

**A38 Derby Junctions**

**TR010022**

**8.121 Applicant's Response to Secretary of  
State's Statement of Matters of  
2 August 2021**

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

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**The Infrastructure Planning  
(Examination Procedure) Rules 2010**

**A38 Derby Junctions  
Development Consent Order 202[ ]**

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## 1 Introduction

- 1.1 This document sets out Highways England's (the Applicant's) response to the Department for Transport's Statement of Matters that was published on the Planning Inspectorate's website on 2 August 2021 containing a request by the Secretary of State (SoS) for further representations from the Applicant.

## 2 Secretary of State request for further representations (point 2, 1st bullet)

- 2.1 The Secretary of State requests that the Applicant provides further representations on:

*The carbon impact of the development; the implications if any, of the development in relation to the Paris Agreement and the UK's nationally determined contribution under the Paris Agreement, the 2050 net zero target in the Climate Change Act 2008, and carbon budgets set under the 2008 Act (including the sixth carbon budget as set out in the Carbon Budget Order 2021); and, whether the increase in carbon emissions resulting from the development is so significant that it would have a material impact on the ability of the Government to meet its carbon reduction targets;*

- 2.2 Applicant's response

### **2050 Net Zero Target and UK Carbon Budgets**

- 2.2.1 A summary of the UK Government carbon budgets relevant to the Scheme is provided below in Table 2-1 (as per 14.10.13 from the climate chapter of the Environmental Statement (APP- 052), with the addition of information regarding the 6th carbon budget).

**Table 2-1 Summary of relevant carbon budgets**

Carbon Budget	Carbon Budget Level	Reduction Below 1990 Levels
3rd carbon budget (2018 to 2022)	2,544 MtCO <sub>2</sub> e <sup>1</sup>	37% by 2023
4th carbon budget (2023 to 2027)	1,950 MtCO <sub>2</sub> e	51% by 2025
5th carbon budget (2028 to 2032)	1,725 MtCO <sub>2</sub> e	57% by 2030
6th carbon budget (2033 to 2037)	965 MtCO <sub>2</sub> e	78% by 2035

**Note:** MtCO<sub>2</sub>e = Million tonnes CO<sub>2</sub> equivalent

- 2.2.2 As requested by the Secretary of State an assessment of scheme greenhouse gas (GHG) emissions against the UK Government carbon budgets has been undertaken covering the GHG emissions that are projected to occur across the relevant carbon budget periods up to and including the sixth carbon budget.
- 2.2.3 Chapter 14, Climate, in the Environmental Statement presents emissions from the Scheme in the context of the 3rd, 4th and 5th carbon budgets. In June 2021, subsequent to the submission of the DCO application, the 6th carbon budget has been legislated. An assessment against the 6th carbon budget has been undertaken and the results are presented in Table 2-2.
- 2.2.4 Table 2-2 summarises the GHG emissions of the proposed scheme including emissions from construction and operation (the latter including road user, operational energy use and maintenance emissions, aligned with the relevant carbon budgets, up to and including the 6th Carbon Budget.)
- 2.2.5 Table 2-2 also compares the carbon impact of the 'Do Minimum' option of not building the Scheme with the 'Do Something' option of building the Scheme. The comparison of the two scenarios provides the net emissions from construction and operation across each carbon budget period.

<sup>1</sup> Million tonnes of Carbon Dioxide equivalent

**Table 2-2 Scheme GHG emissions in 5-year periods aligned with relevant carbon budgets**

Scheme Stage	Estimated total GHG emissions over relevant carbon budgets (tCO <sub>2</sub> e) (DS - DM Scenario)*	Net project GHG emissions (tCO <sub>2</sub> e) over relevant carbon budgets	3rd Carbon Budget	4th Carbon Budget	5th Carbon Budget	6th Carbon Budget
Construction	130,858	130,858	56,086	74,774		
Operation	101,240,659	51,315		9,887	19,085	22,343
Total	101,371,517	182,173	56,086	84,659	19,085	22,343
% of carbon budget			0.0022	0.0043	0.0011	0.0023

\*DS = Do something, DM = do minimum

2.2.6 The Scheme has been assessed as contributing just 0.0023% (22,343 tCO<sub>2</sub>e / 965,000,000 tCO<sub>2</sub>e) to the 6th carbon budget reporting period (2033-2037).

