement Plans, Rail Plans and Bridge Plans** which describe the various aspects of the proposed road and rail infrastructure;

11.2.6. Other plans submitted with the application are referred in the description of the Works in Schedule 1 and the requirements in Schedule 2 but some of these are provided for illustrative purposes. These include:

- **Highway Classification Plans** that identify the intended classification of the proposed A5/A449 Link Road and other highway infrastructure to be provided;
- **Future Highway Maintenance Plans** that identify the extent of the works on the SRN and county highway network and future responsibility for maintenance of the new highway infrastructure;
- **Traffic Regulation Order Plans and Speed Limit Plans** that deal with consequential changes to existing Traffic Regulation Orders and indicate the proposed speed limits to be applied to the new sections of the road network;
- An **Illustrative Master Plan** which indicates a form of the development that would comply with the defined parameters which have been assessed in the ES.

11.2.7. The EIA has been undertaken using a Rochdale Envelope approach and, although the Illustrative Master Plan provides an indication of a possible layout this does not underpin the assessment of effects set out in the ES. This is based on the Parameters Plans which identify the parameters that would apply to the different parts of the site within the Order Limits if development consent is granted. The control of development is secured by;

- Article 4 (parameters of the Authorised Development) and 44 (governance of requirements and protective provisions relating to highway works);
- The description of the works in Schedule 1;
- The requirements in Schedule 2; and
- The parameters shown on the Parameters Plans and the limits of deviation shown on the Works Plans, Bridge Plans and Rail Section Plans.

Separate Parameters Plans define the parameters for the siting and size (footprint) of buildings within each of the Development Zones, the maximum height of buildings in each Zone, and the location and extent of the proposed GI and the maximum heights of the proposed screen mounds or bunds.

- 11.2.8. The relationship between the provisions and requirements within the draft Order with the Works Plans, Parameter Plans and other documents that help to define the scope and form of the Proposed Development has been carefully considered in the Examination. These discussions have focused on adding clarity where necessary to enable conclusions to be formed about the environmental effects of the Proposed Development and to respond to specific concerns raised by IPs. They have resulted in changes to a large number of the plans and the submission of revised versions of the plans listed in paragraph 2.2.1.
- 11.2.9. I had extended discussions with the Applicant about the limits of deviation in Article 4 and how these relate to the details shown on the Bridge Plans and about the inclusion, in the earlier drafts of this article, of a rider which would have provided for additional flexibility in the detailed design of the works.
- 11.2.10. I am satisfied that the inclusion of the words "*and subject to those parameters*" in Article 4 within the final version of the draft Order, in combination with the details added to the revised Bridge Plans, remove any uncertainty as to the limits of deviation that would apply to these works. The Applicant has subsequently agreed that the proposed rider is unnecessary and has removed it from the article. My concern that this might enable development to take place outside of the parameters and limits of deviation authorised in the DCO has, therefore, been addressed.
- 11.2.11. I discussed with the Applicant the wording of sub-paragraphs (1) and (2) of Article 44 (Article 45 in earlier drafts of the DCO) and whether this was consistent with paragraph 13 of Schedule 2 to the Infrastructure Planning (EIA) Regulations 2017 which define what constitutes EIA development. Possible alternative wording for that part of the article was considered but was not found to be suitable. Having given this careful consideration I am satisfied that the words "*significant adverse effects on the environment not identified at the time this Order was made or in any updated environmental information*" are sufficiently clear as to their meaning. The Applicant has also referred to similar wording having been adopted in other DCOs made by the SoS. Additional clarity has, however, been added by the inclusion of the words "*such approval or agreement must not be given if it would permit development outside of the parameters of the Authorised Development referred to in article 4*" which was used in the equivalent article in the EMGRFI DCO.
- 11.2.12. I am satisfied that the final drafting of Articles 4 and 44 would ensure that the approval of subsequent details or plans under the requirements or other schedules to the DCO, and any further amendments to them made under Article 44, must fall within the Authorised Development.

### **11.3. SPECIFIC ELEMENTS OF THE DRAFT DCO**

- 11.3.1. As noted above the draft Order has passed through a number of iterations during the course of the Examination. Many of the changes made are minor in their scope and significance and do not need to be explained in this report. Table 11.1 below, therefore, focuses on key

changes made to the draft DCO which I have accepted as being necessary and appropriate and which should not require more detailed consideration by the SoS. Table 11.2 deals with those articles and provisions within the final draft DCO which I consider should undergo further amendment should development consent be granted.

11.3.2. If, in the following tables, I make no mention of or comment on specific articles or other provisions within the draft Order the SoS can be clear that I am satisfied that the reasons for seeking the powers are adequately explained in the final version of the Explanatory Memorandum [REP8-007].

**Table 11.1: DCO Provisions Not Recommended to be Changed**

<b>Provision</b>	<b>Examination Issue</b>	<b>ExA Reasoning</b>
Article 2 Interpretation	Definition of “ <i>verge</i> ” amended to refer to “ <i>street</i> ” rather than “ <i>road</i> ”	I am satisfied that the proposed wording is an adequate response to the comments made by HE at ISH4 without introducing further confusion.
Article 4	Amendments to subparagraph (b) to refer to limits of deviation shown on the Bridge Plans and to amend the limits of deviation.  Inclusion of the words “ <i>subject to those parameters</i> ” in the article.	I am satisfied that these changes remove the previous uncertainty around the scope of the limits of deviation.
Article 4	Removal of the rider that could possibly have allowed for the subsequent approval of details that would be outside of the approved parameters	I welcome the Applicant’s decision to delete that rider and consider that this removes any uncertainty on this matter.
Article 12 (3)	Amendments to replace the reference to “ <i>byway open to all traffic</i> ” with “ <i>public right of way</i> ”.	This change renders the article consistent with all other references to the claimed right of way at Gravelly Way. The

Provision	Examination Issue	ExA Reasoning
		need for the inclusion of this right of way is explained in paragraphs 5.96-5.97 of this report.
Article 29	Amendments to clarify that the Mineral Code does not apply to land subject to CA powers or where the minerals are specifically noted as being subject to CA in the BoR and Land Plans.	This is an important clarification for those affected by CA whose land includes minerals interests. However, it is appropriate that the Code should apply to all other land within the Order Limits.
Article 42 (formerly 43)	Inclusion of reference to BS3998:2010 in relation to tree work.	This addition adequately responds to a concern raised by SCC about the need to ensure that all works to trees complies with the recommended guidance.
Article 44(1) & (2) (formerly 45)	Addition of the words <i>"such approval or agreement must not be given if it would permit development outside of the parameters of the Authorised Development referred to in article 4"</i>	This additional wording is consistent with that used in the equivalent clause in the EMGRFI DCO and provides additional certainty as to the scope of changes that might subsequently be agreed.
Article 48 (formerly 49)	Additional sub-paragraph (2) to specify that the provisions in 48(1) do not apply to any decisions made by the SoS pursuant to the provisions of the Order.	This is a necessary amendment to ensure that decisions made by the SoS, for example in respect of the transfer of the benefit of the Order under Article 7, should not be subject

Provision	Examination Issue	ExA Reasoning
		to any subsequent arbitration.
<p>Schedule 1</p> <p>Removal of Works No. 11</p>	<p>Earlier versions of the draft DCO had included works related to the retention of Straight Mile Farm and the provision of a new garden and boundary treatments for that property. These proposed works were in accordance with a draft Agreement between the Applicant and the owners of that property. Following confirmation at D7 that the owners no longer wish to proceed with that voluntary agreement, the works are no longer required.</p> <p>What was Works No.12 in earlier drafts of the Order has now become Works No. 11.</p>	<p>This change is appropriate in view of the owners' decision not to proceed with the voluntary agreement. I deal with issues relating to the CA powers in relation to that property in Chapter 10 of this report.</p>
<p>Schedule 1 - Further Works</p>	<p>Amendment to sub-paragraph 4.</p>	<p>This is an appropriate amendment to provide the undertaker with the power to stop up the claimed PROW at Gravelly Way if this is added to the definitive map.</p>
<p>Schedule 2 – Part 1</p> <p>Requirement 3</p>	<p>Amendments to wording to provide for the review of the DAS after the completion of 186,000 sq. m of</p>	<p>These amendments are an appropriate response to the concerns raised by</p>

Provision	Examination Issue	ExA Reasoning
	warehousing and to ensure that the draft details of each phase should be subject to consultation.	SCC in its written representation.
Schedule 2 – Part 1 Requirements 11, 15 & 19	<p>Amendments to require that, if a phase does not include ecological mitigation and management or landscaping, a written statement should be submitted to confirm that that is the case.</p> <p>Amendments to the wording relating to the location and height of lighting columns.</p>	<p>These amendments provide for greater clarity at the implementation stage.</p> <p>The amendment to Requirement 19 is important to ensure appropriate mitigation of the effect on bats.</p>
Schedule 2 – Part 1 Requirements 20, 21 & 26	Amendments to Requirements 20(3) and 21(4) and 26(2) to clarify working hours and provide cross references to the ES and to revised the wording of the requirement in respect of the SWSWDS.	These amendments respond to specific issues raised by SSDC and the EA and add clarity as to what is required.
Schedule 2 – Part 2 Rail Requirement 3	New requirement stipulating that notice be given to the LPA when occupation has taken place of the 47,000 sq. m and 186,000 sq. m floorspace thresholds.	This has been introduced following discussions at ISH4 and is essential for the effective operation and application of the rail requirements.
Schedule 13	HE [REP7-030 & REP8-] have requested that the	Although this is primarily a matter for the parties the DCO

<b>Provision</b>	<b>Examination Issue</b>	<b>ExA Reasoning</b>
Part 2	<p>provisions in Part 2 should include the payment of a Bond Sum of 150% and for a Cash Sum of £150,000 in order to reduce the financial risk to HE in the event that proposed works affecting the SRN are not satisfactorily completed.</p> <p>In response the Applicant [REP8-016] has increased the Cash Sum to £150,000 but maintains that a Bond Sum of 120% is appropriate. In so doing they refuted HE's assertion that there were errors in the Applicant's cost estimates and point to other DCOs in respect of which HE has agreed a Bond Sum of 120%.</p>	<p>should not impose unreasonable burdens on the Applicant without good reason. I do not consider that HE has provided any good reason as to why a higher bond sum is required in this case if 120% has been found to be acceptable in relation to similarly large NSIP projects.</p> <p>Accordingly, I recommend that no further changes to Part 2 are required.</p>
<p>Schedule 13</p> <p>Parts 3 to 10</p> <p>Protective Provisions</p>	<p>Updates and revisions to Protective Provisions to reflect matters agreed with the affected parties.</p>	<p>I am satisfied that the amendments made are necessary and appropriate to remove potential objections to the grant of development consent and to safeguard the assets concerned.</p>

**Table 11.2: DCO Provisions Recommended to be Changed**

<b>Provision</b>	<b>Examination Issue</b>	<b>Recommendations</b>
<p>Articles 11,13,17,21 &amp; 22</p>	<p>HE [REP2-034] has objected to the wording of Articles 11(5), 13(3),17(7) &amp; 22(9) which provide that, if a person who has received an application for consent under these articles has not responded within the specified time limits, their consent is deemed to have been given. HE argues that these deemed consent clauses would negate the approval process which they are required to follow under the terms of the Infrastructure Act 2015 and the licence under which HE operates.</p> <p>The Applicant in Appendix 3 to their Response to Other Parties' D2 Submissions [REP3-007] rejects those concerns and believes there is no reason why HE should not be subject to the same provisions in respect of deemed consent such as the local authorities.</p> <p>In their final draft DCO [REP8-005] the Applicant has inserted</p>	<p>I recommend that no change is required and that the suggested alternative wording should not be adopted. This wording should accordingly be deleted.</p> <p>I am satisfied that the deemed consent provisions are commonly found in DCOs made to date and are regularly sought in DCOs which HE themselves have applied for. The provisions do not negate HE's statutory purpose and role in approving details that might affect the SRN; they simply require that any decision needed from HE is given in a timely fashion.</p> <p>The Applicant has increased the time period for receiving a response from 28 to 42 days. I consider that this is a reasonable time limit to be applied in respect of application for what are likely to be relatively minor works.</p>

Provision	Examination Issue	Recommendations
	<p>a possible alternative wording in italics within these paragraphs which could be adopted if HE's concerns are accepted by the SoS.</p>	
<p>Schedule 1 – Authorised Development  Works No. 6 and 7</p>	<p>The Applicant has set out in italics possible additional wording to Works Nos. 6(u) and 7(r) to provide authorisation for the construction of a new culvert under the A449 should the SoS considered that these decisions are required.</p>	<p>I recommend that the additional wording in italics be added to Works Nos. 6(u) and 7(r).</p> <p>As explained in section 6.12 of this report, HE disputes the Applicant's right to discharge surface water into the existing culvert. With this matter unresolved, the inclusion of this additional wording would remove any concern that uncertainty as to the Applicant's ability to deliver the SWSWDS could act as an impediment to the implementation of the Order if development consent is granted.</p>
<p>Schedule 2 – Part 1  Requirement 3</p>	<p>As explained in paragraphs 6.2.95-6.2.97 of this report HE has an outstanding concern that not all issues arising from the Stage 1 Road Safety Audit in respect of the pedestrian crossing facilities at the new A449/Link Road junction have</p>	<p>I recommend that the following clause be added to Requirement 3(2):</p> <p><i>(q) the location of the pedestrian crossing on the A5/A449 link road notwithstanding the detail shown in that respect on the Highway plans (in consultation with the</i></p>

Provision	Examination Issue	Recommendations
	<p>satisfactorily been dealt with by the Applicant. However, this concern can be resolved by requiring that the detailed location of the pedestrian crossing should be approved as part of the details to be submitted under Requirement 3 of DCO.</p>	<p><i>local highway authority and Highways England)</i></p>
<p>Schedule 2 – Part 1 Requirement 3</p>	<p>As set out in paragraphs 6.10.59-6.10.63 of this report I am not satisfied that a significant adverse effect on sailing conditions on Calf Heath Reservoir can be ruled out at this stage. I consider that there is a case for the effects to be considered more fully at the detailed design stage. I therefore recommend an additional provision within Requirement 3 that would require that a wind or other assessment be submitted with any application for the approval of the details of landscaped mounds or buildings within Development Zones A4a and A5a.</p> <p>Undertaking a wind tunnel test was suggested in the Applicant’s original wind assessment report. However, this</p>	<p>I recommend that existing sub-paragraphs 3 to 7 in Requirement 7 be renumbered as sub-paragraphs 4 to 8 and that a new sub-paragraph 3 be inserted to read as follows:</p> <p><i>"The details of any phase including the formation of screen bunds and/or buildings within Development Zones A4a and A5a as shown on the Parameters Plan must include a wind tunnel or other technical assessment of the likely effects of those detailed proposals on wind characteristics at Calf Heath Reservoir and any consequential effects on the suitability of the reservoir for sailing so that these effects can be taken into account by the local authority in deciding whether</i></p>

Provision	Examination Issue	Recommendations
	<p>suggested additional requirement has not been put to the Applicant or other IPs during the Examination.</p>	<p><i>those details should be approved".</i></p> <p>The SoS may wish to consider if comments should be invited on this additional requirement.</p>
<p>Schedule 2 – Part 1: Requirement 5</p>	<p>Because the intended side agreement between the Applicant and NR had not been finalised and signed at the close of the Examination, NR is concerned [REP8-058] that its operational needs may not be adequately protected by the protective provisions as currently drafted in Schedule 13 Part 1.</p> <p>NR has requested that additional requirements be inserted in the DCO specifically to safeguard the access that it requires to the operational network at all times.</p> <p>In their late submission on 27 August [AS-090] the Applicant indicated their hope that the additional requirement may not be needed as discussions about the side agreement were well advanced. However, I have no further information to</p>	<p>I recommend that two additional sub-paragraphs be added to Requirement 5 to read as follows:</p> <p><i>"(1) No Authorised Development may commence until a scheme for the continued provision of access to the West Coast Main Line has been agreed by the local planning authority, in consultation with Network Rail. Such a scheme is to include the specification of and timings for Network Rail's temporary and permanent access to the West Coast Main Line and show how access to the West Coast Main line will be maintained at all times.</i></p> <p><i>(2) The Authorised Development is to be carried out in accordance with the details approved to the satisfaction of the local planning authority in</i></p>

Provision	Examination Issue	Recommendations
	<p>indicate that this agreement has been completed.</p> <p>If the SoS receives confirmation that the side agreement has been signed and completed no amendment to the requirement would be needed.</p> <p>However, without a side agreement or other appropriate protection being in place, the DCO would be at risk of constraining NR's ability to fulfil its duties and responsibilities as a statutory undertaker. NR's section 127 letter submitted at D2 [REP2-130] remains in place and it is appropriate that that the risk be removed if it can be through the amendments requested by NR.</p>	<p><i>consultation with Network Rail. "</i></p>
<p>Schedule 2 - Part 2: Rail Requirement 4</p>	<p>The issues and concerns about delivery of the rail infrastructure are set out in full in section 5.6. of this report.</p> <p>The Applicant had previously indicated their agreement that the tailpiece to Rail Requirement 4 should not be included but their final draft DCO [REP8-005] retains</p>	<p>I recommend that the suggested alternative wording in italics should not be included in the DCO. As set out in section 5.6 of this report, I consider that this proposed wording would add uncertainty as to whether the completed development would constitute an NSIP and call into question any decision to grant</p>

Provision	Examination Issue	Recommendations
	<p>this tailpiece in italics as a possible addition to the requirement.</p>	<p>development consent for the development within the Green Belt.</p> <p>I am satisfied that the other changes incorporated in the final draft of Rail Requirement 4 are appropriate and that these add certainty as to the delivery of the rail infrastructure and terminal.</p>
<p>Schedule 2 - Part 2: Rail Requirement 6</p>	<p>The issues and concerns about delivery of the rail infrastructure are set out in full in section 5.6. of this report.</p> <p>The Applicant has retained the tailpiece to this requirement in their final draft DCO but, for the reasons set out in that section paragraphs I consider that it should be deleted.</p>	<p>I recommend that the words "<i>unless otherwise agreed by the Secretary of State</i>" should be deleted.</p>
<p>Schedule 13 Part 1 Protective Provisions for the Protection of Rail Interests</p>	<p>Because the intended side agreement between the Applicant and NR had not been finalised and signed at the close of the Examination NR [REP8-058 to 060] is concerned that its operational needs may not be adequately protected by the protective provisions as</p>	<p>Appendix 2 to NR's D8 submission provides a comparison between the current drafting of Part 1 of Schedule 13 and NR's standard provisions and, in practice, there are few substantive differences.</p> <p>Accordingly, I recommend that the wording currently set out in Part 1 of Schedule 13 be</p>

Provision	Examination Issue	Recommendations
	<p>currently drafted in Schedule 13 Part 1.</p> <p>NR has requested that the protective provisions as currently drafted should be replaced by NR's standard provisions.</p> <p>In their late submission on 27 August [AS-090] the Applicant indicated their hope that the changes may not be required as discussions about the side agreement were well advanced. However, I have no further information to indicated that this has been completed.</p> <p>If the SoS receives confirmation that the side agreement has been signed and completed no amendment to the protective provisions would be needed.</p> <p>Without a side agreement or other appropriate protection in place, the DCO would be at risk of constraining NR's ability to fulfil its duties and responsibilities as a statutory undertaker. NR's section 127 letter submitted at D2 remains in place and it is appropriate that that risk be removed</p>	<p>amended as necessary to follow the wording set out in Appendix 2 to NR's submission at D8 [REP8-060].</p>

Provision	Examination Issue	Recommendations
	if it can be through the amendments requested by NR.	

## 11.4. OBLIGATIONS

### DEVELOPMENT CONSENT OBLIGATION

11.4.1. A development consent obligation (DCOb) [REP8-020 to 024] has been completed with SCDC and SSC. The obligation has been signed by the principal site owners as owners of the "Obligation Land" shown coloured pink on Plan A. Under Clause 6.1.2, those owners undertake not to allow access over the Obligation Land to any other land within the Order Limits where land acquisition by the Applicant has yet to be completed until equivalent obligations have been entered into in respect of that land. The effect of this important clause is to ensure that all of the land not yet in the Applicant's control is appropriately tied into the overall purpose and objectives of the DCOb such that the agreed mitigation and benefits can be delivered across the whole site. The DCOb is divided into a number of schedules that specify the obligations entered into by the owners.

11.4.2. Schedule 1 includes the following obligations to SSDC:

- The establishment of a Community Fund of £100,000 to be applied for the community purposes in Schedule 5 which include schemes to enhance public realm, to maximise the use of the Community Parks and facilitate engagement between WMI occupiers and the wider community;
- The establishment of a Community Liaison Group to facilitate liaison with local residents, local authorities and other stakeholders during the construction and operation of the development;
- The setting up of the Estate Management Company and the preparation, for the Council's approval, of an Estate Management Plan for the long-term management of the completed development including maintenance of the private roads and GI.
- The appointment of the Rail Freight Co-ordinator who would be the person responsible for identifying and implementing measures for the promotion of rail freight and for keeping SSDC and others informed about progress with the delivery of the rail infrastructure.
- The implementation of the provisions set out in the Bespoke Noise Insulation Scheme (BNIS), full details of which are set out in Schedule 6.

11.4.3. Schedule 2 is concerned with highways and sets out the following obligations to SCC:

- Payment of the Travel Plan Sum, to cover SSC's costs incurred in the implementation and monitoring of the SWTP;

- To appoint the SWTP Co-ordinator and establish the TSG prior to development being commenced;
- To make the Travel Plan Contingency Fund available to the TSG with payments to be made in the agreed instalments;
- To pay the Contingent Traffic Management Fund to SCC;
- To submit Occupier Travel Plans for SCC's approval in respect of the Rail Terminal and any warehouse intended to accommodate more than 50 employees;
- To implement the SWTP and to produce and submit to SCC an Annual Performance Report in relation to progress made in achieving the SWTP targets;
- Prior to commencement of development in each phase to submit an HGV Management Plan for that phase, in accordance with the SWHGVMP, for SCC's approval;
- Except on occasions when the M6 is fully closed, to ensure that drivers of all HGVs accessing and egressing WMI are instructed to use approved routes and not to use the Barred Route and to ensure that each HGV Management Plan incorporates these requirements;
- Prior to the first occupation of any warehouse to obtain SCC's approval to a system of appropriate technology to monitor any breaches of the HGV restrictions on the Barred Route and, subsequently to implement the agreed system for the lifetime of the development;
- To operate a system of fines for breaches of the HGV restrictions with the revenue received from fines to be paid into the Contingent Traffic Management Fund;
- To ensure that each HGV Management Plan includes a plan identifying the HGV parking spaces to be made available as Early Arrival Bays, Extended Stay Bays and Operational Bays and to ensure that occupiers retain those bays for those specific uses;
- To pay to SCC the Bus Service Contribution in the agreed instalments;
- To submit for SCC's approval, details of the Shuttle Bus Service and to procure the provision of the agreed services the Shuttle Bus Period (i.e. until the agreed fund has been fully expended).

11.4.4. Schedule 3 is concerned with the Employment, Skills and Training Plan Framework (ESTPF) and includes the following obligations:

- To pay to SCC the Brokerage Service Contribution (£1.29M) in the agreed instalments;
- To pay an Initial Employment Fund for each warehouse to be calculated as set out in the obligation to support the initiatives of the Brokerage Service;
- To pay a Contingency Employment Fund for each warehouse in the event that the agreed targets are not met;
- To require that each incoming occupier prepare, submit for approval and subsequently implement an occupier ESTP for that warehouse.
- To produce quarterly and annual monitoring reports for the performance of each warehouse against the ESTP targets and objectives;

- To establish the Employment Fund Steering Group before the first occupation of any warehouse;
- To make available within the Estate Management Office a room for use by occupiers for training and recruiting purposes.

11.4.5. Schedule 4 is concerned with ecological monitoring and includes the following obligations to SCC:

- To pay the Ecological Monitoring Fee of £15,000 to SCC to enable the Council to monitor the effectiveness of the ecological mitigation and enhancement works;
- To make the LWS Improvement Payment of £60,000 to SCC for the improvement of degraded LWS and ecological connectivity along Saredon Brook.

11.4.6. The other schedules within the DCOB are:

- Schedule 5 sets out the purposes of the Community Fund
- Schedule 6 includes a full copy of the agreed BNIS.
- Schedule 7 includes a full copy of the SWTP.
- Schedule 8 includes a full copy of the SWHGVMP.
- Schedule 9 includes a full copy of the ESTPF.
- Schedule 10 includes Plans A and B which are referred in the obligations together with the GI Plan, Approved Routes Plan and Contingency Fund Routes Plan.<sup>79</sup>

11.4.7. I consider that all of the obligations set out in the DCOB are necessary to ensure that potential adverse effects of the Proposed Development would adequately be mitigated and that all of its potential economic and ecological benefits are secured. These obligations, therefore, meet the tests set out in paragraph 4.10 of the NPSNN.

### **BIRD MITIGATION OBLIGATION**

11.4.8. The Bird Mitigation Obligation [REP8-019] is between the owners of the 12ha Bird Mitigation Land (located to the south of the application site) and SCC. Under that obligation the owners covenant to:

- To submit an Ecological Mitigation and Management Plan for the land, including a detailed programme of implementation, for SCC's approval prior to the commencement of development; and
- To carry out the approved measures for a period of 15 years from the commencement of development.

11.4.9. These obligations are necessary to ensure that the Bird Mitigation Land is managed in such a manner that it would provide appropriate mitigation for the loss of farmland bird habitat on the application site.

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<sup>79</sup> This plan identifies the local roads for which baseline traffic counts would be carried out before development so that any increase in traffic on those roads can be monitored afterwards. The CTM Fund would be used to implement any traffic management measures subsequently agreed to be necessary to discourage the use of a road by WMI traffic.

- 11.4.10. The DCOB and Bird Mitigation Obligation are not for determination by the SoS. I am, however, satisfied that both obligations meet the tests set out in paragraphs 4.10 of the NPSNN and paragraph 56 of the NPPF and that it is appropriate to take these obligations into account in reaching a decision as to whether development consent is granted

## **11.5. CONCLUSIONS**

- 11.5.1. I am satisfied that the description of the Authorised Development in Schedule 1 of the Recommended Order comprises development falling within the terms of s14, 26 and 115 of the PA 2008. I am also satisfied that, with the additional amendments that I have recommended, the provisions and requirements in the Recommended DCO fall within the terms of s120 of the PA 2008.
- 11.5.2. Should the SoS decide that development consent should be granted for the Proposed Development, the final form of the DCO that I recommend is that contained in Appendix D.

## **12. SUMMARY OF FINDINGS AND CONCLUSIONS**

### **12.1. INTRODUCTION**

12.1.1. This chapter summarises the ExA's conclusions arising from the Report as a whole and sets out a recommendation to the SoS.

### **12.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS**

12.2.1. In relation to s104 of the Planning Act 2008 (PA2008) I conclude in summary that:

- making the recommended draft Development Consent Order (DCO) would be in accordance with the National Policy Statement for National Networks (NPSNN), and would not substantively conflict with relevant development plan policy and other relevant policy, all of which have been taken into account in this Report;
- matters arising from the Local Impact Reports from South Staffordshire District Council and Staffordshire County Council have been taken into account;
- whilst the SoS is the competent authority under the Habitats Regulations and will make the definitive assessment, the Proposed Development would not be likely to have significant effects on European sites, species or habitats and this finding has been taken into account in reaching the recommendation;
- in regard to all other matters and representations received, there are no important and relevant matters that would individually or collectively lead to a different recommendation from that below; and
- with the mitigation proposed through the Recommended DCO, there are no adverse impacts arising from the Proposed Development that would outweigh its benefits; and there is no reason to indicate that the application should be decided other than in accordance with the relevant National Policy Statement, NPSNN and none of the other subsections of s104 apply.

12.2.2. I have considered the case for Compulsory Acquisition (CA) and Temporary Possession (TP) of land and rights required in order to implement the Proposed Development. The CA and TP powers requested in all cases are necessary to enable the Applicant to complete the Proposed Development. In addition, there is a compelling case in the public interest, the Applicant has a clear idea of how it intends to use the land, and funds are available for the implementation.

12.2.3. I have had regard to the provisions of the Human Rights Act 1998. In some cases, there would be interference with the peaceful enjoyment of property in contravention of Article 1 of the First Protocol of the Human Rights Act 1998. However, the interference in their human rights would be proportionate and justified in the public interest as set out in Chapter 10.

- 12.2.4. I have had regard to the Public Sector Equality Duty (PSED). The Proposed Development does not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, there is no breach of the PSED.
- 12.2.5. With the changes included within the Recommended DCO as proposed in Appendix D to this Report, the Proposed Development meets the tests in s104 of the PA2008.

## **12.3. RECOMMENDATION**

- 12.3.1. My findings and conclusions on important and relevant matters are set out in this Report. In considering the recommendation, the Secretary of State may wish to be satisfied on the following points:
- The appropriate approach to be taken to the interpretation and application of the objectives and requirements with regard to SRFI proposals that are set out in paragraphs 4.83 and 4.88 of the NPSNN;
  - Whether Articles 11,13,17, 21 of the Recommended DCO should be amended to include the words shown in italics in the Applicant's final draft DCO [REP8-005] in response to Highway England's concerns about deemed consent [REP2-034];
  - Whether Rail Requirement 4 in Part 2 of Schedule 2 to the Recommended DCO should include the additional flexibility that was sought in the alternative wording proposed in italics in the Applicant in their final draft DCO [REP8-005].
  - If minded to make the Recommended DCO with the additional Requirement 7(3) included within Part 1 of Schedule in accordance with my recommendation, the SoS will need to consider whether to seek comments from the relevant parties before making the Order in that form.
- 12.3.2. Subject to the above, the SoS is recommended to make The West Midlands Rail Freight Interchange Order 20xx in the form attached as Appendix D to this report.

## **APPENDICES**

APPENDIX A: THE EXAMINATION .....	I
APPENDIX B: EXAMINATION LIBRARY.....	IV
APPENDIX C: LIST OF ABBREVIATIONS .....	I
APPENDIX D: THE RECOMMENDED DCO.....	VII

## APPENDIX A: THE EXAMINATION

The table below lists the main events during the examination.

	<b>EVENT</b>	<b>DATE</b> <b>All dates are 2019</b>
1	<b>Preliminary Meeting</b>	27 February
2	<b>Open Floor Hearing – afternoon</b>	27 February
3	<b>Open Floor Hearing – evening</b>	27 February
4	<b>Issue Specific Hearing 1 re draft DCO</b>	28 February
5	Publication by the ExA of: Rule 8 letter Examination Timetable The ExA's First Written Questions	4 March
6	<b>Deadline 1</b>  Deadline for receipt of post-hearing submissions and written submissions of oral case and any supporting information	13 March
7	<b>Deadline 2</b>  Deadline for receipt of: Comments on Relevant Representations (RRs) Summaries of all RRs exceeding 1500 words Written Representations (WRs) Summaries of all WRs exceeding 1500 words Local Impact Reports from local authorities Statements of Common Ground (SoCG) requested by the ExA Responses to the ExA's First Written Questions Comments on updated application documents Applicant's proposed itinerary for an Accompanied Site Inspection Proposals from other IPs for Accompanied Site Inspection Viewpoints Notification of wish to speak at a Compulsory Acquisition Hearing or an Open Floor Hearing Comments on Submissions Made at Deadline 1	5 April

8	<b>Deadline 3</b> Deadline for receipt of: Comments on submissions for Deadline 2 including responses to First Written Questions Revised draft DCO from Applicant	24 April
9	<b>Accompanied Site Inspection Part 1 – afternoon</b>	3 June
10	<b>Accompanied Site Inspection Part 2 – morning/ afternoon</b>	4 June
11	<b>Compulsory Acquisition Hearing – morning</b>	5 June
12	<b>Issue Specific Hearing 2 re Accessibility and Transport – morning</b>	5 June
13	<b>Issue Specific Hearing 3 re Environmental Matters – morning</b>	6 June
14	<b>Issue Specific Hearing 4 re draft DCO – afternoon</b>	6 June
15	<b>Deadline 4</b> Deadline for receipt of post hearing submissions including written submissions of oral case and any supporting information	14 June
16	Publication of ExA's Second Written Questions	19 June
17	<b>Deadline 5</b> Deadline for receipt of: Responses to the ExA's Second Written Questions and other information requested by the ExA Applicant's revised draft DCO and updated Explanatory Memorandum	5 July
18	<b>Issue Specific Hearing 5 re Meeting SRFI Objectives – afternoon</b>	10 July
19	<b>Issue Specific Hearing 6 re draft DCO – morning</b>	11 July
20	<b>Deadline 6</b> Deadline for receipt of:	19 July

	<p>Comments Deadline 5 submission including responses to the ExA's Second Written Questions and requests of further information</p> <p>Post hearing submissions including written submissions of oral case and any supporting information</p> <p>Applicant's final draft DCO and updated Explanatory Memorandum</p>	
21	Publication by the ExA of ExA's Third Written Questions and request for information	31 July
22	<p><b>Deadline 7</b></p> <p>Deadline for receipt of: Responses to ExA's Third Written Questions and Request for Information Comments on applicant's final draft DCO and related documents</p>	7 August
23	Publication by ExA of Request for Further Information	15 August
24	<p><b>Deadline 8</b></p> <p>Deadline for receipt of: Responses to ExA's Request for Further Information published on 15 August Final DCO to be submitted by the Applicant in the SI template with the SI template validation report Signed DCOb and Bird Mitigation Obligation</p>	21 August
25	<p>Deadline for comments on responses to ExA Request for Further Information</p> <p><b>Examination Closed</b></p>	27 August

## **APPENDIX B: EXAMINATION LIBRARY**

# **TR050005 West Midlands Interchange**

## **Examination Library**

**Updated – 02/09/2019**

This Examination Library relates to the West Midlands Interchange application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document. A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites and will be used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- This is a working document and will be updated periodically as the examination progresses.
- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate, is published to the National Infrastructure Website but is not included within the Examination Library as such advice is not an examination document.
- This document contains references to documents from the point the application was submitted.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

**TR050005 West Midlands Interchange****Examination Library - Index**

<b>Category</b>	<b>Reference</b>
<a href="#">Application Documents</a> As submitted and amended version received before the PM. Any amended version received during the Examination stage to be saved under the Deadline received	APP-xxx
<a href="#">Adequacy of Consultation responses</a>	AoC-xxx
<a href="#">Relevant Representations</a>	RR-xxx
<a href="#">Procedural Decisions and Notifications from the Examining Authority</a> Includes Examining Authority's questions, s55, and post acceptance s51	PD-xxx
<a href="#">Additional Submissions</a> Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination	AS-xxx
<a href="#">Events and Hearings</a> Includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant's hearing notices, and responses to Rule 6 and Rule 8 letters	EV-xxx
<b><a href="#">Representations – by Deadline</a></b>	
<a href="#">Deadline 1:</a>	REP1-xxx
<a href="#">Deadline 2:</a>	REP2-xxx
<a href="#">Deadline 3:</a>	REP3-xxx
<a href="#">Deadline 4:</a>	REP4-xxx

<a href="#">Deadline 5:</a>	REP5-xxx
<a href="#">Deadline 6:</a>	REP6-xxx
<a href="#">Deadline 7:</a>	REP7-xxx
<a href="#">Deadline 8:</a>	REP8-xxx
<a href="#">Other Documents</a> Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents	OD-xxx

## TR050005 West Midlands Interchange

### Examination Library

#### Application Documents

APP-001	<a href="#">Four Ashes Limited</a> 1.1 Application Form
APP-002	<a href="#">Four Ashes Limited</a> 1.2 Guide to the Application
APP-003	<a href="#">Four Ashes Limited</a> 1.3 Document List
APP-004	<a href="#">Four Ashes Limited</a> Applicants S55 Checklist
APP-005	<a href="#">Four Ashes Limited</a> 4.1 Statement of Reasons
APP-006	<a href="#">Four Ashes Limited</a> 4.2 Funding Statement
APP-007	<a href="#">Four Ashes Limited</a> 4.3 Book of Reference
APP-008	<a href="#">Four Ashes Limited</a> 3.1 Draft Development Consent Order
APP-010	<a href="#">Four Ashes Limited</a> 3.2 Explanatory Memorandum
APP-011	<a href="#">Four Ashes Limited</a> 3.3 Draft Development Consent Order - Validation Report
APP-012	<a href="#">Four Ashes Limited</a> 6.1 Scoping Opinion
APP-013	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Glossary and Abbreviations
APP-014	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Volume 1 - Table of Contents
APP-015	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Volume 2 - Table of Contents
APP-016	<a href="#">Four Ashes Limited</a> 6.2 Non-Technical Summary
APP-017	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 1 Introduction
APP-018	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 2 EIA Process and Methodology
APP-019	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 3 Alternatives and Design Evolution

APP-020	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 4 Description of the Proposed Development
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APP-021	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 4 Description of the Proposed Development Figure 4.2 - Floor Level and Building Heights Parameter Plan
APP-022	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 4 Description of the Proposed Development Figure 4.3 - Green Infrastructure Parameter Plan
APP-023	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 4 Description of the Proposed Development Figure 4.4 - Demolition Plan
APP-024	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 4 Description of the Proposed Development Figure 4.5 - Indicative Phasing Plan
APP-025	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 5 Demolition and Construction
APP-026	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 6 Agriculture and Soils
APP-027	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 7 Air Quality
APP-028	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 8 Archaeology (Below Ground Heritage)
APP-029	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 9 Cultural Heritage - Built Heritage
APP-030	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 10 Ecology and Nature Conservation
APP-031	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 11 Ground Conditions
APP-032	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 12 Landscape and Visual
APP-033	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 12 Landscape and Visual Figure 12.1 - Landscape Character - National and County
APP-034	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 12 Landscape and Visual Figure 12.2 - Landscape Sensitivity for Employment Site Allocations (Plan Extract of Figure 1)
APP-035	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 12 Landscape and Visual Figure 12.3 - Landscape Designations
APP-036	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 12 Landscape and Visual Figure 12.4 - Site Landscape
APP-037	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 12 Landscape and Visual Figure 12.5 - Topography

APP-038	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 12 Landscape and Visual Figure 12.6 - Aerial and Oblique Aerial Photographs
APP-039	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 12 Landscape and Visual Figure 12.7 - Photo Viewpoint and Photomontage Locations
APP-040	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 12 Landscape and Visual Figure 12.8 - Photo Viewpoints
APP-041	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 12 Landscape and Visual Figure 12.9 - Zone of Theoretical Visibility (ZTV)
APP-042	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 12 Landscape and Visual Figure 12.10 - Visual Receptors - Inset Plan
APP-043	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 12 Landscape and Visual Figure 12.11 - Landscape and Green Infrastructure - Illustrative Plan
APP-044	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 12 Landscape and Visual Figure 12.12 - Illustrative Landscape Cross Sections
APP-045	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 12 Landscape and Visual Figure 12.13 - Photomontages
APP-046	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 13 Noise and Vibration
APP-047	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 13 Noise and Vibration Figure 13.1 - Baseline Survey Locations
APP-048	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 13 Noise and Vibration Figure 13.2 - Receptor Locations
APP-049	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 13 Noise and Vibration Figure 13.3 - Vicarage Road Receptors
APP-050	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 13 Noise and Vibration Figure 13.4 - NIR 1975 Assessment Locations
APP-051	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 13 Noise and Vibration Figure 13.5 - NIR 1996 Assessment Locations
APP-052	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 14 Socio-economics and Human Health
APP-053	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 15 Transport and Access
APP-054	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 15 Transport and Access Figures 15.1 - 15.10 Transport Figures

APP-055	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 16 Water Environment and Flood Risk
APP-056	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 17 Cumulative Effects
APP-057	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Chapter 18 Summary of Residual Effects
APP-058	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 2.1 ES Scoping Report
APP-059	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 2.2 ES Scoping Opinion
APP-060	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 2.3 Outline Demolition and Construction Environmental Management Plan
APP-061	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 2.4 Operational Waste Technical Note
APP-062	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 2.5 Daylight sunlight and overshadowing technical note
APP-063	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 2.6 Wind Microclimate Technical Note
APP-064	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 2.7 List of other developments for the cumulative effects assessment
APP-065	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 2.8 Statement of technical competence for ES authors
APP-066	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 6.1 Agricultural Land Classification (ALC)
APP-067	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 7.1 Construction Dust Assessment Criteria
APP-068	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 7.2 Methodology for Modelling of Traffic Emissions
APP-069	<a href="#">Four Ashes Limited</a> Environmental Statement - Appendix 7.3 Local Authority Data
APP-070	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 7.4 Future Base Concentrations Predicted at Receptors
APP-071	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 7.5 Predicted Construction Impacts at Human Receptors
APP-072	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 7.6 Predicted Impacts at Human Receptors

APP-073	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 7.7 Compliance Risk Assessment Results
APP-074	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 7.8 WSP WMI Transport Technical Note
APP-075	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 8.1 Historic Environment Desk-Based Assessment
APP-076	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 8.2 Addendum to Historic Environment Desk-Based Assessment
APP-077	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 8.3 LiDAR data assessment
APP-078	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 8.4 Detailed Gradiometer Survey Report
APP-079	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 8.5 Outline Written Scheme of Investigation
APP-080	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 9.1 Historic Map
APP-081	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 9.2 Map of Heritage Receptors
APP-082	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 9.3 Map of the Staffordshire and Worcestershire Canal
APP-083	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 9.4 Staffordshire and Worcestershire Canal Conservation Area Appraisal (Staffordshire County Council 1978)
APP-084	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 9.5 Historic Landscape Character Maps
APP-085	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 9.6 Photographic Gazetteer of Heritage Receptors
APP-086	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 9.7 List Entry Descriptions
APP-087	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 10.1 Ecology Baseline Report
APP-088	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 10.2 Badger Report (Confidential)
APP-089	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 10.3 No Significant Effects Report (Habitats Regulations)

APP-090	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 10.4 Framework Ecological Mitigation and Management Plan
APP-091	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 10.5 Natural England Letter of no Impediment
APP-092	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 11.1 Historical Maps
APP-093	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 11.2 Environmental Database Report
APP-094	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 11.3 Factual Phase II Environmental Site Assessment
APP-095	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 11.4 Factual Phase II Environmental Site Assessment - South-east land
APP-096	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 11.5 Remediation Safeguarding Report
APP-097	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 11.6 Summary of Ground Conditions
APP-098	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 12.1 Landscape and Visual Impact Assessment (LVIA) Criteria
APP-099	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 12.2 Visibility Mapping and Photomontage Methodology
APP-100	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 12.3 Published Landscape Character Assessments - Relevant Extracts
APP-102	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 12.4 Cannock Chase AONB Management Plan
APP-103	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 12.5 Landscape Effects Table (LET)
APP-104	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 12.6 Visual Effects Table (VET)
APP-105	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 12.7 Arboriculture Assessment
APP-106	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 12.8 Lighting Strategy and Lighting Impact Assessment
APP-107	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 12.9 Green Infrastructure - Planting and Habitats Summary Schedule of Areas

APP-108	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 13.1 Glossary of Terminology
APP-109	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement - Appendix 13.2 Standards and Guidelines
APP-110	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 13.3 Full Survey Results
APP-111	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 13.4 Construction Assessment
APP-112	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 13.5 Operational Noise Assessment Information
APP-113	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 14.1 Wind Effects on Sailing (Desk Study)
APP-114	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Transport Assessment
APP-115	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Figure 1 - Site Location and Local Highway Network
APP-116	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Figure 2 - Existing Pedestrian and Cycle Network
APP-117	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Figure 3 - Existing Local Access Restrictions around WMI
APP-118	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Figure 4 - Existing Public Transport Network
APP-119	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Figure 5 - Survey Locations
APP-120	<a href="#">Four Ashes Limited</a> Environmental Statement Appendix 15.1 Figure 6 - Personal Injury Accidents 1 7 11 to 30 6 16
APP-121	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Figure 7 - Access Points to Site
APP-122	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Figure 8 - Proposed Non Car Access Strategy
APP-123	<a href="#">Four Ashes Limited</a> Environmental Statement Appendix 15.1 Figure 9 - Proposed Directional Signage
APP-124	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Figure 10 - Proposed Local Access Signs

APP-125	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Figure 11 - Routes to be considered by Contingent Traffic Management Fund
APP-126	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Figure 12 - Key Junction Locations
APP-127	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Figure 13 - Local Journey Time Routes
APP-128	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Figure 14 - A449/A5 Link Road Internal Junctions
APP-129	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Figure 15 - Potential Alternative Routes for WMI
APP-130	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Appendix A Transport Assessment Scoping Note
APP-131	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Appendix B Meeting Notes
APP-132	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Appendix C List of Surveys Undertaken
APP-133	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Appendix D 2015 Baseline Link Flow Diagram
APP-134	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Appendix E General Arrangement Drawings
APP-135	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Appendix F Technical Note 22 (Vicarage Road Junctions)
APP-136	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Appendix G Technical Note 19 (Sustainable Transport Strategy)
APP-137	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Appendix H Site Wide Travel Plan
APP-138	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Appendix I Site Wide HGV Management Plan
APP-139	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Appendix J Intermodal Terminal Access Arrangements and HGV Parking Drawing
APP-140	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Appendix K Technical Note 5 (HGV and Non HGV Trip Generation)

APP-141	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Appendix L Technical Note 28 - TRICS Initial Trip Rates
APP- 142	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Appendix M Technical Note 14 (Trip Distribution)
APP -143	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Appendix N Demolition and Construction Traffic Management Plan
APP-144	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Appendix O Local Model Validation Report Feb 2017 VISSIM
APP-145	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Appendix P Traffic Flow Diagrams of Wider Area Using M54 M6SM and SSVM
APP-146	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Appendix Q Traffic Flow Turning Diagrams of Local Area Using SSVM Data -2021
APP-147	<a href="#">Four Ashes Limited</a> Environmental Statement Appendix 15.1 Appendix R Merge Diverge Assessment
APP-148	<a href="#">Four Ashes Limited</a> Environmental Statement Appendix 15.1 Appendix S Technical Note 31 Shift Change Assessments
APP-149	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 15.1 Appendix T Technical Note 29- 2036 Assessment
APP-150	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 16.1 Flood Risk Assessment (FRA)
APP-151	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 16.2 Water Framework Directive (WFD) Assessment
APP-152	<a href="#">Four Ashes Limited</a> 6.2 Environmental Statement Appendix 16.3 Site Wide Surface Water Drainage Strategy
APP-153	<a href="#">Four Ashes Limited</a> 5.2 Statutory Nuisance Statement
APP-154	<a href="#">Four Ashes Limited</a> 5.3 Habitats Regulation Assessment - No Significant Effects Report
APP-155	<a href="#">Four Ashes Limited</a> 7.6 Mitigation Route Map
APP-156	<a href="#">Four Ashes Limited</a> 7.7A Draft Development Consent Obligation
APP-157	<a href="#">Four Ashes Limited</a> 7.7B Draft Bird Mitigation Obligation
APP-158	<a href="#">Four Ashes Limited</a> 7.8 Existing Highway Orders

APP-159	<a href="#">Four Ashes Limited</a> 2.1 Land Plans Key Plan
APP-160	<a href="#">Four Ashes Limited</a> 2.1A Land Plans Sheet 1 of 12
APP-161	<a href="#">Four Ashes Limited</a> 2.1B Land Plans Sheet 2 of 12
APP-162	<a href="#">Four Ashes Limited</a> 2.1C Land Plans Sheet 3 of 12
APP-163	<a href="#">Four Ashes Limited</a> 2.1D Land Plans Sheet 4 of 12
APP-164	<a href="#">Four Ashes Limited</a> 2.1E Land Plans Sheet 5 of 12
APP-165	<a href="#">Four Ashes Limited</a> 2.1F Land Plans Sheet 6 of 12
APP-166	<a href="#">Four Ashes Limited</a> 2.1G Land Plans Sheet 7 of 12
APP-167	<a href="#">Four Ashes Limited</a> 2.1H Land Plans Sheet 8 of 12
APP-168	<a href="#">Four Ashes Limited</a> 2.1I Land Plans Sheet 9 of 12
APP-169	<a href="#">Four Ashes Limited</a> 2.1J Land Plans Sheet 10 of 12
APP-170	<a href="#">Four Ashes Limited</a> 2.1K Land Plans Sheet 11 of 12
APP-171	<a href="#">Four Ashes Limited</a> 2.1L Land Plans Sheet 12 of 12
APP-172	<a href="#">Four Ashes Limited</a> 2.2 Works Plans Key Plan
APP-173	<a href="#">Four Ashes Limited</a> 2.2A Works Plans Sheet 1 of 9
APP-174	<a href="#">Four Ashes Limited</a> 2.2B Works Plans Sheet 2 of 9
APP-175	<a href="#">Four Ashes Limited</a> 2.2C Works Plans Sheet 3 of 9
APP-176	<a href="#">Four Ashes Limited</a> 2.2D Works Plans Sheet 4 of 9
APP-177	<a href="#">Four Ashes Limited</a> 2.2E Works Plans Sheet 5 of 9
APP-178	<a href="#">Four Ashes Limited</a> 2.2F Works Plans Sheet 6 of 9
APP-179	<a href="#">Four Ashes Limited</a> 2.2G Works Plans Sheet 7 of 9
APP-180	<a href="#">Four Ashes Limited</a> 2.2H Works Plans Sheet 8 of 9
APP-181	<a href="#">Four Ashes Limited</a> 2.2I Works Plans Sheet 9 of 9
APP-182	<a href="#">Four Ashes Limited</a> 2.3 Access and Rights of Way Plans Key Plan
APP-183	<a href="#">Four Ashes Limited</a> 2.3A Access and Rights of Way Plans Sheet 1 of 6