2.2.7 It should be noted that this assessment is conservative. Given current policy commitments, described at 2.2.9 below, it is considered to be an overestimate as the uptake of new electric vehicles in future years would be expected to be higher than the proportions used in the national projections included in Defra's Emissions Factor Toolkit (v10) used for the scheme assessment. Within the Emissions Factor Toolkit account is not taken for the increase of electric vehicles beyond 2030.

2.2.8 Furthermore, the recent publication of both the DfT's Transport Decarbonisation Plan<sup>2</sup> and Highways England's net zero plan<sup>3</sup> are likely to further reduce carbon emissions.

2.2.9 The DfT's Transport Decarbonisation Plan was published in July 2021. The plan outlines a number of commitments by the Government to remove all emissions from road transport to achieve net zero target by 2050. Commitments that will have a direct impact on road user emissions from the Scheme will include:

- An end to the sale of new petrol and diesel cars and vans by 2030
- All new cars and vans to zero emissions at the tailpipe by 2035
- All new L-category vehicles to be fully zero emissions at the tailpipe by 2035

<sup>2</sup> [Decarbonising Transport – A Better, Greener Britain \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>3</sup> [net-zero-highways-our-2030-2040-2050-plan.pdf \(highwaysengland.co.uk\)](https://www.highwaysengland.co.uk/net-zero-highways-our-2030-2040-2050-plan.pdf)

- The end of the sale of all non-zero emissions HGVs by 2040

- 2.2.10 In addition, the Government is providing support for at least 4,000 zero emission buses and has committed to holding a consultation on a date to end the sale of new non-zero emissions motorbikes.
- 2.2.11 Also, in July 2021, Highways England published its own 2030/2040/2050 net zero highways plan. This plan includes commitments to ensure that Highways England's corporate emissions become net zero by 2030, its maintenance and construction activities will become net zero by 2040 and road user emissions on the strategic road network will become net zero by 2050.
- 2.2.12 Highways England recognise that they have a key role in the development and maintenance of a strategic road network that will facilitate the journey to net zero emissions. As part of this the Highways England Net zero plan sets out commitments to develop a blueprint for EV charging and energy storage by 2023 and to report to Government on global HGV technology trials and set out proposals for trials in the UK in 2022.

### **Paris Agreement and Nationally Determined Contribution**

- 2.2.13 The UK confirmed its Nationally Determined Contribution (NDC) under the Paris Agreement to the United Nations Framework Convention on Climate Change (UNFCCC) in December 2020. The NDC commits the UK to reducing economy-wide greenhouse gas emissions by at least 68% by 2030, compared to 1990 levels.
- 2.2.14 The NDC aligns with the legislated UK carbon reduction target in the 6th Carbon Budget, which, by setting a carbon budget for the period 2033 to 2037 of 965 MtCO<sub>2e</sub>, will achieve a to reduce emissions reduction of by 78% by 2035 compared to 1990 levels as the legislated carbon reduction target was set by the Climate Change Committee to align with the 6th Carbon Budget.
- 2.2.15 As presented in table 2-2 the climate assessment will not impact the UK achieving its carbon reduction targets. In turn it can therefore be concluded that there are no implications of the development in relation to the Paris Agreement and the UK's nationally determined contribution under the Paris Agreement.

### **Point 2 (bullet point 1) - Summary and Conclusion**

- 2.2.16 The contribution of GHG emissions resulting from the Scheme is assessed as a maximum of 0.0043% across all relevant carbon budget periods. Consequently, Highways England does not consider CO<sub>2e</sub> emissions resulting from the Scheme to have a material effect on the Government's ability to comply with the carbon budgets.

### 3 Secretary of State request for further representations (point 2, 2nd bullet)

3.1 The Secretary of State requests that the Applicant provides further representations on:

*The direct, indirect and cumulative likely significant effects of the development on climate, including greenhouse gas emissions and climate change adaptation, in light of the requirements set out in the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ('the EIA Regulations') and in light of paragraphs 5.17 and 5.18 of the National Policy Statement for National Networks (NPSNN');*

3.2 Applicant's response

3.2.1 To support this response the following terms have been interpreted as follows:

- Direct emissions - direct emissions to the atmosphere from relevant activities (e.g. tailpipe emissions from road users or construction vehicles).
- Indirect emissions - indirect emissions resulting from the purchase of electricity (e.g. for infrastructure operation) and/or any relevant downstream activities by third parties within the supply chain (e.g. embedded carbon from the manufacturing of construction products such as concrete).
- Cumulative effects of the Scheme - The consideration of the GHG emissions impact of the Scheme with other relevant committed developments included within the traffic model for the Scheme.
- Likely significant effect - An increase in carbon emissions resulting from a proposed scheme that are so significant that the Scheme would have a material impact on the ability of Government to meet its carbon reduction targets (as per paragraphs 5.17 and 5.18 of the NNNPS).