APP-184	<a href="#">Four Ashes Limited</a> 2.3B Access and Rights of Way Plans Sheet 2 of 6
APP-185	<a href="#">Four Ashes Limited</a> 2.3C Access and Rights of Way Plans Sheet 3 of 6
APP-186	<a href="#">Four Ashes Limited</a> 2.3D Access and Rights of Way Plans Sheet 4 of 6
APP-187	<a href="#">Four Ashes Limited</a> 2.3E Access and Rights of Way Plans Sheet 5 of 6
APP-188	<a href="#">Four Ashes Limited</a> 2.3F Access and Rights of Way Plans Sheet 6 of 6
APP-189	<a href="#">Four Ashes Limited</a> 2.4 Order Limits and Parish Boundaries Plan
APP-190	<a href="#">Four Ashes Limited</a> 2.5 Development Zone Parameters Plan Key Plan
APP-191	<a href="#">Four Ashes Limited</a> 2.5A Development Zone Parameters Plan Sheet 1 of 4
APP-192	<a href="#">Four Ashes Limited</a> 2.5B Development Zone Parameters Plan Sheet 2 of 4
APP-193	<a href="#">Four Ashes Limited</a> 2.5C Development Zone Parameters Plan Sheet 3 of 4
APP-194	<a href="#">Four Ashes Limited</a> 2.5D Development Zone Parameters Plan Sheet 4 of 4
APP-195	<a href="#">Four Ashes Limited</a> 2.6 Floor Levels and Building Heights Parameters Plan Key Plan
APP-196	<a href="#">Four Ashes Limited</a> 2.6A Floor Levels and Building Heights Parameters Plan Sheet 1 of 4
APP-197	<a href="#">Four Ashes Limited</a> 2.6B Floor Levels and Building Heights Parameters Plan Sheet 2 of 4
APP-198	<a href="#">Four Ashes Limited</a> 2.6C Floor Levels and Building Heights Parameters Plan Sheet 3 of 4
APP-199	<a href="#">Four Ashes Limited</a> 2.6D Floor Levels and Building Heights Parameters Plan Sheet 4 of 4
APP-200	<a href="#">Four Ashes Limited</a> 2.7 Green Infrastructure Parameters Plan Key Plan
APP-201	<a href="#">Four Ashes Limited</a> 2.7A Green Infrastructure Parameters Plan Sheet 1 of 4
APP-202	<a href="#">Four Ashes Limited</a> 2.7B Green Infrastructure Parameters Plan Sheet 2 of 4
APP-203	<a href="#">Four Ashes Limited</a> 2.7C Green Infrastructure Parameters Plan Sheet 3 of 4
APP-204	<a href="#">Four Ashes Limited</a> 2.7D Green Infrastructure Parameters Plan Sheet 4 of 4
APP-205	<a href="#">Four Ashes Limited</a> 2.8 Illustrative Master plan Key Plan
APP-206	<a href="#">Four Ashes Limited</a> 2.8A Illustrative Master plan Sheet 1 of 4

APP-207	<a href="#">Four Ashes Limited</a> 2.8B Illustrative Master plan Sheet 2 of 4
APP-208	<a href="#">Four Ashes Limited</a> 2.8C Illustrative Master plan Sheet 3 of 4
APP-209	<a href="#">Four Ashes Limited</a> 2.8D Illustrative Master plan Sheet 4 of 4
APP-210	<a href="#">Four Ashes Limited</a> 2.9 Highway Plans General Arrangement Key Plan/Highway Master plan
APP-211	<a href="#">Four Ashes Limited</a> 2.9A Highway Plans General Arrangement Plan 101
APP-212	<a href="#">Four Ashes Limited</a> 2.9B Highway Plans General Arrangement Plan 102
APP-213	<a href="#">Four Ashes Limited</a> 2.9C Highway Plans General Arrangement Plan 103
APP-214	<a href="#">Four Ashes Limited</a> 2.9D Highway Plans General Arrangement Plan 104
APP-215	<a href="#">Four Ashes Limited</a> 2.9E Highway Plans General Arrangement Plan 105
APP-216	<a href="#">Four Ashes Limited</a> 2.9F Highway Plans General Arrangement Plan 106
APP-217	<a href="#">Four Ashes Limited</a> 2.9G Highway Plans General Arrangement Plan 107
APP-218	<a href="#">Four Ashes Limited</a> 2.9H Highway Plans General Arrangement Plan 108
APP-219	<a href="#">Four Ashes Limited</a> 2.9I Highway Plans General Arrangement Plan 109
APP-220	<a href="#">Four Ashes Limited</a> 2.9J Highway Plans General Arrangement Plan 110
APP-221	<a href="#">Four Ashes Limited</a> 2.9K Highway Plans General Arrangement Plan 111
APP-222	<a href="#">Four Ashes Limited</a> 2.10 Future Highways Maintenance Plans Key Plan
APP-223	<a href="#">Four Ashes Limited</a> 2.10A Future Highways Maintenance Plans Sheet 1 of 3
APP-224	<a href="#">Four Ashes Limited</a> 2.10B Future Highways Maintenance Plans Sheet 2 of 3
APP-225	<a href="#">Four Ashes Limited</a> 2.10C Future Highways Maintenance Plans Sheet 3 of 3
APP-226	<a href="#">Four Ashes Limited</a> 2.11 Traffic Regulation Plans Key Plan
APP-227	<a href="#">Four Ashes Limited</a> 2.11A Traffic Regulation Plans Sheet 1 of 3
APP-228	<a href="#">Four Ashes Limited</a> 2.11B Traffic Regulation Plans Sheet 2 of 3
APP-229	<a href="#">Four Ashes Limited</a> 2.11C Traffic Regulation Plans Sheet 3 of 3
APP-230	<a href="#">Four Ashes Limited</a> 2.12 Speed Limit Plans Key Plan
APP-231	<a href="#">Four Ashes Limited</a> 2.12A Speed Limit Plans Sheet 1 of 3

APP-232	<a href="#">Four Ashes Limited</a> 2.12B Speed Limit Plans Sheet 2 of 3
APP-233	<a href="#">Four Ashes Limited</a> 2.12C Speed Limit Plans Sheet 3 of 3
APP-234	<a href="#">Four Ashes Limited</a> 2.13 Highway Classification Plans Key Plan
APP-235	<a href="#">Four Ashes Limited</a> 2.13A Highway Classification Plans Sheet 1 of 3
APP-236	<a href="#">Four Ashes Limited</a> 2.13B Highway Classification Plans Sheet 2 of 3
APP-237	<a href="#">Four Ashes Limited</a> 2.13C Highway Classification Plans Sheet 3 of 3
APP-238	<a href="#">Four Ashes Limited</a> 2.14 Rail General Arrangement Drawings Illustrative Arrangement of Rail Alignment
APP-239	<a href="#">Four Ashes Limited</a> 2.15A Rail Terminal - Illustrative Initial Rail Terminal Layout
APP-240	<a href="#">Four Ashes Limited</a> 2.15B Rail Terminal - Illustrative Expanded Rail Terminal Layout
APP-241	<a href="#">Four Ashes Limited</a> 2.16A Cross Sections Rail Alignment Sheet 1 of 3
APP-242	<a href="#">Four Ashes Limited</a> 2.16B Cross Sections Rail Alignment Sheet 2 of 3
APP-243	<a href="#">Four Ashes Limited</a> 2.16C Cross Sections Rail Alignment Sheet 3 of 3
APP-244	<a href="#">Four Ashes Limited</a> 2.16D Long Sections - Rail Alignment Sheet 1 of 2
APP-245	<a href="#">Four Ashes Limited</a> 2.16E Long Sections - Rail Alignment Sheet 2 of 2
APP-246	<a href="#">Four Ashes Limited</a> 2.17 Proposed Road Bridge Location Plan
APP-247	<a href="#">Four Ashes Limited</a> 2.18A Proposed Road Bridges Plan and Long Section
APP-248	<a href="#">Four Ashes Limited</a> 2.18B Proposed Road Bridge B1 Section and Elevation
APP-249	<a href="#">Four Ashes Limited</a> 2.18C Proposed Road Bridge B2 and B3 Section and Elevation
APP-250	<a href="#">Four Ashes Limited</a> 2.18D Proposed Road Bridge B4 Section and Elevation
APP-251	<a href="#">Four Ashes Limited</a> 2.19 Ease of Use A3 Plan Bundle
APP-252	<a href="#">Four Ashes Limited</a> 7.1A Planning Statement
APP-253	<a href="#">Four Ashes Limited</a> 7.1A Planning Statement Appendices
APP-254	<a href="#">Four Ashes Limited</a> 7.1B Statement of Economic Benefits
APP-255	<a href="#">Four Ashes Limited</a> 7.2 Alternative Sites Assessment
APP-256	<a href="#">Four Ashes Limited</a> 7.3 Rail Operations Report

APP-257	<a href="#">Four Ashes Limited</a> 7.4 Market Assessment
APP-258	<a href="#">Four Ashes Limited</a> 7.5 Design and Access Statement
APP-259	<a href="#">Four Ashes Limited</a> 5.1 Consultation Report
APP-260	<a href="#">Four Ashes Limited</a> 5.1 Consultation Report Appendices Part 1 - Appendices A to H
APP-261	<a href="#">Four Ashes Limited</a> 5.1 Consultation Report Appendices Part 2 - Appendices I to R
<b>Adequacy of Consultation Responses</b>	
AoC-001	<a href="#">Peak District National Park Authority</a> Adequacy of Consultation Representation
AoC-002	<a href="#">Cannock Chase District Council</a> Adequacy of Consultation Representation
AoC-003	<a href="#">Derbyshire County Council</a> Adequacy of Consultation Representation
AoC-004	<a href="#">Stafford Borough Council</a> Adequacy of Consultation Representation
AoC-005	<a href="#">South Staffordshire District Council</a> Adequacy of Consultation Representation
AoC-006	<a href="#">City of Wolverhampton Council</a> Adequacy of Consultation Representation
AoC-007	<a href="#">Walsall Council</a> Adequacy of Consultation Representation
AoC-008	<a href="#">Staffordshire County Council</a> Adequacy of Consultation Representation
AoC-009	<a href="#">Birmingham City Council</a> Adequacy of Consultation Representation
<b>Relevant Representations</b>	
-	To assist navigation of this Examination Library, the Relevant Representations are recorded in a separate library available here: <a href="https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/2020/05/000547-West%20Mids%20RR%20Table.pdf">https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/2020/05/000547-West%20Mids%20RR%20Table.pdf</a>
<b>Procedural Decisions and Notifications from the Examining Authority</b>	
PD-001	<a href="#">Notification of Decision to Accept Application</a>
PD-002	<a href="#">Appointment of Examining Authority</a>
PD-003	<a href="#">Four Ashes Limited</a> Section 56 and regulation 8 and 16 Notice
PD-004	<a href="#">Section 51 advice to the Applicant</a>
PD-005	<a href="#">Section 55 Checklist</a>
PD-006	<a href="#">Rule 6 letter - Notification of the preliminary meeting and matters to be discussed</a>
PD-007	<a href="#">Written Questions</a>
PD-008	<a href="#">Rule 8 – notification of timetable for the examination</a>
PD-009	<a href="#">Rule 13 - Notification of Hearings</a>

PD-010	<a href="#">Rule 13 - Notification of Hearings</a>
PD-011	<a href="#">Further Written Questions</a>
PD-012	<a href="#">Request for Further Information - Rule 17 - 30 July 2019</a>
PD-013	<a href="#">Request for Further Information - Rule 8(3) &amp; Rule 17</a>
PD-014	<a href="#">Notification of Completion of the Examining Authority's Examination</a>

<b>Additional Submissions</b>	
AS-001	<a href="#">Four Ashes Limited</a> Response to Box 30 of s55 checklist Accepted at the discretion of the Examining Authority
AS-002	<a href="#">Four Ashes Limited</a> Response to s51 Advice Accepted at the discretion of the Examining Authority
AS-003	<a href="#">Four Ashes Limited</a> Fig 10 001 Designated Sites Accepted at the discretion of the Examining Authority
AS-004	<a href="#">Four Ashes Limited</a> Fig 10 004 Bird Mitigation Accepted at the discretion of the Examining Authority
AS-005	<a href="#">Four Ashes Limited</a> Annex 10 1 1SERC Map Legend Accepted at the discretion of the Examining Authority
AS-006	<a href="#">Four Ashes Limited</a> Highway General Arrangement Plan 108 Accepted at the discretion of the Examining Authority
AS-007	<a href="#">Cadent Gas</a> Relevant Representation Withdraw Accepted at the discretion of the Examining Authority
AS-008	<a href="#">Western Power Distribution</a> Protective Provisions Accepted at the discretion of the Examining Authority
AS-009	<a href="#">Jane O'Flaherty</a> Relevant Representation Accepted at the discretion of the Examining Authority
AS-010	<a href="#">Oliver Nagel</a> Relevant Representation Accepted at the discretion of the Examining Authority
AS-011	<a href="#">Peter Swinden</a> Relevant Representation Accepted at the discretion of the Examining Authority
AS-012	<a href="#">Leonard Lean</a> Additional Submission - Accepted at the discretion of the Examining Authority
AS-013	<a href="#">Penkridge Parish Council</a> Additional Submission - Accepted at the discretion of the Examining Authority
AS-014	<a href="#">Four Ashes Limited</a> Additional Submission - Accepted at the discretion of the Examining Authority - 3.1A DCO (Clean)
AS-015	<a href="#">Four Ashes Limited</a> Additional Submission - Accepted at the discretion of the Examining Authority - 3.1A - DCO (Tracked)
AS-016	<a href="#">Four Ashes Limited</a> Additional Submission - Accepted at the discretion of the Examining Authority - 3.4 DCO Tracker
AS-017	<a href="#">Peak District National Park Authority</a> Additional Submission - Accepted at the discretion of the Examining Authority

AS-018	<a href="#">NATS</a> Additional Submission - Accepted at the discretion of the Examining Authority
AS-019	<a href="#">Keith Burton</a> Additional Submission - Accepted at the discretion of the Examining Authority
AS-020	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Letter to PINS - Accepted at the discretion of the Examining Authority
AS-021	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Document List - Accepted at the discretion of the Examining Authority
AS-022	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Applicant's Draft Response to ExA DCO and DCOB Comments (Agenda to ISH1) - Accepted at the discretion of the Examining Authority
AS-023	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Updated Draft Development Consent Obligation - Accepted at the discretion of the Examining Authority
AS-024	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Statement of Common Ground with Historic England - Accepted at the discretion of the Examining Authority
AS-025	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Statement of Common Ground with Network Rail - Accepted at the discretion of the Examining Authority
AS-026	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Statement of Common Ground with Environment Agency - Accepted at the discretion of the Examining Authority
AS-027	<a href="#">FBC Manby Bowdler LLP on behalf of <b>The Inglewood Investment Company Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority
AS-028	<a href="#">Canal &amp; River Trust</a> Additional Submission - Accepted at the discretion of the Examining Authority
AS-029	<a href="#">Margaret Heath</a> Additional Submission - Accepted at the discretion of the Examining Authority
AS-030	<a href="#">Cllr Winnie Millington</a> Additional Submission - Accepted at the discretion of the Examining Authority

AS-031	<a href="#"><u>Max Reynolds on behalf of Greensforge Sailing Club</u></a> Additional Submission - Accepted at the discretion of the Examining Authority
AS-032	<a href="#"><u>Penkridge Parish Council</u></a> Additional Submission - Accepted at the discretion of the Examining Authority
AS-033	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of Four Ashes Limited</u></a> Additional Submission - Letter to PINS 19.2.19 - Accepted at the discretion of the Examining Authority
AS-034	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of Four Ashes Limited</u></a> Additional Submission - Letter to PINS 7.5.19 - Accepted at the discretion of the Examining Authority
AS-035	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of Four Ashes Limited</u></a> Additional Submission - ES - Vol 2 Technical Appendix 10.4 Updated Framework EMMP Regulation 5(2)(a) - Accepted at the discretion of the Examining Authority
AS-036	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of Four Ashes Limited</u></a> Additional Submission - ES - Vol 2 Technical Appendix 10.4 Updated Framework EMMP (highlighted text) Regulation 5(2)(a) - Accepted at the discretion of the Examining Authority
AS-037	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of Four Ashes Limited</u></a> Additional Submission - Updated Draft Development Consent Obligation Clean - Accepted at the discretion of the Examining Authority
AS-038	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of Four Ashes Limited</u></a> Additional Submission - Updated Draft Development Consent Obligation Tracked - Accepted at the discretion of the Examining Authority
AS-039	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of Four Ashes Limited</u></a> Additional Submission - Site Wide Travel Plan April 2019 - Accepted at the discretion of the Examining Authority
AS-040	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of Four Ashes Limited</u></a> Additional Submission - Site Wide HGV Management Plan April 2019 - Accepted at the discretion of the Examining Authority
AS-041	<a href="#"><u>Anita Anderson</u></a> Additional Submission - Accepted at the discretion of the Examining Authority
AS-042	<a href="#"><u>FBC Manby Bowdler LLP on behalf of The Inglewood Investment Company Limited</u></a> Additional Submission - Accepted at the discretion of the Examining Authority

AS-043	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Letter to PINS 21.5.19
AS-044	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Explanation of Minor Amendments to Plans
AS-045	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Document List
AS-046	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Updated Mitigation Route Map
AS-047	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Access and Rights of Way Plans Key Plan
AS-048	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Access and Rights of Way Plans Sheet 1
AS-049	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Access and Rights of Way Plans Sheet 2
AS-050	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Access and Rights of Way Plans Sheet 6
AS-051	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Access and Rights of Way Plans Sheet 7
AS-052	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Development Zone Key Plan
AS-053	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Development Zone Plan Sheet 1
AS-054	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Development Zone Plan Sheet 2

AS-055	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Development Zone Plan Sheet 3
AS-056	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Development Zone Plan Sheet 4
AS-057	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Floor Levels and Height Key Plan
AS-058	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Floor Levels and Heights Plan Sheet 1
AS-059	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Floor Levels and Heights Plan Sheet 2
AS-060	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Floor Levels and Heights Plan Sheet 3
AS-061	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Floor Levels and Heights Plan Sheet 4
AS-062	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Green Infrastructure Key Plan
AS-063	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Green Infrastructure Plan Sheet 1
AS-064	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Green Infrastructure Plan Sheet 2
AS-065	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Green Infrastructure Plan Sheet 3
AS-066	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Green Infrastructure Plan Sheet 4

AS-067	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Highway GA Key Plan
AS-068	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Highway General Arrangement Plan 103
AS-069	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Highway General Arrangement Plan 104
AS-070	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Highway General Arrangement Plan 106
AS-071	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Highway General Arrangement Plan 107
AS-072	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Highway General Arrangement Plan 109
AS-073	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Highway General Arrangement Plan 110
AS-074	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Future Highways Maintenance Key Plan
AS-075	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Future Highways Maintenance Sheet 1
AS-076	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Traffic Regulation Plans Key Plan
AS-077	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Traffic Regulation Plans Sheet 1
AS-078	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Speed Limit Plans Key Plan

AS-079	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Speed Limit Plans Sheet 1
AS-080	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Highway Classification Plans Key Plan
AS-081	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Highway Classification Plans Sheet 1
AS-082	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Proposed Road Bridges Plan and Long Section
AS-083	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Road Bridge B1
AS-084	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Road Bridges B2 and B3
AS-085	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission - Accepted at the discretion of the Examining Authority - Road Bridge B4
AS-086	<a href="#">Tim Brunton</a> Additional Submission - Accepted at the discretion of the Examining Authority - Cross Britain Way and West Midlands Interchange
AS-087	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission accepted at the discretion of the Examining Authority - Doc 2.9K - Highway General Arrangement Plan 111
AS-088	<a href="#">Laurence Hunt</a> Additional Submission accepted at the discretion of the Examining Authority
AS-089	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission accepted at the discretion of the Examining Authority - Letter to the Examining Authority dated 22 August 2019
AS-090	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Additional Submission accepted at the discretion of the Examining Authority - Letter to the Examining Authority dated 27 August 2019

AS-091	<a href="#">Greensforge Sailing Club</a> Additional Submission Accepted at the discretion of the Examining Authority - Unresolved issues within the draft SoCG
AS-092	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Additional Submission accepted at the discretion of the Examining Authority - Post Deadline 8 Responses
AS-093	<a href="#">Highways England</a> Additional Submission accepted at the discretion of the Examining Authority - Letter to the Examining Authority dated 27 August 2019
AS-094	<a href="#">Sue Worrall</a> Additional Submission accepted at the discretion of the Examining Authority
AS-095	<a href="#">Maurice Cotton</a> Additional Submission accepted at the discretion of the Examining Authority
<b>Events and Hearings</b>	
<b>Preliminary meeting 27 February 2019 / Open Floor Hearing 27 February 2019/ Issue Specific Hearing 28 February 2019</b>	
EV-001	<a href="#">Agenda for Open Floor Hearing</a> Open Floor Hearing 1 and Open Floor Hearing 2 - 27 February
EV-002	<a href="#">Agenda for Issue Specific Hearing: Draft Development Consent Order</a> Issue Specific Hearing: Draft Development Consent Order - Wednesday 28 February 2019
EV-003	<a href="#">Recording of Preliminary Meeting - 27 February 2019</a>
EV-004	<a href="#">Recording of Open Floor Hearing 1 - 27 February 2019</a>
EV-005	<a href="#">Recording of Open Floor Hearing 2 - 27 February 2019</a>
EV-006	<a href="#">Recording of Issue Specific Hearing 1 on the Draft DCO - Part 1 - 28 February 2019</a>
EV-007	<a href="#">Recording of Issue Specific Hearing 1 on the Draft DCO - Part 2 - 28 February 2019</a>
EV-007a	<a href="#">Preliminary Meeting Note</a>
<b>Unaccompanied Site Inspection – 26 &amp; 28 February 2019</b>	
EV-008	<a href="#">Note of Unaccompanied Site Inspection 1- 26 February 2019</a>
EV-009	<a href="#">Note of Unaccompanied Site Inspection 2 -28 February 2019</a>
<b>Accompanied Site inspection 3-4 June 2019</b>	
EV-010	<a href="#">Accompanied Site Inspection Itinerary Day 1</a>
EV-011	<a href="#">Accompanied Site Inspection Itinerary Day 2</a>
<b>Issue Specific Hearings 2,3 &amp; 4, 5 – 6 June 2019 / Compulsory Acquisition Hearing 5 June 2019 / Unaccompanied Site Inspection</b>	
EV-012	<a href="#">Agenda for Issue Specific Hearing 2 - Accessibility and Transport</a>

EV-013	<a href="#">Agenda for Compulsory Acquisition Hearing</a>
EV-014	<a href="#">Agenda for Issue Specific Hearing 3 - Environmental Matters</a>
EV-015	<a href="#">Agenda for Issue Specific Hearing 4 - the draft Development Consent Order</a>
EV-016	<a href="#">Recording of Compulsory Acquisition Hearing - 5 June 2019 AM</a>
EV-017	<a href="#">Recording of Issue Specific Hearing on Accessibility and Transport - 5 June 2019 PM</a>
EV-018	<a href="#">Recording of Issue Specific Hearing on Environmental Effects - 6 June 2019 AM</a>
EV-019	<a href="#">Recording of Issue Specific Hearing on the Draft DCO - 6 June 2019 PM</a>
EV-020	<a href="#">Note of Unaccompanied Site Inspection 3 - Monday 3 June 2019</a>
EV-021	<a href="#">Note of Unaccompanied Site Inspection 4 - Wednesday 5 June 2019</a>
EV-022	<a href="#">Note of Unaccompanied Site Inspection 5 - Friday 7 June 2019</a>
EV-023	<a href="#">Action Points from Compulsory Acquisition Hearing - 5 June 2019</a>
EV-024	<a href="#">Action Points from Issue Specific Hearing on Accessibility and Transport - 5 June 2019</a>
EV-025	<a href="#">Action Points from Issue Specific Hearing on Environmental Effects - 6 June 2019</a>
EV-026	<a href="#">Action Points from Issue Specific Hearing on the Draft DCO - 6 June 2019</a>
<b>Issue Specific Hearing 5 &amp; 6 - 10 / 11 July 2019</b>	
EV-027	<a href="#">Agenda for Issue Specific Hearing 5 - achieving SRFI objectives</a>
EV-028	<a href="#">Agenda for Issue Specific Hearing 6 - the draft Development Consent Order</a>
EV-028a	<a href="#">Recording of Issue Specific Hearing 5 on Achieving SRFI Objectives - 10 July 2019 - Session 1</a>
EV-028b	<a href="#">Recording of Issue Specific Hearing 5 on Achieving SRFI Objectives - 10 July 2019 - Session 2</a>
EV-028c	<a href="#">Recording of Issue Specific Hearing 6 on the Draft DCO - 11 July 2019</a>
EV-028d	<a href="#">Action Points from Issue Specific Hearing 5 - Achieving SRFI Objectives -10 July 2019</a>
EV-028e	<a href="#">Action Points from Issue Specific Hearing 6 - the draft Development Consent Order - 11 July 2019</a>
<b>Unaccompanied Site Inspection 11 July 2019</b>	
EV-029	<a href="#">Note of Unaccompanied Site Inspection 6 - Thursday 11 July 2019</a>

<b>Deadline 1</b>	
	<ul style="list-style-type: none"> <li>Post-Hearing submissions and written submissions of oral case</li> </ul>
REP1-001	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 1 Submission - Cover Letter
REP1-002	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 1 Submission - Post Hearing Submission
REP1-003	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 1 Submission - Statement of Common Ground between Four Ashes Limited and Natural England
REP1-004	<a href="#">Staffordshire County Council</a> Deadline 1 Submission - Cover Letter
REP1-005	<a href="#">Staffordshire County Council</a> Deadline 1 Submission - Post Hearing Submission
REP1-006	<a href="#">South Staffordshire Council</a> Deadline 1 Submission - Post Hearing Submission and Written Submission of Oral Case
REP1-007	<a href="#">Highways England</a> Deadline 1 Submission - Summary Statement
REP1-008	<a href="#">Highways England</a> Deadline 1 Submission - Response to Deadline 1 / Post Hearing Submission
REP1-009	<a href="#">CPRE Staffordshire</a> Deadline 1 Submission- Post Hearing Submission and Written Submission of Oral Case
REP1-010	<a href="#">Gareth Minton</a> Deadline 1 Submission - Post Hearing Submission and Written Submission of Oral Case
REP1-011	<a href="#">Cllr David J Williams</a> Deadline 1 Submission - Response to Deadline 1
REP1-012	<a href="#">Chloe Burns</a> Deadline 1 Submission - Response to Deadline 1
REP1-013	<a href="#">Andrew Linney</a> Deadline 1 Submission - Response to Deadline 1
REP1-014	<a href="#">Gaynor E Caffrey</a> Deadline 1 Submission - Response to Deadline 1
REP1-015	<a href="#">Anna Kelley</a> Deadline 1 Submission - Response to Deadline 1
REP1-016	<a href="#">Greensforge Sailing Club</a> Deadline 1 Submission - Post Hearing Submission
REP1-017	<a href="#">Jane Padmore (Ruthven)</a> Deadline 1 Submission - Response to Deadline 1
REP1-018	<a href="#">Martin Bave</a> Deadline 1 Submission - Response to Deadline 1
REP1-019	<a href="#">Stop the West Midlands Interchange Community Group</a> Deadline 1 Submission - Post Hearing Submission and Written Submission of Oral Case

REP1-020	<a href="#">Janet Taylor</a> Deadline 1 Submission - Response to Deadline 1
REP1-021	<a href="#">The Collective of Parish Councils</a> Deadline 1 Submission - Post Hearing Submission
REP1-022	<a href="#">William R Caffrey</a> Deadline 1 Submission - Response to Deadline 1
REP1-023	<a href="#">Janet Crossley</a> Deadline 1 Submission - Post-Hearing submission and Written Submission of Oral Case
REP1-024	<a href="#">Nick Wiley</a> Deadline 1 Submission - Response to Deadline 1
REP1-025	<a href="#">Paul F Windmill</a> Deadline 1 Submission - Post Hearing Submission and Written Submission of Oral Case
REP1-026	<a href="#">Steve Askew</a> Deadline 1 Submission - Post-Hearing Submission and Written Submission of Oral Case
REP1-027	<a href="#">Philippa Elsmore</a> Deadline 1 Submission - Response to Deadline 1
<b>Deadline 2</b>	
<ul style="list-style-type: none"> <li>• Comments on Relevant Representations (RRs)</li> <li>• Summaries of all RR's exceeding 1500 words</li> <li>• Written Representations (WRs)</li> <li>• Summaries of all WRs exceeding 1500 words</li> <li>• Local Impact Reports from any local authorities</li> <li>• Statements of Common Ground (SoCG) requested by the ExA</li> <li>• Responses to the ExA's Written Questions Comments on updated application documents</li> <li>• Responses to further information requested by the ExA</li> <li>• Applicant's proposed itinerary for an Accompanied Site Inspection</li> <li>• Proposals from other IPs for Accompanied Site Inspection Viewpoints</li> <li>• Notification of wish to speak at a Compulsory Acquisition Hearing or an Open Floor Hearing</li> <li>• Comments on Submissions Made at Deadline 1</li> </ul>	
REP2-001	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 2 Submission - Cover Letter
REP2-002	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 2 Submission - Document List
REP2-003	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 2 Submission - List of Abbreviations and Acronyms
REP2-004	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 2 Submission - Updated Market Assessment
REP2-005	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 2 Submission - Applicants Proposed Accompanied Site Inspection Itinerary

REP2-006	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 2 Submission - Statement of Common Ground between South Staffordshire District Council and Four Ashes Limited
RP2-007	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 2 Submission - Statement of Common Ground between Staffordshire County Council and Four Ashes Limited
REP2-008	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 2 Submission - Statement of Common Ground between Highways England and Four Ashes Limited
REP2-009	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 2 Submission - Applicant's Responses to Examining Authority's Q1
REP2-010	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 2 Submission - Applicant's Responses to Examining Authority's Q1 - Appendices 1-5
REP2-011	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 2 Submission - Applicant's Responses to Examining Authority's Q1 - Appendices 6-10
REP2-012	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 2 Submission - Applicant's Responses to Examining Authority's Q1 - Appendices 11-15
REP2-013	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 2 Submission - Applicant's Responses to Examining Authority's Q1 - Appendices 16-19
REP2-014	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 2 Submission - ES - Vol 1 - Chapter 13A - Addendum Noise and Vibration Regulation 5(2)(a)
REP2-015	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 2 Submission - ES - Vol 2 Technical Appendix 13A.3 Addendum Noise - Full Survey Results 1 of 3 Regulation 5(2)(a)
REP2-016	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 2 Submission - ES - Vol 2 Technical Appendix 13A.3 Addendum Noise - Full Survey Results 2 of 3 Regulation 5(2)(a)
REP2-017	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 3 Submission - ES - Vol 2 Technical Appendix 13A.3 Addendum Noise - Full Survey Results 3 of 3 Regulation 5(2)(a)

REP2-018	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 2 Submission - Late Submission Accepted at the discretion of the Examining Authority - Draft Statement of Common Ground between Four Ashes Limited and Canal & River Trust
REP2-019	<a href="#">Brewood and Coven Parish Council</a> Deadline 2 Submission - Written Representation
REP2-020	<a href="#">Canal &amp; River Trust</a> Deadline 2 Submission - Cover Letter
REP2-021	<a href="#">Canal &amp; River Trust</a> Deadline 2 Submission - Written Representation
REP2-022	<a href="#">Canal &amp; River Trust</a> Deadline 2 Submission - Summary of Written Representation
REP2-023	<a href="#">Canal &amp; River Trust</a> Deadline 2 Submission - Response to the Examining Authority's Written Questions
REP2-024	<a href="#">Canal &amp; River Trust</a> Deadline 2 Submission - Proposals for Accompanied Site Inspection
REP2-025	<a href="#">Canal &amp; River Trust</a> Deadline 2 Submission - Appendix 1 - 150m buffer
REP2-026	<a href="#">Canal &amp; River Trust</a> Deadline 2 Submission - Appendix 2 - Bridge Design
REP2-027	<a href="#">Canal &amp; River Trust</a> Deadline 2 Submission - Appendix 3 - Part 1
REP2-028	<a href="#">Canal &amp; River Trust</a> Deadline 2 Submission - Appendix 3 - Part 2
REP2-029	<a href="#">Canal &amp; River Trust</a> Deadline 2 Submission - Appendix 4 - Penkrige accessibility Map
REP2-030	<a href="#">Canal &amp; River Trust</a> Deadline 2 Submission - Appendix 5 - Reservoir feeder channels
REP2-031	<a href="#">Canal &amp; River Trust</a> Deadline 2 Submission - Appendix 6 - Moorings
REP2-032	<a href="#">City of Wolverhampton Council and Walsall Council</a> Deadline 2 Submission - Response to the Examining Authority's Written Questions and requests for information (ExQ1)
REP2-033	<a href="#">Environment Agency</a> Deadline 2 Submission - Response to Deadline 2
REP2-034	<a href="#">Highways England</a> Deadline 2 Submission - Written Representation
REP2-035	<a href="#">Highways England</a> Deadline 2 Submission - Summary of Written Representation
REP2-036	<a href="#">Highways England</a> Deadline 2 Submission - Response to the Examining Authority's Written Questions
REP2-037	<a href="#">Highways England</a> Deadline 2 Submission - Correspondence relating to the Statement of Common Ground between Four Ashes Limited and Highways England
REP2-038	<a href="#">Natural England</a> Deadline 2 Submission - Written Representation

REP2-039	<a href="#">Natural England</a> Deadline 2 Submission - Summary of Written Representation
REP2-040	<a href="#">Natural England</a> Deadline 2 Submission - Response to the Examining Authority's Written Questions
REP2-041	<a href="#">Natural England</a> Deadline 2 Submission - Annex A - Dialogue with applicant since Relevant Representations
REP2-042	<a href="#">Natural England</a> Deadline 2 Submission - Annex B - Designated sites information - Sites of Special Scientific Interest
REP2-043	<a href="#">Natural England</a> Deadline 2 Submission - Annex C - Designated sites information - Special Areas of Conservation
REP2-044	<a href="#">Penkridge Parish Council</a> Deadline 2 Submission - Written Representation
REP2-045	<a href="#">South Staffordshire District Council</a> Deadline 2 Submission - Cover Letter
REP2-046	<a href="#">South Staffordshire District Council</a> Deadline 2 Submission - Written Representation
REP2-047	<a href="#">South Staffordshire District Council</a> Deadline 2 Submission - Appendix 1 to Written Representation
REP2-048	<a href="#">South Staffordshire District Council</a> Deadline 2 Submission- Summary of Written Representation
REP2-049	<a href="#">South Staffordshire District Council</a> Deadline 2 Submission - Response to the Examining Authority's Written Questions
REP2-050	<a href="#">South Staffordshire District Council</a> Deadline 2 Submission - Statement of Common Ground between South Staffordshire District Council and Four Ashes Limited
REP2-051	<a href="#">South Staffordshire District Council</a> Deadline 2 Submission - Local Impact Report
REP2-052	<a href="#">South Staffordshire District Council</a> Deadline 2 Submission - Appendix 1 to Local Impact Report - Bericote Four Ashes Business Park Skills Plan Insight Profile
REP2-053	<a href="#">South Staffordshire District Council</a> Deadline 2 Submission - Green Belt Release Sites
REP2-054	<a href="#">South Staffordshire District Council</a> Deadline 2 Submission - Proposed West Midlands Interchange Site Location Plan
REP2-055	<a href="#">South Staffordshire District Council</a> Deadline 2 Submission - Shoal Hill Common Viewing Points
REP2-056	<a href="#">South Staffordshire District Council</a> Deadline 2 Submission - Shareshill Viewing Points
REP2-057	<a href="#">South Staffordshire District Council</a> Deadline 2 Submission - Swallow Field Caravan Licence
REP2-058	<a href="#">South Staffordshire District Council</a> Deadline 2 Submission - Allocated and Safeguarded Sites removed from Green Belt in Site Allocations 2018
REP2-059	<a href="#">Staffordshire County Council</a> Deadline 2 Submission - Cover Letter

REP2-060	<a href="#">Staffordshire County Council</a> Deadline 2 Submission - Written Representation
REP2-061	<a href="#">Staffordshire County Council</a> Deadline 2 Submission - Written Representation Summary
REP2-062	<a href="#">Staffordshire County Council</a> Deadline 2 Submission - Local Impact Report
REP2-063	<a href="#">Staffordshire County Council</a> Deadline 2 Submission - Response to the Examining Authority's Written Questions
REP2-064	<a href="#">Staffordshire County Council</a> Deadline 2 Submission - Statement of Common Ground between Staffordshire County Council and Four Ashes Limited
REP2-065	<a href="#">Anita Anderson</a> Deadline 2 Submission - Written Representation
REP2-066	<a href="#">Anita Anderson &amp; Peter Cambidge</a> Deadline 2 Submission - Written Representation
REP2-067	<a href="#">Charlotte Appleby</a> Deadline 2 Submission - Written Representation
REP2-068	<a href="#">Grace Appleby</a> Deadline 2 Submission - Written Representation
REP2-069	<a href="#">Paula Appleby</a> Deadline 2 Submission - Written Representation
REP2-070	<a href="#">Robert Appleby</a> Deadline 2 Submission - Written Representation
REP2-071	<a href="#">Steve Askew</a> Deadline 2 Submission - Written Representation
REP2-072	<a href="#">Ann Barlow</a> Deadline 2 Submission - Written Representation
REP2-073	<a href="#">Carolyn Barton</a> Deadline 2 Submission - Written Representation
REP2-074	<a href="#">Paul Beason</a> Deadline 2 Submission - Written Representation
REP2-075	<a href="#">Mills &amp; Reeve LLP on behalf of <b>Bericote Four Ashes Limited</b></a> Deadline 2 Submission - Written Representation
REP2-076	<a href="#">The Best Family</a> Deadline 2 Submission - Written Representation
REP2-077	<a href="#">Jannette Bevan</a> Deadline 2 Submission - Written Representation
REP2-078	<a href="#">Miles M Bickford</a> Deadline 2 Submission - Written Representation
REP2-079	<a href="#">David Blount</a> Deadline 2 Submission - Written Representation
REP2-080	<a href="#">Anne Bott</a> Deadline 2 Submission - Written Representation
REP2-081	<a href="#">Stephen Bradshaw</a> Deadline 2 Submission - Written Representation
REP2-082	<a href="#">Brewood Civic Society</a> Deadline 2 Submission - Written Representation
REP2-083	<a href="#">Mary-Ann Burke and Brian Harvey</a> Deadline 2 Submission - Written Representation

REP2-084	<a href="#">Keith Burton</a> Deadline 2 Submission - Written Representation
REP2-085	<a href="#">Gaynor E Caffrey</a> Deadline 2 Submission - Written Representation
REP2-086	<a href="#">William R Caffrey</a> Deadline 2 Submission - Written Representation
REP2-087	<a href="#">Campaign for Better Transport</a> Deadline 2 Submission - Written Representation
REP2-088	<a href="#">Mr C. Clark</a> Deadline 2 Submission - Written Representation
REP2-089	<a href="#">Collective of Parish Councils</a> Deadline 2 Submission - Written Representation
REP2-090	<a href="#">Gill Collins</a> Deadline 2 Submission - Written Representation
REP2-091	<a href="#">Maurice Cotton</a> Deadline 2 Submission - Written Representation
REP2-092	<a href="#">CPRE Staffordshire</a> Deadline 2 Submission - Written Representation - Economic Impact
REP2-093	<a href="#">CPRE Staffordshire</a> Deadline 2 Submission - Written Representation - Highways and Movement Issues
REP2-094	<a href="#">CPRE Staffordshire</a> Deadline 2 Submission - Written Representation - Rail Freight Interchange
REP2-095	<a href="#">CPRE Staffordshire</a> Deadline 2 Submission - Written Representation - Green Belt - Impact of Proposals
REP2-096	<a href="#">CPRE Staffordshire</a> Deadline 2 Submission - Written Representation - Green Belt
REP2-097	<a href="#">CPRE Staffordshire</a> Deadline 2 Submission - Written Representation - Green Belt - Impact of Proposals
REP2-098	<a href="#">CPRE Staffordshire</a> Deadline 2 Submission - Response to the Examining Authority's Written Questions
REP2-099	<a href="#">A. Crocker</a> Deadline 2 Submission - Written Representation
REP2-100	<a href="#">Ian Crocker</a> Deadline 2 Submission - Written Representation
REP2-101	<a href="#">Debbie</a> Deadline 2 Submission - Written Representation
REP2-102	<a href="#">Caroline Elliman</a> Deadline 2 Submission - Written Representation
REP2-103	<a href="#">David and Jill Evans</a> Deadline 2 Submission - Written Representation
REP2-104	<a href="#">A M Gent</a> Deadline 2 Submission- Written Representation
REP2-105	<a href="#">Wedlake Bell LLP on behalf of Gestamp Tallent Limited</a> Deadline 2 Submission - Written Representation

REP2-106	<a href="#">Claire Gibbons</a> Deadline 2 Submission - Written Representation
REP2-107	<a href="#">Debbie Gibson</a> Deadline 2 Submission - Written Representation
REP2-108	<a href="#">Donna Gilmartin</a> Deadline 2 Submission - Written Representation
REP2-109	<a href="#">J. S. Goodwin</a> Deadline 2 Submission - Written Representation
REP2-110	<a href="#">Greensforge Sailing Club</a> Deadline 2 Submission - Response to the Examining Authority's Written Questions
REP2-111	<a href="#">Lisa Griffiths</a> Deadline 2 Submission - Written Representation
REP2-112	<a href="#">Margaret and Maurice Heath</a> Deadline 2 Submission - Written Representation
REP2-113	<a href="#">Linda Hughes</a> Deadline 2 Submission - Written Representation
REP2-114	<a href="#">FBC Manby Bowdler LLP on behalf of <b>The Inglewood Investment Company Limited</b></a> Deadline 2 Submission - Written Representation
REP2-115	<a href="#">FBC Manby Bowdler LLP on behalf of <b>The Inglewood Investment Company Limited</b></a> Deadline 2 Submission - Summary of Written Representation
REP2-116	<a href="#">FBC Manby Bowdler LLP on behalf of <b>The Inglewood Investment Company Limited</b></a> Deadline 2 Submission - Appendices
REP2-117	<a href="#">FBC Manby Bowdler LLP on behalf of <b>The Inglewood Investment Company Limited</b></a> Deadline 2 Submission - Written Representation - Evidence - Owen Land and Property
REP2-118	<a href="#">FBC Manby Bowdler LLP on behalf of <b>The Inglewood Investment Company Limited</b></a> Deadline 2 Submission - Summary of Written Representation - Owen Land and Property
REP2-119	<a href="#">FBC Manby Bowdler LLP on behalf of <b>The Inglewood Investment Company Limited</b></a> Deadline 2 Submission - Written Representation - Appendices 1-4 - Owen Land and Property
REP2-120	<a href="#">FBC Manby Bowdler LLP on behalf of <b>The Inglewood Investment Company Limited</b></a> Deadline 2 Submission - Written Representation - Appendices 5-7 - Owen Land and Property
REP2-121	<a href="#">Josh Jones</a> Deadline 2 Submission - Written Representation
REP2-122	<a href="#">Jean Ann Lea-Jones</a> Deadline 2 Submission - Written Representation
REP2-123	<a href="#">D M Jones</a> Deadline 2 Submission - Written Representation
REP2-124	<a href="#">Mary Jones</a> Deadline 2 Submission - Written Representation

REP2-125	<a href="#">Dr James Kettle</a> Deadline 2 Submission - Written Representation
REP2-126	<a href="#">Jeremy Lefroy MP</a> Deadline 2 Submission - Written Representation
REP2-127	<a href="#">Gareth Minton</a> Deadline 2 Submission - Written Representation
REP2-128	<a href="#">Anne Moseley</a> Deadline 2 Submission - Written Representation
REP2-129	<a href="#">Antonia Murphy</a> Deadline 2 Submission - Written Representation
REP2-130	<a href="#">Womble Bond Dickinson (UK) LLP on behalf of <b>Network Rail Infrastructure Limited</b></a> Deadline 2 Submission - Written Representation
REP2-131	<a href="#">Womble Bond Dickinson (UK) LLP on behalf of <b>Network Rail Infrastructure Limited</b></a> Deadline 2 Submission - Summary of Written Representation
REP2-132	<a href="#">Womble Bond Dickinson (UK) LLP on behalf of <b>Network Rail Infrastructure Limited</b></a> Deadline 2 Submission - Response to the Examining Authority's Written Questions
REP2-133	<a href="#">Lavinia Newell</a> Deadline 2 Submission - Written Representation
REP2-134	<a href="#">Simply Planning Ltd on behalf of <b>NewRiver Retail</b></a> Deadline 2 Submission - Written Representation
REP2-135	<a href="#">Pauline</a> Deadline 2 Submission - Written Representation
REP2-136	<a href="#">Janet Peel</a> Deadline 2 Submission - Written Representation
REP2-137	<a href="#">Ann Pemberton</a> Deadline 2 Submission - Written Representation
REP2-138	<a href="#">Janet Perry</a> Deadline 2 Submission - Written Representation
REP2-139	<a href="#">Richard Perry</a> Deadline 2 Submission - Written Representation
REP2-140	<a href="#">Simon Phipps</a> Deadline 2 Submission - Written Representation
REP2-141	<a href="#">Alan Powell</a> Deadline 2 Submission - Written Representation
REP2-142	<a href="#">Anthony Powell</a> Deadline 2 Submission - Written Representation
REP2-143	<a href="#">James Powell</a> Deadline 2 Submission - Written Representation
REP2-144	<a href="#">Margaret Powell</a> Deadline 2 Submission - Written Representation
REP2-145	<a href="#">Colin Price</a> Deadline 2 Submission - Written Representation
REP2-146	<a href="#">B Purchase</a> Deadline 2 Submission - Written Representation
REP2-147	<a href="#">John and Wendy Robb</a> Deadline 2 Submission - Written Representation

REP2-148	<a href="#">Shareshill Parish Council</a> Deadline 2 Submission - Written Representation
REP2-149	<a href="#">Shoal Hill Joint Committee</a> Deadline 2 Submission - Written Representation
REP2-150	<a href="#">Eva and Tim Simcox</a> Deadline 2 Submission - Written Representation
REP2-151	<a href="#">Bryan Cave Leighton Paisner LLP on behalf of <b>SI Group - UK Ltd</b></a> Deadline 2 Submission - Written Representation
REP2-152	<a href="#">Glen Singleton</a> Deadline 2 Submission - Written Representation
REP2-153	<a href="#">Liz Singleton</a> Deadline 2 Submission - Written Representation
REP2-154	<a href="#">Alan Smallwood</a> Deadline 2 Submission - Written Representation
REP2-155	<a href="#">Richard Smith</a> Deadline 2 Submission - Written Representation
REP2-156	<a href="#">Chris Smythe</a> Deadline 2 Submission - Written Representation
REP2-157	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 2 Submission - Response to the Examining Authority's Written Questions
REP2-158	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 2 Submission - Planning Report
REP2-159	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 2 Submission - Rail Report
REP2-160	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 2 Submission - Road Infrastructure Report
REP2-161	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 2 Submission - Report by Milestone Transport Planning
REP2-162	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 2 Submission - Health Impact Report
REP2-163	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 2 Submission- Ecology & Environment Report
REP2-164	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 2 Submission - Tourism & Leisure Report
REP2-165	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 2 Submission - Agriculture & Farming Impact Report
REP2-166	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 2 Submission - Supporting Information

REP2-167	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 2 Submission- Wrong Location Report
REP2-168	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 2 Submission - Proposals for Accompanied Site Inspection
REP2-169	<a href="#">Celia Strickland</a> Deadline 2 Submission - Written Representation
REP2-170	<a href="#">Mark Sutton</a> Deadline 2 Submission - Written Representation
REP2-171	<a href="#">Wendy Sutton</a> Deadline 2 Submission- Written Representation
REP2-172	<a href="#">Dr Richard Taylor</a> Deadline 2 Submission - Written Representation
REP2-173	<a href="#">K. M. Turner</a> Deadline 2 Submission - Written Representation
REP2-174	<a href="#">Jean Wakeham</a> Deadline 2 Submission - Written Representation
REP2-175	<a href="#">Chris Walker</a> Deadline 2 Submission - Written Representation
REP2-176	<a href="#">M. M. Walker</a> Deadline 2 Submission - Written Representation
REP2-177	<a href="#">Christopher Walton</a> Deadline 2 Submission - Written Representation and Appendices
REP2-178	<a href="#">Daniel Williams</a> Deadline 2 Submission - Written Representation
REP2-179	<a href="#">Gavin Williamson MP</a> Deadline 2 Submission - Written Representation
REP2-180	<a href="#">Joyce Wilson</a> Deadline 2 Submission - Written Representation
REP2-181	<a href="#">Paul F Windmill</a> Deadline 2 Submission - Written Representation
REP2-182	<a href="#">R D Wootton</a> Deadline 2 Submission - Written Representation
REP2-183	<a href="#">Sue Worrall</a> Deadline 2 Submission - Written Representation
REP2-184	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 2 Submission - Applicant's Responses to Examining Authority's Q1 - Appendix 18. Late submission for Deadline 2 - accepted at the discretion of the Examining Authority
<b>Deadline 3</b>	
<ul style="list-style-type: none"> <li>• Comments on submissions for deadline 2</li> <li>• Revised draft DCO from Applicant</li> <li>• Responses to further information requested by the ExA</li> </ul>	
REP3-001	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 3 Submission - Cover Letter

REP3-002	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 3 Submission - Document List
REP3-003	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 3 Submission - Draft Development Consent Order - Clean
REP3-004	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 3 Submission - Draft Development Consent Order - Tracked
REP3-005	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 3 Submission - DCO Changes Tracker
REP3-006	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 3 Submission - Compulsory Acquisition Status Report
REP3-007	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 3 Submission - Applicant's Responses to Other Parties Deadline 2 Submissions
REP3-008	<a href="#">Canal &amp; River Trust</a> Deadline 3 Submission - Draft Statement of Common Ground between Four Ashes Limited and Canal & River Trust
REP3-009	<a href="#">Canal &amp; River Trust</a> Deadline 3 Submission - Comments on Deadline 2 Submissions
REP3-010	<a href="#">Highways England</a> Deadline 3 Submission - Highways England's further comments following Applicant's response to the Examining Authority's Written Questions
REP3-011	<a href="#">FBC Manby Bowdler LLP on behalf of <b>The Inglewood Investment Company Limited</b></a> Deadline 3 Submission - Response to Deadline 3
REP3-012	<a href="#">Womble Bond Dickinson (UK) LLP on behalf of <b>Network Rail</b></a> Deadline 3 Submission - Response to the Examining Authority's written question 1.2.16
REP3-013	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 3 Submission - Comments on Deadline 2 Submissions
REP3-014	<a href="#">Anita Anderson</a> Deadline 3 Submission - Comments on recent accidents
REP3-015	<a href="#">Eleanor Carless</a> Deadline 3 Submission - Response to Deadline 3
REP3-016	<a href="#">Ian Carless</a> Deadline 3 Submission - Response to Deadline 3
REP3-017	<a href="#">Christopher Walton</a> Deadline 3 Submission - Response to deadline 3

**Deadline 4**

- Post hearing submissions including written submissions of oral case

REP4-001	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 4 Submission - Cover Letter
REP4-002	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 4 Submission - Document List
REP4-003	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 4 Submission - Applicant's Post Hearing Submissions
REP4-004	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 4 Submission - Applicant's Post Hearing Submissions (CAH, ISH 2 and ISH3) - Appendices 1-4
REP4-005	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 4 Submission - Applicant's Post Hearing Submissions (CAH, ISH 2 and ISH3) - Appendix 5 Part 1
REP4-006	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 4 Submission - Applicant's Post Hearing Submissions (CAH, ISH 2 and ISH3) - Appendix 5 Part 2
REP4-007	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 4 Submission - Applicant's Post Hearing Submissions (CAH, ISH 2 and ISH3) - Appendices 6-11
REP4-008	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 4 Submission - Applicant's Post Hearing Submissions (CAH, ISH 2 and ISH3) - Appendix 12
REP4-009	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 4 Submission - Applicants draft response to Examining Authority's comments on DCO and DCOB (ISH 4 Agenda)
REP4-010	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 4 Submission - Applicant's Post Hearing Submissions (ISH4)
REP4-011	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 4 Submission - Minerals Resource Statement
REP4-012	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 4 Submission - Sailing Quality Analysis of Calf Heath Reservoir
REP4-013	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 4 Submission - Calf Heath Reservoir Wind Assessment

REP4-014	<a href="#">Brewood and Coven Parish Council</a> Deadline 4 Submission - Post Hearing Submission
REP4-015	<a href="#">Canal &amp; River Trust</a> Deadline 4 Submission - Post Hearing Submission
REP4-016	<a href="#">Highways England</a> Deadline 4 Submission - Post Hearing submissions including Written Submissions of oral case
REP4-017	<a href="#">South Staffordshire District Council</a> Deadline 4 Submission - Response to Deadline 4
REP4-018	<a href="#">South Staffordshire District Council</a> Deadline 4 Submission - Appendix A - Noise Report Hepworth Acoustics 7 January 2019
REP4-019	<a href="#">South Staffordshire District Council</a> Deadline 4 Submission - Appendix B - Noise Report Hepworth Acoustics 7 January 2019
REP4-020	<a href="#">South Staffordshire District Council</a> Deadline 4 Submission - Appendix C - Noise Report Hepworth Acoustics 24 January 2019
REP4-021	<a href="#">South Staffordshire District Council</a> Deadline 4 Submission - Appendix D - Review of Air Quality in South Staffordshire March 2019
REP4-022	<a href="#">South Staffordshire District Council</a> Deadline 4 Submission - Appendix E - 2019 Air Quality Annual Status Report (ASR)
REP4-023	<a href="#">South Staffordshire District Council</a> Deadline 4 Submission - Appendix F - AQL Air Quality Report December 2018
REP4-024	<a href="#">South Staffordshire District Council</a> Deadline 4 Submission - Appendix G - Air Quality Report January 2019
REP4-025	<a href="#">South Staffordshire District Council</a> Deadline 4 Submission - Appendix H - AQL Air Quality Report April 2019
REP4-026	<a href="#">South Staffordshire District Council</a> Deadline 4 Submission - Appendix I - WMI Final Report April 2019
REP4-027	<a href="#">The Collective of Parish Councils against the West Midlands Interchange</a> Deadline 4 Submission - Post Hearing Submission
REP4-028	<a href="#">FBC Manby Bowdler LLP on behalf of <b>The Inglewood Investment Company Limited</b></a> Deadline 4 Submission - Post Hearing Submission
REP4-029	<a href="#">Womble Bond Dickinson (UK) LLP on behalf of <b>Network Rail Infrastructure Limited</b></a> Deadline 4 Submission - Post Hearing Submission
REP4-030	<a href="#">Foot Anstey LLP on behalf of <b>South Staffordshire Water PLC</b></a> Deadline 4 Submission - Response to Deadline 4
REP4-031	<a href="#">Staffordshire County Council</a> Deadline 4 Submission - Post Hearing Submission
REP4-032	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 4 Submission - Post Hearing Submission

REP4-033	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 4 Submission - Applicant's Responses to Reports by Stop the West Midlands Interchange
REP4-034	<a href="#">Anita Anderson</a> Deadline 4 Submission - Post Hearing Submission
REP4-035	<a href="#">Anita Anderson</a> Deadline 4 Submission - Residents feedback in regard to A5 West of Gailey
REP4-036	<a href="#">Janis Bradshaw</a> Deadline 4 Submission - Post Hearing Submission
REP4-037	<a href="#">Stephen Bradshaw</a> Deadline 4 Submission - Response to Deadline 4
REP4-038	<a href="#">Helen Didlock</a> Deadline 4 Submission - Response to Deadline 4
REP4-039	<a href="#">Debbie Gibson</a> Deadline 4 Submission - Response to Deadline 4
REP4-040	<a href="#">Donna Gilmartin</a> Deadline 4 Submission - Post Hearing Submission
REP4-041	<a href="#">Lisa Griffiths</a> Deadline 4 Submission - Response to Deadline 4
REP4-042	<a href="#">Cllr Winnie Millington</a> Deadline 4 Submission - Question Regarding Traffic
REP4-043	<a href="#">Hilary Perruzza</a> Deadline 4 Submission - Concerns about the proposed one-way of Crateford Lane
REP4-044	<a href="#">T Rhodes</a> Deadline 4 Submission - Response to Deadline 4
REP4-045	<a href="#">Elaine Smitheman</a> Deadline 4 Submission - Response to Deadline 4
REP4-046	<a href="#">Dr Richard Taylor</a> Deadline 4 Submission - Response to Deadline 4
REP4-047	<a href="#">Jan Timms</a> Deadline 4 Submission - Response to Deadline 4
REP4-048	<a href="#">Linda Tomkins</a> Deadline 4 Submission - Response to Deadline 4
REP4-049	<a href="#">Jamie Wilkes</a> Deadline 4 Submission - Letter Regarding Straight Mile Farm Calf Heath
REP4-050	<a href="#">Daniel Williams</a> Deadline 4 Submission - Response to Deadline 4
REP4-051	<a href="#">South Staffordshire District Council</a> Deadline 4 Submission - Late Submission accepted at the discretion of the Examining Authority - Officer report setting out how lighting issues were considered in the application
REP4-052	<a href="#">Stop the West Midlands Interchange</a> Deadline 4 Submission - Late Submission accepted at the discretion of the Examining Authority
REP4-053	<a href="#">Lyndon Beasley</a> Deadline 4 Submission - Late Submission accepted at the discretion of the Examining Authority

REP4-054	<a href="#">Debbie Gibson</a> Deadline 4 Submission - Late Submission accepted at the discretion of the Examining Authority
REP4-055	<a href="#">T Rhodes</a> Deadline 4 Submission - Late Submission accepted at the discretion of the Examining Authority
REP4-056	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 4 Submission - Late Submission accepted at the discretion of the Examining Authority - Post Hearing Submission
REP4-057	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 4 Submission - Late Submission accepted at the discretion of the Examining Authority - Response to Deadline 4
<b>Deadline 5</b>	
<ul style="list-style-type: none"> <li>• Responses to the ExA's Further Written Questions (if required)</li> <li>• Responses to further information requested by the ExA</li> <li>• Applicant's revised draft DCO and revised/updated Explanatory Memorandum</li> </ul>	
REP5-001	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 5 Submission - Cover Letter
REP5-002	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 5 Submission - Document List
REP5-003	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 5 Submission - Applicant's Responses to Examining Authority's Second Written Questions and Requests for Information (ExQ2)
REP5-004	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 5 Submission - Applicant's Responses to Examining Authority's Second Written Questions and Requests for Information (ExQ2) Appendices 1-8
REP5-005	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 5 Submission - Applicant's Responses to Examining Authority's Second Written Questions and Requests for Information (ExQ2) Appendices 9-14
REP5-006	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 5 Submission - Applicant's Responses to Other Parties Deadline 4 Submissions
REP5-007	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 5 Submission - Draft Development Consent Order (Clean)

REP5-008	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - Draft Development Consent Order (Tracked)
REP5-009	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - DCO Changes Tracker
REP5-010	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - Updated Explanatory Memorandum (Clean)
REP5-011	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - Updated Explanatory Memorandum (Tracked)
REP5-012	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - Access and Rights of Way Plans Key Plan
REP5-013	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - Access and Rights of Way Plans Sheet 1
REP5-014	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - Access and Rights of Way Plans Sheet 2
REP5-015	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - Access and Rights of Way Plans Sheet 3
REP5-016	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - Access and Rights of Way Plans Sheet 4
REP5-017	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - Access and Rights of Way Plans Sheet 5
REP5-018	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - Access and Rights of Way Plans Sheet 6
REP5-019	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - Green Infrastructure Key Plan
REP5-020	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - Green Infrastructure Plan Sheet 1
REP5-021	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - Green Infrastructure Plan Sheet 2
REP5-022	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - Green Infrastructure Plan Sheet 3
REP5-023	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - Green Infrastructure Plan Sheet 4

REP5-024	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - Traffic Regulation Plans Key Plan
REP5-025	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - Traffic Regulation Plans Sheet 1
REP5-026	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - Traffic Regulation Plans Sheet 3
REP5-027	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - SI Facility Plan
REP5-028	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - Agreed Bird Mitigation Obligation (Clean)
REP5-029	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - Agreed Bird Mitigation Obligation (Tracked)
REP5-030	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - Agreed DCOB Main Site - CTM Fund Routes Plan
REP5-031	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - Updated Draft Development Consent Obligation (Clean)
REP5-032	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - Updated Draft Development Consent Obligation (Tracked)
REP5-033	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - ES - Vol 2 Technical Appendix 10.4 Updated FEMMP (Clean)
REP5-034	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - ES - Vol 2 Technical Appendix 10.4 Updated FEMMP (Tracked Changes)
REP5-035	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - ES - Vol 2 Technical Appendix 2.3 Updated ODCEMP (Clean)
REP5-036	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - ES - Vol 2 Technical Appendix 2.3 Updated ODCEMP (Tracked)
REP5-037	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 5 Submission - Updated Site Wide Travel Plan (Clean)

REP5-038	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 5 Submission - Updated Site Wide Travel Plan (Tracked)
REP5-039	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 5 Submission - Addendum to the Statement of Common Ground with Staffordshire County Council
REP5-040	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 5 Submission - Addendum to the Statement of Common Ground with South Staffordshire District Council (Lighting)
REP5-041	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 5 Submission - Statement of Common Ground - Canal and River Trust
REP5-042	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 5 Submission - Letter from iPort
REP5-043	<a href="#">Canal &amp; River Trust</a> Deadline 5 Submission - Response to the Examining Authority's Further Written Questions
REP5-044	<a href="#">City of Wolverhampton Council and Walsall Council</a> Deadline 5 Submission - Responses to the Examining Authority's Further Written Questions
REP5-045	<a href="#">Highways England</a> Deadline 5 Submission - Cover Letter
REP5-046	<a href="#">Highways England</a> Deadline 5 Submission - Responses to the Examining Authority's Further Written Questions
REP5-047	<a href="#">Natural England</a> Deadline 5 Submission - Response to the Examining Authority's Further Written Questions
REP5-048	<a href="#">South Staffordshire Council</a> Deadline 5 Submission - Cover Letter
REP5-049	<a href="#">South Staffordshire Council</a> Deadline 5 Submission - Responses to the Examining Authority's Further Written Questions
REP5-050	<a href="#">Staffordshire County Council</a> Deadline 5 Submission - Cover Letter
REP5-051	<a href="#">Staffordshire County Council</a> Deadline 5 Submission - Extract from The Minerals Local Plan for Staffordshire (2015 to 2030) Adopted - February 2017
REP5-052	<a href="#">Staffordshire County Council</a> Deadline 5 Submission - Plan showing Sand , Gravel Sites in South Staffs
REP5-053	<a href="#">Staffordshire County Council</a> Deadline 5 Submission - Response to the Examining Authority's Further Written Questions

REP5-054	<a href="#">Staffordshire County Council</a> Deadline 5 Submission - Addendum to the Statement of Common Ground with Staffordshire County Council
REP5-055	<a href="#">Greensforge Sailing Club</a> Deadline 5 Submission - Responses to the Examining Authority's Further Written Questions
REP5-056	<a href="#">FBC Manby Bowdler LLP on behalf of <b>The Inglewood Investment Company Limited</b></a> Deadline 5 Submission - Response to Deadline 5
REP5-057	<a href="#">Womble Bond Dickinson (UK) LLP on behalf of <b>Network Rail Infrastructure Limited</b></a> Deadline 5 Submission - Cover Letter
REP5-058	<a href="#">Womble Bond Dickinson (UK) LLP on behalf of <b>Network Rail Infrastructure Limited</b></a> Deadline 5 Submission - Responses to the Examining Authority's Further Written Questions
REP5-059	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 5 Submission - Responses to the Examining Authority's Further Written Questions
REP5-060	<a href="#">Woodland Trust</a> Deadline 5 Submission - Response to Deadline 5
REP5-061	<a href="#">Anita Anderson</a> Deadline 5 Submission - Response to Deadline 5
REP5-062	<a href="#">Donna Gilmartin</a> Deadline 5 Submission - Response to Action List C.A. hearing 5 June 2019
REP5-063	<a href="#">Daniel Williams</a> Deadline 5 Submission - Response to the Examining Authority's Further Written Questions
<b>Deadline 6</b>	
<ul style="list-style-type: none"> <li>• Comments on responses to the ExA's Further Written Questions (if required)</li> <li>• Responses to further information requested by the ExA</li> <li>• Post hearing submissions including written submissions of oral case</li> <li>• Applicant's final draft DCO and revised/updated Explanatory Memorandum</li> </ul>	
REP6-001	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 6 Submission - Cover Letter
REP6-002	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 6 Submission - Document List
REP6-003	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 6 Submission - Draft Development Consent Order (Clean)
REP6-004	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 6 Submission - Draft Development Consent Order (Tracked)

REP6-005	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 6 Submission - DCO Changes Tracker
REP6-006	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 6 Submission - Amended drafting to Part 2 of Schedule 2 to the draft DCO (Clean)
REP6-007	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 6 Submission - Amended drafting to Part 2 of Schedule 2 to the draft DCO (Tracked)
REP6-008	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 6 Submission - Compulsory Acquisition Status Report
REP6-009	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 6 Submission - Explanatory Memorandum (Clean)
REP6-010	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 6 Submission - Explanatory Memorandum (Tracked)
REP6-011	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 6 Submission - Applicant's Responses to Deadline 5 Submissions and Other Requests for Information
REP6-012	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 6 Submission - Applicant's Post Hearing Submissions (ISH5)
REP6-013	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 6 Submission - Applicant's Post Hearing Submissions (ISH6)
REP6-014	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 6 Submission - Speed Limit Plans Key Plan
REP6-015	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 6 Submission - Speed Limit Plans Sheet 1
REP6-016	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 6 Submission - Highway Classification Plans Key Plan
REP6-017	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 6 Submission - Highway Classification Plans Sheet 1
REP6-018	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 6 Submission - Access and Rights of Way Plans Sheet 7
REP6-019	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 6 Submission - Highway General Arrangement Key Plan

REP6-020	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 6 Submission - Highway General Arrangement Plan 103
REP6-021	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 6 Submission - Future Highways Maintenance Key Plan
REP6-022	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 6 Submission - Future Highways Maintenance Sheet 1
REP6-023	<a href="#">Highways England</a> Deadline 6 Submission - Post Hearing Submission
REP6-024	<a href="#">Highways England</a> Deadline 6 Submission - The Town and Country Planning (Development Affecting Trunk Roads) Direction 2018
REP6-025	<a href="#">South Staffordshire Council</a> Deadline 6 Submission - Response to Deadline 6
REP6-026	<a href="#">Connect Consultants Limited on behalf of <b>NewRiver</b></a> Deadline 6 Submission - Connect Technical Note 02 and Response to WSP Technical Note 42
REP6-027	<a href="#">Bryan Cave Leighton Paisner LLP on behalf of <b>SI Group - UK Ltd</b></a> Deadline 6 Submission - Proposed amendment to the draft Order
REP6-028	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 6 Submission - Post Hearing Submission
REP6-029	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 6 Submission - Response to Deadline 5 Submissions
REP6-030	<a href="#">Anita Anderson</a> Deadline 6 Submission - Response to Deadline 6
REP6-031	<a href="#">Anita Anderson</a> Deadline 6 Submission - Residents feedback
REP6-032	<a href="#">Janis Bradshaw</a> Deadline 6 Submission - Post Hearing Submission
REP6-033	<a href="#">Stephen Bradshaw</a> Deadline 6 Submission - Post Hearing Submission
REP6-034	<a href="#">Donna Gilmartin</a> Deadline 6 Submission - Response to Deadline 6
REP6-035	<a href="#">Christopher Walton</a> Deadline 6 Submission - Response to Deadline 6
REP6-036	<a href="#">Daniel Williams</a> Deadline 6 Submission - Response to Deadline 6
<b>Deadline 7</b>	
<ul style="list-style-type: none"> <li>• Comments on responses to the ExA's Further Written Questions (if required)</li> <li>• Responses to further information requested by the ExA</li> <li>• Post hearing submissions including written submissions of oral case</li> <li>• Applicant's final draft DCO and revised/updated Explanatory Memorandum</li> </ul>	
REP7-001	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 7 Submission - Cover Letter

REP7-002	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - Document List
REP7-003	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - Applicant's Responses to Deadline 6 Submissions
REP7-004	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - Applicant's Responses to ExQ3 and Requests for Information
REP7-005	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - Updated Book of Reference (Clean)
REP7-006	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - Updated Book of Reference (Tracked)
REP7-007	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - Traffic Regulation Plans Key Plan
REP7-008	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - Traffic Regulation Plan Sheet 1
REP7-009	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - Traffic Regulation Plans Sheet 2
REP7-010	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - Traffic Regulation Plans Sheet 3
REP7-011	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - Traffic Regulation Plans Sheet 4
REP7-012	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - Updated Statement of Reasons (Clean)
REP7-013	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - Updated Statement of Reasons (Tracked)
REP7-014	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - Updated Statement of Reasons (Clean) - 7 August
REP7-015	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - Updated Statement of Reasons (Tracked) - 7 August
REP7-016	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - ES Volume 1 - Updated Chapter 7 - Air Quality (Clean)

REP7-017	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - ES Volume 1 - Updated Chapter 7 - Air Quality (Tracked)
REP7-018	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - Updated Technical Appendix 7.2 (Clean) Methodology for Modelling of Traffic Emissions
REP7-019	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - Updated Technical Appendix 7.2 (Tracked) Methodology for Modelling of Traffic Emissions
REP7-020	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - Updated Technical Appendix 7.3 (Clean) Local Authority Monitoring Data
REP7-021	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - Updated Technical Appendix 7.3 (Tracked) Local Authority Monitoring Data
REP7-022	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - Updated Technical Appendix 7.4 (Clean) Future Base Concentrations at Receptors
REP7-023	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - Updated Technical Appendix 7.4 (Tracked) Future Base Concentrations at Receptors
REP7-024	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - Updated Technical Appendix 7.6 (Clean) Predicted Impacts at Human Receptors
REP7-025	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - Updated Technical Appendix 7.6 (Tracked) Predicted Impacts at Human Receptors
REP7-026	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - Updated Technical Appendix 7.7 (Clean) Compliance Risk Assessment Results
REP7-027	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 7 Submission - Updated Technical Appendix 7.7 (Tracked) Compliance Risk Assessment Results
REP7-028	<a href="#"><u>Canal &amp; River Trust</u></a> Deadline 7 Submission - Response to Deadline 7
REP7-029	<a href="#"><u>City of Wolverhampton Council and Walsall Council</u></a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions

REP7-030	<a href="#">Highways England</a> Deadline 7 Submission - Comments on the Applicant's final draft DCO and Response to the Examining Authority's 3rd Written Questions
REP7-031	<a href="#">Public Health England</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions
REP7-032	<a href="#">South Staffordshire District Council</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions
REP7-033	<a href="#">Staffordshire County Council</a> Deadline 7 Submission - Cover Letter
REP7-034	<a href="#">Staffordshire County Council</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions
REP7-035	<a href="#">Greensforge Sailing Club</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions
REP7-036	<a href="#">FBC Manby Bowdler LLP on behalf of <b>The Inglewood Investment Company Limited</b></a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions
REP7-037	<a href="#">Womble Bond Dickinson (UK) LLP on behalf of <b>Network Rail Infrastructure Limited</b></a> Deadline 7 Submission - Cover Letter
REP7-038	<a href="#">Womble Bond Dickinson (UK) LLP on behalf of <b>Network Rail Infrastructure Limited</b></a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions
REP7-039	<a href="#">Shareshill Parish Council</a> Deadline 7 Submission - Response to Deadline 7
REP7-040	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 7 Submission - Response to Deadline 6 Submissions
REP7-041	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions
REP7-042	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - Annex 1
REP7-043	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - Annex 2
REP7-044	<a href="#">The Collective of Parish Councils against the West Midlands Interchange</a> Deadline 7 Submission - Response to Deadline 7

REP7-045	<a href="#">Andrew Adams</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-046	<a href="#">A Allsop</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-047	<a href="#">Anita Anderson</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-048	<a href="#">Paula Appleby</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-049	<a href="#">Robert Appleby</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-050	<a href="#">Frederick Barrett</a> Deadline 7 Submission - Response to Deadline 7
REP7-051	<a href="#">Martin Bave</a> Deadline 7 Submission - Response to Deadline 7
REP7-052	<a href="#">Lyndon Beasley</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-053	<a href="#">Bev Bish</a> Deadline 7 Submission - Response to Deadline 7
REP7-054	<a href="#">David Blount</a> Deadline 7 Submission - Response to Deadline 7
REP7-055	<a href="#">Anne Bott</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-056	<a href="#">Jane Bowrin</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-057	<a href="#">David Broadhurst</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-058	<a href="#">Tim Brunton</a> Deadline 7 Submission - Response to Deadline 7
REP7-059	<a href="#">Chloe Burns</a> Deadline 7 Submission - Response to Deadline 7
REP7-060	<a href="#">Keith Burton</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-061	<a href="#">Mr C. Clark</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-062	<a href="#">Lorraine Cole</a> Deadline 7 Submission - Response to Deadline 7
REP7-063	<a href="#">Will Cole</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1

REP7-064	<a href="#">Gill Collins</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-065	<a href="#">Ian Collins</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-066	<a href="#">Ian Cooper</a> Deadline 7 Submission - Response to Deadline 7
REP7-067	<a href="#">Ian Crocker</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-068	<a href="#">Janet Crossley</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-069	<a href="#">Peter Davenport</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-070	<a href="#">Marc Deakin</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-071	<a href="#">Sandra Dell</a> Deadline 7 Submission - Response to Deadline 7
REP7-072	<a href="#">Kerry Dudley</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-073	<a href="#">David Evans</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-074	<a href="#">Mr &amp; Mrs G.Farr</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-075	<a href="#">Claire Gibbons</a> Deadline 7 Submission - Response to Deadline 7
REP7-076	<a href="#">Debbie Gibson</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-077	<a href="#">Donna Gilmartin</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-078	<a href="#">Mandy Gocan</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-079	<a href="#">Lisa Griffiths</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Question - 3.1.1
REP7-080	<a href="#">Brian Hancher</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-081	<a href="#">L E Hancher</a> Deadline 7 Submission - Response to Deadline 7

REP7-082	<a href="#">Richard Hancher</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-083	<a href="#">Deborah Hardman-Wilson</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-084	<a href="#">Glen Hickman</a> Deadline 7 Submission - Response to Deadline 7
REP7-085	<a href="#">Kate &amp; Richard Hopwood</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-086	<a href="#">Linda Hughes</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-087	<a href="#">Jan Jeffries</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-088	<a href="#">Joan and Bill Jinks</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-089	<a href="#">Eithne Johnston</a> Deadline 7 Submission - Response to Deadline 7
REP7-090	<a href="#">Mary Jones</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-091	<a href="#">Paul Jones</a> Deadline 7 Submission - Response to Deadline 7
REP7-092	<a href="#">David Langford</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-093	<a href="#">Sue Langford</a> Deadline 7 Submission - Response to Deadline 7
REP7-094	<a href="#">Dan Littleton</a> Deadline 7 Submission - Response to Deadline 7
REP7-095	<a href="#">Dan Martin</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-096	<a href="#">Zoe Martin</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-097	<a href="#">Peter Middleton</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-098	<a href="#">Gareth Minton</a> Deadline 7 Submission - Response to Deadline 7
REP7-099	<a href="#">Vanessa Moreton</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1

REP7-100	<a href="#">Dr David Morrice</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions
REP7-101	<a href="#">Anne Moseley</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-102	<a href="#">Anthony Powell on behalf of Antonia Murphy , Jean Ann Lea-Jones , James Powell</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.8.1
REP7-103	<a href="#">Diane Nelson</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-104	<a href="#">Amie Newell</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions
REP7-105	<a href="#">Janet Perry</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-106	<a href="#">Alan Powell</a> Deadline 7 Submission - Response to Deadline 7
REP7-107	<a href="#">James Powell</a> Deadline 7 Submission - Response to Deadline 7
REP7-108	<a href="#">Bridgett Purchase</a> Deadline 7 Submission - Response to Deadline 7
REP7-109	<a href="#">Eva Rawlins</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-110	<a href="#">Jenny Raynor</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions
REP7-111	<a href="#">Max Reynolds</a> Deadline 7 Submission - Response to Deadline 7
REP7-112	<a href="#">Pete Reynolds</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-113	<a href="#">Glen Singleton</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-114	<a href="#">Liz Singleton</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-115	<a href="#">Chris Smythe</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-116	<a href="#">Dr Vanessa Springthorpe</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-117	<a href="#">Rebecca Talbot</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1

REP7-118	<a href="#">Janet Taylor</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions
REP7-119	<a href="#">Amanda Tranter</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-120	<a href="#">Nick Wiley</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-121	<a href="#">Jamie Wilkes</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.8.3
REP7-122	<a href="#">Daniel Williams</a> Deadline 7 Submission - Response to Deadline 7
REP7-123	<a href="#">Gavin Williamson MP</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions
REP7-124	<a href="#">Joyce Wilson</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-125	<a href="#">Margaret Wootton</a> Deadline 7 Submission - Response to Deadline 7
REP7-126	<a href="#">Sally Wormald</a> Deadline 7 Submission - Response to Deadline 7
REP7-127	<a href="#">Sue Worrall</a> Deadline 7 Submission - Response to Deadline 7
REP7-128	<a href="#">Christine Wright</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-129	<a href="#">Gill Yerbury</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions
REP7-130	<a href="#">Greg Yerbury</a> Deadline 7 Submission - Response to the Examining Authority's 3rd Written Questions - 3.1.1
REP7-131	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 7 Submission - Late Submission accepted at the discretion of the Examining Authority - Statement of Common Ground between Four Ashes Limited and Canal & River Trust
REP7-132	<a href="#">Gareth Minton</a> Deadline 7 Submission - Late Submission accepted at the discretion of the Examining Authority
REP7-133	<a href="#">Helen Sutton</a> Deadline 7 Submission - Late Submission accepted at the discretion of the Examining Authority
REP7-134	<a href="#">Mike Woodall</a> Deadline 7 Submission - Late Submission accepted at the discretion of the Examining Authority

REP7-135	<a href="#">Ben Gutteridge</a> Deadline 7 Submission - Late Submission accepted at the discretion of the Examining Authority - Response to the Examining Authority's 3rd Written Questions - 3.1.1
<b>Deadline 8</b>	
<ul style="list-style-type: none"> <li>• Responses to comments on the ExA's schedule of changes to the draft DCO (if required)</li> <li>• Responses to comments on the RIES (if required)</li> <li>• Responses to further information requested by the ExA</li> <li>• Final DCO to be submitted by the Applicant in the SI template with the SI template validation report</li> </ul>	
REP8-001	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 8 Submission - Cover Letter
REP8-002	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 8 Submission - Document List
REP8-003	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 8 Submission - DCO Changes Tracker
REP8-004	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 8 Submission - Draft Development Consent Order Validation Report
REP8-005	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 8 Submission - Draft Development Consent Order (Clean)
REP8-006	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 8 Submission - Draft Development Consent Order (Tracked)
REP8-007	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 8 Submission - Explanatory Memorandum (Clean)
REP8-008	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 8 Submission - Explanatory Memorandum (Tracked)
REP8-009	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 8 Submission - Updated Book of Reference (Clean)
REP8-010	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 8 Submission - Updated Book of Reference (Tracked)
REP8-011	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 8 Submission - Updated Statement of Reasons (Clean)
REP8-012	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 8 Submission - Updated Statement of Reasons (Tracked)

REP8-013	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Action List Tracker
REP8-014	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Compulsory Acquisition Status Report
REP8-015	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Applicant's Responses to Examining Authority's Request for Further Information
REP8-016	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Applicant's Responses to Deadline 7 Submissions
REP8-017	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Addendum to the Statement of Common Ground between Four Ashes Limited and Staffordshire County Council
REP8-018	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Update on Network Rail Representations
REP8-019	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Completed Bird Mitigation Obligation
REP8-020	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Completed Main Site DCOB 20.8.19 Part 1
REP8-021	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Completed Main Site DCOB 20.8.19 Part 2
REP8-022	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Completed Main Site DCOB 20.8.19 Part 3
REP8-023	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Completed Main Site DCOB 20.8.19 Part 4
REP8-024	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Completed Main Site DCOB 20.8.19 Part 5
REP8-025	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Explanation of Highway Plans Changes
REP8-026	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Access and Rights of Way Plans Key Plan
REP8-027	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Access and Rights of Way Plans Sheet 1

REP8-028	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Access and Rights of Way Plans Sheet 6
REP8-029	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Highway GA Key Plan
REP8-030	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Highway General Arrangement Plan 103
REP8-031	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Future Highways Maintenance Key Plan
REP8-032	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Future Highways Maintenance Sheet 1
REP8-033	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Highway Classification Plans Key Plan
REP8-034	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Highway Classification Plans Sheet 1
REP8-035	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Traffic Regulation Plans Key Plan
REP8-036	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Traffic Regulation Plan Sheet 1
REP8-037	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Works Plans Key Plan v1
REP8-038	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Works Plans Sheet 1 of 9 v1
REP8-039	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Works Plans Sheet 2 of 9 v1
REP8-040	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Works Plans Sheet 3 of 9 v1
REP8-041	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Works Plans Sheet 4 of 9 v1
REP8-042	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Works Plans Sheet 5 of 9 v1
REP8-043	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Works Plans Sheet 6 of 9 v1
REP8-044	<a href="#"><u>Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></u></a> Deadline 8 Submission - Works Plans Sheet 7 of 9 v1

REP8-045	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 8 Submission - Works Plans Sheet 8 of 9 v1
REP8-046	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 8 Submission - Works Plans Sheet 9 of 9 v1
REP8-047	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 8 Submission - Land Plans Key Plan v1
REP8-048	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 8 Submission - Land Plans Sheet 4 of 12 v1
REP8-049	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 8 Submission - Speed Limit Plans Key Plan
REP8-050	<a href="#">Eversheds Sutherland (International) LLP on behalf of <b>Four Ashes Limited</b></a> Deadline 8 Submission - Speed Limit Plans Sheet 1
REP8-051	<a href="#">City of Wolverhampton Council</a> Deadline 8 Submission - Response to the Examining Authority's 3rd Written Questions - 3.2.2
REP8-052	<a href="#">Dudley Metropolitan Borough Council</a> Deadline 8 Submission - Response to The Examining Authority's request for further information
REP8-053	<a href="#">Highways England</a> Deadline 8 Submission - Response to Deadline 8
REP8-054	<a href="#">Historic England</a> Deadline 8 Submission - Response to The Examining Authority's request for further information
REP8-055	<a href="#">Penkridge Parish Council</a> Deadline 8 Submission - Concluding Document
REP8-056	<a href="#">Walsall Council</a> Deadline 8 Submission - Response to The Examining Authority's request for further information
REP8-057	<a href="#">Wedlake Bell LLP on behalf of <b>Gestamp Tallent Limited</b></a> Deadline 8 Submission - Response to Deadline 8
REP8-058	<a href="#">Womble Bond Dickinson (UK) LLP on behalf of <b>Network Rail Infrastructure Limited</b></a> Deadline 8 Submission - Response to Deadline 8
REP8-059	<a href="#">Womble Bond Dickinson (UK) LLP on behalf of <b>Network Rail Infrastructure Limited</b></a> Deadline 8 Submission - Appendix 1 - Network Rail proposed protective provisions
REP8-060	<a href="#">Womble Bond Dickinson (UK) LLP on behalf of <b>Network Rail Infrastructure Limited</b></a> Deadline 8 Submission - Appendix 2 - Comparison between protective provisions
REP8-061	<a href="#">Connect Consultants Limited on behalf of <b>NewRiver</b></a> Deadline 8 Submission - Response to Deadline 8
REP8-062	<a href="#">Foot Anstey LLP on behalf of <b>South Staffordshire Water PLC</b></a> Deadline 8 Submission - Response to Deadline 8

REP8-063	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 8 Submission - Response to Deadline 7 Submissions
REP8-064	<a href="#">Ansons Solicitors Limited on behalf of <b>Stop the West Midlands Interchange</b></a> Deadline 8 Submission - Concluding Document
REP8-065	<a href="#">The Collective of Parish Councils against the West Midlands Interchange</a> Deadline 8 Submission - Response to Deadline 8
REP8-066	<a href="#">Debbie Gibson</a> Deadline 8 Submission - Response to Deadline 8
REP8-067	<a href="#">Donna Gilmartin</a> Deadline 8 Submission - Response to Deadline 8
REP8-068	<a href="#">Richard Hancher</a> Deadline 8 Submission - Response to Deadline 8
REP8-069	<a href="#">Jeremy Lefroy MP</a> Deadline 8 Submission - Response to Deadline 8
REP8-070	<a href="#">Jeremy Lefroy MP</a> Deadline 8 Submission - Response to The Examining Authority's request for further information
REP8-071	<a href="#">Valentina and Penelope</a> Deadline 8 Submission - Response to Deadline 8
REP8-072	<a href="#">Daniel Williams</a> Deadline 8 Submission - Response to Deadline 8
<b>Other Documents</b>	
OD-001	<a href="#">Regulation 24 Transboundary Screening</a>
OD-002	
OD-003	
OD-004	

## APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or Acronym	Full Term
ALC	Agricultural Land Classification
ANPR	Automatic Number Plate Recognition
AONB	Area of Outstanding Natural Beauty
AP	Affected Person
AQCL	Air Quality Consultants Ltd
AQMA	Air Quality Management Area
ASA	Alternative Sites Assessment
ASI	Accompanied Site Inspection
BCCS	Black Country Core Strategy
BMV	Best and Most Versatile (Agricultural Land)
BOAT	Byway Open to All Traffic
BNIS	Bespoke Noise Insulation Scheme
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CPRE	Council for the Preservation of Rural England
CRT	The Canal and River Trust
CS	Core Strategy
D	Deadline
DAS	Design and Access Statement
DCO	Development Consent Order
DCOb	Development Consent Obligation
DCEMP	Demolition and Construction Environmental Management Plan
DCTMP	Demolition and Construction Traffic Management Plan
Defra	Department for Environment, Food and Rural Affairs
DfT	Department for Transport
DIRFT	Daventry International Rail Freight Terminal

DMRB	Design Manual for Roads and Bridges
DPD	Development Plan Document
EA	Environment Agency
EHO	Environmental Health Officer
EIA	Environmental Impact Assessment
EMGRFI	East Midlands Gateway Rail Freight Interchange
EMMP	Ecological Mitigation and Management Plan
EPR	Examination Procedure Rules 2010
EPS	European Protected Site(s)
ERF	Energy Recovery Facility
ES	Environmental Statement
ESTP	Employment, Skills and Training Plan
ESTPF	Employment, Skills and Training Plan Framework
ExA	Examining Authority
ExQ	Examining Authority's Question
FAL	Four Ashes Limited (the Applicant)
FEMA	Functional Economic Market Area
FEMMP	Framework Ecological Mitigation and Management Plan
FNPORSP	Freight and National Passenger Strategic Route Operations Plan
FRA	Flood Risk Assessment
FWQs	Examining Authority's First Written Questions
GDV	Gross Development Value
GI	Green Infrastructure
GRIP	Governance for Railway Investment Projects
GVA	Gross Value Added
HAR	Habitats Assessment Regulations
HGV	Heavy Goods Vehicle
Howbury Park	Howbury Park Rail Freight Interchange (Proposed)
HRA	Habitat Regulations Assessment
HE	Highways England

i54	i54 South Staffordshire Business Park
IAQM	Institute of Air Quality Management
IP	Interested Party
iPort	iPort Strategic Rail Freight Interchange, Doncaster, South Yorkshire
IRR	Internal Rate of Return
IRFI	Intermodal Rail Freight Interchange
ISH	Issue Specific Hearing
IWA	Inland Waterways Association
JLR	Jaguar Land Rover
Km	Kilometre
Kv	Kilovolt
LCA	Landscape Character Area
LCP	Land Cover Parcel
LCT	Landscape Character Type
LEP	Local Enterprise Partnership
LGIS	Landscape and Green Infrastructure Strategy
LGV	Light Goods Vehicle
LIR	Local Impact Report
LOAEL	Lowest Observed Adverse Effect Level (Noise)
LPA	Local Planning Authority
LSE	Likely Significant Effects
LVIA	Landscape and Visual Impact Assessment
M	Million(s)
MAFF	Ministry of Agriculture, Fisheries, and Food
MCC	Manual Classified Count
MLP	Minerals Local Plan
MP	Member of Parliament
MPA	Minerals Planning Authority
MRS	Minerals Resource Statement
MSOA	Middle Layer Super Output Area
NCA	National Character Area

NDC	National Distribution Centre
NE	Natural England
NGRFI	Northampton Gateway Rail Freight Interchange
NOEL	No Observed Effect Level (Noise)
NMU	Non-Motorised Users
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPSNN	National Networks National Policy Statement
NPSE	Noise Policy Statement for England
NR	Network Rail
NSER	No Significant Effects Report
NSIP	Nationally Significant Infrastructure Project
ODCEMP	Outline Demolition and Construction Environmental Management Plan
OFH	Open Floor Hearing
PA 2008	Planning Act 2009
PC	Parish Council
PC Collective	Collective of Parish Councils against West Midlands Interchange
PENK29	Public Footpath Reference Penkridge 29
PIA	Personal Injury Accident
PM	Preliminary Meeting
PPG	Planning Practice Guidance
PROW	Public Right of Way
PSED	Public Sector Equality Duty
Radlett SRFI	Radlett Strategic Rail Freight Interchange (proposed)
RCSRFI	Rail Central Strategic Rail Freight Interchange (proposed)
RDC	Regional Distribution Centre
RR	Relevant Representation
RSA	Road Safety Audit
RFI	Rail Freight Interchange

RLS	Regional Logistics Site(s)
RSS	Regional Spatial Strategy
S106 Obligation	Planning Obligation entered into under Section 106 of the Town and Country Planning Act 1990
SAC	Special Area of Conservation
SAD	Site Allocations Document
SAM	Scheduled Ancient Monument
SATURN	Simulation and Assignment of Traffic to Urban Roads
SCC	Staffordshire County Council
SI Group	SI Group UK Limited
SOAEL	Significant Observed Adverse Effect Level (Noise)
SoCC	Statement of Community Consultation
SoCG	Statement of Common Ground
SoS	Secretary of State
SRA	Strategic Rail Authority
SRFI	Strategic Rail Freight Interchange(s)
SRN	Strategic Road Network
SRP	Soil Resource Plan
SSCS	South Staffordshire Core Strategy
SSDC	South Staffordshire District Council
SSSI	Site of Special Scientific Interest
SSLEP	Stoke-on-Trent and Staffordshire LEP
SSSAD	South Staffordshire Site Allocations Document
SSW	South Staffordshire Water
Stop WMI	Stop the West Midlands Interchange Community Group
SuDS	Sustainable Drainage System
SWHGVMP	Site Wide Heavy Goods Vehicle Management Plan
SWSWDS	Site Wide Surface Water Drainage Strategy
SWTP	Site Wide Travel Plan
SWTPC	Site Wide Travel Plan Coordinator
SWQs	Examining Authority's Second Written Questions

TA	Transport Assessment
TCPA	The Town and Country Planning Act 1990
TP	Temporary Possession
TSG	Transport Steering Group
VISSIM	Verkehr In Städten – SIMulationsmodell (Traffic micro-simulation modelling program)
UAEL	Unacceptable Adverse Effect Level
USI	Unaccompanied Site Inspection
WCML	West Coast Main Line railway
WCML Loop	The Bushbury to Stafford section of the West Coast Main Line railway
WFD	Water Framework Directive
WMCA	West Midlands Combined Authority
WMI	West Midlands Interchange (short title for the proposed West Midlands Rail Freight Interchange)
WR	Written Representation

## **APPENDIX D: THE RECOMMENDED DCO**

**201[X] No. 0000**

**INFRASTRUCTURE PLANNING**

**The West Midlands Rail Freight Interchange Order 201X**

*Made* - - - - 201[X]

*Coming into force* - - 201[X]

**CONTENTS**

**PART 1**

**PRELIMINARY**

1. Citation and Commencement
2. Interpretation

**PART 2**

**PRINCIPAL POWERS**

3. Development consent granted by the Order
4. Parameters of authorised development
5. Authorisation of use
6. Maintenance of authorised development
7. Benefit of Order

**PART 3**

**STREETS**

8. Street works
9. Power to alter layout, etc., of streets
10. Permanent stopping up of streets
11. Temporary stopping up of streets
12. Public rights of way – creation and stopping up
13. Accesses
14. Maintenance of highway works
15. Classification of A5/A449 link road
16. Speed limits
17. Traffic Regulation
18. Clearways, No Waiting and Limited Waiting
19. Motor vehicle restrictions
20. Agreements with highway authorities

PART 4  
SUPPLEMENTAL POWERS

- 21. Discharge of water
- 22. Authority to survey and investigate the land

PART 5  
POWERS OF ACQUISITION

- 23. Guarantees in respect of payment of compensation
- 24. Compulsory acquisition of land
- 25. Compulsory acquisition of rights
- 26. Acquisition of part of certain properties
- 27. Private rights
- 28. Power to override easements and other rights
- 29. Compulsory acquisition of land – incorporation of the mineral code
- 30. Time limit for exercise of authority to acquire land and rights compulsorily
- 31. Application of Part 1 of the Compulsory Purchase Act 1965
- 32. Application of the Compulsory Purchase (Vesting Declarations) Act 1981
- 33. Statutory undertakers and operators of the electronic communications code network
- 34. Rights under or over streets
- 35. Temporary use of land for carrying out the authorised development
- 36. Temporary use of land for maintaining the authorised development
- 37. Apparatus and rights of statutory undertakers in stopped up streets
- 38. No double recovery

PART 6  
MISCELLANEOUS AND GENERAL

- 39. Operation and use of railways
- 40. Operational land for the purposes of the 1990 Act
- 41. Charges
- 42. Felling or lopping of trees and removal of hedgerows
- 43. Protective provisions
- 44. Governance of requirements and governance of protective provisions relating to highway works
- 45. Disapplication, application and modification of legislative provisions
- 46. Certification of plans and documents
- 47. Service of notices
- 48. Arbitration

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SCHEDULES

- SCHEDULE 1 — AUTHORISED DEVELOPMENT
  - PART 1 — NSIP: THE CONSTRUCTION OF A RAIL FREIGHT INTERCHANGE
  - PART 2 — ASSOCIATED DEVELOPMENT

- SCHEDULE 2
  - PART 1 — REQUIREMENTS
  - PART 2 — RAIL REQUIREMENTS
  - PART 3 — PROCEDURE FOR APPROVALS ETC. UNDER REQUIREMENTS
- SCHEDULE 3 — STREETS SUBJECT TO STREET WORKS
- SCHEDULE 4
  - PART 1 — STREETS TO BE PERMANENTLY STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED
  - PART 2 — STREETS TO BE PERMANENTLY STOPPED UP AND BECOME PRIVATE STREETS
- SCHEDULE 5 — PUBLIC RIGHTS OF WAY
  - PART 1 — PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED
  - PART 2 — NEW PUBLIC RIGHT OF WAY TO BE CREATED
- SCHEDULE 6 — PRIVATE MEANS OF ACCESS
  - PART 1 — PRIVATE MEANS OF ACCESS TO BE CLOSED FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED
  - PART 2 — PRIVATE MEANS OF ACCESS TO BE CLOSED AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED
  - PART 3 — NEW PRIVATE MEANS OF ACCESS CREATED
- SCHEDULE 7 — CLASSIFICATION OF HIGHWAYS
- SCHEDULE 8 — SPEED LIMITS
  - PART 1 — ROADS SUBJECT TO 30MPH SPEED LIMIT
  - PART 2 — ROADS SUBJECT TO 40MPH SPEED LIMIT
  - PART 3 — ROADS SUBJECT TO 50MPH SPEED LIMIT
  - PART 4 — ROADS SUBJECT TO 60MPH SPEED LIMIT
- SCHEDULE 9
  - PART 1 — AMENDMENTS TO EXISTING ORDERS
  - PART 2 — CLEARWAYS
  - PART 3 — NO WAITING AT ANY TIME
  - PART 4 — LIMITED WAITING
  - PART 5 — PROHIBITED MOVEMENTS
  - PART 6 — ONE WAY STREET
- SCHEDULE 10 — LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN
- SCHEDULE 11 — LAND IN WHICH NEW RIGHTS MAY BE CREATED
- SCHEDULE 12 — MODIFICATIONS OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS
- SCHEDULE 13 — PROTECTIVE PROVISIONS
  - PART 1 — FOR PROTECTION OF RAILWAY INTERESTS
  - PART 2 — FOR THE PROTECTION OF HIGHWAYS ENGLAND
  - PART 3 — FOR THE PROTECTION OF STAFFORDSHIRE COUNTY COUNCIL AS HIGHWAY AUTHORITY
  - PART 4 — FOR THE PROTECTION OF WESTERN POWER DISTRIBUTION LIMITED
  - PART 5 — FOR THE PROTECTION OF USERS OF THE GAILEY PARK ROUNDABOUT
  - PART 6 — FOR THE PROTECTION OF THE SI GROUP

- PART 7 — FOR THE PROTECTION OF THE CANAL & RIVER TRUST
- PART 8 — FOR THE PROTECTION OF CADENT GAS LIMITED AS  
GAS UNDERTAKER
- PART 9 — FOR THE PROTECTION OF OPERATORS OF  
ELECTRONIC COMMUNICATIONS CODE NETWORKS
- PART 10 — FOR THE PROTECTION OF WATER AND SEWERAGE  
UNDERTAKERS
- SCHEDULE 14 — MISCELLANEOUS CONTROLS
- SCHEDULE 15 — CERTIFICATION DOCUMENTS

An application has been made to the Secretary of State under section 37 of the Planning Act 2008(a) (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an order granting development consent.