3.2.2 The response to point 2, bullet point 2 of the Secretary of State's request is provided in three parts. The first part relates to the effects on climate, i.e. the GHG aspect of the question and the second part relates to climate vulnerability, i.e. the climate change adaptation aspect. The third part summarises the impacts of parts 1 and 2 in the context of the requirements set out in the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ('the EIA Regulations') and in light of paragraphs 5.17 and 5.18 of the National Policy Statement for National Networks (NPSNN');

#### Part 1

#### Direct, Indirect and Cumulative effects of the Scheme – GHG emissions

3.2.3 Direct and indirect emissions on account of the Scheme are inherently included within the GHG assessment methodology followed in the Environmental Statement – see paragraph 14.3.1.



- 3.2.4 Indirect emissions encompass the accumulation of embedded emissions that occur throughout the construction supply chain (i.e. an accumulation of various emissions sources such as raw material extraction, intra-manufacturing transportation, manufacturing processes etc). The operational tailpipe emissions and construction process emissions from plant/vehicles on site are inherently 'direct' emissions as they are emissions that are directly released to the atmosphere.
- 3.2.5 The consideration of the cumulative effects of the Scheme with other existing and/or approved projects is inherent within the methodology followed in the Environmental Statement through the inclusion of the Scheme and other locally committed developments within the traffic model (see paragraph 15.3.27 of the cumulative effects chapter of the Environmental Statement, and paragraph 4.3.8 of the Transport Assessment).
- 3.2.6 UK Carbon Budgets, used to put emissions from the Scheme into context, are inherently cumulative as they consider emissions across all sectors of the economy.

### **Part 1 - Summary and Conclusion**

- 3.2.7 As explained above, cumulative emissions are taken into consideration both during the calculation of construction emissions and through the traffic model used as the basis for calculating road user emissions. Accordingly, Highways England do not consider that GHG emissions on account of this scheme alone, including on a cumulative basis, is likely to have any significant effect on climate or the UK's ability to comply with its carbon budgets.
- 3.2.8 As a result, the increase in GHG emissions associated with the Scheme is not a reason to refuse development consent. The increase would have no material impact on the ability of Government to meet its carbon reduction targets and so the proposed development does not give rise to any conflict with paragraph 5.18 of the NNNPS.

### **Part 2**

#### **Cumulative likely effects of the Scheme with other existing and/or approved projects – climate adaptation**

- 3.2.9 Direct and indirect climate vulnerability effects on the Scheme are already included within the Climate Change Resilience (CCR) assessment provided within the Environmental Statement. Direct effects have been assessed through a review of the 2018 United Kingdom Climate Impact Projections (UKCP18) published by the Met Office for the 25km area surrounding the Watnall Weather Station. The climate parameters considered as part of the assessment are presented in Tables 1 and 2, Appendix 14.1 Climate resilience Baseline of the Environmental Statement and include variation to seasonal and average air temperature and precipitation.
- 3.2.10 Hazards that may impact the Scheme, identified as a result of the projected changes in climate, are considered to be secondary, and therefore, indirect,

impacts. A summary of the potential hazards is presented in Table 1, Appendix 14.2 of the Environmental Statement and include for example overheating of electrical equipment, such as information and communication systems due to increasing average temperatures.

- 3.2.11 In-combination climate change impacts, that is impacts on receptors in the surrounding environment as a result of the combined impact of the Scheme and climate change, were assessed. The results of this assessment are presented in Table 2, Appendix 14.2 of the Environmental Statement and include for example potential impacts on the surrounding landscape and human health as a result of projected increases in temperatures and the Scheme.
- 3.2.12 The Scheme's Environmental Statement (14.12.3 and 14.12.4) found that there were no significant direct, indirect or in-combination climate change impacts as a result of the Scheme.
- 3.2.13 To supplement the assessment made in the environmental statement, which already includes direct, indirect and cumulative effects, an additional assessment is made here to consider whether other strategic transport infrastructure beyond the boundary of the Scheme, which may when subject to climate impacts, have consequences that exacerbate likely significant effects as measured using the consequence and likelihood criteria described at Tables 14.3 and 14.4. .