The application was examined in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c) by a single person appointed by the Secretary of State in accordance with Chapter 3 of Part 6 of the 2008 Act.

The single appointed person, having considered the representations made and not withdrawn and the application with the accompanying documents, in accordance with section 83 of the 2008 Act has reported to the Secretary of State.

The Secretary of State having considered the representations made and not withdrawn and the report of the single appointed person has decided to make an Order granting development consent for the development described in the application [with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals comprised in the application].

The Secretary of State in exercise of the powers conferred by sections 114, 115, 117, 120 and 122 of, and Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

## PART 1

### PRELIMINARY

#### **Citation and Commencement**

1. This Order may be cited as the West Midlands Rail Freight Interchange Order 201[X] and comes into force on [ ] 201[ ].

#### **Interpretation**

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(d);

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- (a) 2008 c. 29, Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20). Section 37 was amended by section 128(2) and 137 of, and paragraphs 1 and 5 of Part 1 of Schedule 13 to, the Localism Act 2011 (c.20).
  - (b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2014/468, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682 and S.I. 2017/572. There are other amendments to the Regulations which are not relevant to this Order.
  - (c) S.I. 2010/103, amended by S.I. 2012/635.
  - (d) 1961 c.33.

“the 1965 Act” means the Compulsory Purchase Act 1965(a);

“the 1973 Act” means the Land Compensation Act 1973(b);

“the 1980 Act” means the Highways Act 1980(c);

“the 1984 Act” means the Road Traffic Regulation Act 1984(d);

“the 1990 Act” means the Town and Country Planning Act 1990(e);

“the 1991 Act” means the New Roads and Street Works Act 1991(f);

“the 2007 Regulations” means the Town and Country Planning (Control & Advertisements) (England) Regulations 2007(g);

“the 2008 Act” means the Planning Act 2008(h);

“the 2010 Regulations” means the Community Infrastructure Levy Regulations 2010(i);

“the 2017 EIA Regulations” means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(j);

“A5/A449 link road” means the new road to be constructed as part of the authorised development between the A5 trunk road and the A449 (Stafford Road) being Works No.4;

“access and rights of way plans” means the plans of that description referred to in Schedule 15 and certified as the access and rights of way plans by the Secretary of State for the purposes of this Order;

“address” includes any number or address used for the purposes of electronic transmission;

“apparatus” for the purposes of article 8 (street works) and article 37 (apparatus and rights of statutory undertakers in stopped up streets) has the same meaning as in Part 3 of the 1991 Act;

“authorised activity” means for the purpose of article 28 (power to override easements and other rights)—

- (a) the erection, construction, carrying out or maintenance of any building or works on land;
- (b) the erection, construction or maintenance or anything in, on, over or under land; or
- (c) the use of any land;

“authorised development” means the development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 (meaning of development) of the 2008 Act and any works carried out under the requirements;

“book of reference” means the document of that description referred to in Schedule 15 and certified by the Secretary of State as the book of reference for the purposes of this Order;

“bridges” means the bridges shown on the bridge plans;

“bridge plans” mean the plans of that description referred to in Schedule 15 and certified as the bridge plans by the Secretary of State for the purposes of this Order;

“bridleway” has the same meaning as in the 1980 Act;

“building” includes any structure or erection or any part of a building, structure or erection;

“bus” has the same meaning as in Schedule 1 of the Traffic Signs Regulations and General Directions 2016(k);

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- (a) 1965 c.56.
  - (b) 1973 c.26.
  - (c) 1980 c.66.
  - (d) 1984 c.27.
  - (e) 1990 c.8.
  - (f) 1991 c. 22.
  - (g) S.I. 2007/783.
  - (h) 2008 c. 29.
  - (i) S.I. 2010/948 as amended by S.I. 2011/987, S.I. 2012/635, S.I. 2012/2975, S.I. 2013/982, S.I. 2014/385, S.I. 2015/377, S.I. 2015/644, S.I. 2015/836 and S.I. 2018/172.
  - (j) S.I. 2017/572 as amended by S.I. 2017/1012.
  - (k) S.I. 2016/362. There are amendments to the Regulations which are not relevant to this Order.

“carriageway” has the same meaning as in the 1980 Act;

“commence” or “commencement” means the carrying out of a material operation, as defined in section 155 of the 2008 Act (when development begins), as part of the authorised development unless the context indicates otherwise;

“cycle track” has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act<sup>(a)</sup>;

“electronic communications code” has the same meaning as in section 106 of the Communications Act 2003<sup>(b)</sup>;

“electronic communications code network” means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the Communications Act 2003; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“environmental statement” means the document of that description referred to in Schedule 15 and certified by the Secretary of State as the environmental statement for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“future highway maintenance plans” means the plans of that description referred to in Schedule 15 and certified as the future highway maintenance plans for the purposes of this Order;

“hedgerow” has the same meaning as in the Hedgerow Regulations 1997<sup>(c)</sup>;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“highway classification plans” means the plans of that description referred to in Schedule 15 and certified as highway classification plans by the Secretary of State for the purposes of this Order;

“Highways England” means Highways England Company Limited (company number 09346363), whose registered office is at Bridge House, Walnut Tree Close, Guildford, GU1 4ZZ, appointed as highway authority for the highways specified in article 2 of the Appointment of a Strategic Highways Company Order 2015<sup>(d)</sup> or any successor in function;

“highway general arrangement plans” means the plans of that description referred to in Schedule 15 and certified as the highway general arrangement plans by the Secretary of State for the purposes of this Order;

“highway works” means the works comprised in Works Nos. 4, 5, 7, 10a, 10b and 12;

“land plans” means the plans of that description referred to in Schedule 15 and certified as the land plans by the Secretary of State for the purposes of this Order;

“lead local flood authority” means Staffordshire County Council or any successor in function;

“local highway authority” means Staffordshire County Council or any successor in function;

“local planning authority” means South Staffordshire District Council or any successor in function;

“main site” means that part of the land within the Order limits comprising the areas of land described on the works plans as Works Nos. 1, 2, 3 and 6;

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(a) 1980 c. 66. The definition of “cycle track” was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

(b) 2003 c. 21. Section 106 was amended by section 4 of the Digital Economy Act 2017 (c. 30).

(c) S.I. 1997/1160.

(d) S.I. 2015/376.

“maintain” includes inspect, repair, adjust, alter, clear, refurbish or improve and any derivative of “maintain” is to be construed accordingly;

“occupation” means occupation other than for the purposes of construction, fitting out, commissioning or site security;

“Order land” means the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily and described in the book of reference;

“Order limits” means the limits shown on the Order limits plan represented by a red line within which the authorised development may be carried out;

“Order limits plan” means the plan of that description referred to in Schedule 15 and certified as the Order limits plan by the Secretary of State for the purposes of this Order;

“owner” in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(a);

“the parameters plans” means the plans of that description referred to in Schedule 15 and certified as the parameters plans by the Secretary of State for the purposes of this Order;

“phase” means a defined section or part of the authorised development, the extent of which is shown in a scheme submitted to and approved by the local planning authority under requirement 2 (phases of development);

“public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board or a lead local flood authority or a sewerage undertaker;

“railway” has the same meaning as in the 2008 Act;

“rail section plans” means the plans of that description referred to in Schedule 15 and certified as the rail section plans by the Secretary of State for the purposes of this Order;

“rail terminal-illustrative expanded rail terminal layout plan” means the plan of that description referred to in Schedule 15 and certified as the rail terminal illustrative expanded rail terminal layout plan by the Secretary of State for the purposes of this Order;

“relevant body” means in respect of each of the highway works the body referred to in respect of each of those works in column (4) of the table in requirement 25 (transport - phasing of highway works);

“relevant highway authority” means in any provision of this Order the highway authority for any area of land to which that provision relates;

“relevant street authority” means in any provision of this Order the street authority for any area of land to which that provision relates;

“relevant traffic authority” means in any provision of this Order the traffic authority for any area of land to which that provision relates;

“relocation works” means works executed, or apparatus provided, under paragraph (2) of article 37 (apparatus and rights of statutory undertakers in stopped up streets);

“remediation strategy” means the strategy to ensure the effective continuation of on-going groundwater remediation works within the SI Land set out in the remediation safeguarding report;

“remediation safeguarding report” means the report of that description contained in technical appendix 11.5 of the environmental statement;

“requirements” means the requirements set out in Part 1 and Part 2 of Schedule 2 (requirements);

“SI Land” means the land shown as parcel numbers 11, 14 and 18 on the land plans;

“SI Facility” means the chemical works occupied and operated by the SI Group located to the east of the SI Land outwith the Order limits;

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(a) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

“SI Group” means SI Group-UK Ltd whose company number is 00667049 and whose registered office is at Four Ashes, Wolverhampton, WV10 7BT or (as respectively defined in section 1159 of the Companies Act 2006) a holding company of such company, a subsidiary of such company or another subsidiary of such holding company;

“speed limit plans” means the plans of that description referred to in article Schedule 15 and certified by the Secretary of State as the speed limits plan for the purposes of this Order;

“statutory undertaker” means a statutory undertaker for the purposes of section 127(8) (statutory undertakers’ land) of the 2008 Act;

“statutory utility” means a statutory undertaker for the purposes of the 1990 Act or a public communications provider as defined in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(a);

“strategic road network” means that part of the highway network comprising trunk roads and motorways;

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act(b), together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority” in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“traffic authority” has the meaning as in section 121A (traffic authorities) of the 1984 Act(c);

“traffic officer” means a person designated under section 2 (designation of Traffic Officers) of the Traffic Management Act 2004(d);

“traffic regulation plans” means the plans of that description referred to in Schedule 15 and certified by the Secretary of State as the traffic regulation plans for the purposes of this Order;

“tribunal” means the Lands Chamber Upper Tribunal;

“trunk road” means a highway which is a trunk road by virtue of—

- (a) section 10 or 19(1) of the 1980 Act(e); or
- (b) an order or direction under section 10 of that Act; or
- (c) this Order; or
- (d) any other enactment;

“the undertaker” means—

- (a) Four Ashes Limited (company number 09747871) registered office 4<sup>th</sup> Floor, 7/10 Chandos Street, Cavendish Square, London W1G 9DQ; and
- (b) in respect of the main site only any other person who has the benefit of this Order in accordance with section 156 (benefit of order granting development consent) of the 2008 Act for such time as that section applies to that person but does not include SI Group unless SI Group is carrying out part of the authorised development under this Order other than the remediation strategy and does not include any other person who owned land within the main site at the date of this Order until such time as the authorised development is commenced on land owned by that person;

“verge” means any part of the street which is not a carriageway;

“warehousing” means the warehousing constructed as part of the authorised development;

- 
- (a) 2003 c. 21. There are amendments to section 151 of the Communications Act 2003 which are not relevant to this Order.
  - (b) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26).
  - (c) 1984 c. 27. Section 121A was inserted by section 168(1) of, and paragraph 70 of Part II of Schedule 8 to, the New Roads and Street Works Act 1991 (c. 22), and was amended by section 1(b) of, and paragraphs 70 and 95(1) and (3) of Part 2 of Schedule 1 to, the Infrastructure Act 2015 (c. 7). There are other amendments to schedule 121A of the Act which are not relevant to this Order.
  - (d) 2004 c. 18.
  - (e) 1980 c. 66. Section 10 was amended by section 22(2)(a), (b) and (cc) of the New Roads and Street Works Act 1991 (c. 22), section 1(6) of, and paragraphs 1, 10(1)-(4) of Part 1 of Schedule 1 to, the Infrastructure Act 2015 (c. 7), section 36 of, and paragraphs 21 and 22 of Schedule 2 to, the Planning Act 2008 (c. 29). Section 19(1) was amended by section 1(6) of, and paragraphs 1 and 15 of Part 1 of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or public drain; and

“the works plans” means the plans of that description referred to in Schedule 15 and certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate and where applicable distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development) and references to numbered requirements are to the requirements as numbered in Part 1 of Schedule 2 (requirements).

(5) For the purposes of this Order all areas described in square metres in the book of reference are approximate.

(6) Where the term approximate precedes a figure of measurement or quantum then the flexibility accorded by that word is limited by the parameters and the limits of deviation as described in article 4 (parameters of authorised development) and does not authorise any works which would result in significant environmental effects which have not been assessed in the environmental statement.

(7) Where in this Order a document or plan is referred to by reference to a document number, the reference is to the document or plan of that number referred to in Schedule 15 (certification of plans and documents).

## PART 2 PRINCIPAL POWERS

### **Development consent granted by the Order**

3. Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development to be carried out and used within the Order limits.

### **Parameters of authorised development**

4. The authorised development must be carried out within the parameters shown and described on the parameters plans and subject to those parameters in carrying out the authorised development the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans;
- (b) in respect of the bridges, deviate vertically from the levels shown highlighted yellow on the bridge plans to a maximum of 0.5 metres upwards or 1.0 metres downwards; and
- (c) in respect of the railway works, comprised in Works Nos. 1 and 2 deviate vertically from the levels shown on the rail section plans to a maximum of 1.5 metres upwards or 2.5 metres downwards.

### **Authorisation of use**

5. Subject to the provisions of this Order and to the requirements, the undertaker and any persons authorised by the undertaker may operate and use those parts of the authorised development comprised in Works Nos. 1 to 3 inclusive for the purposes of a rail freight terminal

and warehousing for any purposes for which such parts of the authorised development is designed and for any purposes ancillary to those purposes.

### **Maintenance of authorised development**

6.—(1) The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) Paragraph (1) does not extend to the highway works the maintenance of which is governed by article 14 (maintenance of highway works) and Parts 2 and 3 of Schedule 13 (protective provisions).

(3) Paragraph (1) does not extend to any maintenance works which would give rise to any significant adverse effects on the environment not identified at the time this Order was made or in any updated environmental information supplied under the 2017 EIA Regulations.

### **Benefit of Order**

7.—(1) Subject to paragraphs (2), (3) and (4) the undertaker shall have the benefit of this Order.

(2) Four Ashes Limited have the sole benefit of the provisions of Part 5 (powers of acquisition) unless the Secretary of State consents to the transfer of the benefit of those provisions.

(3) Four Ashes Limited have the sole benefit of the powers conferred by this Order to carry out the highway works in accordance with the provisions of Parts 2 and 3 of Schedule 13 (protective provisions) unless—

- (a) the Secretary of State consents to the transfer of the benefit of those provisions; or
- (b) the provisions of paragraph 4(6) of Part 2 or paragraph 4(9) of Part 3 of Schedule 13 apply in which case the relevant highway authority shall have the benefit of the powers to carry out the relevant highway works.

(4) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers, operators of the electronic communications code network and other persons affected by the authorised development.

## **PART 3 STREETS**

### **Street works**

8.—(1) The undertaker may, for the purposes of the carrying out of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) as are within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position;
- (e) construct bridges and tunnels;
- (f) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (g) alter the level or increase the width of such kerb, footway, cycle track or verge;
- (h) reduce the width of the carriageway of the street;
- (i) make and maintain crossovers and passing places; and
- (j) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (i).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) In respect of streets for which Highways England is the street authority, the street works must be carried out in accordance with the relevant provisions of Part 2 of Schedule 13 (protective provisions).

(4) In respect of streets for which the local highway authority is the street authority, the street works must be carried out in accordance with the relevant provisions of Part 3 of Schedule 13.

### **Power to alter layout, etc., of streets**

**9.**—(1) Subject to paragraph (2), the undertaker may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within Works No. 5 and the layout of any street at its junction with such a street; and, without limitation on the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of such kerb, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) make and maintain crossovers, and passing places.

(2) The powers conferred by paragraph (1) must not be exercised without the consent of the local highway authority but such consent must not be unreasonably withheld and if the highway authority which has received an application for consent to exercise powers under paragraph (1) accompanied by all relevant information fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application is submitted with all relevant information, it is deemed to have granted consent.

### **Permanent stopping up of streets**

**10.**—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up permanently the street specified in column (2) Part 1 of Schedule 4 (streets to be permanently stopped up for which a substitute is to be provided) to the extent specified in column (3) of that Part of that Schedule.

(2) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up permanently the street specified in column (2) Part 2 of Schedule 4 (streets to be permanently stopped up and become private streets) to the extent specified in column (3) of that Part of that Schedule.

(3) No street specified in column (2) of Parts 1 and 2 of Schedule 4 is to be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, which is specified in column (4) of Parts 1 and 2 of that Schedule, has been completed to the reasonable satisfaction of the relevant street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(4) Where a street has been stopped up under paragraph (1) of this article—

- (a) all rights of way over or along the street so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the street as is bounded on both sides by land owned by the undertaker.

(5) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article is subject to article 37 (apparatus and rights of statutory undertakers in stopped up streets).

(7) The undertaker must provide to the local highway authority within 28 days of the stopping up of a length of street specified in column (2) of Parts 1 and 2 of Schedule 4 a plan to a scale of not less than 1:500 showing the extent of the stopping up.

### **Temporary stopping up of streets**

**11.**—(1) The undertaker may during and for the purposes of carrying out the authorised development, temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(3) The undertaker must not temporarily stop up, alter or divert any street for which it is not the street authority without the consent of the relevant street authority which may attach reasonable conditions to any consent (including specifying the time period during which the street may be stopped up, altered or diverted) but such consent must not be unreasonably withheld.

(4) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) If a street authority has received an application for consent under paragraph (3) accompanied with all relevant information fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was submitted with all relevant information, it is deemed to have granted consent.

### **Public rights of way – creation and stopping up**

**12.**—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of that part of the authorised development comprised in Work Nos. 1, 3 and 6 stop up the public right of way specified in column (2) of Part 1 of Schedule 5 (public rights of way to be permanently stopped up for which no substitute is to be provided) to the extent specified in column (3) of that Part of that Schedule.

(2) The undertaker must provide to the relevant highway authority within 28 days of the stopping up of the length of public right of way specified in column (3) of Part 1 of Schedule 5 a plan to a scale of not less than 1:500 showing the extent of the stopping up.

(3) If at any time the land shown coloured purple between points A and B on sheet 7 of the access and rights of way plans is the subject of a modification order under section 53 of the Wildlife and Countryside Act 1981(a) the effect of which is to give the land status as a public right of way then by operation of this paragraph (3), in connection with the carrying out of the authorised development the public right of way shall be stopped up without the need for any further order.

(4) The undertaker must in connection with carrying out of the authorised development provide the new public right of way specified in columns (1) and (2) of Part 2 of Schedule 5 (new public right of way to be created) to the extent specified in column (3) of that Part of that Schedule at the stage of the authorised development identified in column (4) of that Part of that Schedule.

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(a) 1981 c.69

## **Accesses**

**13.**—(1) The undertaker may, for the purposes of the authorised development and subject to paragraph (2), with the consent of the relevant highway authority or the relevant street authority as appropriate (such consent not to be unreasonably withheld), form and lay out such means of access (permanent or temporary) or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) The agreement of the relevant highway authority or the relevant street authority as appropriate is not required for the formulation, layout or improvement of a new or existing means of access shown in the highway general arrangement plans and carried out in accordance with the relevant provisions of Parts 2 and 3 of Schedule 13 (protective provisions).

(3) If a local highway authority or street authority has received an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was made, it is deemed to have granted consent.

(4) The private means of access as set out in column (2) of Part 1 of Schedule 6 (private means of access to be closed for which no substitute is to be provided) may be closed by the undertaker at the stage of the authorised development identified in column (3) of that Part of that Schedule without a substitute being provided.

(5) The private means of access as set out in column (2) of Part 2 of Schedule 6 (private means of access to be closed and for which a substitute is to be provided) may be removed by the undertaker and if removed must be replaced by the means of access as set out in column (3) of Part 2 of Schedule 6 at the stage of the authorised development identified in column (4) of that Part of that Schedule.

(6) The undertaker must provide the private means of access as set out in column (2) of Part 3 of Schedule 6 (new private means of access created) at the stage of the authorised development identified in column (3) of that Part of that Schedule.

## **Maintenance of highway works**

**14.**—(1) The highway works must be completed in accordance with the provisions of Parts 2 and 3 of Schedule 13 (protective provisions).

(2) With effect from the date of the handover certificate referred to in paragraph 7 of Part 2 of Schedule 13 the highway works to which that certificate relates will be maintained by and at the expense of Highways England.

(3) With effect from the date of the final certificate referred to in paragraphs 7 and 8 of Part 3 of Schedule 13 the highway works to which that certificate relates will be maintained by the local highway authority.

(4) Where new land not previously part of the public highway is the subject of a provisional certificate under paragraph 6 of Part 2 of Schedule 13 then it shall be deemed to be dedicated as part of the public highway on the issue of that certificate.

(5) Where new land not previously part of the public highway is the subject of a final certificate under paragraph 7 or 8 of Part 3 of Schedule 13 then it shall be deemed to be dedicated as part of the public highway on the issue of that certificate.

(6) For the purposes of this article, the definition of “maintain” in article 2 shall not apply and the word “maintain” shall be given its ordinary meaning when applied to highways.

## **Classification of A5/A449 link road**

**15.**—(1) The A5/A449 link road described in Schedule 7 (new highways) is to be—

- (a) classified as set out in column (3) of Schedule 7 for the purpose of any enactment or instrument which refers to highways classified as such; and
- (b) provided for the use of the classes of traffic defined in Schedule 4 (classes of traffic for purposes of special roads) to the 1980 Act as set out in column (4) of Schedule 7,

as if such classification has been made under section 12(3) of the 1980 Act.

(2) From the date of the opening of the A5/A449 link road to the public Staffordshire County Council shall be the highway authority for that highway.

### **Speed limits**

**16.**—(1) Upon the opening of the length of highway specified in columns (1) and (2) of Part 1 of Schedule 8 (roads subject to 30mph speed limit) no person is to drive any motor vehicle at a speed exceeding 30 miles per hour in the lengths of road identified in column (2) of Part 1 of Schedule 8.

(2) Upon the opening of the length of highway specified in columns (1) and (2) of Part 2 of Schedule 8 (roads subject to 40mph speed limit) no person is to drive any motor vehicle at a speed exceeding 40 miles per hour in the lengths of road identified in column 2 of Part 2 of Schedule 8.

(3) Upon the opening of the length of highway specified in columns (1) and (2) of Part 3 of Schedule 8 (roads subject to 50mph speed limit) no person is to drive any motor vehicle at a speed exceeding 50 miles per hour in the lengths of road identified in column (2) of Part 3 of Schedule 8.

(4) Upon the opening of the length of highway specified in columns (1) and (2) of Part 4 of Schedule 8 (roads subject to 60mph speed limit) no person is to drive any motor vehicle at a speed exceeding 60 miles per hour in the lengths of road identified in column (2) of Part 4 of Schedule 8.

(5) Subject to the provisions of this article and the consent (such consent not to be unreasonably withheld) of the relevant traffic authority, which consent may be subject to reasonable conditions, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction, operation or maintenance of the authorised development impose a temporary speed limit either at all times or at times, on days or during such periods and on such roads as may be specified by the undertaker.

(6) The undertaker must not exercise the powers in paragraph (5) unless it has given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the relevant traffic authority.

(7) The speed limits imposed by this Order are deemed to have been imposed by an order under the 1984 Act and—

- (a) have the same effect; and
- (b) may be varied by the relevant traffic authority in the same manner,

as any other speed limit imposed by an order under that Act.

(8) No speed limit imposed by this Order applies to vehicles falling within regulation 3(4) (regulations in relation to orders and notices under the 1984 Act) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011<sup>(a)</sup> when used in accordance with regulation 3(5) of those Regulations.

### **Traffic Regulation**

**17.**—(1) The orders referred to in columns (1) and (2) of Part 1 of Schedule 9 (amendments to existing orders) are revoked or amended as set out in column (3) of Part 1 of Schedule 9 upon the event listed in column (4) of Part 1 of Schedule 9 occurring.

(2) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent (such consent not to be unreasonably withheld) of the relevant traffic authority, which consent may be subject to reasonable conditions, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction, operation, or maintenance of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;

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(a) S.I. 2011/935.

- (b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (c) suspend or authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(3) The undertaker must not exercise the powers in paragraph (2) unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the relevant traffic authority; and
- (b) advertised its intention in such manner as the relevant traffic authority may specify in writing within 7 days of the relevant traffic authority's receipt of notice of the undertaker's intention under sub-paragraph (a).

(4) Any prohibition, restriction or other provision made by the undertaker under paragraph (2) shall—

- (a) have effect as if duly made by, as the case may be—
  - (i) the relevant traffic authority as a traffic regulation order under the 1984 Act; or
  - (ii) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act<sup>(a)</sup>; and
- (b) be deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 (road traffic contraventions subject to civil enforcement).

(5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (2) at any time.

(6) Expressions used in this article and in the 1984 Act shall have the same meaning in this article as in that Act.

(7) If the relevant traffic authority fails to notify the undertaker of its decision within 42 days of receiving an application for consent under paragraph (2) that is accompanied by all relevant information the relevant traffic authority shall be deemed to have given consent.

### **Clearways, No Waiting and Limited Waiting**

**18.**—(1) Subject to paragraphs (5) and (6), following the event specified in column (4) of Part 2 of Schedule 9 (clearways), no person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit any vehicle to wait on any part of a carriageway specified in columns (1) and (2) of Part 2 of Schedule 9, other than a lay-by.

(2) Subject to paragraphs (5) and (7) following the event specified in column (4) of Part 2 of Schedule 9 no person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit any vehicle to wait on any verge adjacent to any part of a carriageway specified in columns (1) and (2) of Part 2 of Schedule 9 where such prohibition is indicated as applying in column (3) of Part 2 of Schedule 9.

(3) Subject to paragraph (5) following the event specified in column (3) of Part 3 of Schedule 9 (no waiting at any time) no person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit any vehicle to wait at any time on any day, on the sides of the carriageway specified in columns (1) and (2) of Part 3 of Schedule 9 or its adjacent verge at any time.

(4) Subject to paragraph (5) following the event specified in column (3) of Part 4 of Schedule 9 (limited waiting), no person, except upon the direction or with the permission of a police officer or

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(a) 1984 c. 27. Section 32 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51). There are other amendments to section 32 which are not relevant to this Order.

traffic officer in uniform, is to cause or permit any vehicle to wait for any longer than two hours or return within one hour on any part of the carriageway specified in columns (1) and (2) of Part 4 of Schedule 9 or its adjacent verge.

(5) Nothing in paragraphs (1), (2), (3) or (4) applies—

- (a) to render it unlawful to cause or permit a vehicle to wait on any part of the carriageway or verge, for so long as may be necessary to enable that vehicle to be used in connection with—
  - (i) the removal of any obstruction to traffic;
  - (ii) the maintenance, improvement, reconstruction or operation of the carriageway or verge;
  - (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the carriageway or verge of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any telecommunications apparatus as defined in Schedule 3A to the Communications Act 2003(a); or
  - (iv) any building operation or demolition;
- (b) in relation to a vehicle being used—
  - (i) for police, ambulance, fire and rescue authority or traffic officer purposes;
  - (ii) in the service of a local authority, Highways England, a safety camera partnership or the Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;
  - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(b); or
  - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services Act 2000(c); or
- (c) in relation to a vehicle waiting when the person in control of it is—
  - (i) required by law to stop;
  - (ii) obliged to stop in order to avoid an accident; or
  - (iii) prevented from proceeding by circumstances outside the person's control.

(6) Nothing in paragraph (1) applies to any vehicle selling or dispensing goods to the extent that the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispersed.

(7) Nothing in paragraph (2) applies—

- (a) so as to prevent a vehicle waiting on any verge specified in paragraph (2) for so long as may be necessary—
  - (i) to enable a person to board or alight from the vehicle;
  - (ii) to enable goods to be loaded on to or unloaded from the vehicle; or
  - (iii) to enable goods to be sold from the vehicle provided such goods are immediately delivered at, or taken into, premises adjacent to the vehicle from which sale is effected;
- (b) so as to prevent a vehicle waiting on any verge specified in paragraph (2) for so long as may be necessary to enable that vehicle, if it cannot conveniently be used for such purpose without waiting on such verge, to be used in connection with any building operation or demolition, the removal of any obstruction or potential obstruction to traffic, the maintenance, improvement or reconstruction of such verge or of a carriageway immediately adjacent to such verge or the erection, laying, placing, maintenance, testing,

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(a) 2003 c. 21.

(b) 1991 c. 56.

(c) 2000 c. 26.

alteration, repair or removal of any structure, works or apparatus in, on, under or over that verge or carriageway; or

- (c) to a vehicle waiting on any verge specified in paragraph (2) while any gate or other barrier at the entrance to premises to which the vehicle requires access or from which it has emerged is opened or closed.

(8) Paragraphs (1) to (7) have effect as if made by a traffic regulation order under the 1984 Act and their application may be varied or revoked by such an order or by any other enactment which provides for the variation or revocation of such orders.

### **Motor vehicle restrictions**

**19.**—(1) No person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit any vehicle to proceed along any part of a road specified in columns (1) and (2) of Part 5 of Schedule 9 (prohibited movements) in the manner specified in column (3) of Part 5 of Schedule 9.

(2) No person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit any vehicle to proceed along the parts of road specified in columns (1) and (2) of Part 6 of Schedule 9 (one way street) in a direction other than that specified in relation to that road in column (3) of Part 6 of Schedule 9 (one way street).

(3) Paragraphs (1) and (2) have effect as if made by a traffic regulation order under the 1984 Act, and their application may be varied or revoked by such an order or by any other enactment which provides for the variation or revocation of such orders.

### **Agreements with highway authorities**

**20.**—(1) A relevant highway authority and the undertaker may enter into agreements related to the authorised development with respect to—

- (a) the construction, and/or maintenance of any new highway, including any structure carrying the highway over the existing canal and railway and any railway authorised by this Order;
- (b) the strengthening, improvement, repair or reconstruction of any highway under the powers conferred by this Order;
- (c) the maintenance of landscaping within a highway constructed as part of the highway works;
- (d) the maintenance of any highway related assets which fall outside the extent of highway maintained by a relevant highway authority;
- (e) any stopping up, alteration or diversion of a highway as part of or to facilitate the authorised development;
- (f) the carrying out in the highway of any of the works referred to in article 8 (street works); or
- (g) the erection of signage in connection with the authorised development.

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

- (a) make provision for the relevant highway authority to carry out any function under this Order which relates to the highway in question;
- (b) include an agreement between the undertaker and the relevant highway authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

**21.**—(1) Subject to paragraphs (3), (4), and (5) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) No water may be discharged into a watercourse that flows into the highway drainage system without the consent of the relevant highway authority and such consent may be given subject to such terms and conditions as the relevant highway authority considers appropriate such consent not to be unreasonably withheld or delayed.

(5) The undertaker must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016(b).

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a local authority or a sewerage undertaker; and

(b) other expressions excluding watercourse, which are used both in this article and in the Water Resources Act 1991(c) have the same meaning as in that Act.

(9) If a person who has received an application for consent under paragraphs (3) or (4) or approval under paragraph (5)(a) fails to notify the undertaker of its decision within 42 days of receiving the application submitted with all relevant information, that person is deemed to have granted consent or given approval as the case may be.

#### **Authority to survey and investigate the land**

**22.**—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

(a) survey or investigate the land;

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(a) 1991 c.56. Section 106 was amended by section 35(1) and (8) and section 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43) and, sections 36(2) and 99 of the Water Act 2003 (c. 37) (subject to the transitional provisions contained in article 6 of, and Schedule 3 to, S.I. 2004/641) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act (c. 29).

(b) S.I. 2016/1154. There are amendments to regulation 12 which are not relevant to this Order.

(c) 1991 c. 57.

- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 28 days' notice has been served on every owner, who is not the undertaker, and occupier of the land.

(3) Any person entering land under the powers conferred by this article on behalf of the undertaker—

- (a) must, if so required, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes may be made under this article—

- (a) in land located within the highway boundary without the consent of the relevant highway authority; or
- (b) in a private street without the consent of the relevant street authority,

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(6) If either a local highway authority or a street authority has received an application for consent under paragraph (4) fails to notify the undertaker of its decision within 42 days of receiving the application submitted with all relevant information the authority is deemed to have granted the consent.

## PART 5

### POWERS OF ACQUISITION

#### **Guarantees in respect of payment of compensation**

**23.—**(1) The undertaker must not exercise a power conferred by articles 24 to 28 or 33 to 36 unless a guarantee or alternative form of security in respect of the liabilities of the undertakers to pay compensation under the power being exercised is first in place.

(2) The form of guarantee or security referred to in paragraph (1), and the amount guaranteed or secured, must be approved by the local planning authority; but such approval must not be unreasonably withheld.

(3) The undertaker must provide the local planning authority with such information as the local planning authority may reasonably require relating to the interests in the land affected by the exercise of the powers conferred by articles 24 to 28 or 33 to 36 for the local planning authority to be able to determine the adequacy of the proposed guarantee or security including—

- (a) the interests affected; and
- (b) the undertaker's assessment, and the basis of the assessment, of the level of compensation.

(4) A guarantee or other security given in accordance with this article that guarantees or secures the undertaker's payment of compensation under this Part shall be treated as enforceable against

the guarantor or provider of security by any person to whom such compensation is properly payable.

(5) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years from the date on which the relevant power is exercised.

### **Compulsory acquisition of land**

**24.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or is incidental to, it as described in the book of reference and shown on the land plans.

(2) From the day on which a compulsory acquisition notice under section 134 of the 2008 Act<sup>(a)</sup> is served or the day on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, all rights, trusts and incidents to which that land or that part of it which is vested (as the case may be) was previously subject shall be discharged or suspended, so far as their continuance would be inconsistent with the exercise of the powers under this Order.

(3) This article is subject to—

- (a) article 25 (compulsory acquisition of rights);
- (b) article 26 (acquisition of part of certain properties);
- (c) article 30 (time limit for exercise of authority to acquire land and rights compulsorily); and
- (d) article 35(9) (temporary use of land for carrying out the authorised development).

### **Compulsory acquisition of rights**

**25.**—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights listed in Schedule 11 (land in which new rights may be created) and described in the book of reference and shown on the land plans.

(2) From the date on which a compulsory acquisition notice is served pursuant to section 134 of the 2008 Act or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new right is, or rights are, acquired shall be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section 8 (other provisions as to divided land) of the 1965 Act<sup>(b)</sup>, as modified by paragraph (5) of Schedule 12 (modifications of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires an existing right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 12 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article.

(5) In any case where the acquisition of new rights under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this order if that power were exercised by the undertaker.

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(a) 2008 c. 29. Section 134 was amended by section 142(1)-(4) and section 237 of, and Part 21 of Schedule 25 to, the Localism Act 2011 (c. 20) and regulation 2 of and paragraph 6 of the Schedule to the Housing and Planning Act 2016 (Compulsory Purchase) (Corresponding Amendments) Regulations 2017 (S.I. 2017/16).

(b) 1965 c. 56. Section 8 was amended by section 199(1) of, and paragraphs 1 and 2 of Part 1 of Schedule 17 to, the Housing and Planning Act 2016 (c. 22) and articles 5(1) and (2) of, and paragraphs 59 and 62(b) and (c) of Schedule 1 to, the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307).

## Acquisition of part of certain properties

26.—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as to divided land) (as applied by section 125 of the 2008 Act<sup>(a)</sup>) where—

- (a) a notice to treat is served on a person (the “owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (the “land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (the “land subject to the counter-notice”).

(3) If no counter-notice is served within that period, the owner is required to sell the land subject to the notice to treat.

(4) If a counter-notice is served within that period, the question whether the owner is required to sell only the land subject to the notice to treat must, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on a reference the tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner is required to sell the land subject to the notice to treat.

(6) If on a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is deemed to be a notice to treat for that part.

(7) If on a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If—

- (a) the undertaker agrees to take the land subject to the counter-notice; or
- (b) the tribunal determines that—
  - (i) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
  - (ii) the material detriment is not confined to a part of the land subject to the counter-notice,

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(a) 2008 c. 29. Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, if it does so, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

### **Private rights**

**27.**—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry)<sup>(a)</sup>,

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of the acquisition of the right by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land within the limits of land which may be acquired shown on the land plans are extinguished on the appropriation of the land by the undertaker.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act<sup>(b)</sup> to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act<sup>(c)</sup> (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 33 (statutory undertakers and operators of the electronic communications code network) applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—

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(a) 1965 c. 56. Section 11(1) was amended by section 186(1) and (2), section 187(1) and (2) and section 188 of the Housing and Planning Act 2016 (c. 22) and section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No 1).

(b) 2008 c. 29. Section 152 was amended by article 5(1) and (2) of, and paragraphs 291 and 293 of Schedule 1 to S.I. 2009/1307.

(c) 2008 c. 29. Section 138 was amended by section 23(4) of the Growth and Industry Act 2013 (c. 27) and regulation 2 of, and paragraph 12 of Part 1 of Schedule 1 to, S.I. 2017/1285.

- (i) the completion of the acquisition of the land or the acquisition of rights over or affecting the land;
  - (ii) the undertaker's appropriation of the land;
  - (iii) the undertaker's entry onto it; or
  - (iv) the undertaker's taking temporary possession of it,
- that any or all of those paragraphs do not apply to any right specified in the notice; or
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.
- (8) If any agreement referred to in paragraph (7)(b)—
- (a) is made with a person in or to whom the right is vested or belongs; and
  - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include references to any trusts or incidents to which the land is subject.

### **Power to override easements and other rights**

**28.**—(1) Any authorised activity undertaken by the undertaker which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title under it) is authorised by this Order if it is done in accordance with the terms of this Order, regardless of whether it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the use of the land arising by virtue of a contract.

(2) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

(3) Nothing in this article authorises interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land which is a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or a right conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network.

(4) Where any interest or right to which this article applies is interfered with or any restriction breached by any authorised activity in accordance with the terms of this article the interest or right is extinguished, abrogated or discharged at the time that the interference or breach in respect of the authorised activity in question commences.

(5) In respect of any interference, breach, extinguishment, abrogation or discharge under this article, compensation—

- (a) is payable under section 7 (measure of compensation in case of severance), as substituted by paragraph (5) of Schedule 12 (modifications of compensation and compulsory purchase enactments for creation of new rights), or section 10 (further provisions as to compensation for injurious affection) of the 1965 Act<sup>(a)</sup>; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections in respect of injurious affection where—
  - (i) the compensation is to be estimated in connection with a purchase under that Act; or
  - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

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(a) 1965 c. 56. Section 10 was amended by article 5(1) and (2) of, and paragraphs 59 and 63 of Schedule 1 to, S.I. 2009/1307.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

(7) Nothing in this article is to be construed as restricting the entitlement of any person to compensation.

(8) Where a person deriving title under the undertaker by whom the land in question was acquired or appropriated—

- (a) is liable to pay compensation; and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(9) For the purposes of this article, “statutory undertakers” does not include operators of the electronic communications code network.

### **Compulsory acquisition of land – incorporation of the mineral code**

**29.**—(1) Subject to paragraph (2), parts II and III of Schedule 2 (minerals) to the Acquisition of Land Act 1981(a) are incorporated in this Order subject to the following modifications—

- (a) for “the acquiring authority” substitute “the undertaker”;
- (b) for the “undertaking” substitute “authorised development”;
- (c) paragraph 8(3) is not incorporated.

(2) Paragraph (1) does not apply to the plots shown coloured pink, hatched pink or coloured orange on the land plans.

### **Time limit for exercise of authority to acquire land and rights compulsorily**

**30.**—(1) After the end of the period of 5 years beginning on the day on which this Order comes into force—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981(b) as applied by article 32 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 35 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of the land after the end of that period, if the land was entered and possession taken before the end of that period, subject always to the limitation in article 35.

### **Application of Part 1 of the Compulsory Purchase Act 1965**

**31.**—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act is modified as follows—

- (a) In section 4A(1) (extension of time limit during challenge)(c)—
  - (i) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”;

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(a) 1981 c. 67.

(b) 1981 c. 66. Section 4 was amended by sections 184, 185 and 199(2) of, and paragraphs 1 and 2 of Part 1 of Schedule 13 to, the Housing and Planning Act 2016 (c. 22).

(c) 1965 c. 56. Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

- (ii) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 30 (time limit for exercise of authority to acquire land and rights compulsorily) of the West Midlands Rail Freight Interchange Order 201X”.

(2) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 30 (time limit for exercise of authority to acquire land and rights compulsory) of the West Midlands Rail Freight Interchange Order 201X”.

(3) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat) at the end insert—

## “PART 4

### INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 35 (temporary use of land for carrying out the authorised development) or 36 (temporary use of land for maintaining the authorised development) of West Midlands Rail Freight Interchange Order 201X.”

#### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

**32.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) applies as if this Order was a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of Act), for subsection 2 substitute—

“(2) This section applies to any Minister, any local or other public authority or any body or person authorised to acquire land by means of a compulsory purchase order.”

(4) Omit section 5 (earliest date for execution of declaration)(b).

(5) Omit section 5A (time limit for general vesting declaration)(c).

(6) In section 5B(1) (extension of time limit during challenge)(d)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and

(b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 30 (time limit for exercise of authority to acquire land and rights compulsorily) of the West Midlands Rail Freight Interchange Order 201X”.

(7) In section 6 (notices after execution of declaration)(e), for subsection (1)(b) there is substituted—

“(b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 of the Planning Act 2008.”

(8) In section 7 (constructive notice to treat)(f), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

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(a) 1981 c. 66.

(b) Section 5 was amended by section 183 of, and Schedule 15 to, the Housing and Planning Act 2016 (c. 22).

(c) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

(d) Section 5B(1) was inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).

(e) Section 6 was amended by section 183 of, and paragraphs 4 and 7 of Schedule 15 to, the Housing and Planning Act 2016 (c. 22) and section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11).

(f) Section 7 was amended by section 199(2) of, and paragraphs 1 and 3 of Part 1 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration)(a), omit paragraph 1(2).

(10) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are to be construed as references to that Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act as modified by article 31 (application of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land and rights under this Order.

### **Statutory undertakers and operators of the electronic communications code network**

**33.** The undertaker may, subject to Schedule 13 (protective provisions)—

- (a) extinguish the rights of statutory undertakers and operators of the electronic communications code network within the Order limits; and
- (b) replace, reposition, renew, alter and supplement the apparatus belonging to statutory undertakers and operators of the electronic communications code network within the Order limits.

### **Rights under or over streets**

**34.**—(1) Subject to paragraph (6) the undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who—

- (a) is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land; and
- (b) suffers loss as a result,

is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

(6) Paragraph (1) does not apply to the strategic road network.

### **Temporary use of land for carrying out the authorised development**

**35.**—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter into and take temporary possession of—
  - (i) the land specified in columns (1) and (2) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and

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(a) Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

- (ii) any of the Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act<sup>(a)</sup> or no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;
  - (b) remove any buildings and vegetation from that land; and
  - (c) construct and use temporary works (including the provision of means of access) and buildings on that land.
- (2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.
- (3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—
- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 10; or
  - (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of a period of 1 year beginning with the date of completion of the work for which temporary possession of that land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land or has otherwise acquired the land subject to temporary possession.
- (4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must—
- (a) remove all temporary works (including temporary accesses to the public highway);
  - (b) restore the land affected by temporary works to the reasonable satisfaction of the owners of the land;
  - (c) reinstate the land affected by any temporary highway access to the reasonable satisfaction of the relevant highway authority,
- save that the undertaker is not required to replace a building removed under this article.
- (5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.
- (6) Any dispute to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.
- (7) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).
- (8) For the avoidance of doubt unless provided for in the book of reference and article 24 (compulsory acquisition of land) the undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1).
- (9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.
- (10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

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(a) 1965 c. 56. Section 11 was amended by section 186(1) and (2), section 187(1) and (2) and section 188 of, and paragraphs 1 and 2 of Schedule 16 to, and paragraph 6 of Schedule 14 to, the Housing and Planning Act 2016 (c. 22), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous provisions) Measure 2006 (2006 No 1), and article 5(1) and (2) of, and paragraphs 59 and 64 of Schedule 1 to, S.I. 2009/1307.

## Temporary use of land for maintaining the authorised development

36.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for those purposes provided that any temporary access to the public highway shall be subject to the approval of the relevant highway authority.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article, the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may remain in possession of land under this article only for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must—

- (a) remove all temporary works (including temporary access to the public highway);
- (b) restore the land affected by temporary works to the reasonable satisfaction of the owners of the land;
- (c) reinstate the land affected by any temporary highway access to the reasonable satisfaction of the relevant highway authority.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act<sup>(a)</sup> applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act.

(11) In this article, “maintenance period”, in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first brought into use.

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(a) 1965 c. 56. Section 13 was amended by section 139(4)-(9) and section 62(3) of, paragraphs 27 and 28(1)-(3) of Schedule 13 to, and Part 13 of Schedule 23 to, the Tribunal, Courts and Enforcement Act 2007 (c. 15).

## **Apparatus and rights of statutory undertakers in stopped up streets**

**37.**—(1) Where a street is stopped up under article 10 (permanent stopping up of streets) any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 10 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the statutory utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the statutory utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of that new apparatus involves additional costs which would not have been incurred if the apparatus had been of the same type, capacity or laid at the same depth as the existing apparatus, then the amount payable to the statutory utility is to be reduced by a sum equivalent to those additional costs.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works must be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs must be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

### **No double recovery**

38. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

## **PART 6**

### **MISCELLANEOUS AND GENERAL**

#### **Operation and use of railways**

39. The undertaker may operate and use the railway comprised in the authorised development and any other elements of the authorised development as a system, or part of a system, of transport for the carriage of goods.

#### **Operational land for the purposes of the 1990 Act**

40. Development consent granted by this Order within that part of the Order limits upon which the highway works are to be carried out is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

#### **Charges**

41. The undertaker may demand, take or recover or waive such charges for carrying goods on the railway comprised in the authorised development, and for any other services or facilities provided in connection with the operation of that railway, as it thinks fit.

#### **Felling or lopping of trees and removal of hedgerows**

42.—(1) Subject to sub-paragraph (4) the undertaker may fell or lop any tree, shrub or hedgerow near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree, shrub or hedgerow—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must comply with British Standard 3998:2010 “Tree Work Recommendations”, must not cause unnecessary damage to any tree, shrub or hedgerow and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.

(4) The provisions of this article do not apply without the agreement of the local planning authority to any tree or hedgerow identified to be retained in the landscaping scheme approved under requirement 11 (ecological management and mitigation plan).

(5) The provisions of this article do not apply without the agreement of the relevant highway authority to any tree or hedgerow within a highway.

(6) The provisions of this article do not apply to any tree and/or hedgerow planted as part of an agreed landscaping or ecological mitigation plan.

#### **Protective provisions**

43. Schedule 13 to this Order has effect.

## **Governance of requirements and governance of protective provisions relating to highway works**

**44.**—(1) When in any requirement or in Parts 2 and 3 of Schedule 13 (protective provisions) approval or agreement is required of, or with, anybody in relation to the content, carrying out or use of the authorised development (including for the avoidance of doubt the approval of details or plans under the requirements) such approval or agreement must not be given if it would permit development outside of the parameters of the authorised development referred to in article 4 (parameters of authorised development) or would give rise to any significant adverse effects on the environment not identified at the time this Order was made or in any updated environmental information supplied under the 2017 EIA Regulations(a).

(2) When any details, plans or other matters have been agreed or approved by the local planning authority under a requirement or the relevant highway authority under a requirement or Parts 2 and 3 of Schedule 13 then they may subsequently be amended by agreement with the local planning authority or relevant highway authority as the case may be provided that no amendments to those details, plans or other matters may be approved where such amendments would permit development outside of the parameters of the authorised development referred to in article 4 (parameters of authorised development) or would give rise to any significant adverse effects on the environment not identified at the time this Order was made or in any updated environmental information supplied under the 2017 EIA Regulations.

(3) Where a consent, agreement or approval is required or requested by the undertaker under a requirement then the procedure set out in Part 3 of Schedule 2 (procedure for approvals etc. under requirements) for obtaining such consent, agreement or approval, and appealing against the refusal or failure to approve or refuse such consent, agreement or approval, shall apply.

## **Disapplication, application and modification of legislative provisions**

**45.**—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development—

- (a) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw-making powers of the authority) to the Water Resources Act 1991(b);
- (b) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(c) in relation to watercourses for which Staffordshire County Council is the drainage board concerned;
- (c) section 32 (variation of awards) of the Land Drainage Act 1991(d);
- (d) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991(e); and
- (e) section 28E (duties in relation to sites of special scientific interest) of the Wildlife and Countryside Act 1981(f).

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(a) S.I. 2017/578 as amended by S.I. 2017/1012.

(b) 1991 c. 57. Paragraph 5 was amended by section 106 of the Natural Environment and Rural Communities Act 2006, section 31 of, and paragraphs 40 and 49 of Schedule 2 to the Flood and Water Management Act 2010 (c. 39), and sections 84 and 146(1) of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009 (c. 23). Paragraph 6 was amended by section 105 of, and paragraph 6 of Schedule 15 to, the Environment Act 1995 (c. 25), sections 233(1), 224 and 321 of, and paragraphs 20 and 24 of Schedule 16 and Part 5(b) of Schedule 22 to, the Marine and Coastal Access Act 2009 (c. 23). Paragraph 6A was inserted by section 103(3) of the Environment Act 1995 (c. 25).

(c) 1991 c. 59. Section 23 was amended by section 31 of, and paragraphs 25 and 32 of Schedule 2 to, the Flood and Water Management Act 2010 (c. 29).

(d) 1991 c. 59.

(e) 1991 c. 59. Section 66 was amended by section 31 of, and paragraphs 25 and 38 of Schedule 2 to, the Flood and Water Management Act 2010 (c. 29) and section 86(1) and (3) of the Water Act 2014 (c. 21).

(f) 1981 c. 69. Section 28E was amended by section 105(1) of, and paragraphs 79 and 80 of Part 1 of Schedule 11 to, the Natural Environment and Rural Communities Act 2006 (c. 16).

(2) The provisions of the Neighbourhood Planning Act 2017<sup>(a)</sup> do not apply in so far as they relate to the temporary possession of land under articles 35 and 36 of this Order.

(3) Any development, or any part of a development within the Order limits which is constructed or used under the authority of a planning permission pursuant to Part 3 of the 1990 Act (whether express or otherwise) following the coming into force of this Order shall be disregarded at all times for the purposes of ascertaining whether or not an offence has been committed under the provisions of sections 160 and 161 of the 2008 Act<sup>(b)</sup>.

(4) Regulation 4 of the 2007 Regulations does not apply to any advertisement approved by the local planning authority under requirement 3.

(5) The Order shall not constitute a planning permission for the purpose of Part 11 of the 2008 Act (community infrastructure levy) notwithstanding the definition of planning permission contained within article 5 of the 2010 Regulations (meaning of planning permission).

(6) Sections 158(1) and (2) of the 2008 Act (nuisance: statutory authority) do not apply to the authorised development.

(7) Schedule 14 (miscellaneous controls) to this Order which makes provision applying/modifying and excluding statutory provisions which relate to matters for which provision may be made by this Order has effect.

(8) Paragraphs (1) to (7) only apply in so far as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the 2008 Act.

### **Certification of plans and documents**

**46.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of the documents identified in Schedule 15 for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### **Service of notices**

**47.**—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978<sup>(c)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

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(a) 2017 c. 20.

(b) 2008 c.29. Sections 160 and 161 were amended by regulation 4(1) of, and paragraph 41 of Part 1 of Schedule 4 to S.I. 2015/664. Section 161 was also amended by section 112(2) of, and paragraph 4 of Part 1 of Schedule 8 to, the Marine and Coastal Access Act 2009 (c. 23).

(c) 1978 c. 30.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of that land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date may not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article—

“electronic transmission” means a communication transmitted—

- (a) by means of electronic communications network; or
- (b) by other means but while in electronic form; and

“legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

## **Arbitration**

**48.**—(1) Subject to sub-paragraph (2) except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order, other than a difference which falls to be determined by the tribunal, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party, after giving notice in writing to the other, by—

- (a) in the case of matters pertaining to land and the surveying of such land, the president of the Royal Institute of Chartered Surveyors;
- (b) in the case of matters of legal interpretation, the president of the Law Society; and
- (c) in the case of all other matters the president of the Institute of Civil Engineers.

(2) Sub-paragraph (1) does not apply to any decisions of the Secretary of State made pursuant to the provisions of this Order.

Signed by the authority of the Secretary of State

Address  
Date

*Name*  
Position  
Department

## SCHEDULES

### SCHEDULE 1

Article 3

### AUTHORISED DEVELOPMENT

#### PART 1

#### NSIP: THE CONSTRUCTION OF A RAIL FREIGHT INTERCHANGE

**In the County of Staffordshire and the District of South Staffordshire—**

##### **Works No. 1**

Within the area of land described on the works plans as Works No. 1—

The construction of a new railway line from the rail freight terminal (Works No. 2) to connect with the existing West Coast Main Line Loop railway line the general arrangement of which is shown on the general arrangement of railway alignment plans and including—

- (a) construction of a new railway track and associated rail infrastructure;
- (b) formation of new railway embankments and all necessary earthworks and drainage;
- (c) new arrival and departure rail tracks adjacent to the existing railway;
- (d) the alteration of the existing railway infrastructure including points and signals;
- (e) acoustic and security fencing;
- (f) temporary drainage lagoon;
- (g) the removal of telecommunications mast;
- (h) the removal of Footpath 29 footbridge over the West Coast Main Line Loop railway;
- (i) works to accommodate the removal of masonry bridge (part of existing Gravelly Way) over the West Coast Main Line Loop railway;
- (j) the removal and replacement of pipework and boreholes associated with the remediation strategy for the SI Land;
- (k) the stopping up of Gravelly Way to the east and west of the existing railway bridge;
- (l) the stopping up of the length of Footpath 29 shown on the access and rights of way plans;
- (m) the construction of new maintenance access points to the east and west of the West Coast Main Line Loop railway including interface with Works No. 6; and
- (n) the construction of a new culvert under the rail lines to connect services either side of the West Coast Main Line Loop railway.

##### **Works No. 2**

Within the area of land described on the works plans as Works No. 2—

The construction of a rail freight terminal, the general arrangement of which is shown on the rail terminal-illustrative expanded rail terminal layout plan, to connect with the rail infrastructure described in Works No. 1 including—

- (a) earthworks to achieve a terminal plateau;
- (b) access and circulation roads;
- (c) an intermodal rail freight loading/unloading terminal including but not exclusively—
  - (i) rail sidings to load/unload freight;
  - (ii) freight storage areas; and
  - (iii) gantry cranes and reach stackers;
- (d) railtracks and associated rail infrastructure;
- (e) drainage and attenuation ponds;
- (f) security fencing;
- (g) cripple sidings, rail freight terminal refuelling and maintenance areas;
- (h) alteration of the existing rail infrastructure including signalling;
- (i) terminal entry and exit gates, loading lanes, internal roads, gatehouses and vehicle/cycle parking areas;
- (j) rail freight terminal gateway/office including staff and visitor welfare facilities;
- (k) storage and workshop buildings;
- (l) the removal and replacement of pipework and boreholes associated with the remediation strategy for the SI Land;
- (m) works to accommodate removal of bridge over West Coast Main Line Loop railway; and
- (n) the stopping up of Gravelly Way.

**Works No. 3**

Within the area of land described on the works plans as Works No. 3—

(1) The construction of rail served warehousing (including ancillary offices and other buildings) within the areas annotated as Zones A1 to A7 including—

- (a) earthworks to provide development plateaus;
- (b) construction of development plateaus;
- (c) warehouses and ancillary buildings such as gatehouses;
- (d) service yards and vehicle/cycle parking;
- (e) rail infrastructure within Zones A1 and A2 to facilitate rail connected warehousing;
- (f) vehicle access routes;
- (g) solar energy provision;
- (h) vehicle maintenance units including washing and refuelling;
- (i) vehicle electricity charging facilities;
- (j) container storage;
- (k) removal of telecommunication masts;
- (l) the removal and replacement of pipework and boreholes associated with the remediation strategy for the SI Land;
- (m) drainage and attenuation structures;
- (n) on plot landscaping and bunding;
- (o) signage; and
- (p) the stopping up of the length of Footpath 29 shown on the access and rights of way plans.

(2) The demolition of existing farmhouses and associated outbuildings, other buildings and structures.

**Works No. 4**

Within the area of land described on the works plans as Works No. 4—

The A5/A449 link road the general arrangement of which is shown on the highway general arrangement plans and bridge plans including—

- (a) footways and cycleways;
- (b) construction of a new three arm roundabout on the A5;
- (c) construction of a left in and left out junction with Harrisons Lane;
- (d) construction of a new four arm roundabout on the A449;
- (e) new bridges over the railway and canal as shown on the bridge plans;
- (f) works comprising the interface with Works Nos. 5 and 7;
- (g) removal of existing laybys on the A5;
- (h) closure of the existing accesses on the A5 as shown on the access and rights of way plans;
- (i) upgrading of existing footway on the north side of the A5 to a cycleway;
- (j) bus stops and bus laybys on the A5/A449 link road;
- (k) bus laybys on the A449;
- (l) removal of bridge over West Coast Main Line Loop railway;
- (m) street lighting;
- (n) construction of new maintenance access points to the rail lines on the east and west (the latter through the rail terminal) of the West Coast Main Line Loop railway;
- (o) drainage and attenuation structures;
- (p) diversion and culverting of the existing canal feeder drain; and
- (q) installation of new service crossings below the public highway.

#### **Works No. 5**

Within the area of land described on the works plans as Works No. 5—

(1) The construction of infrastructure the general arrangement of which is shown on the highway general arrangement plans including—

- (a) principal on site private estate roads and associated junctions;
- (b) works comprising the interfaces with Works Nos. 4 and 7;
- (c) footways and cycleways;
- (d) signage;
- (e) street lighting; and
- (f) bus stop.

(2) The demolition of buildings and structures.

## **PART 2**

### **ASSOCIATED DEVELOPMENT**

Associated development within the meaning of s115(2) (development for which consent may be granted) of the 2008 Act comprising—

**In the County of Staffordshire and the District of South Staffordshire—**

#### **Works No. 6**

Within the area of land described on the works plans as Works No. 6—

The provision of structural landscaping and two community parks including—

- (a) a community park in the location identified as Croft Lane Community Park on the parameters plans;
- (b) a community park in the location identified as Calf Heath Community Park on the parameters plans;
- (c) earthworks including the creation of screening bunds;
- (d) drainage and attenuation structures;
- (e) boundary treatments including acoustic fencing;
- (f) habitat creation;
- (g) canal enhancement;
- (h) demolition of buildings and structures;
- (i) retention of existing woodland;
- (j) vehicle and pedestrian accesses to Zones A2 to A7;
- (k) removal of two steel pipe bridges and a concrete bridge over the canal;
- (l) the removal and replacement of pipework and boreholes associated with the remediation strategy for the SI Land;
- (m) the stopping up of the length of Footpath 29 shown on the access and rights of way plans;
- (n) the stopping up of Gravelly Way and landscaping/highway verge associated with the revised highway arrangements to Four Ashes industrial area;
- (o) closure of private accesses as shown on the access and rights of way plans (Document 2.3);
- (p) vehicle access and parking and cycle parking facilities within community parks;
- (q) cycle track adjacent to Zone A6;
- (r) new public car parks for the community parks;
- (s) diversion of the existing land drainage network;
- (t) interface with Works Nos. 1 and 10a for the construction of new maintenance access points to the east of the West Coast Main Line Loop railway;
- (u) the construction of culverts under the A449 adjacent to Zone A1 and, if necessary, adjacent to Zone A2 as an alternative to use of the existing culvert situated adjacent to Zone A2, under Vicarage Road between Zone A5b and A7c and under Straight Mile south of Zone A7c to connect services either side of the public highway;
- (v) the construction of a new culvert under the West Coast Main Line Loop railway, and under the Staffordshire and Worcestershire Canal to connect services either side of the rail lines and the canal; and
- (w) construction of new drainage outfalls to Staffordshire and Worcestershire Canal and the existing ditch along Woodlands Lane.

#### **Works No. 7**

Within the area of land described on the works plans as Works No. 7—

Works to the public highway the general arrangement of which is shown on the highway general arrangement plans including—

- (a) upgrading of the existing footway on the north side of the A5 to a cycleway/footway;
- (b) works of improvement to the A449 including—
  - (i) removal of the A449/Station Drive right turn lane;
  - (ii) upgrading the cycleway/footway along the east side of the A449 from Station Drive to the A5; and
  - (iii) laybys on the west and east side of the A449 between Gravelly Way and the A5;
- (c) realignment of Vicarage Road and provision of access roundabout;

- (d) the closure of three gaps in the central reservation on the A449 between the A5 and Gravelly Way;
- (e) closure of the existing access on the A449 as shown on the access and rights of way plans;
- (f) works comprising the interfaces with Work Nos. 4 and 5;
- (g) the addition of cycleway/footway along a length of Vicarage Road from the south east corner of Zone A6 to the new roundabout;
- (h) provision of a pedestrian/cycle crossing point along Vicarage Road to the south west of the new access roundabout;
- (i) provision of HGV turning area on Station Drive to the west of the railway bridge;
- (j) the provision of two pedestrian/cycle crossing points along Straight Mile between Vicarage Road and Kings Road;
- (k) amendments to Crateford Lane to create a one way road;
- (l) closure of the existing accesses on the A5 as shown on the access and rights of way plans;
- (m) upgrading of existing footway on the north side of the A5 to a cycleway;
- (n) an amended left in/left out junction to The Poplars;
- (o) improved visibility splay at the junction of Vicarage Road and Straight Mile;
- (p) footway works at junction of Straight Mile and Woodlands Lane with Kings Road including pedestrian crossing points;
- (q) installation of new service crossings below the public highway;
- (r) the construction of culverts under the A449 adjacent to Zone A1 and, if necessary, adjacent to Zone A2 as an alternative to use of the existing culvert situated adjacent to Zone A2, under Vicarage Road between Zone A5b and A7c and under Straight Mile south of Zone A7c to connect services either side of the public highway;
- (s) signage; and
- (t) street lighting.

**Works No. 8**

Within the area of land described on the works plans as Works No. 8—

- (1) Conversion of Gravelly Way Farm buildings to use for the purposes of estate management offices, training facilities, meeting rooms, amenity and welfare facilities with ancillary parking and landscaping.
- (2) Provision of buildings for the storage of estate management plant and machinery and related workshop facilities.

**Works No. 9a**

Within the area of land described on the works plans as Works No. 9a—

- (a) the removal and replacement of the existing 132kv tower with a new terminal tower;
- (b) restringing to the new terminal tower;
- (c) installation of underground cabling to connect into the underground cabling in Works No. 4; and
- (d) a temporary access and set down and assembly area for the demolition of existing tower and construction of new tower to include a temporary office and welfare facility.

**Works No. 9b**

Within the area of land described on the works plans as Works No. 9b—

- (a) the removal and replacement of the existing 132kv tower with a new terminal tower;
- (b) restringing to the new terminal tower;

- (c) installation of underground cabling to connect into the underground cabling in Works No. 6; and
- (d) a temporary access and set down and assembly area for the demolition of existing tower and construction of new tower to include a temporary office and welfare facility.

**Works No. 10a**

Within the area of land described on the works plans as Works No. 10a, the provision of revised access arrangements for the SI Facility the general arrangement of which is shown on the highway general arrangement plans incorporating access also to Zone A3 and Works No. 8 including—

- (a) an underpass under the A5/A449 link road;
- (b) interface with Works No.s 1 and 6 for the construction of new maintenance access points to the east of the West Coast Main Line Loop railway;
- (c) interface with Works No. 3 (Zone A3);
- (d) interface with Works No. 4;
- (e) interface with Works No. 8;
- (f) interface with Works No. 10b;
- (g) at grade junction with the A5/A449 link road;
- (h) footways/cycleways;
- (i) footpaths/cycle tracks;
- (j) signage;
- (k) street lighting and
- (l) the construction of new maintenance access points to the east of the West Coast Main Line Loop railway.

**Works No. 10b**

Within the area of land described on the works plans as Works No. 10b and as shown on the access and rights of way plans (Document 2.3C), the provision of revised access arrangements to Four Ashes industrial area the general arrangement of which is shown on the highway general arrangement plans including—

- (a) the provision of at grade access from the A5/A449 link road leading to an amended roundabout with new accesses off to adjacent land;
- (b) closure of part of Gravelly Way to all traffic;
- (c) retention of use of part of Gravelly Way to public cycle path and footpath proceeding under the A5/A449 link road to connect with the canal towpath;
- (d) footpath/cycle path adjacent to the west of the new road leading to the amended roundabout; and
- (e) the provision of footpath alongside Works No. 8, the access to Works No. 8 and Works No. 10a connecting to the footway/cycle way provided as part of Works No. 4.

**Works No. 11**

Within the area of land described on the works plans as Works No. 11, the provision of improved access to Avenue Cottages from the A5 including the provision of a turning area the general arrangement of which is shown on the highway general arrangement plans.

**Further works**

The following further works provided that such works do not give rise to any significant adverse effects on the environment not identified at the time the Order was made or in any updated environmental information supplied under the 2017 EIA Regulations—

- (1) Within the area of land described on the works plans as Works Nos. 1 to 3 the provision of—

- (a) weighbridges;
  - (b) diversion and provision of utilities services including underground cabling to connect into Work Nos. 9a and 9b; and
  - (c) such other works as may be necessary or expedient for the purpose of or in connection with the construction of the authorised development.
- (2) Within the area of land described on the works plans as Works Nos. 1 to 6 and Works No. 8 the provision of—
- (a) bunds, embankments, swales, landscaping and boundary treatments, earthworks and earthwork retaining structures;
  - (b) the provision of footways, cycle tracks, permissive cycle tracks, bridleways and footpath linkages;
  - (c) water supply works, foul drainage provision, foul pumping stations, surface water management systems, balancing ponds (surface and underground), attenuation and culverting;
  - (d) connections to mains services and provision of utilities infrastructure including primary and secondary substations and pressure reducing stations;
  - (e) diversion and provision of utilities services including underground cabling to connect into Work Nos. 9a and 9b;
  - (f) the relocation/erection of telecommunications masts following the removal thereof as part of Works Nos. 1 and 3;
  - (g) demolition of surface structures;
  - (h) fencing and boundary treatments;
  - (i) temporary concrete batching plants;
  - (j) temporary construction compounds and materials and aggregate store;
  - (k) lighting;
  - (l) CCTV and vehicle monitoring equipment; and
  - (m) such other works as may be necessary or expedient for the purpose of or in connection with the construction of the authorised development.
- (3) Within the area of land described on the works plans as Works Nos. 4, 5, 7, 10a, 10b and 11 the provision of—
- (a) fencing;
  - (b) surface water drainage works;
  - (c) landscaping and boundary treatments;
  - (d) earthworks and earthwork retaining structures;
  - (e) pavements, surface treatments, kerbs and channels;
  - (f) traffic signs, traffic signals and road markings;
  - (g) diversion and provision of utilities services including underground cabling to connect into Work Nos. 9a and 9b;
  - (h) temporary earthworks material stockpiles; and
  - (i) such other works as may be necessary or expedient for the purpose of or in connection with the construction of the authorised development.
- (4) Within the area of land described on the works plans as Works Nos. 1, 2, 3, 4, 6, 10a and 10b the stopping up of the public right of way shown coloured purple on sheet 7 of the access and rights of way plans if added to the definitive map pursuant to an Order under section 53 of the Wildlife and Countryside Act 1981.

## PART 1 REQUIREMENTS

### **Interpretation**

In this Part of this Schedule unless the context requires otherwise—

“demolition and construction traffic management plan” means the document of that description contained in appendix N of technical appendix 15.1 of the environmental statement;

“design and access statement” means the document of that description referred to in Schedule 15 and certified by the Secretary of State as the design and access statement for the purposes of this Order;

“development zone parameters plan” means the plans of that description identified as document 2.5 and included in the documents certified as the parameters plans by the Secretary of State for the purposes of this Order;

“flood risk assessment” means the document of that description contained in technical appendix 16.1 of the environmental statement;

“framework ecological mitigation and management plan” means the document of that description contained in technical appendix 10.4 of the environmental statement;

“green infrastructure parameters plan” means the plans of that description identified as document 2.7 and included in the documents certified as the parameters plans by the Secretary of State for the purposes of this Order;

“lighting strategy and lighting impact assessment” means the document of that description contained in technical appendix 12.8 of the environmental statement;

“map of heritage receptors” means the document of that description contained in technical appendix 9.2 of the environmental statement;

“outline demolition and construction environmental management plan” means the document of that description contained in technical appendix 2.3 of the environmental statement;

“outline written scheme of investigation” means the document of that description contained in technical appendix 8.5 of the environmental statement;

“permissive paths” means those paths identified as such on the access and rights of way plans;

“site-wide surface water drainage strategy” means the document of that description contained in technical appendix 16.3 of the environmental statement; and

“water framework directive assessment” means the document of that description contained in technical appendix 16.2 of the environmental statement.;

### **Time limit**

1. The authorised development must not commence later than the expiration of 5 years beginning with the date that this Order comes into force.

### **Phases of development**

2.—(1) The authorised development (excluding archaeological investigation, soil movement, geotechnical or ground contamination investigation) must not commence until a written scheme setting out all the phases of the authorised development, has been submitted to and approved in writing by the local planning authority. The approved phasing scheme must include phasing details of—

- (a) earthworks;
- (b) ecological mitigation;
- (c) rail infrastructure;
- (d) roads and bridges;
- (e) surface water and foul drainage;
- (f) development plots;
- (g) landscaping, including mounding and acoustic fencing; and
- (h) mains services.

(2) The approved phasing scheme can be subject to amendment by agreement with the local planning authority.

(3) The authorised development must be carried out in accordance with the approved phasing scheme as approved in writing by the local planning authority.

### **Detailed design approval**

3.—(1) No phase of the authorised development (excluding archaeological investigation, soil movement, geotechnical or ground contamination investigation) is to commence until details of that phase have been submitted to and approved in writing by the local planning authority. The details of each phase must be in general accordance with the design principles set out in section 7 of the design and access statement. Following the commencement of the authorised development the design principles set out in section 7 must be reviewed, updated if necessary, and agreed with the local planning authority following the occupation of 186,000 sq. m of warehousing. Any revised design principles will apply to any phase of the development which has not been the subject of discussions pursuant to sub-paragraph (3) prior to the date of agreement of the revised design principles.

(2) The details of each phase must include details of the following where they are located within that phase—

- (a) rail infrastructure and rail terminal;
- (b) embankments and mounds;
- (c) hard landscaping, cycle tracks, footpaths, bridleways and towpaths;
- (d) advertisements for which advertisement consent under the 2007 Regulations would be required were it not for the provisions of article 45(5) of this Order;
- (e) surface and foul drainage;
- (f) bicycle, motorcycle and vehicle parking (including the location and quantum of electric charging points);
- (g) built development design (including external materials and sustainable energy measures) and layout;
- (h) site levels and finished floor levels;
- (i) estate roads and other highway works except where such details have already been approved pursuant to Parts 2 and 3 of Schedule 13 (protective provisions);
- (j) vehicular circulation routes;
- (k) bridges;
- (l) weighbridges;
- (m) gatehouses;
- (n) HGV parking and welfare facilities;
- (o) fencing walls and other means of enclosure (including acoustic fencing); and
- (p) substations and relocated telecommunications masts.

- (q) the location of the pedestrian crossing on the A5/A449 link road notwithstanding the detail shown in that respect on the highway plans (in consultation with the local highway authority and Highways England)

(3) The details of any phase including the formation of screen bunds and/or buildings within Development Zones A4a and A5a as shown on the parameters plan must include a wind tunnel or other technical assessment of the likely effect of those detailed proposals on wind characteristics at Calf Heath Reservoir and any consequential effects on the suitability of the reservoir for sailing so that these effects can be taken into account by the local planning authority in deciding whether those details should be approved.

(4) Draft details of each phase, required to be submitted to sub-paragraph (2), must be discussed with the local planning authority prior to being submitted for approval.

(5) No part of the authorised development comprised in Works No. 8 will be undertaken until details of the size and appearance of any buildings or other structures to be erected and details of any landscaping and hard surfacing have been submitted to and approved by the local planning authority.

(6) The details of the estate roads to be constructed to provide access to warehousing within Zone A7 must have regard to the desirability of minimising the impact on and loss of the existing hedgerows.

(7) Any warehouse erected within Zone A7 (as identified on the development zones parameters plan) must be single aspect so that the warehousing provides noise screening between the service yard/loading docks and noise sensitive receptors.

(8) The authorised development must be carried out in accordance with the details as approved in writing by the local planning authority.

#### **Demolition and construction environmental management plan**

4.—(1) No phase of the authorised development (with the exception of the highway works which are governed by Parts 2 and 3 of Schedule 13 (protective provisions)) is to commence, including any preparatory earthworks or site levelling but excluding archaeological investigation, geotechnical or ground contamination investigation and ecological survey or mitigation works, until a demolition and construction environmental management plan (“DCEMP”) for that phase of development, drafted in accordance with the principles set out in the outline demolition and construction environmental management plan, has been submitted to and approved in writing by the local planning authority. The DCEMP for each phase must include—

- (a) details of the methods to control noise arising from construction activities including—
  - (i) proposals for monitoring of construction noise;
  - (ii) proposals for the introduction of mitigation measures or alternative working practices where the measurements exceed acceptable limits; and
  - (iii) proposals for hours of construction and deliveries to and from the site.
- (b) details of a dust management plan setting out the methods to be used to control dust and other emissions including smoke from the site;
- (c) details of all temporary fencing, temporary buildings, compound areas and parking areas including arrangements for their removal following completion of construction;
- (d) details of areas to be used for the storage of plant and construction materials;
- (e) details of construction waste management including controlled wastes;
- (f) details of the facilities to be provided for the storage of fuel, oil and other chemicals, including measures to prevent pollution;
- (g) details of lighting arrangements for construction and site security purposes;
- (h) advisory signage at public access points advising of possible hazards including the potential for sudden noise;
- (i) details of any temporary surface water management system;

- (j) details of existing and proposed landscaping which need to be protected during construction; and
- (k) details for management of soils during the construction phases in accordance with the DEFRA Code of Practice for the Sustainable Use of Soil on Construction Sites 2009.

(2) The DCEMP for each phase of development is to be kept under review and updated if necessary as construction proceeds. Each DCEMP must be submitted by the undertaker for approval in writing by the local planning authority and any amendments must be agreed with the local planning authority. All construction works must be carried out in accordance with the DCEMP as approved.

## **Rail**

**5.**—(1) The undertaker must comply with the requirements in Part 2 of this Schedule (rail requirements).

(2) No authorised development may commence until a scheme for the continued provision of access to the West Coast Main Line has been agreed by the local planning authority, in consultation with Network Rail. Such a scheme is to include the specification of and timings for Network Rail's temporary and permanent access to the West Coast Main Line and show how access to the West Coast Main line will be maintained at all times.

(3) The authorised development is to be carried out in accordance with the details approved to the satisfaction of the local planning authority in consultation with Network Rail.

## **Construction hours**

**6.**—(1) Subject to sub-paragraph (2), construction and demolition works (which for the purposes of this requirement excludes archaeological investigations and any non-intrusive internal fit-out works but must include start up and shut down and deliveries) must not take place other than between 07:00 and 18:30 hours on weekdays and 08:00 and 13:00 hours on Saturdays, excluding public holidays, unless otherwise agreed in writing by the local planning authority. Outside the above periods the following working is permitted—

- (a) pre-planned construction works to highway or rail infrastructure requiring possessions where first notified to the local planning authority and local residents;
- (b) emergency works; and
- (c) works which do not cause noise that is audible at the boundary of the Order limits.

(2) Regardless of sub-paragraph (1) no piling operations are to take place after 18:00 hours unless otherwise agreed in writing by the local planning authority.

(3) Any emergency works carried out under sub-paragraph (1)(b) must be notified to the local planning authority within 72 hours of their commencement.

## **Air quality - operational emissions**

**7.**—(1) No warehouse or rail terminal may be brought into use until details of any combustion plant where the single or combined NO<sub>x</sub> emission rate is greater than 5mg/second have been submitted to and approved in writing by the local planning authority. Where applicable, considering IAQM guidance (Guidance from Environmental Protection UK and the Institute of Air Quality Management for the consideration of air quality within the land-use planning and development control processes - January 2017), the details will be supported by an air quality assessment, which must outline mitigation measures if necessary.

(2) Any combustion plant must be installed and operated in accordance with manufacturers' instructions at all times.

## **Archaeology**

**8.**—(1) No phase of the authorised development (with the exception of the highway works to the existing highways (the A5, the A449, Vicarage Road, Station Road and Station Drive) which are governed by Parts 2 and 3 of Schedule 13 (protective provisions)) is to commence until a written scheme of investigation for that phase has been submitted to and approved in writing by the local planning authority. The written scheme of investigation must be in accordance with the principles set out in the outline written scheme of investigation contained in technical appendix 8.5 of the environmental statement. The written scheme of investigation must provide for the investigation of areas of archaeological interest identified by the evaluation surveys which established the base line conditions in the environmental statement and include the following components, completion of each of which will trigger the phased discharging of the requirement—

- (a) approval of a written scheme of investigation;
- (b) where identified to be necessary, fieldwork in accordance with the agreed written scheme of investigation;
- (c) completion of a post-fieldwork assessment report; to be submitted within 6 months of the completion of fieldwork, unless otherwise agreed in advance in writing by the local planning authority; and
- (d) completion of analysis, preparation of site archive ready for deposition at a store approved by the local planning authority, production of an archive report, and submission of a publication report; to be completed within 2 years of the completion of fieldwork, unless otherwise agreed in advance in writing by the local planning authority.

(2) Any actions required by the written scheme of investigation must be carried out by a suitably qualified archaeologist in accordance with that approved scheme.

(3) The programme of archaeological work may be subject to alteration by approval in writing by the local planning authority.

## **Cultural heritage - demolition of heritage assets**

**9.**—(1) The undertaker must not demolish the Woodside Farm House and associated structures (as identified on the map of heritage receptors) before the commencement of development at Development Zones A6, A5b or A7c as shown on development zone parameter plan.

(2) The Woodside Farm House and associated structures must not be demolished until they have been subject to a scheme of historic building recording by suitably qualified professionals and written confirmation obtained from the local planning authority that the works required under subparagraphs (3)(a) to (c) below have been completed and have been submitted to the local planning authority.

(3) The scheme of historic building recording must be undertaken in accordance with a written scheme of investigation which will be submitted to and approved in writing by the local planning authority before the recording begins. The written scheme of investigation must set out the level of recording required in accordance with the ‘Understanding Historic Buildings: A Guide to Good Recording Practice’ guidance prepared by Historic England (May 2016, or latest edition at the time the written scheme of investigation is prepared). The written scheme of investigation must include the following components—

- (a) the identification, description and methodology for the level of recording necessary for the Woodside Farm House and associated structures as per the Historic England guidance stated above;
- (b) research on the heritage asset necessary to understand their historical and architectural interest which is proportionate to the level of recording identified;
- (c) an on site survey of the Woodside Farm House and associated structures in accordance with subparagraph (3)(a) and to include photography; and
- (d) completed research and analysis for presentation in an illustrated historic building recording report to be submitted within 12 weeks of recording work on site. The report

will be suitable for deposition at an archival store as directed and approved by the local planning authority.

(4) The archive referred to in sub-paragraph (3)(d) should be collated, ordered and indexed in accordance with the requirements of the Management of Research Projects in the Historic Environment (MoRPHE) (Historic England, 2015).

### **Cultural heritage – demolition of canal crossings**

**10.** Demolition of the canal crossings (as identified on the development zone parameter plan) must be completed within 5 years of the commencement of the authorised development.

### **Ecological mitigation and management plan**

**11.—**(1) No phase of the authorised development which incorporates ecological mitigation or management is to commence until a written ecological mitigation and management plan for that phase has been submitted to and approved in writing by the local planning authority. The ecological mitigation and management plan must be in accordance with the principles set out in the framework ecological mitigation and management plan. The ecological mitigation and management plan may be subject to alteration by agreement in writing by the local planning authority.

(2) Any ecological mitigation and management plan approved under sub-paragraph (1) must include an implementation timetable and must be carried out as approved in writing by the local planning authority.

(3) If a phase does not include ecological mitigation or management then a statement from the undertaker must be provided to the local planning authority prior to the relevant phase being commenced, confirming that the phase includes no ecological mitigation or management and therefore no ecological mitigation and management plan is required for that phase pursuant to sub-paragraph (1).

(4) Where specified as required in the framework ecological mitigation and management plan, works must be supervised by a suitably qualified person or body.

### **Ground conditions - contamination risk**

**12.—**(1) No phase of the authorised development (with the exception of the highway works to the existing highways (the A5, the A449, Vicarage Road, Station Road and Station Drive) which are governed by Parts 2 and 3 of Schedule 13 (protective provisions)) is to commence until a contamination report for that phase has been submitted to and approved in writing by the local planning authority. The contamination report will either—

- (a) confirm that no further investigation is necessary for that phase of authorised development and, where applicable, what remedial measures are proposed (and detail how the remedial measures will be verified (a ‘verification plan’)) or confirm that no remedial measures are required for the particular phase of development; or
- (b) include a written scheme of any further investigation considered necessary for that phase of the authorised development.

(2) Where further investigation is considered necessary under sub-paragraph (1)(b), the findings will be outlined in an assessment report to identify the extent of any contamination and, where applicable, any remedial measures to be taken to render the land fit for its intended purpose (and include details of a verification plan). The assessment report for that phase of the authorised development will be submitted to and approved in writing by the local planning authority.

(3) If, during the course of development, previously unidentified contamination is discovered which potentially poses a significant risk to site occupants, controlled waters or ecological receptors, development must cease on that localised area and the contamination must be reported in writing to the local planning authority within 10 working days. Prior to the recommencement of development on that localised area, suitable investigation for the discovered contamination (to include any required amendments to the remedial measures) must be submitted to and approved in

writing by the local planning authority. The development must then be implemented in accordance with the details submitted to the local planning authority, unless otherwise agreed in writing by the local planning authority.

(4) Any contamination report, assessment report and any suitable investigation for discovered contamination referred to in this requirement 12 related to the authorised development at Development Zones A1, B and/or C as shown on development zone parameter plan must be in accordance with the principles set out in the remediation safeguarding report.

**13.**—(1) No part of the authorised development (with the exception of the highway works to the existing highways (the A5, the A449, Vicarage Road, Station Road and Station Drive) which are governed by Parts 2 and 3 of Schedule 13 (protective provisions)) may be brought into use until either—

- (a) if no remediation measures or verification plan was required under requirement 12 a statement from the undertaker, or their approved agent, must be provided to the local planning authority, stating that no previously unidentified contamination was discovered during the course of development; or
- (b) if remediation measures and verification plan were agreed under requirements 12(1)(a) or 12(2), verification measures must be undertaken in line with the agreed verification plan for any works outlined in the remedial measures and a report showing the findings of the verification (a ‘verification report’) must be submitted to and approved in writing by the local planning authority.

(2) The verification report must—

- (a) contain a full description of the works undertaken in accordance with the agreed remedial measures and verification plan; and
- (b) demonstrate the effectiveness of the approved remedial measures.

### **Earthworks**

**14.** No phase of the authorised development (with the exception of the highway works to the existing highways (the A5, the A449, Vicarage Road, Station Road and Station Drive) which are governed by Parts 2 and 3 of Schedule 13 (protective provisions) and excluding archaeological investigation, geotechnical or ground contamination investigation and ecological mitigation works) is to commence until details of—

- (a) the earthworks strategy relating to that phase of development including the management and protection of soils;
- (b) an earthworks specification for each phase of the development;
- (c) cutting slopes and embankment design that would accord with the approved earthworks specification;
- (d) the extent of any material to be temporarily stored within the site;
- (e) the use of the sand and gravel disturbed during the construction of the phase in connection with the authorised development; and
- (f) any surplus material to be removed from the site for disposal or material to be imported to the site,

have been submitted to and approved in writing by the local planning authority. All earthworks must be carried out in accordance with the details as approved.

### **Landscape – written landscaping scheme**

**15.**—(1) No phase of the authorised development containing landscaping mitigation is to commence until a written landscaping scheme for that phase (including the strategic landscaping included within that phase) has been submitted to and approved in writing by the local planning authority. The landscaping scheme must be in accordance with the green infrastructure parameters plan and must include details of all proposed soft landscaping works, including—

- (a) location, number, species, size, layout, method of trees support, plant protection measures and planting density of any proposed planting;
- (b) cultivation, importation of materials and other operations to ensure plant establishment;
- (c) details of existing trees to be retained, with measures for their protection during the construction period in accordance with British Standard 5837:2012 “Trees in relation to Design, Demolition and Construction Recommendations”, and to include a schedule of remedial tree works to be carried out in accordance with British Standard 3998:2010 “Tree Works Recommendations” prior to construction commencing;
- (d) a method statement and plan for the propagation, planting, establishment and maintenance of propagated Black Poplar specimens;
- (e) the important hedgerows which are to be retained;
- (f) a canal enhancement scheme (for the relevant phase);
- (g) a programme for the implementation of the works; and
- (h) a landscape management plan setting out for a period of 20 years the arrangements for future maintenance including methods of funding and future monitoring, review and the maintenance of new trees, shrubs, hedgerows, woodlands and grassed areas and retained trees, shrubs, hedgerows, woodlands and grassed areas.

(2) Any written landscaping scheme approved under sub-paragraph (1) must include an implementation timetable and must be carried out as approved in writing by the local planning authority.

(3) If a phase does not include landscaping mitigation then a statement from the undertaker must be provided to the local planning authority prior to the relevant phase being commenced, confirming that the phase includes no landscaping mitigation and therefore no written landscaping scheme is required for that phase pursuant to sub-paragraph (1).

(4) The soft landscaping works in the vicinity of the ‘bat hop-overs’ as identified on Figure A1.1 of the framework ecological mitigation and management plan must be in general accordance with the principles set out in the framework ecological mitigation and management plan and the bat hop over structures must be erected prior to any new road to which they relate being brought into use.

**Landscape – implementation and maintenance of landscaping works**

**16.**—(1) All landscaping works (with the exception of the highway works which are governed by Parts 2 and 3 of Schedule 13 (protective provisions) must be carried out and maintained in accordance with the written landscaping scheme approved under requirement 15.

(2) Any tree or shrub planted as part of an approved landscape scheme that, within a period of 10 years after planting is removed, dies or becomes, in the opinion of the local planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the local planning authority gives consent to any variation.

**Landscape – phasing of landscaping and ecology works**

**17.** The undertaker must complete the landscaping works identified in column (2) of the table below by no later than the stage of development set out in column (3) of the table below or such alternative later triggers as are agreed by the local planning authority.

<i>(1) Item as identified on the green infrastructure parameters plan</i>	<i>(2) Description</i>	<i>(3) Stage of Development</i>
(i)	Croft Lane Community Park	To be completed within 5 years of the commencement of the authorised development

(ii)	The ecological corridor linking Calf Heath Wood and Calf Heath Reservoir	To be completed within 5 years of the commencement of the authorised development, or prior to commencement of development at Development Zones A4a or A4b as shown on the green infrastructure parameters plan, whichever is sooner
(iii)	The southern section of Calf Heath Community Park	To be completed prior to the commencement of development at Development Zones A4b as shown on the green infrastructure parameters plan

### Height of containers

18. The height of any stack of containers within the Order limits must not exceed 12 metres.

### Lighting details

19.—(1) No phase of the authorised development which incorporates artificial lighting is to commence until a lighting scheme with details of the proposed permanent external lighting in that phase has been submitted to and approved in writing by the local planning authority. The lighting scheme must accord with the principles established in the lighting strategy and lighting impact assessment but notwithstanding the content of the lighting strategy must have regard to the location and height of lighting columns in the vicinity of landscape bunds and screening. The lighting scheme must also accord with the ecological principles established in framework ecological management and mitigation plan.

(2) The approved lighting scheme must be implemented and maintained during operation of the authorised development and no external lighting other than that approved under this requirement may be installed.

(3) The highways lighting in the vicinity of the “bat hop-overs” as identified on Figure A1.1 of the framework ecological mitigation and management plan must be in accordance with the principles set out in the framework ecological management and mitigation plan.

(4) The details submitted under this requirement must include details of any lighting on any gantry cranes included in the phase concerned.

### Noise – construction stage

20.—(1) For normal daytime construction and demolition works carried out on weekdays between 07:00 and 18:30 hours, the construction and demolition noise level measured at a noise sensitive receptor must not exceed Leq, 11hour 65 dB(A) and on Saturdays between 08:00 and 13:00 hours, the noise level measured at a noise sensitive receptor must not exceed Leq, 5 hour 65 dB(A) wherever practicable. Where this is not practicable, prior approval from the local authority shall be sought, with full justification given for the deviation.

(2) Subject to health and safety requirements, broadband reversing alarms must be employed on mobile plant.

(3) In the event that complaints for noise nuisance are received by the local planning authority in respect of construction noise and the local planning authority considers those complaints justified, the undertaker must unless otherwise agreed by the local planning authority, at its own expense, employ a consultant approved by the local planning authority to carry out an assessment of noise from the development relating to noise from construction of the site. The assessment will be carried out to an appropriate methodology agreed in writing by the local planning authority and the results of the assessment will be submitted to the local planning authority within 28 days of the assessment. If it is found that the effect of noise from the authorised development is greater than was anticipated (as set out in paragraphs 13A.67 to 13A.82 of the addendum to Chapter 13 of the environmental statement), recommendations for appropriate remedial measures must be made and

those recommendations, where reasonable, implemented in accordance with a programme agreed between the local planning authority and the undertaker.

### **Noise – operational stage**

**21.**—(1) Prior to the occupation of any warehouse unit, details of all mechanical and ventilation plant must be submitted to and approved in writing by the local planning authority. Any fixed plant or ventilation equipment must be installed and operated in accordance with manufacturers' instructions at all times and the overall rating levels from all mechanical and ventilation plant should not exceed the limits set out in Table 13A.20 of the addendum to Chapter 13 of the environmental statement.

(2) The external walls of all warehouses must provide a minimum sound reduction of 39dB Rw and all warehouse roofs must provide a minimum sound reduction of 28dB Rw.

(3) Subject to health and safety requirements, broadband reversing alarms must be employed on site-based mobile plant and vehicles.

(4) In the event that complaints for noise nuisance are received by the local planning authority in respect of operational noise and the local planning authority considers those complaints justified, the undertaker must unless otherwise agreed by the local planning authority, at its own expense, employ a consultant approved by the local planning authority to carry out an assessment of noise from the development relating to noise from operation of the site. The assessment will be carried out to an appropriate methodology agreed in writing by the local planning authority and the results of the assessment will be submitted to the local planning authority within 28 days of the assessment. If it is found that the effect of noise from the authorised development is greater than was anticipated (as set out in paragraphs 13A.83 to 13A.133 of the addendum to Chapter 13 of the environmental statement), recommendations for appropriate remedial measures must be made and those recommendations, where reasonable, implemented in accordance with a programme agreed between the local planning authority and the undertaker.

### **Permissive paths**

**22.**—(1) No phase of the authorised development containing permissive paths is to commence until a scheme for the provision of the permissive paths in that phase has been submitted to and approved in writing by the local planning authority. The schemes must—

- (a) set out the specification of the relevant permissive paths and timing of their provision;
- (b) confirm the arrangements for ongoing maintenance of the relevant permissive paths;
- (c) ensure public access to the relevant permissive paths at all time save for emergency closures and any closures required to maintain their permissive status; and
- (d) make provision for the alteration to, or replacement of, the relevant permissive paths subject to the provision of suitable alternative arrangement.

(2) The approved permissive paths schemes must be implemented and maintained during operation of the authorised development.

### **Transport – demolition and construction**

**23.**—(1) The construction and demolition works must be carried out in accordance with the demolition and construction traffic management plan. The demolition and construction traffic management plan may be subject to alteration by agreement in writing by the local highway authority.

(2) No phase of the authorised development is to commence until a scheme for the provision, maintenance and subsequent removal of temporary signage for construction traffic in respect of that phase has been submitted to and approved by the local planning authority. The undertaker must provide, maintain and remove the temporary signage in accordance with the approved scheme.

## Transport – phasing of highway works

24.—(1) The undertaker must complete the highway works identified in columns (1) and (2) of the table below by no later than the stage of development set out in column (3) of the table below or such alternative later triggers as are agreed by the relevant body or bodies identified in column (4).