### **Study area**

- 3.2.14 Given the Scheme's importance to regional transport, cumulative climate vulnerability effects are considered at both local and regional scales. The main transport networks at these scales are shown in Figure 1, Figure 2 and Figure 3, Appendix A, and are described in the following paragraphs.

### **Climate vulnerability baseline for cumulative effects**

- 3.2.15 Figure 1 (Appendix A) shows that alternate road routes around the Scheme are primarily provided by A roads while the M1 runs to the east of Derby.
- 3.2.16 Collectively these routes ring the Scheme and would provide local resilience in the event of climate vulnerability impacts in the area.
- 3.2.17 Figure 2 puts the Scheme in a regional context. It shows that:
- Traffic traveling from the south of the Scheme towards Matlock or Mansfield or north of the Scheme towards Burton on Trent can use the A50, A52 or M1 for long distance journeys.
  - Traffic travelling from the east to the west of the Scheme and vice versa can use the A50 between Stoke on Trent and Nottingham to the south of Derby.
- 3.2.18 The above mentioned regional alternate routes provide some flexibility at an unforeseen point of traffic disruption that caused re-routing.

- 3.2.19 The rail transport network is shown on Figure 1 and Figure 2 and shown schematically on Figure 3. Together these figures show that:
- Main line East Midlands routes from London St Pancras via Leicester to Sheffield and Leeds pass through the study area.
  - Rail traffic can divert east around the study area through Nottingham to travel north.
- 3.2.20 The Scheme will improve transport resilience by replacing old degrading assets that were designed with less resilience to climate change than the assets that will replace them. The Scheme will be designed to improve the resilience of the existing road to climate; where practicable construction materials will be specified that are resilient to increased temperature fluctuation and precipitation. Further details on the climate change mitigation that is embedded into the Scheme design can be found in Table 14.13 of the Environmental Statement. For example, with regards to flood risk the Scheme has been design to relevant standards (see Chapter 7.1 – Flood Risk Assessment in the Environmental Statement) with regard to anticipated climate change.
- 3.2.21 Where significant climate vulnerability events occur and affect one or more strategic routes it is likely that the broad number of journey options available, coupled with the level of mitigation embedded in the design of this scheme and the rail network (as demonstrated through, for example, the regional weather resilience and climate adaptation plans for the rail network<sup>4</sup> would provide a sufficient level of systemic resilience to avoid a significant effect when considered against the criteria for significance in the Environmental Statement (which accord with the methodology in LA114 in DMRB).

### **Potential cumulative climate vulnerability effects**

- 3.2.22 Cumulative effects have been considered through the Climate Change Resilience (CCR) and In-combination Climate Change Impact (ICCI) assessments. Both assessments have concluded that there would be no significant cumulative climate vulnerability effects associated with the Scheme. Cumulative effects have also been considered in the additional assessment of the combined effects on transport infrastructure presented in this report. This assessment demonstrates that the Scheme will improve the resilience of the SRN to the effects of climate change.

## **Part 3**

### **Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 – National Policy Statement for National Networks**

The Secretary of State has requested that the additional information to be provided '*...in light of the requirements set out in the Infrastructure Planning*

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<sup>4</sup> <https://www.networkrail.co.uk/wp-content/uploads/2020/10/LNE-and-EM-Route-WRCCA-Plan-CP6.pdf>

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*(Environmental Impact Assessment) Regulations 2017 and in light of paragraphs 5.17 and 5.18 of the National Policy Statement for National Networks ('NNNPS').'*

- 3.2.23 As to compliance with the Infrastructure Planning (Environmental Impact Assessment Regulations) 2017 (as amended) (the EIA Regulations), the Scheme constitutes EIA development for the purposes of those regulations. The Scheme is therefore subject to the environmental impact assessment process provided for at regulation 5 of the EIA Regulations, which includes the preparation of an environmental statement. An environmental statement was duly prepared and was submitted with Highways England's application for development consent.
- 3.2.24 Paragraph 5 of Schedule 4 of the EIA Regulations provides that the environmental statement must, among other matters, include a description of:
- “(e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;*
- (f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;”*
- 3.2.25 The information provided in this response is additional information for the purposes of the EIA Regulations and is provided in response to the Secretary of State's request to assist him in discharging his duty under regulation 21 of the EIA Regulations to reach a reasoned conclusion which is up to date on the significant effects of the Scheme on the environment.
- 3.2.26 The NNP, at 5.17 states that *“Where the development is subject to EIA, any Environmental Statement will need to describe an assessment of any likely significant climate factors in accordance with the requirements in the EIA Directive”* and *“It is very unlikely that the impact of a road project will, in isolation, affect the ability of Government to meet its carbon reduction plan targets. However, for road projects applicants should provide evidence of the carbon impact of the project and an assessment against the Government's carbon budgets”*. 5.18 states *“...any increase in carbon emissions is not a reason to refuse development consent, unless the increase in carbon emissions resulting from the proposed scheme are so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets”*.
- 3.2.27 In relation to paragraphs 5.17 and 5.18 of the NNP, this response, together with the information provided in Chapter 14 of the Environmental Statement, demonstrates that the Scheme will not materially affect the ability of the Government to meet its carbon budgets. Accordingly, the increase in carbon emissions that may arise in consequence of the Scheme is not a reason to refuse development consent pursuant to paragraph 5.18 of the NNP.