<i>(1) Item as identified on the highways general arrangement key plan / highways masterplan</i>	<i>(2) Description</i>	<i>(3) Stage of Development</i>	<i>(4) Relevant Body</i>
(i)	A5 Access Roundabout, including works to Avenue Cottages junction	To be completed prior to the occupation of first warehouse to be occupied (with the exception of less than 47,000 square metres (gross internal area) of warehouse floorspace accessed from the Vicarage Road Access Roundabout (item (iii)))	Highways England / Staffordshire County Council
(ii)	A5 – A449 link road	To be completed prior to occupation of more than 140,000 square metres (gross internal area) of warehouse floorspace served via the A5 and 47,000 square metres (gross internal area) of warehouse floorspace served via the Vicarage Road Access Roundabout (item (iii)) or within five years of the occupation of more than 47,000 square metres (gross internal area) of warehouse floorspace, whichever is sooner	Highways England / Staffordshire County Council
(iii)	Vicarage Road Access Roundabout	To be completed prior to the occupation of any warehouse floorspace to accessed from the Vicarage Road Access Roundabout	Staffordshire County Council
(iv)	Right turn ban and associated works at A449 / Station Drive junction	Not to be in force until such time as the A449 Roundabout (item xiv) has been completed	Highways England
(v)	Crateford Lane closed	To be completed prior	Staffordshire County

	to westbound traffic	to occupation of more than 140,000 square metres (gross internal area) of warehouse floorspace or within five years of the occupation of more than 47,000 square metres (gross internal area) of warehouse floorspace, whichever is sooner	Council
(vi)	Improved footway links along the A5 between Gailey Roundabout and the A5 Access Roundabout	To be completed within 6 months of opening the A5 Access Roundabout	Highways England
(vii)	Upgraded footway / cycleway on the A449 between Station Drive and Gailey Roundabout	To be completed within 6 months of opening the A449 Access Roundabout	Highways England
(viii)	Provide HGV turning area on Station Drive to the west of the rail bridge	To be completed within 6 months of completing the Vicarage Road Access	Staffordshire County Council
(ix)	Provide relocated A449 laybys to include closure of existing gaps in A449 Central Reservation and field accesses	To be completed prior to commencement of construction of A5 Access Roundabout	Highways England
(x)	Improved visibility splay at Vicarage Road / Straight Mile Priority Junction	To be completed prior to opening of Vicarage Road Roundabout	Staffordshire County Council
(xi)	Provide footway and crossing improvements at Straight Mile / Kings Road / Woodlands Lane	To be completed prior to opening of network of Permissive Paths / Community Parks	Staffordshire County Council
(xii)	Provide pedestrian crossing facilities at Straight Mile	To be completed prior to opening of network of Permissive Paths / Community Parks	Staffordshire County Council
(xiii)	Provide new Cycleway on Vicarage Road	To be completed within 6 months of completing the Vicarage Road Access Roundabout	Staffordshire County Council
(xiv)	A449 Roundabout	To be completed prior to occupation of more than 140,000 square metres (gross internal	Highways England

		area) of warehouse floorspace or within five years of the occupation of more than 47,000 square metres (gross internal area) of warehouse floorspace, whichever is sooner	
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(2) At least two weeks prior to the anticipated date of each event/trigger specified in column (3) the undertaker must notify the relevant body identified in column (4) of the above table of that anticipated date.

**Water and flood risk – flood risk assessment**

25. The authorised development must be carried out in accordance with the mitigation measures detailed within section 5.3 of the flood risk assessment or be carried out in accordance with any variation to these measures agreed in writing with the Environment Agency, the relevant local flood authority or the approving body under Schedule 3 (sustainable drainage) to the Flood and Water Management Act 2010, whichever of these is the body having jurisdiction over the watercourse in question.

**Water and flood risk - surface water drainage scheme**

26.—(1) No phase of the authorised development (excluding archaeology works) is to commence until a surface water drainage scheme for that phase has been submitted to and approved in writing by the local planning authority or such other approval process that is put in place under the Flood and Water Management Act 2010. The surface water drainage scheme must be generally in accordance with the flood risk assessment and site-wide surface water drainage strategy and section 3.4 of the water framework directive assessment and must include a schedule of required maintenance activities (including frequency), and details of who is to be responsible for such maintenance, to ensure the continued performance of the system for the lifetime of the authorised development.

(2) Any surface water drainage scheme approved under sub-paragraph (1) (including, for the avoidance of doubt, the sustainable urban drainage component (SUDS)) must be implemented and maintained in accordance with the details approved by the local planning authority or in accordance with any variations to the details agreed in writing by the local planning authority prior to the completion of the relevant phase of the authorised development.

**Water and flood risk – foul water drainage**

27.—(1) Prior to the commencement of the development of any warehouse or the rail terminal, a foul water drainage scheme must be submitted to and approved in writing by the local planning authority.

(2) Any foul water drainage scheme approved under sub-paragraph (1) must be implemented in accordance with the details approved by the local planning authority or in accordance with any variations to the details agreed in writing by the local planning authority prior to the occupation of any warehouse unit or the rail terminal.

**Building sustainability**

28.—(1) No development of a warehouse is to commence until a BREEAM pre-assessment report based upon the BREEAM 2011 method (or equivalent) has been submitted to and approved in writing by the local planning authority demonstrating that the warehouse is expected to achieve at least a BREEAM 2011 “Very Good” rating (BREEAM Industrial 2008 “Excellent”).

(2) The development of each of the warehouses must be carried out in accordance with the details in the BREEAM pre-assessment report (or equivalent) for that warehouse and a certificate must be provided within three months of completion or occupation (whichever is the sooner) of each warehouse confirming that the measures in respect of that warehouse committed to within the pre-assessment report have been implemented.

### **Waste management during the operational phase**

29. No warehouse, rail terminal or community park may be brought into use until a waste management scheme for that part of the development during the operational phase has been submitted to and approved in writing by the local planning authority. Thereafter the approved scheme must be implemented and maintained for the duration of the operation of that part of the development.

## **PART 2**

### **RAIL REQUIREMENTS**

#### **Rail Provision**

1. The undertaker must comply with all the rail provision milestones unless otherwise agreed with the local planning authority.

2. The undertaker must keep the local planning authority advised of progress in respect of all the rail provision milestones on a quarterly basis including providing copies to the local planning authority of any material formally submitted to all bodies in pursuance of compliance with the rail provision milestones, if requested.

3. The undertaker must notify the local planning authority of the date of the first occupation of more than 47,000 sq m. of warehousing and 186,000 sq m. of warehousing within 28 days of such occupations occurring.

#### **Rail Infrastructure**

4.—(1) The undertaker must complete the rail terminal works prior to the earliest of—

- (a) the occupation of more than 186,000 sq.m. of warehousing; or
- (b) the sixth anniversary of the first occupation of more than 47,000 sq.m. of warehousing.

5. The undertaker must pursue the completion of the rail terminal works as expeditiously as possible following the commencement of their construction.

6. Following completion of the rail terminal works the undertaker must retain, manage and keep the rail terminal works available for use.

#### **Rail Support**

7. The undertaker must appoint a rail freight co-ordinator at least three months prior to the submission of the application for approval of GRIP 3 referred to in paragraph 9(1) who must report to the local planning authority no less than once a quarter on—

- (a) the progress towards meeting the rail provision milestones;
- (b) the progress of the rail terminal works; and
- (c) the operation of the rail terminal when open including—
  - (i) the appointment of a rail operator to operate the rail terminal;
  - (ii) the amount of rail freight usage of the rail terminal;
  - (iii) the number of trains using the rail terminal;

- (iv) the warehousing receiving or sending goods through the rail terminal; and
- (v) the amount of goods being received or sent through the rail terminal by freight handlers not occupying the warehousing.

8. The undertaker must maintain a person in the position of rail freight co-ordinator throughout the life of the authorised development unless otherwise agreed with the local planning authority.

### **Rail Provision Milestones**

9.—(1) The undertaker must submit an application to Network Rail for approval of the matters required to be considered as part of GRIP 3 by Network Rail prior to commencement of the authorised development and thereafter pursue such application expeditiously.

(2) The undertaker must submit an application to Network Rail for approval of the matters required to be considered as part of GRIP 4 by Network Rail within three months of the approval of the matters approved under sub-paragraph (1) and thereafter pursue such application expeditiously.

(3) The undertaker must identify and apply to Network Rail for the necessary track possessions required to enable the carrying out of the rail terminal works by no later than 14 days from approval of the matters approved under sub-paragraph (2) and thereafter pursue such application expeditiously.

(4) The undertaker must submit an application to Network Rail for approval of the matters required to be considered as part of GRIP 5 by Network Rail within 12 months of approval of the matters approved under sub-paragraph (2) and thereafter pursue such application expeditiously.

10. The undertaker must progress the approvals referred to in sub-paragraphs (a) to (d) below as expeditiously as possible following the commencement of the authorised development—

- (a) the approval of all of the Detailed Design Information (as defined in paragraph (2) of Part 3 of Schedule 13 (protective provisions) for Works No. 4 (A5/A449 link road) pursuant to paragraph (3) of Part 3 of Schedule 13;
- (b) the obtaining of a variation to the existing environmental permit issued under the Environmental Permitting (England & Wales) Regulations 2010 relating to the remediation of the SI Land;
- (c) the obtaining of any approvals required from Network Rail in connection with the construction of the rail terminal works pursuant to the provisions of Part 1 of Schedule 13; and
- (d) the obtaining of all other consents required to lawfully construct the rail terminal works.

### **Interpretation of Part 2 of Schedule 2**

11. In this Part of this Schedule—

- (a) the expression “rail terminal works” means the works required to construct and provide a rail terminal capable of handling at least four trains a day;
- (b) the expression “rail terminal” means the rail terminal constructed as a result of and upon completion of the rail terminal works;
- (c) *the expression “matters outside of the control of the undertaker” shall be given its ordinary meaning save that, for the avoidance of doubt, such expression shall not include the inability of the undertaker to fund or obtain funding for the construction of the rail terminal works;*
- (d) the expression “rail provision milestones” means the actions, and the timing related thereto, set out in sub-paragraphs 10(1) to (4) and sub paragraphs 11( a) to (d);
- (e) the expression “undertaker” shall mean only Four Ashes Limited as referred to in item (a) of the definition of “undertaker” in article 2; and

- (f) *the expression “revised timetable” means an alternative programme for the completion of the rail terminal works which may include revised timing and/or revised floorspace figures to those set out in paragraph (4)(1)(a) and/or 4(1)(b);*
- (g) the expressions GRIP 3, GRIP 4 and GRIP 5 relate to Network Rail’s Governance for Rail Investment Projects current at the date of this order.

## PART 3

### PROCEDURE FOR APPROVALS ETC. UNDER REQUIREMENTS

#### **Applications made for certain approvals**

1.—(1) Where an application has been made to a discharging authority for any consent, agreement or approval required or contemplated under the requirements the discharging authority must give notice to the undertaker of its decision on the application before the end of the decision period.

(2) For the purposes of sub-paragraph (1), the decision period is—

- (a) where no further information is requested under paragraph 2, 42 days from the day immediately following that on which the application is received by the discharging authority;
- (b) where further information is requested under paragraph 2, 42 days from the day immediately following that on which the further information has been supplied by the undertaker under paragraph 2; or
- (c) such longer period as may be agreed by the undertaker and the discharging authority in writing before the end of the period in paragraph (a) or (b).

#### **Further information**

2.—(1) In relation to any application to which this Schedule applies, the discharging authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.

(2) If the discharging authority considers such further information to be necessary it must, within 10 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the discharging authority does not give such notification as specified in sub-paragraph (2) it is to be deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

#### **Appeals**

3.—(1) The undertaker may appeal in the event that—

- (a) the discharging authority refuses an application for any consent, agreement or approval required or contemplated under the requirements or grants it subject to conditions;
- (b) the discharging authority does not give notice of its decision to the undertaker within the decision period specified in paragraph 1;
- (c) on receipt of a request for further information under paragraph 2 the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) expiry of the decision period as determined under paragraph 1;
- (b) the undertaker must submit the appeal documentation to the Secretary of State [directed to [ ]] and must within 7 working days provide copies of the appeal documentation to the discharging authority and the requirement consultees;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to determine the appeal (“the appointed person”)(a) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent;
- (d) the discharging authority and the requirement consultees must submit written representations to the appointed person in respect of the appeal within 20 working days of the date on which the appeal parties are notified of the appointment of a person under paragraph (c) and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the appeal parties must make any counter-submissions to the appointed person within 20 working days of receipt of written representations under paragraph (d).

(3) The appointed person must make a decision and notify it to the appeal parties, with reasons, within 20 working days of expiry of the 20 working day period referred to in paragraph 3(2)(e) or, if applicable, within 20 working days of the expiry of the 10 working day period referred to in sub-paragraph (6).

(4) The appointment of the person pursuant to sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(5) If the appointed person considers that further information is necessary to enable consideration of the appeal the appointed person must, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(6) Any further information required under sub-paragraph (5) is to be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 10 working days of that date.

(7) On an appeal under this paragraph, the appointed person must—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(8) The appointed person must proceed to a decision on an appeal taking into account only such written representations as have been sent within the prescribed time limits, or set by the appointed person under this paragraph.

(9) The appointed person must proceed to a decision even though no written representations have been made within the prescribed time limits.

(10) The decision of the appointed person on an appeal is to be final and binding on the appeal parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

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(a) Appointed by the Planning Inspectorate on behalf of the Secretary of State.

(11) If an approval is given by the appointed person under this Schedule, it is deemed to be an approval for the purpose of any consent, agreement or approval required under the requirement as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(12) Except where a direction is given under sub-paragraph (13) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person are to be met by the undertaker(a).

(13) On application by the discharging authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the Planning Practice Guidance published by the Department for Communities and Local Government on 6th March 2014 or any circular or guidance which may from time to time replace it.

(14) For the avoidance of doubt the provisions of Part 3 of this Schedule shall apply to decisions made, or failure to take decisions, pursuant to the provisions of Part 1 only of this Schedule and shall not apply to Part 2 of this Schedule.

## **Fees**

**4.**—(1) Where an application is made to the discharging authority for consent, agreement or approval in respect of a requirement, other than where the parties have agreed otherwise, the fee that would have been payable had the fee been determined under the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(b), is to be paid to that authority.

(2) Any fee paid under this Part of this Schedule must be refunded to the undertaker within 42 days of—

- (a) the application being rejected as invalidly made; or
- (b) the discharging authority failing to determine the application within the decision period as determined under paragraph (1),

unless within that period the undertaker agrees, in writing, that the fee is to be returned by the discharging authority and credited in respect of a future application.

## **Interpretation of Part 3 of Schedule 2**

**5.** In this Part of this Schedule—

“appeal documentation” means the application submitted to the discharging authority, any further information submitted under paragraph 2 and any notice of a decision to refuse;

“the appeal parties” means the discharging authority, the undertaker and any requirement consultee(s);

“discharging authority” means the authority from whom a consent, approval or agreement is required or requested by the undertaker under the requirement concerned;

“requirement consultee” means any body named in a requirement which is the subject of an appeal as a body to be consulted by the discharging authority in discharging that requirement; and

“working day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971.

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(a) The costs of the appointed person are calculated based on the applicable day rate for a Single Inspector as if he or she were appointed under s78/ s79 of the PA2008. See the National Infrastructure Planning website for more information: <https://infrastructure.planninginspectorate.gov.uk/application-process/application-fees/>

(b) S.I. 2012/2920.

### SCHEDULE 3

Article 8

#### STREETS SUBJECT TO STREET WORKS

(1) <i>Area</i>	(2) <i>Street within the Order limits subject to street works</i>
District of South Staffordshire and Parishes of Penkridge, Hatherton and Brewood and Coven	A5
	A449
	Vicarage Road
	Straight Mile
	Station Drive
	Station Road
	Harrisons Lane
	Crateford Lane
	Gravelly Way
	Four Ashes Road
	Kings Road
	Woodlands Lane
	Access to Avenue Cottages
Access to the Poplars	

### SCHEDULE 4

Article 10

#### PART 1

#### STREETS TO BE PERMANENTLY STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

(1) <i>Area</i>	(2) <i>Street to be stopped up</i>	(3) <i>Extent of stopping up</i>	(4) <i>New street to be substituted</i>
District of South Staffordshire and Parish of Penkridge	Gravelly Way	The existing highway along the length shown hatched red between points (i) and (ii) on the access and rights of way plans (Document 2.3A)	New highway along the length tinted grey between points A and B on the access and rights of way plans (Document 2.3A)

#### PART 2

#### STREETS TO BE PERMANENTLY STOPPED UP AND BECOME PRIVATE STREETS

(1) <i>Area</i>	(2) <i>Street to be stopped up</i>	(3) <i>Extent of stopping up</i>	(4) <i>Replacement private</i>

			<i>street</i>
District of South Staffordshire and Parish of Penkridge	Gravelly Way	The existing highway along the length shown cross hatched green on the access and rights of way plans (Document 2.3C)	The new private road along the length shown cross hatched green on the access and rights of way plans (Document 2.3C)

## SCHEDULE 5

Article 12

### PUBLIC RIGHTS OF WAY

#### PART 1

#### PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
District of South Staffordshire and Parish of Penkridge	Public footpath Penkridge 29	The length of existing footpath shown with a dashed red line between the points (iii) and (iv) on the access and rights of way plans (Document 2.3A)

#### PART 2

#### NEW PUBLIC RIGHT OF WAY TO BE CREATED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way to be created</i>	<i>(3)</i> <i>Extent of new public right of way</i>	<i>(4)</i> <i>Stage of the authorised development</i>
District of South Staffordshire and Parish of Penkridge	Footpath and cycle track	The length of footpath and cycle track shown coloured blue between points LL and AA on the access and rights of way plans (Document 2.3C)	No later than six months from the opening to public traffic of the A5/A449 link road

## SCHEDULE 6

Article 13

### PRIVATE MEANS OF ACCESS

#### PART 1

#### PRIVATE MEANS OF ACCESS TO BE CLOSED FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Private Means of Access</i>	<i>(3)</i> <i>Stage of the Authorised Development</i>
District of South Staffordshire	Field access to the west of the A449 shown with a green dot at point 1 on the access and rights of way plans (Document 2.3A and 2.3F)	Upon the opening to public traffic of the layby on the western side of the A449
District of South Staffordshire	Field access to the east of the A449 shown with a green dot at point 2 on the access and rights of way plans (Document 2.3A and 2.3F)	Upon the opening to public traffic of the layby on the eastern side of the A449
District of South Staffordshire	Field access to the south of the A5 shown with a green dot at point 3 on the access and rights of way plans (Document 2.3A and 2.3B)	Upon the commencement of construction of the roundabout at the junction of the A5 with the A5/A449 link road.
District of South Staffordshire	Access to Clovelly south of the A5 shown with a green dot at point 4 on the access and rights of way plans (Document 2.3A and 2.3B)	Upon the commencement of construction of the roundabout at the junction of the A5 with the A5/A449 link road.
District of South Staffordshire	Access to Fir Tree Cottage to the east of the A449 shown with a green dot at point 5 on the access and rights of way plans (Document 2.3E)	Upon the commencement of that part of the authorised development known as Zone A1 as shown on the parameters plans.
District of South Staffordshire	Field access to the east of the A449 shown with a green dot at point 6 on the access and rights of way plans (Document 2.3E)	Upon the commencement of that part of the authorised development known as Zone A1 as shown on the parameters plans.
District of South Staffordshire	Access to Croft Farm shown coloured purple between points FF and GG on the access and rights of way plans (Document 2.3A)	Upon the commencement of that part of the authorised development known as Zone A3 as shown in the parameters plans.
District of South Staffordshire	Access to Calf Heath Quarry shown coloured purple between points HH and II on the access and rights of way plans (Document 2.3B)	Upon the commencement of that part of the authorised development known as Zone A4a as shown on

		the parameters plans.
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## PART 2

### PRIVATE MEANS OF ACCESS TO BE CLOSED AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Replacement</i>	<i>(4)</i> <i>Stage of the authorised development</i>
District of South Staffordshire	Existing Gravelly Way between points KK and EEE shown purple on the access and rights of way plans (Document 2.3C)	(i) The private means of access shown hatched blue between points FFF and GGG and MM, FFF and GGG and NN, and FFF and GGG and HHH on the access and rights of way plans (Document 2.3C); and (ii) The private means of access shown hatched blue between points CCC and BBB and DDD and PP on the access and rights of way plans (Document 2.3C)	No later than the opening to public traffic of the A5/A449 link road
District of South Staffordshire	Existing Gravelly Way between points EEE and JJ shown cross hatched purple on the access and rights of way plans (Document 2.3C)	(i) The private means of access shown hatched blue between points CCC and BBB on the access and rights of way plans (Document 2.3C); and (ii) The private means of access shown hatched blue between points DDD and PP on the access and rights of way plans (Document 2.3C)	No later than the opening to public traffic of the A5/A449 link road
District of South Staffordshire	Existing Gravelly Way at point QQ shown purple on the access and rights of way plans (Document 2.3C)	(i) The private means of access shown hatched blue between points CCC and BBB on the access and rights of way plans (Document 2.3C); and (ii) The private means of access shown hatched blue between points DDD and PP on the access and rights	No later than the opening to public traffic of the A5/A449 link road

		of way plans (Document 2.3C)	
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### PART 3

#### NEW PRIVATE MEANS OF ACCESS CREATED

<i>(1) Area</i>	<i>(2) Private Means of Access</i>	<i>(3) Stage of the authorised development</i>
District of South Staffordshire	The private footpath shown with a dashed orange line between points J and AAA on the access and rights of way plans (Document 2.3C)	No later than the opening to public traffic of the A5/A449 link road
District of South Staffordshire	The private means of access shown hatched blue between points FFF and GGG and MM on the access and rights of way plans (Document 2.3C)	No later than the opening to public traffic of the A5/A449 link road
District of South Staffordshire	The private means of access shown hatched blue between points FFF and GGG and NN on the access and rights of way plans (Document 2.3C)	Upon the commencement of that part of the authorised development known as Zone A3 as shown on the parameters plans
District of South Staffordshire	The private means of access shown hatched blue between points FFF and GGG and HHH on the access and rights of way plans (Document 2.3C)	No later than the opening to public traffic of the A5/A449 link road
District of South Staffordshire	The turning head for Avenue Cottages shown hatched blue at point RR on the access and rights of way plans (Document 2.3A and 2.3B)	Upon the commencement of that part of the authorised development known as Zone A4a as shown on the parameters plans
District of South Staffordshire	Length of new road shown hatched blue between points V and DD on the access and rights of way plans (Document 2.3A and 2.3D)	Upon the completion of that part of the authorised development in Works No. 5 which is served by that length of road
District of South Staffordshire	Length of new road between points SS and TT shown hatched blue on the access and rights of way plans (Document 2.3D and 2.3E)	Upon the occupation of that part of the authorised development known as Zone A6 as shown on the parameters plans
District of South Staffordshire	New rail terminal access road between points WW and XX shown on the access and right of way plans (Document 2.3A and 2.3F)	Upon the occupation of that part of the authorised development known as Zone A5a as shown on the parameters plans
District of South Staffordshire	Length of new road between points AA1 and YY shown on the access of rights of way plans (Document 2.3D)	Upon the completion of that part of the authorised development in Zones A7a, A7b and A7c as shown on the parameters plans

District of South Staffordshire	Length of new road between points III and JJJ shown on the access and rights of way plans (Document 2.3A and 2.3F)	Upon the occupation of that part of the authorised development known as Zone A2 on the parameters plans
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## SCHEDULE 7

Article 15

### CLASSIFICATION OF HIGHWAYS

#### NEW HIGHWAYS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Extent of Street</i>	<i>(3)</i> <i>Classification</i>	<i>(4)</i> <i>Classes of Traffic</i>
In the District of South Staffordshire	A5/A449 link road as shown tinted orange between points marked A and B on the highway classification plans (Document 2.13A)	Classified (County A road)	All purpose

## SCHEDULE 8

Article 16

### SPEED LIMITS

#### PART 1

#### ROADS SUBJECT TO 30MPH SPEED LIMIT

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Length</i>
A5/A449 link road	Shown coloured pink between points marked A and B as shown on the speed limits plans (Document 2.12A).
Vicarage Road link	Shown coloured pink between points marked C and C1 as shown on the speed limits plans (Document 2.12A and 2.12B)
Private Estate Roads	Shown coloured orange between points C and D as shown on the speed limits plans (Document 2.12B)
Private Estate Roads	Shown coloured orange between points marked C2 and C3 as shown on the speed limits plans (Document 2.12B)
Private Estate Roads	Shown coloured orange between points marked C4 and C5 as shown on the speed limits plans (Document 2.12B)
Private Estate Roads	Shown coloured orange between points marked E and E1 as shown on the speed limits plans (Document 2.12B)

## PART 2

### ROADS SUBJECT TO 40MPH SPEED LIMIT

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Description</i>
Vicarage Road	Shown coloured blue between points D and E, D and G and D and F as shown on the speed limits plans (Document 2.12B).
Vicarage Road	Shown coloured blue between points F and G on the speed limits plans (Document 2.12B)

## PART 3

### ROADS SUBJECT TO 50MPH SPEED LIMIT

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Description</i>
A5/A449 link road	Shown coloured yellow between points marked B and B1 as shown on the speed limits plans (Document 2.12A)
A5	Shown coloured yellow between points marked H and I as shown on the speed limits plans (Document 2.12A)

## PART 4

### ROADS SUBJECT TO 60MPH SPEED LIMIT

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Description</i>
A5/A449 link road	Shown coloured green between points marked A and A1 as shown on the speed limits plans (Document 2.12A)
A449	Shown coloured green between points marked J and K as shown on the speed limits plans (Document 2.12A and 2.12C)
Crateford Lane	Shown coloured green between points marked L and L1 as shown on the speed limits plans (Document 2.12A)
Vicarage Road	Shown coloured purple between points F and F1 as shown on the speed limits plans (Document 2.12B)
Vicarage Road	Shown coloured purple between points G and G1 as shown on the speed limits plans (Document 2.12B)

## SCHEDULE 9

Articles 17, 18 and 19

### PART 1

#### AMENDMENTS TO EXISTING ORDERS

(1) <i>Statutory Instrument/ Order Title</i>	(2) <i>Statutory Instrument Number if applicable</i>	(3) <i>Changes</i>	(4) <i>Event</i>
The Worcester-Wolverhampton South of Stafford Trunk Road (Prohibition of Waiting) Clearways Order 1965	1965 No. 427	New side road Terminals Signs to be added to Highways Agency Drawing M91226008/A449_02 at A5/A449 link road	Upon the opening of the A449 roundabout to public traffic as shown on the highway general arrangement plans (Document 2.9C)
The Worcester-Wolverhampton South of Stafford Trunk Road (Prohibition of Waiting) Clearways Order 1965	1965 No. 427	Prohibition of waiting on verges along the section of the A5 between points AA and BB as shown on the traffic regulation plans (Document 2.11A)	Upon the commencement of construction of the A5 roundabout as shown on the highway general arrangement plans (Document 2.9G)
The Trunk Road (A449) (Stafford Road, Coven Heath) (Clearway) Order 1986	1986 No. 885	New side road Terminals Signs to be added to Highways Agency Drawing M91226008/A449_02 at A5/A449 link road	Upon the opening of the A449 roundabout to public traffic as shown on the highway general arrangement plans (Document 2.9C)
The Trunk Road (A449) (Stafford Road, Coven Heath) (Clearway) Order 1986	1986 No. 885	Prohibition of waiting on verges along the section of the A449 between points CC and DD as shown on the traffic regulation plans (Document 2.11A and 2.11D)	Upon the commencement of construction of the relocated A449 laybys as shown on the highway general arrangement plans (Document 2.9E)
The London-Holyhead Trunk Road (Prohibition of Waiting) (Clearways) Order 1969	1969 No. 1576	New side road Terminals Signs to be added to Highways Agency Drawing M91226005/DRA5E_01 at new junction with A5/A449 link road	Upon the opening of the A5 roundabout to public traffic as shown on the highway general arrangement plans (Document 2.9G)
The London-Holyhead Trunk Road (Prohibition of Waiting) (Clearways) Order 1969	1969 No. 1576	Prohibition of waiting on verges along the section of the A5 between points AA and BB as shown on the traffic regulation plans (Document 2.11A)	Upon the commencement of construction of the A5 roundabout as shown on the highway general arrangement plans (Document 2.9G)

The West Midlands Trunk Road (Prohibition of Waiting) (Clearways) Amendment Order 1989	1989 No. 1037	New side road Terminals Signs to be added to Highways Agency Drawing M91226005/DRA5E_01 at new junction with A5/A449 link road	Upon the opening of the A5 roundabout to public traffic as shown on the highway general arrangement plans (Document 2.9G)
The West Midlands Trunk Road (Prohibition of Waiting) (Clearways)	1989 No. 1037	Prohibition of waiting on verges along the section of the A449 between points CC and DD as shown on the traffic regulation plans (Document 2.11A and 2.11D)	Upon the commencement of construction of the relocated A449 laybys as shown on the highway general arrangement plans (Document 2.9E)

## PART 2 CLEARWAYS

(1) <i>Location</i>	(2) <i>Description</i>	(3) <i>Inclusion prohibition of waiting on verges?</i>	(4) <i>Event</i>
A5/A449 link road	Shown coloured pink between points A and B on the traffic regulation plans (Document 2.11A and 2.11B)	No	Upon the opening of the A5/A449 link road to public traffic as shown on the highway general arrangement plans (Document 2.9C, 2.9D, 2.9H and 2.9G)
A5/A449 link road	Shown with a dashed green line between points C and D on the traffic regulation plans (Document 2.11A and 2.11B)	Yes	Upon the opening of the A5/A449 link road to public traffic as shown on the highway general arrangement plans (Document 2.9C, 2.9D, 2.9H and 2.9G)
A5/A449 link road roundabout with Vicarage Road link	Shown coloured green between points E and F on the traffic regulation plans (Document 2.11A and 2.11B)	No	Upon the opening of the A5/A449 link road roundabout with Vicarage Road link to public traffic as shown on the highway general arrangement plans (Document 2.9H)
A5/A449 link road roundabout with Vicarage Road link	Shown dashed green at between points G and H on the traffic regulation plans (Document 2.11A and 2.11B)	Yes	Upon the opening of the A5/A449 link road roundabout with Vicarage Road link to public traffic as shown on the highway

			general arrangement plans (Document 2.9H)
Vicarage Road Roundabout	Shown coloured orange at point I on the traffic regulation plans (Document 2.11B)	No	Upon the opening of the Vicarage Road roundabout to public traffic as shown on the highway general arrangement plans (Document 2.9I)
Vicarage Road Roundabout	Shown dashed green at point J on the traffic regulation plans (Document 2.11B)	Yes	Upon the opening of the Vicarage Road roundabout to public traffic as shown on the highway general arrangement plans (Document 2.9I)

### PART 3

#### NO WAITING AT ANY TIME

(1) <i>Location</i>	(2) <i>Length</i>	(3) <i>Event</i>
Station Drive turning head	Between points K, L and M as shown with a dark blue line on the traffic regulation plans (Document 2.11C)	Opening of the Station Drive turning head as shown on the highway general arrangement plans (Document 2.9A)
Bus stops on the A5/A449 link road	Between points N and O and P and Q shown with a dark blue line on the traffic regulation plans (Document 2.11A and 2.11B)	Opening of the A5/A449 link road bus stops as shown on highway general arrangement plans (Document 2.9D and 2.9H)
Bus stops on the A449	Between points R and S and T and U shown with a yellow line on the traffic regulation plans (Document 2.11A and 2.11C)	Opening of the A449 roundabout as shown on the highway general arrangement plans (Document 2.9C)

### PART 4

#### LIMITED WAITING

(1) <i>Location</i>	(2) <i>Length</i>	(3) <i>Event</i>
A449 Laybys	Between points V and W and X and Y as shown with a purple line on the traffic regulation plans (Document 2.11A)	Opening of the northbound A449 laybys as shown on the highway general arrangement plans (Document 2.9E)

**PART 5**  
**PROHIBITED MOVEMENTS**

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Length</i>	<i>(3)</i> <i>Description</i>
Avenue Cottage Access on to A5	At the point shown with a light blue arrow and marked 1 at the Avenue Cottage access on to the A5 on the traffic regulation plans (Document 2.11A)	No right turn on to the A5
A5	At the point shown with a light blue arrow and marked 2 on the A5 east-bound on the traffic regulation plans (Document 2.11A)	No right turn in to Avenue Cottages access
Harrisons Lane access on to A5	At the point shown with a light blue arrow and marked 3 at the Harrisons Lane access on to the A5 on the traffic regulation plans (Document 2.11A)	No right turn on to the A5
A5	At the point shown with a light blue arrow and marked 4 on the A5 west-bound on the traffic regulation plans (Document 2.11A)	No right turn in to Harrisons Lane
Poplars Access on to A5	At the point shown with a light blue arrow and marked 5 at the Poplars access on to the A5 on the traffic regulation plans (Document 2.11A)	No right turn on to the A5
A5	At the point shown with a light blue arrow and marked 6 at the Poplars access on to the A5 on the traffic regulation plans (Document 2.11A)	No right turn in to the Poplars
A449	At the point shown with a light blue arrow and marked 7 on the A449 north-bound on the traffic regulation plans (Document 2.11C)	No right turn in to Station Drive
A5	At the point shown with a blue dot on the A5 east-bound on the traffic regulation plans (Document 2.11A)	No U-turns
A449	At the points marked 8, 9 and 10 with red dots on the A449 as shown on the traffic regulation plans (Document 2.11A)	No access through central reservation

**PART 6**  
**ONE WAY STREET**

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Length</i>	<i>(3)</i> <i>Direction</i>
Crateford Lane	From point Z to point Z1 along the centre line shown with a red line and arrow on the traffic regulation plans (Document 2.11A)	West to East only

## SCHEDULE 10

Article 35

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plan</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
District of South Staffordshire	87a	Temporary compound for pylon works north of the A5	Works No. 9a
	87b	Temporary compound for pylon works north of the A5	Works No. 9a

## SCHEDULE 11

Article 25

### LAND IN WHICH NEW RIGHTS MAY BE CREATED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Plot of land shown on land plan</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
District of South Staffordshire	74, 76 and 78	Works No. 6
District of South Staffordshire	87	Works No. 9a
District of South Staffordshire	97	Works Nos. 7 and 11
District of South Staffordshire	98	Works No. 11

## SCHEDULE 12

Article 25

### MODIFICATIONS OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

#### *Compensation enactments*

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

**2.**—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973<sup>(a)</sup> has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for “land is acquired or taken” substitute “a right over land is purchased”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable”.

**3.**—(1) Without limiting paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act, after “if” substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act;
- (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 5 of Schedule 12 to the West Midlands Rail Freight Interchange Order 201X) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,  
the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purposes of exercising that right.”

#### **Application of Part 1 of the 1965 Act**

**4.** Part 1 of the 1965 Act as applied by section 125 of the 2008 Act and as modified by article 31 (application of Part 1 of the 1965 Act) to the compulsory acquisition of land under article 24 (compulsory acquisition of land) applies to the compulsory acquisition of a right by the creation of a new right under article 25 (compulsory acquisition of rights)—

- (a) with the modifications specified in paragraph 5; and
- (b) with other modifications as may be necessary.

**5.**—(1) The modifications referred to in paragraph 4(a) are as follows.

(2) References in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(3) For section 7 of the 1965 Act (measure of compensation in case of severance) substitute—

“**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

(4) Section 8(1) of the Compulsory Purchase Act 1965 has effect as if references to acquiring land were to acquiring a right in the land.

**6.** The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);

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(a) 1973 c. 26.

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

7. Section 11 (powers of entry) of the 1965 Act(a) is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12(b) (penalty for unauthorised entry) and 13(c) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20 of the 1965 Act(d) (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

9. Section 22 of the 1965 Act (interests omitted from purchase) is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

10. Schedule 2A to that Act is to be read as if, for that Schedule, there were substituted—

## “SCHEDULE 2A

### COUNTER-NOTICE REQUIRING PURCHASE OF LAND

#### Introduction

1. This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 32 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the West Midlands Rail Freight Interchange Order 201X in respect of the land to which the notice to treat relates.

2. In this Schedule, “house” includes any park or garden belonging to a house.

#### Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

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(a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

(b) Section 12 was amended by section 56(2) of, and part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).

(c) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(d) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

#### **Response to counter-notice**

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The acquiring authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the acquiring authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the acquiring authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the acquiring authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

#### **Determination by Upper Tribunal**

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right,
- (b) the use to be made of the right proposed to be acquired, and
- (c) if the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

## PROTECTIVE PROVISIONS

## PART 1

## FOR PROTECTION OF RAILWAY INTERESTS

1. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006<sup>(a)</sup>) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

3.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

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(a) 2006 c. 46.

- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

**4.—(1)** The undertaker must not exercise the powers conferred by articles 22 (authority to survey and investigate the land), 24 (compulsory acquisition of land), 25 (compulsory acquisition of rights), 26 (acquisition of part of certain properties), 28 (power to override easements and other rights), 35 (temporary use of land for carrying out the authorised development) and 36 (temporary use of land for maintaining the authorised development) or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act or article 33 (statutory undertakers and operators of the electronic communications code network), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

**5.—(1)** The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 48 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated his approval or disapproval, he shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation, de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case with all reasonable dispatch and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

**6.—**(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

**7.** The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

**8.** Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

**9.—**(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

**10.** The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by him of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

**11.**—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations comprised in the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 48 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

**12.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

**13.** The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

**14.** Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

**15.—**(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) shall include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

**16.** Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

**17.** In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

**18.** The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

**19.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

**20.** The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 7 (benefit of order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

**21.** The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 46 (certification of plans and documents) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

## PART 2

### FOR THE PROTECTION OF HIGHWAYS ENGLAND

#### **Application**

**1.** The provisions of this Part of this Schedule shall have effect unless otherwise agreed in writing between the undertaker and Highways England and shall apply to the Trunk Road Works.

#### **Interpretation**

**2.—(1)** The terms used in this Part of this Schedule are as defined in article 2 of this Order save where inconsistent with sub-paragraph (2) below which shall prevail; and

(2) In this Part of this Schedule—

“As Built Information” means one digital copy of the following information where applicable to the Phase in question—

- (a) As constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker in compliance with Interim Advice Note 184 or any successor document;
- (b) List of suppliers and materials used;
- (c) Product data sheets and technical specifications for all materials used;
- (d) As constructed information for any Utilities discovered or moved during the works;
- (e) Method Statements for works carried out;
- (f) In relation to road lighting, signs and traffic signals any information required by Series 1400 of the Specification for Highway Works;

- (g) Organisation and methods manuals for all products used in the construction of the Trunk Road Works;
- (h) As constructed programme;
- (i) Test results and records as required by the Detailed Design Information and during the construction phase of the Trunk Road Works;
- (j) RSA 3 and exceptions agreed;
- (k) Health and Safety File; and
- (l) other such information as is necessary to enable Highways England to update all relevant databases and to ensure compliance with the Highways England Asset Data Management Manual as shall be in operation at the relevant time including, for the avoidance of doubt, CCTV surveys.

“the Bond Sum” means the sum equal to 120% of the cost of the carrying out of the Phase of the Trunk Road Works concerned (to include all costs including the Commuted Sum) or such other sum agreed between the undertaker and Highways England;

“the Cash Surety” means the sum of £150,000 or such other sum agreed between the undertaker and Highways England;

“Commuted Sum” means such sum as shall be calculated for each Phase as provided for in paragraph 10 of this Part of this Schedule to be used to fund the future cost of maintaining the Trunk Road Works;

“Contractor” means any contractor or sub-contractor appointed by the undertaker to carry out the Trunk Road Works or any Phase of the Trunk Road Works and approved by Highways England pursuant to paragraph 3(3) below;

“County Highway Works” means those parts of Works Nos. 4 and 7 shown coloured pink and yellow on the future highway maintenance plans the general arrangement of which is shown on the highways general arrangement plans and any ancillary works thereto;

“Detailed Design Information” means drawings, specifications and calculations as appropriate for the following which shall all be in accordance with the general arrangements of the Trunk Road Works shown on the highway general arrangement plans unless otherwise agreed between Highways England and the undertaker—

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;
- (c) road restraints systems and supporting Road Restraint Risk Appraisal Process assessment (RRRAP);
- (d) drainage and ducting as required by Series 500 of the Specification for Highway Works, HD43/04, IAN 147/12 and SD15 Parts 1-6 inclusive;
- (e) earthworks including supporting geotechnical assessments required by HD22/08 and any required Strengthened Earthworks Appraisal Form certification (SEAF);
- (f) pavement, pavement foundations, kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets);
- (j) electrical work for road lighting, traffic signs and signals;
- (k) highway structures and any required structural Approval in Principle (AIP);
- (l) landscaping;
- (m) agreed departures from DMRB standards;
- (n) a report of walking, cycling and horse riding carried out in accordance with the Design Manual for Roads and Bridges Standard KD42/17 or any successor document;

- (o) Stage 2 Road Safety Audit and exceptions agreed and in the event that any works are not commenced within five years of the date of the Stage 1 Road Safety Audit a further Stage 1 Road Safety Audit and exceptions agreed;
- (p) Utilities diversions;
- (q) topographical survey;
- (r) maintenance and repair strategy in accordance with Designing for Maintenance Interim Advice Note 69/15 or any successor document; and
- (s) health and safety information including any asbestos survey required by GD05/16 or any successor document,

where relevant to the Phase concerned;

“Dilapidation Survey” means a survey of the condition of the roads, bridges and retaining walls which will be the subject of the physical works comprised in the Phase concerned;

“Estimated Costs” means the estimated costs in respect of each Phase agreed pursuant to paragraphs 5(1)(b) to (d) and (5) of this Part of this Schedule;

“the Excess” means the amount by which Highways England estimates that the costs referred to in paragraph 5(1)(b) to (d) will exceed the Estimated Costs pursuant to paragraph 5(5)(b);

“Nominated Persons” means the undertaker’s representatives or the Contractor’s representatives on site during the carrying out of the Trunk Road Works as notified to Highways England from time to time;

“Phase” means that part of the Trunk Road Works which is to be carried out in separate phases within the area identified separately as Works Nos. 7 on the works plans such phasing arrangements to be as agreed with Highways England;

“Programme of Works” means a document setting out the sequence and timetabling of the Phase of the Trunk Road Works in question;

“Road Safety Audit” means an audit carried out in accordance with the Road Safety Audit Standard – a member of Highways England West Midlands Asset Delivery Road Safety Team will be part of the approved audit team;

“Road Safety Audit Standard” means the Design Manual for Roads and Bridges Standard HD 19/15 or any successor document;

“Trunk Road Works” means that part of Works Nos 4 or 7 shown coloured green and blue on the future highway maintenance plans the general arrangement of which is shown on the relevant highway general arrangement plans and any ancillary works thereto;

“Utilities” means any pipes, wires, cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991; and

“Winter Maintenance” means maintenance of the road surface to deal with snow and ice.

### **Prior Approvals and Security**

**3.—**(1) No work must commence on any Phase of the Trunk Road Works until the Detailed Design Information and a Programme of Works in respect of that Phase has been submitted to and approved by Highways England.

(2) Highways England must nominate a person who will be a single point of contact on behalf of Highways England for consideration of the Detailed Design Information and who shall co-ordinate the Highways England response to the details submitted.

(3) No works must commence on any Phase of the Trunk Road Works other than by a Contractor employed by the undertaker for that Phase but first approved by Highways England.

(4) No work must commence on any Phase of the Trunk Road Works until Highways England has agreed the Bond Sum for that Phase and the undertaker has provided security for the carrying out of those works as provided for in paragraph 9 below or some other form of security acceptable to Highways England.

(5) No work must commence on any Phase of the Trunk Road Works until Stage 1 and Stage 2 Road Safety Audits have been carried out in respect of that Phase and all recommendations raised incorporated into an amended design approved by Highways England or secured by agreement with Highways England pursuant to article 20 or any relevant exceptions approved by Highways England.

(6) No work must commence on any Phase of the Trunk Road Works until the undertaker demonstrates to the satisfaction of Highways England that the Walking, Cycling and Horse Riding Assessment and Review process for that Phase has been adhered to in accordance with the Design Manual for Roads and Bridges Standard HD 42/17 or any successor document.

(7) No work must commence on any Phase of the Trunk Road Works until a scheme of traffic management has been submitted by the undertaker and approved by Highways England for that phase such scheme to be capable of amendment by agreement between the undertaker and Highways England from time to time.

(8) No work must commence on any Phase of the Trunk Road Works until stakeholder liaison has taken place for that Phase in accordance with a scheme for such liaison agreed between the undertaker and Highways England.

(9) No work must commence on any Phase of the Trunk Road Works until Highways England has approved the audit brief and CVs for all Road Safety Audits and exceptions to items raised if appropriate for that Phase in accordance with the Road Safety Audit Standard.

(10) No work must commence on any Phase of the Trunk Road Works until the undertaker has agreed the Commuted Sum for that Phase with Highways England to be calculated in accordance with paragraph 10 of this Part of this Schedule.

(11) No work must commence on any Phase of the Trunk Road Works until a Dilapidation Survey for that Phase has been carried out by the undertaker and has been submitted to and approved in writing by Highways England.

(12) No work must commence on any Phase of the Trunk Road Works until the scope of all routine maintenance to be carried out by the undertaker during the construction of the Phase concerned has been agreed in writing by Highways England such maintenance shall only include Winter Maintenance of the Phase concerned when—

- (a) access to carry out such maintenance by Highways England is not available by virtue of the works being carried out at that Phase; and
- (b) any Winter Maintenance is needed immediately prior to the opening of any carriageway to traffic when that carriageway had been closed for the purposes of the carrying out of the Phase concerned.

### **Carrying out of works**

4.—(1) The undertaker must prior to commencement of each Phase of the Trunk Road Works give Highways England 28 days' notice in writing of the date on which that Phase will start unless otherwise agreed by Highways England.

(2) The undertaker must comply with Highways England's usual road space booking procedures prior to and during the carrying out of each Phase of the Trunk Road Works and no Trunk Road Works for which a road space booking is required shall commence without a road space booking having first been secured such road space booking not to be unreasonably withheld or delayed.

(3) Each Phase of the Trunk Road Works must be carried out to the satisfaction of Highways England in accordance with—

- (a) the relevant Detailed Design Information and a Programme of Works approved pursuant to paragraph 3(1) above or as subsequently varied by agreement between the undertaker and Highways England;
- (b) the Design Manual for Roads and Bridges, the Specification for Highway Works (contained within the Manual of Contract Documents for Highway Works), all relevant interim advice notes, the Traffic Signs Manual and Traffic Signs Regulations and General Directions 2016 and any amendment to or replacement thereof for the time being in force

save to the extent that they are inconsistent with the general arrangement of the Trunk Road Works as shown on the highways general arrangement plans or a departure from such standards has been approved by Highways England;

- (c) such approvals or requirements of Highways England that are required by the provisions of paragraph 3 to be in place prior to the relevant Phase of the Trunk Road Works being undertaken; and
- (d) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker, as client, shall ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of Highways England.

(4) The undertaker must permit and require the Contractor to permit at all reasonable times persons authorised by Highways England (whose identity shall have been previously notified to the undertaker by Highways England) to gain access to the Trunk Road Works and County Highway Works for the purposes of inspection and supervision and the undertaker must provide to Highways England contact details of the Nominated Persons with whom Highways England should liaise during the carrying out of the Trunk Road Works.

(5) At any time during the carrying out of the Trunk Road Works the Nominated Persons must act upon any reasonable request made by Highways England in relation to the carrying out of the Trunk Road Works as soon as practicable following such request being made to the Nominated Persons save to the extent that the contents of such request are inconsistent with or fall outside the Contractor's obligations under its contract with the undertaker or the undertaker's obligations in this Order.

(6) If at any time the undertaker does not comply with any of the terms of this Part of this Schedule in respect of any Phase of the Trunk Road Works having been given notice of an alleged breach and an adequate opportunity to remedy it by Highways England then Highways England shall on giving to the undertaker 14 days' notice in writing to that effect be entitled to either (i) carry out and complete that Phase of the Trunk Road Works and any maintenance works which the undertaker would have been responsible for on the undertaker's behalf; or (ii) carry out such necessary works of reinstatement of the highway and other land and premises of Highways England and in either case the undertaker must within 28 days of receipt of the itemised costs pay to Highways England the costs so incurred by Highways England.

(7) If at any time the undertaker in carrying out the authorised development causes any damage or disruption to the strategic road network not hereby authorised then Highways England shall give notice of such damage or disruption and allow the undertaker 14 days to remedy the problem. Should the undertaker fail to adequately remedy the problem to the satisfaction of Highways England then Highways England shall on giving to the undertaker 7 days' notice in writing to that effect be entitled to carry out such necessary works as Highways England acting reasonably deem appropriate to remedy the damage or disruption and the undertaker must within 28 days of receipt of the itemised costs pay to Highways England the costs so incurred by Highways England.

(8) Nothing in this Part of this Schedule shall prevent Highways England from carrying out any work or taking such action as deemed appropriate forthwith without prior notice to the undertaker in the event of an emergency or danger to the public the cost to Highways England of such work or action being chargeable to and recoverable from the undertaker if the need for such action arises from the carrying out of the authorised development. For the avoidance of doubt this provision applies to all areas of the authorised development including any area of traffic management deployed under the traffic management plan approved pursuant to paragraph 3(7) to facilitate delivery of the authorised development.

(9) For the avoidance of doubt it is confirmed that the undertaker in carrying out each Phase of the Trunk Road Works must at its own expense divert or protect all Utilities as may be necessary to enable the Trunk Road Works to be properly carried out and all agreed alterations to existing services must be carried out to the reasonable satisfaction of Highways England.

(10) During the construction of each Phase of the Trunk Road Works the undertaker shall be responsible for all routine maintenance at its cost within that Phase (including Winter Maintenance when required to be undertaken by the undertaker in accordance with paragraph 3(12)). All routine

maintenance must be carried out in accordance with the scope of routine maintenance operations agreed by Highways England pursuant to paragraph 3(12).

## Payments

5.—(1) The undertaker must fund the whole of the cost of the Trunk Road Works and all costs incidental to the Trunk Road Works and must also pay to Highways England in respect of each Phase of the Trunk Road Works a sum equal to the whole of any costs and expenses which Highways England incur including costs and expenses for using external staff and resources as well as costs and expenses of using in-house staff and resources in relation to the Trunk Road Works and arising out of them and their implementation including without prejudice to the generality thereof—

- (a) the checking and approval of all design work carried out by or on behalf of the undertaker for that Phase;
- (b) costs in relation to agreeing the Programme of Works for that Phase;
- (c) the carrying out of supervision of that Phase; and
- (d) all administrative costs in relation to (a) and (b) above,

together comprising “the Estimated Costs”.

(2) The sums referred to in sub-paragraph (1) above do not include any sums payable from the undertaker to the Contractor but do include any value added tax which is payable by Highways England in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs.

(3) The undertaker must pay to Highways England upon demand and prior to such costs being incurred the total costs that Highways England believe will be properly and necessarily incurred by Highways England in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the Trunk Road Works provided that this paragraph shall not apply to the making of any orders which duplicate orders contained in this Order.

(4) The undertaker must make the payments of the Estimated Costs as follows—

- (a) the undertaker must pay a sum equal to the anticipated cost of the tasks referred to in sub-paragraphs 5(1)(a), (b) and (d) to Highways England prior to Highways England undertaking those tasks;
- (b) the undertaker must pay a sum equal to the anticipated cost of the tasks referred to in sub-paragraph 5(1)(c) prior to commencing that Phase;
- (c) if at any time or times after the payment in respect of a Phase referred to in sub-paragraphs (4)(a) and (b) above has become payable and Highways England reasonably estimates that the costs in respect of that Phase referred to in sub-paragraph (1) above will exceed the Estimated Costs for that Phase it may give notice to the undertaker of the amount by which it then reasonably estimates those costs will exceed the Estimated Costs (“the Excess”) and the undertaker must pay to Highways England within 28 days of the date of that notice a sum equal to the Excess.

(5) Within 91 days of the issue of the handover certificate for each Phase of the Trunk Road Works pursuant to paragraph 7 Highways England must give the undertaker a final account of the costs referred to in sub-paragraph (1) above and within 28 days from the expiry of the 91 day period—

- (a) if the account shows a further sum as due to Highways England the undertaker must pay to Highways England the sum shown due to it in that final account; and
- (b) if the account shows that the payment or payments previously made have exceeded those costs Highways England must refund the difference to the undertaker.

(6) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 1% above the rate payable in respect of

compensation under Section 32 of the Land Compensation Act 1961 for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

### **Provisional Certificate**

6.—(1) As soon as—

- (a) each Phase of the Trunk Road Works has been completed; and
- (b) a Stage 3 Road Safety Audit for that Phase has been carried out and any resulting recommendations complied with Highways England and any exceptions agreed,

Highways England must forthwith issue a provisional certificate of completion in respect of that Phase such certificate not to be unreasonably withheld or delayed.

### **Handover Certificate and Defects Period**

7.—(1) As soon as, in respect of a Phase—

- (a) The undertaker has carried out a Dilapidation Survey of the area previously surveyed pursuant to sub-paragraph 3(11) and completed any remedial works necessary to bring that area into as good a condition as when it was originally surveyed, such works to be first agreed with Highways England;
- (b) the undertaker has provided a plan clearly identifying the extent of any land which is to become highway maintainable at public expense together with any ancillary equipment that will become the responsibility of Highways England; and
- (c) the As Built Information has been provided to Highways England,

Highways England must forthwith issue a handover certificate in respect of that Phase such certificate not to be unreasonably withheld or delayed.

(2) The undertaker must at its own expense remedy any defects in any Phase of the Trunk Road Works as are reasonably required to be remedied by Highways England during a period of 12 months from the date of the handover certificate in respect of that Phase. All identified defects shall be remedied in accordance with the following timescales—

- (a) in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of Highways England);
- (b) in respect of matters which Highways England consider to be serious defects or faults, within 14 days of receiving notification of the same or, if a road space booking is required at the time when the road space is available, whichever is the later; and
- (c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same or, if a road space booking is required, at the time when the road space is available, whichever is the later.

(3) Following the issue of the handover certificate in respect of a Phase Highways England shall be responsible for the Trunk Road Works within that Phase which shall thereafter be maintained by and at the expense of Highways England.

(4) The undertaker must submit Stage 4 Road Safety Audits for each Phase as required by and in line with the timescales stipulated in the Road Safety Audit Standard. The undertaker must comply with the findings of the Stage 4 Road Safety Audits and be responsible for all costs of and incidental to such.

### **Final Certificate**

8. Highways England must issue the final certificate in respect of each Phase at the expiration of the 12 month period in respect of that Phase referred to in paragraph 7(2) or if later on the date on which any defects or damage arising from defects during that period have been made good to the reasonable satisfaction of Highways England such certificate not to be unreasonably withheld or delayed.

## Security

**9.**—(1) Subject to paragraph 3(4) above the undertaker must provide security for the carrying out of the Trunk Road Works as follows—

- (a) prior to the commencement of each Phase the Trunk Road Works within that Phase must be secured by a bond from a bondsman first approved by Highways England substantially in the form of the draft bond attached at Annex 1 or such other form that may be agreed between the undertaker and Highways England to indemnify Highways England against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of that Phase under the provisions of this Part of this Schedule provided that the maximum liability of the bond shall not exceed the Bond Sum relating to that Phase; and
- (b) prior to the commencement of the Trunk Road Works the undertaker must provide the Cash Surety which may be utilised by Highways England in the event of the undertaker failing to meet its obligations to make payments under paragraph 5 or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker (which shall for the avoidance of doubt be a single cash surety for the entirety of the Trunk Road Works).

(2) Each Bond Sum and the Cash Surety (the latter in respect of the final Phase only) must be progressively reduced as follows—

- (a) on receipt of written confirmation (including receipt of receipted invoices evidencing payments made by the undertaker to the Contractors) from the undertaker of the payments made from time to time to the Contractor Highways England must in writing authorise the reduction of the Bond Sum by such proportion of the Bond Sum as amounts to 80% of those payments provided that an evaluation of the Trunk Road Works completed and remaining has been carried out by the undertaker and audited and agreed by Highways England to ensure that the stage of completion of the works is relative to the payments made by the undertaker to the Contractors. Highways England shall only be required to provide the said authorisation should it be satisfied that the monies remaining secured by the Bond Sum shall be sufficient to cover all remaining costs and liabilities anticipated to be incurred in completing the Trunk Road Works plus an additional 20%;
- (b) within 20 working days of completion of each Phase of the Trunk Road Works (as evidenced by the issuing of the provisional certificate in respect of that Phase pursuant to paragraph 6(1)) Highways England must in writing release the bond provider from its obligations in respect of 80% of the Bond Sum relating to that Phase (“the Revised Bond Sum”) save insofar as any claim or claims have been made against the bond and/or liability on its part has arisen prior to that date in which case Highways England will retain a sufficient sum to meet all necessary costs; and
- (c) within 20 working days of the issue of the final certificate for each Phase of the Trunk Road Works referred to in paragraph 8 Highways England must in writing release the bond provider from its obligations in respect of the Revised Bond Sum relating to that Phase and (in respect of the final Phase) shall release the remainder of the Cash Surety to the undertaker save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date in which case Highways England will retain a sufficient sum to meet all necessary costs.

## Commuted sums

**10.** The undertaker must pay to Highways England the Commuted Sum for the relevant Phase calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation dated 18th January 2010 within 28 days of the date of that Phase of the Trunk Road Works becomes maintainable by Highways England pursuant to paragraph 7(3).

## **Insurance**

**11.** The undertaker must prior to commencement of the Trunk Road Works effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (Ten million pounds) against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of the Trunk Road Works or any part thereof by the undertaker.

## **Indemnification**

**12.—(1)** The undertaker must in relation to the carrying out of the Trunk Road Works take such precautions for the protection of the public and private interest as would be incumbent upon it if it were the highway authority and shall indemnify Highways England from and against all costs expenses damages losses and liabilities arising from or in connection with or ancillary to any claim demand action or proceedings resulting from the design and carrying out of the Trunk Road Works provided that—

- (a) the foregoing indemnity shall not extend to any costs, expenses, liabilities and damages caused by or arising out of the neglect or default of Highways England or its officers servants agents or contractors or any person or body for whom it is responsible;
- (b) Highways England must notify the undertaker forthwith upon receipt of any claim; and
- (c) Highways England must following the acceptance of any claim notify the quantum thereof to the undertaker in writing and the undertaker shall within 14 days of the receipt of such notification pay to Highways England the amount specified as the quantum of such claim.

(2) The undertaker must notify Highways England of the intended date of opening of each Phase to public traffic not less than 14 days in advance of the intended date and the undertaker must notify Highways England of the actual date that each Phase is open to public traffic on each occasion within 14 days of that occurrence.

## **Warranties**

**13.** The undertaker must procure warranties from the contractor and designer of each Phase to the effect that all reasonable skill care and due diligence will be exercised in designing and constructing that Phase including the selection of materials, goods, equipment and plant such warranties to be provided to Highways England before that Phase commences.

## **Land Transfer**

**14.—(1)** Following the issuing of the final certificates for all the Trunk Road Works Highways England may serve notice on the undertaker that it wishes to take a freehold transfer of land within the then extent of highway land which is not in the ownership of Highways England but has been acquired by the undertaker for the purposes of carrying out the Trunk Road Works.

(2) If the undertaker receives a notice under sub-paragraph 14(1) then the undertaker must co-operate in a freehold transfer of the land which is the subject of the notice and complete such transfer as soon as reasonably practicable at no cost to Highways England which, for the avoidance of doubt, shall include the undertaker being responsible for the reasonable legal costs incurred by Highways England in connection with such transfer.

## **Approvals**

**15.—(1)** Any approvals, certificates, consents or agreements required of or sought from or with Highways England pursuant to the provisions of this Part of this Schedule must not be unreasonably withheld or delayed and must be given in writing save that any such approval, certificate, consent or agreement shall be deemed to have been given if it is neither given nor refused within 42 days of the specified day.

(2) In this paragraph “specified day” means—

- (a) the day on which particulars of the matter are submitted to Highways England under the provisions of this Part of this Schedule; or
- (b) the day on which the undertaker provides Highways England with any further particulars of the matter that have been reasonably requested by Highways England within 14 days of the date in sub-paragraph (2)(a),

whichever is the later.

### **Expert Determination**

**16.**—(1) Article 48 (arbitration) does not apply to this Part of this Schedule except in respect of sub-paragraph (5) below.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 48.

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

## Annex 1

**BY THIS BOND** [ ] [(Company Regn No )] whose registered office is situate at [ ] (“**the undertaker**”) and [ ] [(Company Regn No )] whose registered office is situate at [ ] (“**the Surety**”) are jointly and severally bound to [ ] of [ ] (“the [ ]”) this [ ] day of [ ] 200[ ] in the sum of [ ] pounds (£[Surety Sum to the payment of which sum the undertaker and the Surety hereby jointly and severally bind themselves their successors and assigns

**WHEREAS** under a Development Consent Order known as The West Midlands Interchange Order 201[ ] (“the DCO”) the undertaker is empowered to commence execute perform and complete the highway works mentioned therein in such manner and within such time and subject to such conditions and stipulations as are particularly specified and set forth in the DCO and also to pay to Highways England such sums as are therein provided **NOW THE CONDITIONS** of this Bond are such that if the undertaker shall duly observe and perform all the terms provisions covenants conditions and stipulations of Schedule [ ] of the DCO on the undertaker’s part to be observed and performed according to the true purport intent and meaning thereof or if on default by the undertaker the Surety shall satisfy and discharge the damages sustained by Highways England thereby up to the amount of this Bond then this obligation shall be null and void but otherwise shall be and remain in full force and effect in accordance with the provisions of the DCO (and including any reductions as provided for in the DCO) but no allowance of time by Highways England under the DCO nor any forbearance or forgiveness in or in respect of any matter or thing concerning the DCO on the part of Highways England shall in any way release the Surety from any liability under this Bond

It is hereby agreed that this Bond will be reduced and released in accordance with paragraph 9 of Schedule [ ] of the DCO

[Attestation]

## PART 3

### FOR THE PROTECTION OF STAFFORDSHIRE COUNTY COUNCIL AS HIGHWAY AUTHORITY

#### Application

1. The provisions of this Part of this Schedule shall have effect unless otherwise agreed in writing between the undertaker and Staffordshire County Council and shall apply to the County Highway Works.

#### Interpretation

2.—(1) The terms used in this Schedule are as defined in article 2 of this Order save where inconsistent with sub-paragraph (2) below which shall prevail.

(2) In this Schedule—

“Approval in Principle” means the document, which records the agreed basis and criteria for the detailed design or assessment of a highway structure.

“As Built Information” means one electronic copy of the following information where applicable to the Phase in question—

- (a) As constructed drawings in both PDF AutoCAD DWG, MX and GIS formats for anything designed by the Undertaker;

- (b) List of suppliers and materials, test results and CCTV surveys;
- (c) Product data sheets, technical specifications for all materials used;
- (d) As constructed information for any Utilities discovered or moved during the works
- (e) Method Statements for works carried out;
- (f) In relation to road lighting, signs and traffic signals any information required by Series 1400 of the Specification for Highway Works;
- (g) Organisation and methods manuals for all products used;
- (h) As constructed programme;
- (i) Health and Safety file under the Construction (Design and Management) Regulations 2015;
- (j) Test results and records; and
- (k) Other such information as is readily available to the undertaker and may be reasonably required by the County Highway Authority to be used to update any relevant databases;

“Bond” means a bond from a surety approved by the County Highway Authority for the Bond Sum substantially in the form of the draft bond attached at Annex 1;

“the Bond Sum” means the sum equal to 120% of the Estimated Costs of the carrying out of the Phase of the County Highway Works concerned or such other sum agreed between the undertaker and the County Highway Authority;

“Committed Sum” means such sum as shall be calculated by the County Highway Authority in accordance with paragraph 7(2)(c) of this Part of this Schedule for any structure within each Phase to be used to fund the future cost of maintaining such structures;

“Contractor” means any contractor or sub-contractor appointed by the undertaker to carry out the County Highway Works or any Phase of the County Highway Works and approved by the County Highway Authority pursuant to paragraph 3(2) below;

“County Highway Works” means those parts of Works Nos. 4 and 7 coloured pink and yellow on the future highway maintenance plans the general arrangement of which is shown on the highway general arrangement plans and any ancillary works thereto;

“County Highway Authority” means Staffordshire County Council;

“Defects Period” a period of twelve months from the date of the Provisional Certificate or longer period if agreed between the undertaker and the County Highway Authority in which all defects arising from the County Highway Works must be rectified by the undertaker;

“Detailed Design Information” means the following drawings, specifications and other information which shall be in accordance with the general arrangements shown on the highway general arrangements plans unless otherwise agreed between the County Highway Authority and the undertaker—

- (a) site clearance details;
- (b) boundary environmental and mitigation fencing;
- (c) road restraint systems (vehicle and pedestrian) and supporting Road Restraint Risk Assessment Process (RRRAP);
- (d) drainage and ducting;
- (e) earthworks including supporting geotechnical assessments required by HD22/08 and any required Strengthened Earthworks Appraisal Form certification (SEAF);
- (f) kerbs, footways and paved areas;
- (g) traffic signs, signals and road markings;
- (h) road lighting (including columns, brackets and bat hop-overs);
- (i) electrical work for road lighting and traffic signs;
- (j) highway structures and any required certification in accordance with BD2/12;
- (k) agreed departures from Standard;

- (l) landscaping;
- (m) Utilities diversions; and
- (n) wildlife crossings

where relevant to the Phase concerned;

“Estimated Costs” means the estimated costs in respect of each Phase agreed pursuant to paragraphs 5(1) of this Part of this Schedule;

“the Excess” means the amount by which the County Highway Authority estimates that the costs referred to in paragraph 5(1) will exceed the Estimated Costs pursuant to paragraph 5(5)(b) of this Part of this Schedule;

“Final Certificate” means the certificate issued by the County Highway Authority to the undertaker for each Phase to certify that the Defects Period has been completed to the Satisfaction of the County Highway Authority;

“Nominated Persons” means the undertaker’s representatives or the Contractor’s representatives on site during the carrying out of the County Highway Works;

“Phase” means a phase of the County Highway Works which are to be carried out in separate phases such phases to be agreed with the County Highway Authority;

“Programme of Works” means a document setting out the sequence and timetabling of works for the Phase in question;

“Provisional Certificate” means the certificate issued by the County Highway Authority to the undertaker for each Phase of the County Highway Works to certify that in the opinion of the County Highway Authority the County Highway Works perform the function for which they were intended and are complete except for minor items not affecting safety;

“Road Safety Audit” means an audit carried out in accordance with the Road Safety Audit Standard;

“Road Safety Audit Standard” means the Design Manual for Roads and Bridges Standard GG119 or any replacement or modification thereof ;

“Satisfaction of the County Highway Authority” means the normal standards of the County Highway Authority in approving the design construction and/or rectification of defects of equivalent highway works applied elsewhere within their administrative area; and

“Utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991.

“Technical Approval Authority” The organisation responsible for agreeing the Approval in Principle and subsequently accepting the relevant certificates for all highway structures.

### **Prior Approvals and Security**

3.—(1) The County Highway Authority is the Technical Approval Authority in respect of all highway structures included in the County Highway Works, including the bridge which will carry the A5/A449 link road over the railway and canal, and the Approval in Principle for all such highway structures must be submitted to the County Highway Authority prior to any work commencing on the detailed design for any such highway structure.

(2) No work must commence on any Phase until the Detailed Design Information and a Programme of Works in respect of that Phase has been submitted to and approved by the County Highway Authority.

(3) No works must commence on any Phase other than by a Contractor employed by the undertaker but first approved by the County Highway Authority.

(4) No work must commence on any Phase until the undertaker has provided security for the carrying out of those works as provided for in paragraph 9 below or some other form of security acceptable to the County Highway Authority.

(5) No work must commence on any Phase until a Stage 2 Road Safety Audit has been carried out in respect of that Phase and as necessary all issues raised incorporated into an amended design

approved by the County Highway Authority or any relevant exceptions approved by the County Highway Authority.

(6) No work must commence on any Phase until traffic management provisions have been agreed with the County Highway Authority.

(7) No work must commence on any Phase until any land within that Phase not within the public highway which will become public highway as a result of the authorised works is in the ownership of the undertaker.

### **Carrying out of works**

4.—(1) The undertaker must prior to commencement of each Phase give the County Highway Authority 14 days' notice in writing of the proposed date on which that Phase will start.

(2) The undertaker must give the County Highway Authority 14 days' notice of the road space required for the carrying out of each Phase.

(3) Each Phase must be carried out to the Satisfaction of the County Highway Authority in accordance with—

- (a) the relevant Detailed Design Information and a Programme of Works approved pursuant to paragraph 3(1) above or as subsequently varied by agreement between the undertaker and the County Highway Authority;
- (b) the Design Manual for Roads and Bridges, the Specification for Highway Works (contained within the Manual of Contract Documents for Highways Works) and any amendment to or replacement thereof for the time being in force save to the extent that they are inconsistent with the Highway General Arrangement Plans (Documents 2.9A – 2.9K) or a departure from such standards has been approved by the County Highway Authority or such approvals or requirements of the County Highway Authority in paragraph 3 that need to be in place prior to the works being undertaken; and
- (c) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker shall ensure that all client duties (as defined in the said regulations) are satisfied.

(4) The undertaker must permit and require the Contractor to permit at all reasonable times persons authorised by the County Highway Authority (whose identity shall have been previously notified to the undertaker by the County Highway Authority) to gain access to the County Highway Works for the purposes of inspection and supervision and the undertaker shall provide to the County Highway Authority contact details of the Nominated Persons with whom the County Highway Authority should liaise during the carrying out of the County Highway Works.

(5) The undertaker must permit attendance by representatives of the County Highway Authority at all pre-contract and progress meetings held in relation to each Phase.

(6) The undertaker must provide shared working facilities including access to welfare and office facilities for the County Highway Authority for the duration of each Phase including the Defects Period unless otherwise agreed.

(7) The undertaker must during the period in which the County Highway Works are carried out maintain the flow of traffic and safeguard the passage of pedestrians along any street on which the County Highway Works are being carried out and maintain, or provide temporary alternative for all accesses (including, for the avoidance of doubt, private accesses) affected thereby or in the vicinity thereof.

(8) At any time during the carrying out of the County Highway Works the Nominated Persons must act upon any reasonable request made by the County Highway Authority in relation to the carrying out of the County Highway Works as soon as practicable following such request being made to the Nominated Persons save to the extent that the contents of such request are inconsistent with or fall outside the Contractor's obligations under its contract with the undertaker or the undertakers obligations in this Order.

(9) If at any time the undertaker does not comply with any of the terms of this Schedule in respect of any Phase having been given one month's notice of an alleged breach by the County

Highway Authority, then the undertaker must within 14 days of receipt of a demand by the County Highway Authority pay to the County Highway Authority the sum of the County Highway Authority's proper estimate of completing that Phase and any maintenance works which the undertaker would have been responsible for, and if the undertaker fails to pay the demand from the County Highway Authority within 14 days, the County Highway Authority shall be entitled to use the Bond to meet the cost of completing the County Highway Works on behalf of the undertaker.

(10) Nothing in this Part of this Schedule shall prevent the County Highway Authority from carrying out any work or taking such action as deemed appropriate forthwith without prior notice to the undertaker in the event of an emergency or danger to the public the cost to the County Highway Authority of such work or action being chargeable to and recoverable from the undertaker if the need for such action arises from the carrying out of the County Highway Works, and the County Highway Authority shall be entitled to utilise the Bond should the undertaker fail to pay any costs arising from this sub- paragraph (10) within 14 days of a demand for such costs being made by the County.

(11) For the avoidance of doubt it is confirmed that the undertaker in carrying out each Phase must at its own expense divert or protect all Utilities as may be necessary to enable the County Highway Works to be properly carried out and all agreed alterations to existing services must be carried out to the Satisfaction of the County Highway Authority acting reasonably.

## **Payments**

**5.—**(1) The undertaker must fund the whole of the cost of the County Highway Works and all costs incidental to the County Highway Works and must also pay to the County Highway Authority in respect of each Phase in accordance with paragraph 5(4) a sum equal to the whole of any costs and expenses which the County Highway Authority incur including costs and expenses for using external staff and resources as well as costs and expenses of using in house staff and resources in relation to the County Highway Works and arising out of them and their implementation including without prejudice to the generality thereof—

- (a) the checking and approval of all design work carried out by or on behalf of the undertaker for that Phase;
- (b) costs in relation to agreeing the Programme of Works for that Phase;
- (c) the carrying out of supervision of that Phase; and
- (d) all legal and administrative costs in relation to (a) and (b) above,

together comprising “the Estimated Costs”.

(2) The undertaker shall pay to the County Highway Authority upon demand the total costs properly and necessarily incurred by the County Highway Authority in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the County Highway Works provided that this paragraph shall not apply to the making of any orders which duplicate orders contained in this Order.

(3) The undertaker and the County Highway Authority shall agree a schedule of the Estimated Costs to be incurred pursuant to sub-paragraph (1) above in respect of each Phase prior to the commencement of that Phase.

(4) The undertaker must make the payments referred to in sub-paragraph (1) as follows—

- (a) the undertaker must pay a sum equal to the agreed Estimated Costs in respect of a Phase prior to commencing that Phase; and
- (b) if at any time or times after the payment in respect of a Phase referred to in sub-paragraph (4)(a) above has become payable the County Highway Authority reasonably estimates that the costs in respect of that Phase referred to in sub-paragraph (1) above will exceed the Estimated Costs for that Phase it may give notice to the undertaker of the amount by which it then reasonably estimates those costs will exceed the Estimated Costs (“the Excess”) and the undertaker must pay to the County Highway Authority within 28 days of the date of that notice a sum equal to the Excess.

(5) If the County Highway Authority has received the As Built Information within 91 days of the issue of the Final Certificate for the final Phase of the A5/A449 link road pursuant to paragraph 7 or for each Phase pursuant to paragraph 8 as the case may be the County Highway Authority shall give the undertaker a final account of the costs referred to in sub-paragraph (1) above and within 28 days from the expiry of the 91 day period—

- (a) if the account shows a further sum as due to the County Highway Authority the undertaker must pay to the County Highway Authority the sum shown due to it in that final account; and
- (b) if the account shows that the payment or payments previously made have exceeded those costs the County Highway Authority must refund the difference to the undertaker.

(6) If any payment due under any of the provisions of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 1% above the Base Rate of Lloyds Bank Plc for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

### **Provisional Certificate and Defects Period**

6.—(1) As soon as each Phase has been completed and a Stage 3 Road Safety Audit for that Phase has been carried out and any resulting recommendations complied with to the Satisfaction of the County Highway Authority, the County Highway Authority must forthwith issue a provisional certificate of completion in respect of that Phase such certificate not to be unreasonably withheld or delayed.

(2) The undertaker must at its own expense remedy any defects in that Phase identified by the County Highway Authority to the Satisfaction of the County Highway Authority acting reasonably during the Defects Period in respect of that Phase.

(3) The undertaker must submit Stage 4(a) (12 months after completion of each Phase) and Stage 4(b) (36 months after completion of each Phase) Road Safety Audits as required by and in line with the timescales stipulated in the Road Safety Audit Standard. The undertaker shall at its own expense comply with the findings of the Stage 4(a) and 4(b) Road Safety Audits to the Satisfaction of the County Highway Authority acting reasonably.

(4) The County Highway Authority must approve the audit brief and CVs for all Road Safety Audits and exceptions to items raised if appropriate in accordance with the Road Safety Audit Standard.

### **Final Certificate – except for A5/A449 link road**

7.—(1) The provisions of this paragraph 7 apply to all the County Highway Works with the exception of the A5/A449 link road.

(2) The undertaker must apply to the County Highway Authority for the issue of the Final Certificate in respect of each Phase of the works to which this paragraph applies at the expiration of the Defects Period in respect of that Phase) or if later on the date on which any defects or damage arising from defects during the Defects Period have been made good to the Satisfaction of the County Highway Authority acting reasonably and when making such application the undertaker must—

- (a) submit to the County Highway Authority As Built Information of the relevant Phase; and
- (b) submit to the County Highway Authority for approval a plan clearly identifying the extent of any land which is to be highway maintainable at public expense by the County Highway Authority which must be in accordance with the Detailed Design Information but reflecting the as built outcome.

(3) If the provisions of sub-paragraph 7(2) are complied with to the Satisfaction of the County Highway Authority, the County Highway Authority must forthwith issue a Final Certificate for the Phase concerned such certificate not to be unreasonably withheld or delayed.

## **Final Certificate – A5/A449 link road**

8.—(1) The provisions of this paragraph 8 apply only to the A5/A449 link road.

(2) The undertaker must apply to the County Highway Authority for the issue of the Final Certificate in respect of the entirety of the A5/A449 link road at the expiration of the Defects Period of the last Phase of the A5/A449 link road to be constructed or if later on the date on which any defects or damage arising from defects during the Defects Period of the last Phase of the A5/A449 link road to be constructed have been made good to the Satisfaction of the County Highway Authority acting reasonably and when making such application the undertaker must—

- (a) submit to the County Highway Authority As Built Information of the relevant Phase;
- (b) submit to the County Highway Authority a plan clearly identifying the extent of any land which is to be highway maintainable at public expense by the County Highway Authority which must be in accordance with the Detailed Design Information but reflecting the as built outcome; and
- (c) pay to the County the Commuted Sum calculated in accordance with the versions of the ADEPT Commuted Sums Calculator and the ADEPT Bridge Sums Guidance in force at the date on which the Commuted Sum is calculated.

(3) If the provisions of sub-paragraph 9(2) are complied with to the Satisfaction of the County Highway Authority, the County Highway Authority must forthwith issue a Final Certificate for the entirety of the A5/A449 link road such certificate not to be unreasonably withheld or delayed.

## **Security**

9.—(1) Prior to the commencement of each Phase the County Highway Works within that Phase must be secured by a Bond or such other form of bond or other security that may be agreed between the undertaker and the County Highway Authority to indemnify the County Highway Authority against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of that Phase under the provisions of this Schedule provided that the maximum liability of the bond or other form of security shall not exceed the Bond Sum relating to that Phase.

(2) In respect of all the County Highway Works with the exception of the A5/A449 link road each Bond Sum must be automatically reduced as follows—

- (a) on the issue of the Provisional Certificate for each Phase the Bond Sum must automatically reduce by 80% of the Bond Sum relating to that Phase save insofar as any claim or claims have been made against the Bond or other form of security and/or liability on its part has arisen prior to that date; and
- (b) on the issue of the Final Certificate for each Phase the bond/security provider must automatically be released from all its obligations in respect of the Bond or other form of security relating to that Phase save insofar as any claim or claims have been made against the Bond or other form of security or liability on its part has arisen prior to that date.

(3) In respect of the A5/A449 link road the Bond Sum for each Phase of the A5/A449 link road must be reduced as follows—

- (a) in respect of any Phase which includes any part of the new bridge to be provided over the railway and canal on the issue of the Provisional Certificate for that Phase the Bond Sum shall be reduced by such percentage as the undertaker and the County Council shall agree save insofar as any claim or claims have been made against the Bond or other form of security and/or liability on its part has arisen prior to that date; and
- (b) in respect of all Phases of the A5/A449 link road to which sub-paragraph (a) does not apply on the issue of the Provisional Certificate for that Phase the Bond Sum shall be reduced by such percentage as the undertaker and the County Council shall agree subject to a minimum reduction to 50% of the Bond Sum save insofar as any claim or claims have been made against the Bond or other form of security and/or liability on its part has arisen prior to that date

- (c) on the issue of the Final Certificate for the A5/A449 link road pursuant to paragraph 8 the bond/security provider must automatically be released from all its obligations in respect of all Bonds or other form of security relating to the A5/A449 link road save insofar as any claim or claims have been made against the Bond or other form of security or liability on its part has arisen prior to that date.

### **Insurance**

**10.** The undertaker must prior to commencement of the County Highway Works effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (Ten million pounds) against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of the County Highway Works or any part thereof by the undertaker.

### **Indemnification**

**11.—(1)** The undertaker must in relation to the carrying out of the County Highway Works take such precautions for the protection of the public and private interest as would be incumbent upon it if it were the highway authority and shall indemnify the County Highway Authority from and against all costs expenses damages losses and liabilities arising from or in connection with or ancillary to any claim demand action or proceedings resulting from the design and carrying out of the County Highway Works prior to the issue of each Defects Certificate provided that the foregoing indemnity shall not extend to any costs, expenses, liabilities and damages caused by or arising out of the neglect or default of the County Highway Authority or its officers, servants, agents or contractors or any person or body for whom it is responsible.

(2) The undertaker must pay to the County Highway Authority each sum (if any) that is due to the County Highway Authority and certified as correct by the County Highway Authority arising from paragraph 12 of this Part of this Schedule within 28 days of receiving written notice from the County Highway Authority to do so and where payment is overdue interest will be payable calculated on a daily basis at a rate of 1% above the Base Rate of Lloyds Bank Plc.

(3) The undertaker must notify the County Highway Authority of the intended date of opening of each Phase to public traffic not less than 14 days in advance of the intended date.

(4) The undertaker must notify the County Highway Authority of the actual date that each Phase is open to public traffic on each occasion within 14 days of that occurrence.

### **Warranties**

**12.** The undertaker must procure warranties from the contractor and designer of each Phase to the effect that all reasonable skill care and due diligence will be exercised in designing and constructing that Phase including the selection of materials, goods, equipment and plant such warranties to be provided to the County Highway Authority before that Phase commences.

### **Approvals**

**13.—(1)** Any approvals, certificates, consents or agreements required of, or sought from or with the County Highway Authority pursuant to the provisions of this Schedule shall not be unreasonably withheld or delayed and must be given in writing save that any such approval, certificate, consent or agreement shall be deemed to have been given if it is neither given or refused within 42 days of the specified day.

(2) In this paragraph “specified day” means—

- (a) the day on which particulars of the matter are submitted to the County Highway Authority under the provisions of this Part of this Schedule; or
- (b) the day on which the undertaker provides the County Highway Authority with any further particulars of the matter that have been reasonably requested by the County Highway Authority within 28 days of the date in sub-paragraph (2)(a),

whichever is the later.

## **Expert Determination**

**14.**—(1) Article 48 (arbitration) does not apply to this Part of this Schedule except in respect of sub-paragraph (7).

(2) Any difference under this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
- (e) in respect of decisions on the level of the reductions of the Bond Sums pursuant to paragraph 9(3)(a) and (b) the need to ensure that the financial risk to the County Highway Authority is no greater than that which would ordinarily be accepted in relation to highway improvements required to facilitate private developments in which the County Highway Authority is carrying out its statutory duty as local highway authority, but having regard to any specific circumstances relating to the A5/A449 link road; and
- (f) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 48.

## Annex 1

**BY THIS BOND** We [ ] [(Company Regn No )] whose registered office is situate at [ ] (“**the undertaker**”) and we [ ] [(Company Regn No )] whose registered office is situate at [ ] (“**the Surety**”) are jointly and severally bound to **STAFFORDSHIRE COUNTY COUNCIL** of 1 Staffordshire Place, Tipping Street, Stafford, ST16 2DH (“the County Highway Authority”) this [ ] day of [ ] 200[ ] in the sum of [ ] pounds (£[Surety Sum to the payment of which sum the undertaker and the Surety hereby jointly and severally bind themselves and their successors and assigns

**WHEREAS** under a Development Consent Order known as The West Midlands Interchange Order 201[ ] (“the DCO”) the undertaker is empowered to commence execute perform and complete the highway works mentioned therein (“the County Highway Works”) in such manner and within such time and subject to such conditions and stipulations as are particularly specified and set forth in the DCO and also to pay to the County Highway Authority such sums as are therein provided **NOW THE CONDITIONS** of this Bond are such that if the undertaker shall duly observe and perform all the terms provisions covenants conditions and stipulations of Part 3 of Schedule 13 of the DCO on the undertaker’s part to be observed and performed according to the true purport intent and meaning thereof or if on default by the undertaker the Surety shall in accordance with the provisions of Part 3 of Schedule 13 of the DCO on demand of the County Highway Authority satisfy and discharge the damages sustained by the County Highway Authority thereby up to the amount of this Bond then this obligation shall be null and void but otherwise shall be and remain in full force and effect in accordance with the provisions of the DCO (and including any reductions as provided for in the DCO) but no allowance of time by the County Highway Authority under the DCO nor any forbearance or forgiveness in or in respect of any matter or thing concerning the DCO on the part of the County Highway Authority shall in any way release the Surety from any liability under this Bond.

It is hereby agreed that this Bond will be reduced and released in accordance with paragraph 9 of Part 3 of Schedule 13 of the DCO.

[**Attestation**]

## PART 4

### FOR THE PROTECTION OF WESTERN POWER DISTRIBUTION LIMITED

1. For the protection of WPD the following provisions are, unless otherwise agreed in writing between the undertaker and WPD, to have effect.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable WPD to fulfil its statutory functions in a manner not less efficient than previously;

“alternative rights” means all necessary legal easements, consents or permissions required by WPD to permit a diversion of apparatus or to authorise the construction of alternative apparatus;

“apparatus” means any conduit overhead electric lines cables ducts pipes or other apparatus or equipment belonging to or maintained by WPD for the purposes of electricity transmission and its distribution and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” or “plans” includes all designs, drawings, specifications, method statements, programmes, calculations, risk assessments and other documents that are reasonably necessary to properly and sufficiently describe and assess the works to be executed;

“specified work” means so much of any of the authorised development that is carried out within 6 metres of any apparatus; and

“WPD” means Western Power Distribution Limited (West Midlands) Plc (Company Registration Number 03600574) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB.

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and WPD are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of any provision in this Order or anything shown on the land plans, the undertaker may not acquire any apparatus otherwise than by agreement.

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that WPD’s apparatus is relocated or diverted, that apparatus shall not be removed under this Part of this Schedule and any right of WPD to maintain that apparatus in that land or gain access to it shall not be extinguished without the prior consent of WPD until alternative apparatus has been constructed and is in operation and access to it has been provided if necessary all to the reasonable satisfaction of WPD.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it shall give to WPD written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order WPD reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to WPD the necessary facilities and rights for the construction of alternative apparatus in other land owned or controlled by the undertaker and subsequently for the maintenance of that apparatus—

(a) If, for the purpose of executing any works, the undertaker requires to remove or divert any apparatus placed within the Order land, and alternative apparatus or any part of such alternative apparatus is to be constructed in land other than the Order land as a consequence of the removal or diversion of apparatus, then the undertaker shall use its reasonable endeavours to obtain alternative rights in other land in which the alternative apparatus is to be constructed;

(b) Should the undertaker not be able to obtain the alternative rights required under sub-paragraph (2)(a) then the undertaker and WPD shall use reasonable endeavours to agree a reasonably practicable and mutually agreeable alternative engineering solution which does not require alternative apparatus to be constructed in land other than Order land and does not require alternative rights; and

(c) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker and the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2)(a) and an alternative engineering solution cannot be agreed in accordance with sub-paragraph 2(b), WPD shall on receipt of written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to a requirement on WPD to use its compulsory purchase powers to this end unless WPD elects to do so.

(3) Any alternative apparatus required pursuant to sub-paragraph (2) shall be constructed in such manner and in such line or situation as may be agreed between WPD and the undertaker or in default of agreement settled in accordance with paragraph 10.

(4) WPD shall, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 10, and after the grant to WPD of any such facilities and rights as are referred to in sub-paragraph (2), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to WPD that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by WPD, shall be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of WPD.

(6) Nothing in sub-paragraph (5) shall authorise the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 600 millimetres of the apparatus.

**6.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to WPD facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and WPD or in default of agreement settled in accordance with paragraph 10.

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert shall—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in the land for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the expert less favourable on the whole to WPD than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the expert shall make such provision for the payment of compensation by the undertaker to WPD as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

**7.**—(1) Not less than 60 days before the undertaker intends to start the execution of any specified work, the undertaker shall submit to WPD a plan, section and description of the works to be executed. Any submission must note the time limits imposed on WPD under sub-paragraph (3) below.

(2) Subject to sub-paragraph (3) below the undertaker shall not commence any works to which sub-paragraph (1) applies until WPD has given written approval of the plan so submitted, and identified any reasonable requirements it has in relation to the carrying out of the works such approval not to be unreasonably withheld or delayed.

(3) If by the expiry of 60 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted WPD has not advised the undertaker in writing of its approval or disapproval of the plans and any reasonable requirements for the alteration or otherwise for the protection of the apparatus, or for securing access to it, it shall be deemed to have approved the plans, sections or descriptions as submitted.

(4) The works referred to in sub-paragraph (1) shall be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (3) by WPD and WPD shall be entitled to watch and inspect the execution of those works.

(5) At all times when carrying out any works authorised under the Order the undertaker shall comply with WPD's *Avoidance of Danger from Electricity Overhead Lines and Underground Cables (2014)*, the Energy Network Association's *A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines* (undated), the Health and Safety Executive's *GS6 Avoiding Danger from Overhead Power Lines* and the Health and Safety Executive's *HSG47 Avoiding Danger from Underground Services (Third Addition) (2014)* as the same may be replaced from time to time.

(6) If WPD in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement in accordance with sub-paragraph (3), sub-paragraphs (1) to (8) shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(7) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 60 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

(8) The undertaker shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall give to WPD notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and shall comply with sub-paragraph (4) in so far as is reasonably practicable in the circumstances.

**8.** The undertaker shall repay to WPD the reasonable expenses incurred by WPD in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new connection arising as a result of the powers conferred upon the undertaker pursuant to this Order.

**9.—(1)** Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified work, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of WPD the undertaker is to—

- (a) bear and pay the cost reasonably incurred by WPD in making good such damage or restoring the supply; and
- (b) make reasonable compensation to WPD for any other expenses, loss, damages, penalty or costs incurred by WPD, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of WPD, its officers, servants, contractors or agents.

(3) WPD must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

### **Expert Determination**

**10.—(1)** Subject to sub-paragraph (7), article 48 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the

absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and
- (e) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 48.

## PART 5

### FOR THE PROTECTION OF USERS OF THE GAILEY PARK ROUNDABOUT

1. The following provisions are to have effect for the protection of the parties unless otherwise agreed in writing between the undertaker and the parties individually.

2. In this Part of this Schedule—

“Gailey Park roundabout” means the roundabout which is to be altered as part of Works No 10b over which the parties have rights of access;

“Gravelly Way” means that part of Gravelly Way to be permanently stopped up as identified in Part 1 of Schedule 4 (streets to be permanently stopped up for which a substitute is to be provided);

“new access road” means the new private road to connect the Gailey Park roundabout and the A5/A449 link road;

“parties” means the parties identified in the annex to this Part of this Schedule who have a right of way over the Gailey Park roundabout and such other persons who may acquire such interest and “party” shall be construed accordingly;

“parties' premises” means the premises owned or occupied by the parties whose access is wholly or partly reliant on the Gailey Park roundabout; and

“vehicular access” means access for any type of vehicle which is able to access the parties' premises at the time this Order was made.

### **Maintaining access rights**

3.—(1) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access at any time to any part of the parties' premises nor materially hinder or materially affect the standard, type and extent of access to the parties' premises without the consent of the party concerned except in the case of emergency (and in the event of such

emergency the undertaker shall ensure that such prevention is minimised in scope and duration so far as is reasonably practicable).

(2) The undertaker must at all times maintain vehicular and pedestrian access for the parties and those wishing to visit the parties' premises from the public highway at any time through the Gailey Park roundabout either utilising the existing Gravelly Way or from the A5/A449 link road or a temporary alternative suitable for such purpose (and in the event that a temporary alternative is to be provided, the undertaker shall ensure that such temporary alternative is provided for the minimum duration reasonably practicable).

(3) The undertaker must not in the exercise of the powers conferred by this Order open the new access road unless and until the section of the A5/A449 link road between the new access road and the A449 has been practically completed and opened to the public.

### **Design details**

4.—(1) The undertaker must before commencing Works No 10b provide a copy of the detailed plans and specifications of the new access road, the Gailey Park roundabout, any permanent and/or temporary accesses to the parties' premises, all existing and proposed service media affected by Works No 10b and all proposed traffic management arrangements to the parties in draft and allow the parties 28 days to comment on them and following receipt of all information reasonably required by the parties the undertaker must have regard to any reasonable comments made by the parties in respect of the detailed design of the new access road, the Gailey Park roundabout, any permanent and/or temporary accesses to the parties' premises, all proposed service media affected by Works No 10b and all proposed traffic management arrangements.

(2) The undertaker must repay to the parties the reasonable and proper fees, costs, charges and expenses reasonably incurred by the parties in respect of their review of the details submitted by the undertaker pursuant to sub-paragraph (1) of this paragraph 4 and any subsequent discussions regarding the specification of the new access road within 28 days of written demand.

5. The undertaker will procure warranties in favour of the parties from all main contractors, any sub-contractors with a design responsibility and any designers of the new access road, the Gailey Park roundabout, and accesses to the parties' premises and any associated temporary works to the effect that all reasonable skill, care and diligence will be exercised in designing and constructing those works to the standard as would reasonably be expected in respect of a similar roadway including the selection of materials, goods, equipment and plant, such warranties to be provided to the parties before commencing Works No 10b.

6. The undertaker must provide as part of the works signage to direct that the new access road and Gailey Park roundabout are not to be used by construction or operational traffic of the authorised development.

7. The undertaker must not in the exercise of powers conferred by this Order extinguish any rights currently enjoyed by any party to install, connect into, repair, maintain, replace, move or remove or otherwise use service media, nor prevent the installation, connection, repair, maintenance, replacement, movement, removal, decommissioning or use of such services without the relevant party's consent (such consent not to be unreasonably withheld or delayed) or until the diversion of or provision of a reasonably suitable alternative to those services has been provided and rights have been granted to the parties to install, connect into, repair, maintain, replace or use such diverted or alternative service media and such diversion, alternative and rights must be no less beneficial to the parties than those currently enjoyed by those parties.

### **New access rights**

8.—(1) Following the completion of the construction of the new access road the undertaker shall grant to each party rights of access for pedestrians and vehicles over the new access road and the Gailey Park roundabout in order to enable that party and all those authorised by it to have pedestrian and vehicular access to and egress from its premises at any time from the A5/A449 link road via the new access road and such rights of access and egress must be on terms which are no

less beneficial to the party's premises and which impose no greater liability (but which will include maintenance of the length of the new access road) in respect of the parties' premises than those enjoyed by or imposed upon that party at the time this Order was made.

(2) The undertaker shall, prior to the grant of the rights required under sub-paragraph (1) of this paragraph 8, consult each party on the form of the rights that party requires having regard to that party's need to have access to and egress from any part of its premises and such rights must be on terms which are no less beneficial and which impose no greater liability (but which will include maintenance of the length of the new access road) in respect of the parties' premises than those currently enjoyed by or imposed upon that party over the Gailey Park roundabout via Gravelly Way from the public highway and the undertaker must have regard to the reasonable comments of the parties in relation to the rights granted.

(3) Following the completion of any temporary alternative access to the parties' premises the undertaker shall grant to the parties concerned rights for pedestrian access and vehicular access over such temporary alternative access as necessary in order that the parties and all those authorised by them can have pedestrian and vehicular access to and egress from their premises at any time from the A5/A449 link road via such temporary alternative access and such rights of access must be no less beneficial to the parties' premises than those rights of access enjoyed by the parties at the time this Order was made.

(4) The undertaker shall, prior to the grant of the rights required under sub-paragraph (3) of this paragraph 8, consult each party on the form of the rights they require having regard to the need to access any part of their premises which must be no less beneficial to the parties' premises than those rights currently enjoyed by those parties over the Gailey Park roundabout via Gravelly Way to the public highway and the undertaker must have due regard to the reasonable comments of the parties in relation to the rights granted.

## **Maintenance**

**9.**—(1) Following the completion of the new access road and the Gailey Park roundabout in order that each party and all those authorised by it are able to have access to and egress from any part of the relevant party's premises, the undertaker shall at its own expense remedy any material defects in those works as reasonably and properly required to be remedied as are identified by the parties or any of them within a period of 12 months from and including the date of such completion. Such remedial work shall be carried out to the satisfaction of the party concerned acting reasonably and provided that the defects in those works have been identified by the parties or any of them within the period of 12 months from the date of completion of the new access road and the Gailey Park roundabout the undertaker's obligation to carry out the remedial works shall continue beyond that 12 month period until the works have been completed to the satisfaction of the party or parties concerned acting reasonably.

(2) The undertaker shall maintain the new access road and the Gailey Park roundabout as necessary in order that each party and all those authorised by it can gain access to and egress from any part of the party's premises following completion of the works until alternative maintenance arrangements are agreed or until the transfer of the works to a management company pursuant to paragraph 10.

**10.** The undertaker and the parties may enter into, and carry into effect, an agreement for the transfer to a management company of the land comprised in the new access road.

## **Indemnity**

**11.** If any material damage to the parties' premises or any of them is caused by the construction or maintenance (where the undertaker is responsible for such maintenance and not the management company) of the new access road, the Gailey Park roundabout, any accesses to the parties' premises, any associated service media works or any associated temporary works, the undertaker must make good such damage and must pay to the party concerned all reasonable and proper costs, charges, damages, expenses and losses that it may incur by reason of such damage and must indemnify and keep indemnified the parties from and against all third party claims and

demands arising out of or in connection with any of the matters referred to in this paragraph provided that the foregoing indemnity shall not extend to any costs, charges, expenses, losses, liabilities or damages caused by or arising out of the actions, omissions or default of the party concerned or its officers, servants, agents or contractors or any person or body for whom it is responsible.

### **Expert Determination**

**12.**—(1) Subject to sub-paragraph (7), article 48 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
- (e) any other important and relevant consideration; and
- (f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 48.

## **Annex**

Gravelly Way Management Ltd  
Bericote Four Ashes Limited  
Energetics Electricity Limited  
Tritax Acquisition 28 Limited  
Tritax Big Box plc  
LU UK II Sarl  
Carver (Wolverhampton) Limited  
Gestamp Tallent Limited  
Hoppe (U.K.) Limited  
Mancot Limited  
Air Liquide (Homecare) Limited  
Haulotte UK Limited  
Alan Monckton  
Camilla Monckton  
Oliver Monckton  
British Telecommunications plc  
Sky UK Limited  
South Staffordshire Water plc

## **PART 6**

### **FOR THE PROTECTION OF THE SI GROUP**

**1.** The following provisions of this Part of this Schedule shall have effect, unless otherwise agreed in writing between the undertaker and SI Group.

**2.** In this Part of this Schedule and notwithstanding the definitions contained in article 2—

“Environmental Permit” means the permit issued by the Environment Agency to SI Group under reference EPR/BS47071B (as varied) in respect of the SI Facility and the SI Land;

“Permits” means the Environmental Permit and a licence to abstract groundwater under reference number MD/028/0003/002 which inter alia govern the abstraction of contaminated groundwater and discharge to a wastewater treatment plant at the SI Facility;

“SI Facility” means the land edged blue for indicative purposes only on the SI Facility Plan;

“SI Facility Plan” means the plan referred to as such in Schedule 15 and certified as the SI Facility Plan by the Secretary of State for the purposes of this Order;

“SI Group” means SI Group – UK, Ltd whose company number is 00667049 and whose registered office is at Four Ashes, Wolverhampton, WV10 7BT or (as respectively defined in section 1159 of the Companies Act 2006) a holding company of such company, a subsidiary of such company or another subsidiary of such holding company;

“SI Land” means the land within the Order limits which is owned by the SI Group for so long as it is owned by it; and

“Written Agreement of SI” means (i) the agreement dated 3 August 2018 between (1) SI Group UK, Ltd and (2) Four Ashes Limited, or (ii) such other written agreement made with the SI Group from time to time.

**3.** Subject to paragraph 7(1) below the undertaker must not exercise any powers pursuant to this Order or the powers conferred by section 11(3) of the 1965 Act (powers of entry) in respect of the SI Group’s interests in the SI Land or SI Facility, or those interests which benefit those interests, including all rights, wayleaves and easements enjoyed by the SI Group in relation to the SI Land and/or SI Facility pursuant to—

- (a) article 13 (accesses);
- (b) article 21 (discharge of water);
- (c) article 22 (authority to survey and investigate the land);
- (d) article 24 (compulsory acquisition of land);
- (e) article 25 (compulsory acquisition of rights);
- (f) article 27 (private rights);
- (g) article 28 (power to override easements and other rights);
- (h) article 34 (rights under and over streets);
- (i) article 35 (temporary use of land for carrying out the authorised development);
- (j) article 36 (temporary use of land for maintaining the authorised development); and/or
- (k) article 42 (felling or lopping trees and removal of hedgerows),

unless the exercise of such powers is in accordance with the Written Agreement of SI.

**4.** The undertaker must not take any steps pursuant to this Order or otherwise that give rise to SI Group being in breach of any Permits.

**5.** The undertaker must not carry out any of the authorised development on any part of the SI Land where that land remains encompassed within the site boundary regulated by and referred to in the Environmental Permit save as in accordance with the Written Agreement of SI.

**6.** The undertaker must not, save as in accordance with the Written Agreement of SI., interfere with or obstruct the free, uninterrupted and safe use of any vehicular access to the SI Facility.

**7.** A power referred to in paragraphs 3, 5 and 6 of this Part 6 of Schedule 13 may be exercised notwithstanding those paragraphs where the Written Agreement with SI to which they refer provides that the power is permitted to be exercised.

## PART 7

### FOR THE PROTECTION OF THE CANAL & RIVER TRUST

**1.** The following provisions are to have effect for the protection of the Canal & River Trust, unless otherwise agreed in writing between the undertaker and the Canal & River Trust.

**2.** In this Part of this Schedule—

“canal” means that part of the Staffordshire and Worcestershire Canal located within the Order limits;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“Trust” means the Canal & River Trust acting as a trustee of the Waterways Infrastructure Trust or any successor body performing the same functions and which holds any waterways within the order limits;

“code of practice” means the Code of Practice for Works Affecting the Trust April 2017 as amended from time to time;

“detriment” means any damage to the waterway or any other property of the Trust caused by the presence of the authorised works and, without prejudice to the generality of that meaning, includes—

- (a) any effect on the stability of the waterway or the safe operation and navigation of any waterway;
- (b) any obstruction of, or interference with, or hindrance or damage to, navigation or to any use of the waterway (including towing paths);

- (c) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;
- (d) the deposit of materials or the siltation of the waterway so as to damage the waterway;
- (e) the pollution of the waterway;
- (f) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;
- (g) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in the Trust network); and
- (h) any interference with the exercise by any person of rights over the Trust's network;

“the engineer” means an engineer appointed by the Trust for the purpose in question;

“plans” includes sections, designs, design data, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), programmes and details of the extent, timing and duration of any proposed use and/or occupation of the waterway;

“protective works” means works carried out pursuant to the provisions of sub paragraph 4(4) of this Part of this Schedule

“specified work” means so much of the authorised development as is situated upon, across, under, over or within 15 metres of the waterway; and

“waterway” means the canal, Calf Heath Reservoir and two feeder channels and any other property of the Trust (including fibre optic cabling within the towpath) and includes any works, services, apparatus, equipment, lands (including subsoil) or premises belonging to or under the control of the Trust and held or used by it in connection with its statutory functions.

### **Powers requiring consent of the Trust**

3.—(1) Where under this Part of this Schedule or anywhere else under this Order the Trust (or the engineer) is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that the Trust must observe the provisions of its code of practice for works affecting waterways and where the code of practice is adhered to and its provisions observed, such consent must not be unreasonably withheld or delayed. For the avoidance of doubt, any consent may be issued subject to reasonable conditions including any condition which requires compliance with the code of practice or any applicable part thereof and any condition which requires the payment of such charges/fees/costs as are typically charged by the Trust and in respect of article 21 (discharge of water), it is reasonable to impose the following conditions—

- (a) requiring the payment of such charges as are typically charged by the owner of the relevant waterway;
- (b) specifying the maximum volume of water which may be discharged in any period; and
- (c) authorising the Trust on giving reasonable notice (except in an emergency, when the Trust may require immediate suspension) to the undertaker to require the undertaker to suspend the discharge of water or reduce the flow of water where this is necessary by reason of any operational or environmental requirement of the Trust .

(2) In so far as any specified work or the acquisition of rights under and/or over or use of the waterway is or may be subject to the code of practice, the Trust must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from that code or any other reasonable requirements of the Trust or the engineer; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of that code and the proper implementation of the authorised development pursuant to this Order.

(3) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any of the waterway, unless preventing such access is with the consent of the Trust.

(4) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by article 33 (statutory undertakers and operators of the electronic communications code network) to this Order, in relation to any right of access of the Trust to the waterway, but such right of access may be diverted with the consent of the Trust .

(5) The undertaker must not exercise any power conferred by this Order to discharge water into the waterway under article 21 (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Trust.

(6) The undertaker must not exercise any power conferred by article 22 (authority to survey and investigate land) or section 11(3) of the 1965 Act, in relation to the waterway unless such exercise is with the written consent of the Trust.

(7) The undertaker must not exercise any power conferred by article 24 (compulsory acquisition of land) or article 25 (compulsory acquisition of rights) in respect of the Trusts interests in the waterway.

(8) The undertaker must not exercise any power conferred by article 35 (temporary use of land for carrying out the authorised development) or article 36 (temporary use of land for maintaining the authorised development) in respect of the waterway unless such exercise is with the consent of the Trust.

(9) The undertaker must not exercise any power conferred by this Order to construct a bridge spanning the waterway without the consent of the Trust with the exception of the powers of acquisition of rights over those interests held by third parties required to facilitate the construction of a bridge over the canal.

(10) The undertaker must not exercise any power conferred by this Order to construct a culvert under the waterway without the consent of the Trust.

(11) The undertaker must not exercise the power conferred by article 4 in respect of any bridges over the waterway without the consent of the Trust.

(12) The undertaker must not exercise any power conferred by article 42 in respect of tree, shrub or hedgerow within an area of the specified work unless such power is exercised with the consent of the Trust.

(13) The undertaker must not demolish the canal crossings (as identified on the development zone parameter plan (Document 2.5) without first agreeing with the Trust the timescales and methodology of the demolition and the demolition must thereafter be carried out in accordance with the agreed methodology and timescale.

(14) The undertaker must not exercise any power conferred by this Order to stop up any public rights of navigation on the canal other than with the consent of the Trust.

(15) Where the Trust is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld or delayed but may be given subject to reasonable conditions.

(16) Where the undertaker is required to obtain the Trust's consent in accordance with this Order, such consent must be obtained in writing.

(17) The undertaker must consult and shall have regard to representations made by the Trust in relation to any details submitted to the local planning authority for approval under any of the requirements relating to so much of the authorised development as is situated upon, across, under, over or within 150 metres of, or may in any way affect, the waterway and for the avoidance of doubt, this shall include (but not be limited to) requirements 2, 3(2)(b), (c), (e), (h) and (n), (4), 5, 11, 12, 15, 16, 17, 19, 26, 27 and 30.

(18) Article 21(8) shall not apply in relation to the Trust and for the avoidance of doubt there shall be no deemed approval in respect of the discharge of any water into the waterway.

#### **Approval of plans**

**4.—**(1) The undertaker must before commencing construction of any specified work or carrying out any works on the waterway whatsoever supply to the Trust proper and sufficient plans of that work, the form(s) and application fee which is ordinarily required by the Trust's engineers in

accordance with the code of practice and such further particulars available to it as the Trust may within 28 days of the submission of the plans reasonably require for the reasonable approval (having regard to the undertaker's timetable for the construction of the authorised development) of the Trust and the specified work must not be commenced until the plans of that work have been approved in writing by the engineer or settled by expert determination pursuant to paragraph 25 and for the avoidance of doubt the approval of the engineer may be subject to any reasonable requirement that the specified work is undertaken at a time specified by the engineer.

(2) If—

(a) at the expiry of the period of 35 days—

- (i) from receipt by the Trust of the proper and sufficient plans of the work, the form(s) and application fee which is ordinarily required by the Trust's engineers in accordance with the code of practice as referred to in sub-paragraph (1) above; or
- (ii) if any other particulars are reasonably required by the Trust under sub-paragraph (1) from receipt by the Trust of that further information for; and

(b) the Trust has not served—

- (i) notice of refusal of those plans; and
- (ii) the grounds for refusal of those plans,

the Trust is deemed to have approved the plans as submitted provided that all information specified in sub-paragraph (1) has been supplied to the Trust together with any ordinarily applicable application fee.

(3) If by the end of the period of 35 days beginning with the date on which written notice was received by the engineer under paragraph 4(1), the Trust gives notice to the undertaker that the Trust desires itself to construct any part of a specified work which in the opinion of the engineer may or will cause any detriment in respect of the waterway or the safe operation of the waterway, then if the undertaker requires such part of such specified work to be constructed the Trust must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision of the undertaker and the undertaker must reimburse the Trust in respect of all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

(4) When signifying its approval of the plans, the Trust may specify any protective works (whether temporary or permanent) which in its opinion should be carried out before commencement of the construction of a specified work to prevent any detriment and such protective works (which for the avoidance of doubt may include requirements to fence any proposed works in order to separate the same from the waterway either on a permanent or temporary basis) as may be reasonably necessary to prevent detriment must be constructed by the undertaker, as agreed between the parties or settled by expert determination in accordance with paragraph 25 and such protective works must be carried out at the expense of the undertaker with all reasonable dispatch and the undertaker must not commence the construction of a specified work until the engineer has notified the undertaker that any protective works have been completed to the engineer's reasonable satisfaction.

(5) The undertaker must pay to the Trust a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (4) above, and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order but if the cost of maintaining the waterway, or of works of renewals of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving must be set off against any sum payable by the undertaker to the Trust under this paragraph.

(6) In the event that the undertaker fails to complete the construction of, or part of, the specified works or protective works the Trust may, if reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that construction be completed. Any notice served under this sub-paragraph shall state the works that are to be completed by the undertaker and lay

out a timetable for the works' completion. If the undertaker fails to comply with this notice within 35 days, the Trust may construct any of the specified works or protective works, or part of such works (together with any adjoining works) in order to complete the construction of, or part of, the specified works and/or protective works and the undertaker must reimburse the Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

### **Vehicles**

5. The undertaker must not use any of the waterway for the passage or siting of vehicles, plant and machinery employed in the construction of the specified works other than—

- (a) with the consent in writing of the Trust whose consent must not be unreasonably withheld; and
- (b) subject to compliance with such reasonable requirements as the Trust may from time to time specify—
  - (i) for the prevention of the detriment; or
  - (ii) in order to avoid or reduce any inconvenience to the Trust, its officers and agents and all other persons lawfully on such land or property, but nothing in this paragraph shall apply in relation to anything done in accordance with any approval given by the Trust under paragraph 4 provided that such approval is given with the knowledge of the use of any land or property of the Trust or the waterway for this purpose.

### **Survey of waterway**

6.—(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works the undertaker must bear the reasonable cost of the carrying out by a qualified engineer (“the surveyor”), to be approved by the Trust and the undertaker, of a survey including a dip-survey to measure the depth of the waterway (“the survey”) of so much of the waterway and any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works.

(2) For the purposes of the survey the undertaker must—

- (a) on being given reasonable notice (save in case of emergency, when immediate access shall be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of the undertaker which may provide support for the waterways as will or may be affected by the specified works; and
- (b) supply the surveyor as soon as reasonably practicable with all such information as he may reasonably require with regard to such existing works of the undertaker and to the specified works or the method of their construction.

(3) The reasonable costs of the survey shall include the costs of any dewatering or reduction of the water level of any part of the waterway (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this Part of this Schedule shall apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were specified works

(4) Copies of the survey must be provided to both the Trust and the undertaker at no cost to the Trust.

### **Design of works**

7.—(1) Without prejudice to its obligations under the foregoing provisions of this Part of this Schedule the undertaker must consult, collaborate and respond constructively to any approach, suggestion, proposal or initiative made by the Trust in relation to—

- (a) the design and appearance of the specified works (or any works authorised by this Order so far as such works may affect the waterway or the setting of the waterway), including the materials to be used for their construction; and
- (b) the environmental effects of those works,

and must have regard to such views as may be expressed by the Trust in response to such consultation pursuant in particular to the requirements imposed on the Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995 and to the interest of the Trust in preserving and enhancing the environment of its waterways.

### **Construction of specified works**

**8.**—(1) Any specified work and any protective works to be constructed must, when commenced, be constructed—

- (a) with all reasonable dispatch (having regard to the undertaker's timetable for construction of the authorised development) in accordance with the plans approved or deemed to have been approved or settled under paragraph 4 and with any requirements made under paragraph 7;
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as possible to the waterway;
- (d) in such a manner to ensure that no materials are discharged or deposited into the waterway forming part of the Trust property otherwise than in accordance with article 21 (discharge of water);
- (e) in such a manner as to cause as little inconvenience as is reasonably practicable to the Trust, its officers and agents and all other persons lawfully using the waterway, except to the extent that temporary obstruction has otherwise been agreed by the Trust; and
- (f) in compliance with the code of practice if relevant.

(2) If any damage or detriment to the waterway is caused by the carrying out of, or in consequence of the construction of a specified work or protective work, the undertaker must make good such damage or detriment and must pay to the Trust all reasonable and proper expenses that the Trust may incur or may be put and reasonable and proper compensation for any loss which it may sustain by reason of such damage, detriment, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligent act or default of the Trust or its servants, contractors or agents or any liability on the Trust with respect of any damage, costs, expenses or loss attributable to the negligent act or default of the undertaker or its servants, contractors or agents.

(4) Nothing in this Order shall authorise the undertaker to make or maintain any permanent work in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which the Trust is required by section 105(1)(b) and (2) (maintenance of waterways) of the Transport Act 1968 to maintain the waterway.

(5) Following the completion of the construction of the specified works the undertaker must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise agreed between the undertaker and the Trust.

### **Notice of works and access to works**

**9.**—(1) The undertaker must give to the Trust 30 days' notice of its intention to commence the construction of any of the specified or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Trust's network.

(2) The undertaker must—

- (a) at all times afford reasonable facilities to the Trust for access to a specified work during its construction; and
- (b) supply the Trust with all such information as it may reasonably require with regard to a specified work or the method of constructing it.

(3) In relation to any proposed closure of the canal or towpath or proposed temporary stopping up of public rights of navigation in respect of the canal, the undertaker must comply with the notification requirements and the procedure set out in the code of practice.

### **Lighting**

10. The undertaker shall provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the Trust may reasonably require during the construction or failure of the specified or protective works.

### **Access to works**

11. The Trust, on being given reasonable notice, must use reasonable endeavours to afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Trust under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker must reimburse the Trust's reasonable costs in relation to the supply of such information.

### **Prevention of pollution**

12. The undertaker must not in the course of constructing a specified work or protective works or otherwise in connection therewith (or in connection with any works authorised by this Order) do or permit anything which may result in the pollution of the waterway or the deposit of materials therein and shall comply with any statutory requirements and take such steps as the Trust may reasonably require to avoid or make good any breach of its obligations under this paragraph.

### **Repayment of the Trust's fees**

13. The undertaker must repay to the Trust all reasonable and proper fees, costs, charges and expenses reasonably incurred by the Trust in accordance with the code of practice in respect of—

- (a) its approval of plans submitted by the undertaker;
- (b) the supervision by the Trust of the construction of a specified work or protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other person whom it shall be reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, the interference, obstruction, danger or accident arising from the construction or failure of the specified works and any protective works; and
- (d) in bringing the specified works or any protective works to the notice of users of the Trust's network.

### **Maintenance of works**

14. If at any time during or after the completion of a specified work or protective works, the Trust gives notice to the undertaker informing it that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not to cause such detriment.

### **Compensation and indemnity**

15.—(1) The undertaker must pay to the Trust all reasonable and proper costs, charges, damages, expenses and losses not otherwise provided for in this Part of this Schedule which may be occasioned to and reasonably incurred by the Trust—

- (a) by reason of the existence, construction or maintenance of a specified work or protective works or the failure of such work; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or protective work,

and the undertaker must indemnify and keep indemnified the Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraph [13(1)]. The fact that any act or thing may have been done by the Trust on behalf of the undertaker or in accordance with plans approved by the Trust or in accordance with any requirement of the Trust or under the Trust's supervisions or in accordance with any directions or awards following expert determination is not (if it was done without negligence on the part of the Trust or any person in its employ or of its contractors or agents) to relieve the undertaker from any liability under the provision of this sub-paragraph.

(2) The Trust must give the undertaker reasonable notice of any such claim or demand and save as such conduct would be contrary to law no settlement or compromise of such a claim or demand must be made without the prior written consent of the undertaker, such consent not to be unreasonably withheld or delayed.

**16.** The Trust must, on receipt of a written request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim or to be made pursuant to this Part of this Schedule.

**17.** In the assessment of any sums payable to the Trust under this Part of this Schedule, there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by the Trust if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

**18.** The undertaker and the Trust may enter into, and carry into effect, agreement for the transfer to the undertaker of—

- (a) any waterway shown on the works and/or land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such waterway; and
- (c) and rights and obligations (whether or not statutory) of the Trust relating to the waterway or any lands, works or other property referred to in this paragraph.

and for the avoidance of doubt the Trust may seek to require the undertaker to pay a commercial rate/cost/fee to the Trust.

**19.** The undertaker must repay to the Trust in accordance with the Trust's code of practice all reasonable fees, costs, charges and expenses reasonably incurred by the Trust—

- (a) in constructing any part of a specified work on behalf of the undertaker or in constructing any protective works including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the Trust of plans submitted by the undertaker and the supervision by it of the construction of a specified work or any protective works;
- (c) in respect of the employment or procurement of the services of any persons whom it must be reasonably necessary to appoint for inspecting, signalling, watching and lighting the waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or incident arising from the construction or failure of a specified work or any protective works;
- (d) in respect of any additional temporary lighting of the waterway in the vicinity of the specified works or any protective works, being lighting made reasonably necessary by

reason or in consequence of the construction or failure of a specified work or protective work;

- (e) in bringing the specified works or any protective works to the notice of users of the Trust's network; and
- (f) in constructing and/or carrying out any measures relating to the authorised development which are reasonably required by the Trust to ensure the safe navigation of the waterway save that nothing shall require the Trust to construct and/or carry out such measures.

**20.**—(1) If any permanent or temporary alterations or additions to the waterway are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of the waterway, the continued safe operation of the waterway or the prevention of a detriment such alterations and additions may be carried out by the Trust upon the giving of reasonable notice to the undertaker and the undertaker must pay to the Trust the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Trust in maintaining, working and, when necessary, renewing any such alternations or additions.

(2) If during the construction of a specified work by the undertaker, the Trust gives notice to the undertaker that the Trust desires itself to construct that part of the specified work which in the opinion of the Trust is endangering the stability of the waterway or the safe operation of any waterway then, if the undertaker decided that part of the specified work is to be constructed, the Trust shall assume construction of that part of the specified work under sub-paragraph 4(3) and the undertaker must pay to the Trust all reasonable expenses to which the Trust may be put and compensation for any loss which it may suffer by reason of the execution by the Trust of that specified work.

(3) The Trust must, in respect of the capitalised sums referred to in this paragraph and the other provisions of this Part of this Schedule, provide such details of the formula by which those sums have been calculated as the undertaker may reasonably request in writing within 14 days of Trust notifying the undertaker of the amount of the capitalised sums.

(4) If the cost of maintaining, working or renewing the waterway is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to the Trust under this paragraph.

### **Costs of alterations**

**21.** Any additional expenses which the Trust may reasonably incur in altering, reconstructing or maintaining the waterway under any powers existing at the date when this Order was made by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be paid by the undertaker to the Trust.

**22.**—(1) The fact that any act or thing may have been done by the Trust on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision or in accordance with any directions or awards of an arbitrator shall not (if it was done without negligence on the part of the Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(2) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or wilful default of the Trust, its officers, servants, contractors or agents.

### **Fencing**

**23.** Where so reasonably required by the engineer the undertaker must to the reasonable satisfaction of the engineer fence off a specified work or protective works or take such other steps

as the engineer may require to be taken for the purpose of separating a specified work or protective works from the waterway, whether on a temporary or permanent basis or both.

### **Capitalised sums**

24. Any capitalised sum which is required to be paid under this Part of this Schedule must be calculated by multiplying the cost of the maintenance or renewal works to the waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.

### **Expert Determination**

25.—(1) Article 48 (arbitration) does not apply to this Part of this Schedule except in respect of sub-paragraph 25(7).

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the undertaker and the Trust or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the status of the Trust as a registered charity;
- (d) the requirement for the Trust to comply with its statutory duties and responsibilities;
- (e) the nature of the power sought to be exercised by the undertaker;
- (f) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and
- (g) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 48.

## PART 8

### FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS UNDERTAKER

#### Application

1. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

#### Interpretation

2. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of Cadent to enable it to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protection, cables or other apparatus belonging to or maintained by Cadent for the purpose of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Cadent for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to the apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Part of this Schedule;

“Cadent” means Cadent Gas Limited (Company Number 10080864) whose registered office is situate at Ashbrook Court, Prologis Park, Central Boulevard, Coventry CV7 8EP and any successor in title or assignee including any successor to their license as a gas transporter under Part 1 of the Gas Act 1986;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by the undertaker (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Cadent’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including construct, use, repair, alter, inspect, renew or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 6(2) or otherwise; and/or
- (b) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 Cadent policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”.

### **On Street Apparatus**

3.—(1) Except for paragraphs 4 (apparatus of Cadent in stopped up streets), 6 (removal of apparatus) and 7 (facilities and rights for alternative apparatus) (in so far as paragraph 3(2) below applies), 8 (retained apparatus: protection), 9 (expenses) and 10 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of the undertaker, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act.

(2) Paragraphs 6 and 7 of this Part of this Schedule shall apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within adopted public highway.

(3) Notwithstanding article 34(5) (rights under or over streets) and article 36(7) (temporary use of land for maintaining the authorised development) or any other powers in the Order generally, s85 of the 1991 Act in relation to cost sharing and the regulations made thereunder shall not apply in relation to any diversion of apparatus of Cadent under the 1991 Act.

### **Apparatus of Cadent in stopped up streets**

4.—(1) Without prejudice to the generality of any other protection afforded to Cadent elsewhere in the Order, where any street is stopped up under article 10 (permanent stopping up of streets), if Cadent has any apparatus in the street or accessed via that street Cadent will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to Cadent, or will procure the granting to Cadent, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph shall affect any right of the undertaker or Cadent to require removal of the apparatus under paragraph 6.

(2) Notwithstanding the temporary stopping up or diversion of any street under the powers of article 11 (temporary stopping up of streets), Cadent will be at liberty at all times to take all necessary access across any such stopped up street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

(3) The protective provisions in this Part of this Schedule apply and take precedence over article 37(2) to (7) of the Order which shall not apply to Cadent.

### **Acquisition of land**

5.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker may not acquire any land interest or apparatus or acquire, extinguish, interfere with or otherwise override any easement and/or other interest or right of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in paragraph 5(1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between Cadent and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause

any conflict with or breach the terms of any easement and/or other legal or land interest of Cadent and/or affects the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus and including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and/or other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule shall prevail.

(4) Any agreement or consent granted by Cadent under paragraph 8 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 5(1).

### **Removal of apparatus**

**6.**—(1) If, in the exercise of the agreement reached in accordance with paragraph 5 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of Cadent in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Cadent to its satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, with the undertaker's assistance if required by Cadent, save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and the undertaker.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of any such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

## **Facilities and rights for alternative apparatus**

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under paragraph 7(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 14 of this Part of this Schedule and the arbitrator shall make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

## **Retained apparatus: protection**

8.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to the undertaker under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraph (1) applies until Cadent has given written approval of the plan so submitted.

(4) Any approval of Cadent required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld or delayed.

(5) In relation to any work to which sub-paragraph (1) applies, Cadent may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and Cadent and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by Cadent for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Cadent will be entitled to watch and inspect the execution of those works.

(7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any authorised works (or any

relevant part thereof) for which protective works are required and the undertaker must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If Cadent in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with the Cadent policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22” and HSE’s “HS(~G)47 Avoiding Danger from underground services”.

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 9.

## **Expenses**

**9.—**(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand all charges, costs and expenses reasonably anticipated or incurred by the undertaker in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by the undertaker as a consequence of Cadent—
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 6(3); and/or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting Cadent
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 48 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Cadent in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## **Indemnity**

**10.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from

liability under the provisions of sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by Cadent as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-paragraph 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 10.

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

### **Enactments and agreements**

**11.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to Cadent on the date on which this Order is made.

### **Co-operation**

**12.—(1)** Where in consequence of the proposed construction of any of the authorised works, the undertaker or Cadent requires the removal of apparatus under paragraph 6(2) Cadent makes requirements for the protection or alteration of apparatus under paragraph 8, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent’s undertaking and Cadent shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent’s consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

### **Access**

**13.** If in consequence of the agreement reached in accordance with paragraph 5(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**14.** Any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 48 (arbitration).

### **Notices**

**15.** The plan and scheme submitted to the undertaker by Cadent pursuant to paragraph 8(1) must be sent to Cadent Gas Limited Plant Protection at [plantprotection@cadentgas.com](mailto:plantprotection@cadentgas.com) or such other

address as the undertaker may from time to time appoint instead for that purpose and notify to the undertaker.

## PART 9

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

1. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

2. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“conduit system” has the same meaning as in part 1 of Schedule 3 of the Digital Economy Act 2017(b);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(c);

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the undertaker is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

3. The exercise of the powers conferred by article 33 (statutory undertakers and operators of the electronic communications code network) is subject to Part 10 of Schedule 3A to the 2003 Act.

4.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the

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(a) 2003 c. 21.

(b) 2017 c. 30.

(c) See section 106 of the Communications Act 2003 (c. 21). Section 106 was amended by section 4 of the Digital Economy Act 2017 (c. 30).

undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 48 (arbitration).

(5) This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(6) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 10

### FOR THE PROTECTION OF WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part of this Schedule—

“alternative apparatus” means any temporary or permanent alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (b) in the case of a sewerage undertaker—
  - (i) any drain or works vested in that undertaker under the Water Industry Act 1991(a); and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(b) of that Act or an agreement to adopt made under section 104(c) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

“utility undertaker” means—

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- (a) 1991 c. 56.
  - (b) 1991 c. 56. Section 102(4) was amended by sections 56 and 96(1)(c) of, and paragraphs 2 and 90 of Schedule 7 to, the Water Act 2014 (c. 21).
  - (c) 1991 c. 56. Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003 (c. 37), sections 11 and 56 of, and paragraphs 2 and 91 of Schedule 7 to, the Water Act 2014 (c. 21), and section 42(3) of the Flood and Water Management Act 2010 (c. 29).

- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
  - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

### **On street apparatus**

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus in stopped up streets**

4.—(1) Where any street is stopped up under article 10 (permanent stopping up of streets), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 6 or the power of the undertaker to carry out works under paragraph 8.

(2) Regardless of the temporary stopping up or diversion of any street under the powers conferred by article 11 (temporary stopping up of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

### **Acquisition of land**

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

### **Removal of apparatus**

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed, diverted or otherwise altered under this Part of this Schedule, and/or any right of a utility undertaker to maintain apparatus in that land must not be extinguished, or made incapable of being exercised unless:

- (a) it is in the reasonable opinion of the undertaker necessary for the purpose of carrying out the authorised development; and
- (b) any alternative, diverted or relocated apparatus required by the utility undertaker (acting reasonably) has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6); and
- (c) any rights required by the utility undertaker (acting reasonably) including to install, access, retain, replace, divert, relocate and maintain any apparatus or alternative apparatus have been granted to the reasonable satisfaction of the utility undertaker; and
- (d) any of the apparatus or alternative apparatus referred to in (b) above or rights required and referred to in (c) above do not in the reasonable opinion of the utility undertaker cause a material increase in the time, resources of and costs to the utility undertaker in using, operating or maintaining its apparatus unless agreed otherwise by the utility undertaker.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal, diversion or alteration of any apparatus placed in that land, the undertaker must give to the utility undertaker in question

28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus, and the utility undertaker may elect to leave in situ any apparatus that the undertaker requires to be removed provided that it permits the undertaker to remove the apparatus and at its own cost in place of the utility undertaker.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed the utility undertaker must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 48(arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 48, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), and in accordance with a timetable to be agreed with the undertaker (both parties acting reasonably) such timetable to have due and proper regard to the utility undertaker's statutory obligations with regard to its apparatus and undertaking including its obligation to maintain the supply of clean water at all times, proceed without unnecessary delay.

(6) To construct and bring into operation the alternative apparatus and, subject to the provisions of sub-paragraph (2) of this paragraph, subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(7) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(8) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is lain in a trench) within 300 millimetres of apparatus which is not being removed, diverted or altered without the consent of the utility undertaker (such consent not to be unreasonably withheld or delayed).

### **Facilities and rights for alternative apparatus**

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as

appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus**

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal, diversion or alteration of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question for approval (such approval not to be unreasonably withheld or delayed and in any event within 17 working days) a plan, section and description of the works to be executed including (where appropriate) the proposed details of and location of alternative apparatus.

(2) Those works must be executed only in accordance with the plan approved under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise of the works necessary for the protection of apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 17 working days beginning with the date on which a plan, section and/or description of the works under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan section and description for approval of the utility undertaker (such approval not to be unreasonably withheld or delayed and in any event within 17 working days) instead of the plan, section or description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and it must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances and it shall not under any circumstances interfere with the apparatus of the utility undertaker or do anything that would interfere with or prevent the use of that apparatus without the express permission of the utility undertaker.

(7) The utility undertaker shall acknowledge any notice received from the undertaker pursuant to sub-paragraph (6) without delay and within not more than 24 hours of receipt of such notice and it shall agree with the undertaker as soon as reasonably possible exercising all reasonable endeavours a scheme of works necessary to address the emergency which works may at the utility undertaker's absolute discretion be carried out by the undertaker and the utility undertaker shall without delay co-operate with the undertaker to address the emergency in so far as it may interfere with the apparatus of the utility undertaker or do anything that would interfere with or prevent the use of that apparatus.

### **Expenses and costs**

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the approval of plans, specification, descriptions, inspection, installation, removal, diversion, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 8(2) and the reasonable costs of securing any rights which the utility undertaker requires (acting reasonably).

(2) There must be deducted from any sum payable under sub-paragraph (1) a sum, equivalent to 7.5% of the costs of any of those matters referred to in sub-paragraph (1) occasioned by the creation of new traffic islands at—

- (a) the A5 between Gailey Bridge (on the Staffordshire and Worcestershire Canal) and Calf Heath Reservoir; and
- (b) Junction of the A449 Stafford Road with Crateford Lane and Gravelly Lane.

**10.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the exercise of any rights or powers under this Order, or construction of any such works referred to in paragraphs 6 or 8(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus (whether unaltered, diverted or relocated) or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, or there is an increase in the cost to the utility undertaker of carrying out its statutory obligations or providing services or goods or operating or maintaining its apparatus or any omission by the undertaker or its agents causes any such matter the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) indemnify that utility undertaker for any other expenses, loss, proceedings, damages, claims, penalty or costs incurred by the utility undertaker, by reason or in consequence of any such damage or interruption or increase in costs or the utility undertaker becoming liable to any third party as aforesaid other than arising from any default of the utility undertaker.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan, specification or description approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (5), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

## **Cooperation**

**11.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or a utility undertaker requires the removal, diversion or alteration of apparatus under paragraph 6(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 8, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to cooperate with the undertaker for that purpose.

**12.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## MISCELLANEOUS CONTROLS

*Public general legislation***Introduction**

1. This Schedule applies, modifies and excludes statutory provisions which relate to matters for which provision may be made in this Order.

**Highways Act 1980**

2.—(1) Section 141 of the 1980 Act(a) (restriction on planting trees etc. in or near carriageway) shall not apply to any tree or shrub planted in the course of the authorised development before completion of construction.

(2) Section 167 of the 1980 Act(b) (powers relating to retaining walls near streets) shall not apply in relation to—

- (a) the erection of a wall in the course of the authorised development before completion of construction; or
- (b) a wall on land on which works are being carried out, or are to be carried out, in pursuance of the authorised development before completion of construction.

**New Roads and Street Works Act 1991**

3.—(1) The powers conferred by section 56(1) and (1A) of the 1991 Act(c) (powers to give directions as to the timing of proposed and subsisting street works) shall not apply in relation to the authorised development.

(2) Section 56A of the 1991 Act(d) (power to give directions as to placing of apparatus) shall not apply in relation to the placing of apparatus in the course of the authorised development.

(3) No restriction under section 58(1) of the 1991 Act(e) (power to impose restriction on execution of street works in the twelve months following completion of substantial road works) shall have effect in relation to the authorised development.

(4) Section 61(1) of the 1991 Act (under which the consent of the street authority is required for the placing of apparatus in a protected street) shall not apply to the placing of apparatus in the course of the authorised development.

(5) Section 62(2) of the 1991 Act (power following designation of a protected street to require removal or repositioning of apparatus already placed in the street) shall not apply in relation to apparatus placed in the course of the authorised development.

(6) Section 62(4) of the 1991 Act (power when designation as a protected street commences or ceases to give directions with respect to works in progress) shall not apply in relation to the authorised development.

(7) Section 63(1) of the 1991 Act (under which Schedule 4 to that Act has effect for requiring the settlement of a plan and section of street works to be executed in a street designated by the street authority as having special engineering difficulties) shall not apply in relation to the authorised development.

(8) The powers conferred by section 73A(1) and 78A(1) of the 1991 Act(a) (requirements for undertaker to re-surface street) may not be exercised in relation to the authorised development.

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(a) 1980 c. 66. Section 141 was amended by sections 37 and 46 of the Criminal Justice Act 1982 (c. 48).

(b) 1980 c. 66. Section 167 was amended by sections 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48).

(c) 1991 c. 22. Section 56(1) and (1A) were amended by section 43 of the Traffic Management Act 2004 (c. 18).

(d) 1991 c. 22. Section 56A was inserted by section 44 of the Traffic Management Act 2004 (c. 18).

(e) 1991 c. 22. Section 58(1) was amended by section 51(1), (2) of the Traffic Management Act 2004 (c. 18).

(9) Sections 74 and 74A of the 1991 Act**(b)** (charge for occupation of the highway and charge determined by reference to duration of works) shall not apply in relation to the authorised development.

(10) Schedule 3A to the 1991 Act (restriction on works following substantial street works) shall not apply where a notice under section 54 (advance notice of certain works) or 55 (notice of starting date of works) of that Act**(c)** is given in respect of the authorised development.

(11) No notice under paragraph 2(1)(d) of that Schedule (power by notice to require notification of works which an undertaker proposes to carry out in a part of a highway to which a proposed restriction applies) shall have effect to require the notification of works proposed to be carried out in the course of the authorised development.

(12) No directions under paragraph 3 of that Schedule (directions as to the date on which undertakers may begin to execute proposed works) may be issued to the undertaker.

(13) Paragraph 3(4) of that Schedule (under which it is an offence for an undertaker to execute street works before the completion of certain other street works) shall not apply in relation to the execution of works in the course of the authorised development.

(14) Paragraph 5(1) of that Schedule (effect of direction under paragraph 4 restricting further works) shall not apply in relation to the execution of works in the course of the authorised development.

#### **Local Government (Miscellaneous Provisions) Act 1976**

**4.** Section 42 of The Local Government (Miscellaneous Provisions) Act 1976**(d)** (certain future local Acts, etc., to be subject to the planning enactments, etc., except as otherwise provided) shall not apply to the extent that it would make provisions of this Order authorising the authorised development subject to other provisions.

#### **Town and Country Planning Act 1990(e)**

**5.** No order, notice or regulation under the Town and Country Planning Act 1990 in relation to the preservation of trees, shall have effect in relation to the authorised development.

#### **Environment Act 1995(f)**

**6.** No order, notice or regulation under the Environment Act 1995 in relation to the preservation of hedgerows, shall have effect in relation to the authorised development.

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(a) 1991 c. 22. Section 73A was inserted by section 55(1) of the Traffic Management Act 2004 (c. 18). Section 78A was inserted by section 57(1) of the Traffic Management Act 2004 (c. 18).

(b) 1991 c. 22. Section 74 was amended by sections 256 and 274 of, and Part V(2) of Schedule 31 to, the Transport Act 2000 (c. 38), section 40(4) and section 52(5) of the Traffic Management Act 2004 (c. 18), and section 1(6) of, and paragraphs 113 and 119 of Part 2 of Schedule 1 to, the Infrastructure Act 2015 (c. 7). Section 74A was inserted by section 255(1) of the Transport Act 2000 (c. 38) and was amended by section 1(6) of, and paragraphs 113 and 120 of Part 2 of Schedule 1 to, the Infrastructure Act 2015 (c. 7) and section 40(4) of the Traffic Management Act 2004 (c. 18).

(c) 1991 c. 22. Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the Traffic Management Act 2004 (c. 18). Section 54 was amended by section 40(1) and (2) and section 49(1) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18). Section 55 was amended by section 40(1) and (2), section 49(2) and section 51(1) and (9) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(d) 1976 c. 57. Section 42 was amended by section 6(2) of, and the Schedule to, the Ports (Finance) Act 1985 (c. 30), and section 15 of the Food and Environment Protection Act 1985 (c. 48).

(e) 1990 c.8.

(f) 1995 c.25.

## SCHEDULE 15

Article 46

### CERTIFICATION DOCUMENTS

7. Documents for certification that they are true copies of the documents referred to in this Order—

<i>(1)</i> <i>Document/Plan</i>	<i>(2)</i> <i>Document Number</i>	<i>(3)</i> <i>Document date/Plan number with revision number</i>
Access and rights of way plans Key Plan Sheet 1 Sheet 2 Sheet 3 Sheet 4 Sheet 5 Sheet 6 Sheet 7	2.3 2.3A 2.3B 2.3C 2.3D 2.3E 2.3F 2.3G	WSP-70001979-SK-060 Rev I WSP-70001979-SK-060 Rev H WSP-70001979-SK-060 Rev G WSP-70001979-SK-060 Rev F WSP-70001979-SK-060 Rev F WSP-70001979-SK-060 Rev F WSP-70001979-SK-060 Rev F WSP-70001979-SK-060 Rev B
The book of reference	4.3B	21 August 2019
The bridge plans Proposed road bridges plan and long section Proposed bridge B1 section and elevation Proposed road bridge B2 and B3 section and elevation Proposed road bridge B4 section and elevation	2.18A 2.18B 2.18C 2.18D	1516-04250WDK-SI-C-301-010 Rev P8 1516-04250WDK-SI-C-301-006 Rev P11 1516-04250WDK-SI-C-301-006 Rev P11 1516-04250WDK-SI-C-301-008 Rev P14
The design and access statement	7.5	3 August 2018
The environmental statement	6.2	3 August 2018 (subject to the substitutions set out below): (i) Figures 10.001, 10.002, 10.003 and 10.004 – 12 September 2018; (ii) Annex 10.1.1 – 12 September 2018; (iii) Addendum to Chapter 13 (Noise and Vibration) – 5 April 2019 (iv) Appendix I to Transport Assessment (Appendix 15.1) (Site Wide HGV Management Plan) – 7 May 2019 (v) Appendix H to Transport Assessment (Appendix 15.1) (Site Wide Travel plan) – 5 July 2019 (vi) Appendix 2.3 (Outline Demolition and Construction Management Plan) – 5 July 2019 (vii) Appendix 10.4 (Framework Ecological Mitigation and Management Plan) – 5 July 2019 (viii) Updated Chapter 7 (Air Quality) and Appendices 7.2, 7.3, 7.4, 7.6 and 7.7 – 7 August 2019

<i>(1)</i> <i>Document/Plan</i>	<i>(2)</i> <i>Document Number</i>	<i>(3)</i> <i>Document date/Plan number with revision number</i>
The future highway maintenance plans Key Plan Sheet 1 Sheet 2 Sheet 3	2.10 2.10A 2.10B 2.10C	WSP-70001979-SK-091 Rev F WSP-70001979-SK-091 Rev F WSP-70001979-SK-091 Rev C WSP-70001979-SK-091 Rev C
The highway classification plans Key Plan Sheet 1 Sheet 2 Sheet 3 Sheet 4	2.13 2.13A 2.13B 2.13C 2.13D	WSP-70001979-SK-068 Rev I WSP-70001979-SK-068 Rev H WSP-70001979-SK-068 Rev E WSP-70001979-SK-068 Rev E WSP-70001979-SK-068 Rev E
The highway general arrangement plans Key Plan/Highway Masterplan General Arrangement Plan 101 General Arrangement Plan 102 General Arrangement Plan 103 General Arrangement Plan 104 General Arrangement Plan 105 General Arrangement Plan 106 General Arrangement Plan 107 General Arrangement Plan 108 General Arrangement Plan 109 General Arrangement Plan 110 General Arrangement Plan 111	2.9 2.9A 2.9B 2.9C 2.9D 2.9E 2.9F 2.9G 2.9H 2.9I 2.9J 2.9K	WSP-70001979-GA-100 Rev L WSP-70001979-GA-101 Rev E WSP-70001979-GA-102 Rev E WSP-70001979-GA-103 Rev I WSP-70001979-GA-104 Rev L WSP-70001979-GA-105 Rev E WSP-70001979-GA-106 Rev G WSP-70001979-GA-107 Rev H WSP-70001979-GA-108 Rev F WSP-70001979-GA-109 Rev G WSP-70001979-GA-110 Rev H WSP-70001979-GA-111 Rev G
The land plans Key Plan Sheet 1 Sheet 2 Sheet 3 Sheet 4 Sheet 5 Sheet 6 Sheet 7 Sheet 8 Sheet 9 Sheet 10 Sheet 11 Sheet 12	2.1 2.1A 2.1B 2.1C 2.1D 2.1E 2.1F 2.1G 2.1H 2.1I 2.1J 2.1K 2.1L	Key Plan v1 Sheet 1 of 12 v0 Sheet 2 of 12 v0 Sheet 3 of 12 v0 Sheet 4 of 12 v1 Sheet 5 of 12 v0 Sheet 6 of 12 v0 Sheet 7 of 12 v0 Sheet 8 of 12 v0 Sheet 9 of 12 v0 Sheet 10 of 12 v0 Sheet 11 of 12 v0 Sheet 12 of 12 v0
Order limits plans	2.4	4049-10 Rev 05
The parameters plans Development Zone Parameters Plan Key Plan Sheet 1 Sheet 2 Sheet 3 Sheet 4	2.5 2.5A 2.5B 2.5C 2.5D	4049-1030 Rev 07 4049-1035 Rev 07 4049-1036 Rev 07 4049-1037 Rev 08 4049-1038 Rev 06
Floor Levels and Building Heights Parameters Plan Key Plan	2.6	4049-1031 Rev 07

<i>(1) Document/Plan</i>	<i>(2) Document Number</i>	<i>(3) Document date/Plan number with revision number</i>
Sheet 1 Sheet 2 Sheet 3 Sheet 4	2.6A 2.6B 2.6C 2.6D	4049-1040 Rev 06 4049-1041 Rev 06 4049-1042 Rev 07 4049-1043 Rev 06
Green Infrastructure Parameters Plan Key Plan Sheet 1 Sheet 2 Sheet 3 Sheet 4	2.7 2.7A 2.7B 2.7C 2.7D	4049-1033 Rev 10 4049-1050 Rev 09 4049-1051 Rev 09 4049-1052 Rev 10 4049-1053 Rev 08
The rail terminal-illustrative expanded rail terminal layout plan	2.15B	TRS-DRG-FA-001010 Rev 02
The rail section plan Cross sections rail alignment Sheet 1 Cross sections rail alignment Sheet 2 Cross sections rail alignment Sheet 3 Long sections rail alignment Sheet 1 Long sections rail alignment Sheet 2	2.16A 2.16B 2.16C 2.16D 2.16E	TRS-DRG-FA-001005 Rev 01 TRS-DRG-FA-001006 Rev 02 TRS-DRG-FA-001007 Rev 01 TRS-DRG-FA-001004 Rev 01 TRS-DRG-FA-001008 Rev 01
The speed limit plans Key Plan Sheet 1 Sheet 2 Sheet 3	2.12 2.12A 2.12B 2.12C	WSP-70001979-SK-062 Rev I WSP-70001979-SK-062 Rev K WSP-70001979-SK-062 Rev F WSP-70001979-SK-062 Rev E
SI Facility Plan	2.20	01
The traffic regulation plan Key Plan Sheet 1 Sheet 2 Sheet 3 Sheet 4	2.11 2.11A 2.11B 2.11C 2.11D	WSP-70001979-SK-061 Rev I WSP-70001979-SK-061 Rev H WSP-70001979-SK-061 Rev E WSP-70001979-SK-061 Rev F WSP-70001979-SK-061 Rev A
The works plans Key Plan Sheet 1 Sheet 2 Sheet 3 Sheet 4 Sheet 5 Sheet 6 Sheet 7 Sheet 8 Sheet 9	2.2 2.2A 2.2B 2.2C 2.2D 2.2E 2.2F 2.2G 2.2H 2.2I	Key Plan v1 Sheet 1 of 9 v1 Sheet 2 of 9 v1 Sheet 3 of 9 v1 Sheet 4 of 9 v1 Sheet 5 of 9 v1 Sheet 6 of 9 v1 Sheet 7 of 9 v1 Sheet 8 of 9 v1 Sheet 9 of 9 v1

## **EXPLANATORY NOTE**

(This note is not part of the Order)

This Order grants development consent for, and authorises Four Ashes Limited (“the undertaker”) to construct, operate and maintain, the new West Midlands Rail Freight Interchange together with associated development. The undertaker is authorised by the Order to acquire compulsorily land and rights over land. The Order also authorises the making of alterations to the highway network, stopping up and diversion of public rights of way and the discharge of water.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 46 (certification of plans and documents) of this Order may be inspected free of charge at the offices of South Staffordshire Council at Wolverhampton Road, Codsall, Wolverhampton WV8 1PX.