## 4 Secretary of State request for further representations (point 2, 3rd bullet)

4.1 The Secretary of State requests that the Applicant provides further representations on:

*Whether, taking account of any more recent data than that which was available during the examination, the Development's construction and/or operation would lead to a significant air quality impact or a deterioration in air quality in a zone/agglomeration, cause delays in areas not compliant with the Air Quality Directive becoming compliant, or cause any compliant areas to become non-compliant, both generally (if necessary), and in particular for Stafford Street within the Derby ring road Air Quality Management Area;*

4.2 Applicant's response

4.2.1 Since the completion of the DCO Examination, the following recent information has been produced which includes:

- Monitoring data collected by Derby City Council (DCiC)
- Progress on DCiC's implementation of traffic management measures to improve air quality in Stafford Street
- Updated Pollution Climate Mapping (PCM) national model results produced by Defra
- Updated modelling of air quality impacts during construction of the Scheme for inclusion in the Construction Environmental Management Plan (CEMP)

### Monitoring Data

4.2.2 DCiC has published more recent monitoring data for the years 2018-2020 in its Air Quality Annual Status Reports<sup>5</sup>. Measured nitrogen dioxide (NO<sub>2</sub>) concentrations that were above the annual mean objective in any of these three years are shown in Table 1, together with the results for 2017 for comparison. The measurements generally indicate a very gradual decrease in NO<sub>2</sub> concentrations between 2017 and 2019 with a large decrease in 2020 due to Covid-19 restrictions. The monitoring data from 2020 shows that all sites had concentrations within the NO<sub>2</sub> objective except for Stafford Street (Burleigh Mews). Highways England considers the data from 2020 to be atypical due to the effect of the various lockdown restrictions had on traffic flows during 2020. DCiC ceased monitoring at DT34 at the end of 2018.

**Table 4-1: Measured Annual Mean NO<sub>2</sub> Concentrations at Sites with Concentrations above the Objective**

Site No	Site Location	2017	2018	2019	2020
DT10 /NR2	203/201 Nottingham Road	48	45	44	36

<sup>5</sup> Derby City Council, Air Quality Annual Status Report, 2018, 2019 and 2020.

DT11 /EG1	Eastgate (Pentagon)	<b>45</b>	<b>43</b>	<b>40</b>	31
DT15 / LR1	938 London Road	<b>44</b>	<b>40</b>	<b>42</b>	35
DT31 /UNR3	431 Uttoxeter New Road	<b>48</b>	<b>44</b>	27	22
DT34	Kingsway / A38	<b>62</b>	<b>59</b>	-	-
DT59 / SS1	Stafford Street (Burleigh Mews)	<b>48</b>	<b>45</b>	<b>45</b>	<b>40</b>
DT60 /AR1	189/191 Ashbourne Road	<b>43</b>	<b>42</b>	38	31

Concentrations above the annual mean objective of 40 µg/m<sup>3</sup> are marked in **bold**.

### **Progress on the Implementation of Traffic Management Measures to Improve Air Quality in Stafford Street.**

4.2.3 DCiC has implemented the traffic management measures to improve air quality in Stafford Street by managing traffic flows - such measures only became operational in August 2021. Given the recent introduction of these measures, it is not possible to state the exact effect it has made to local and wider air quality measurements at this time.

### **Updated PCM national model results produced by Defra**

4.2.4 Defra has updated its PCM model with the latest projections made in 2020 to a reference base year of 2018 6. This is used by Government to assist with forecasting compliance of NO<sub>2</sub> concentrations with the limit values and to identify the relevant local authority or Highways England to undertake a more detailed assessment to determine when limit value compliance would be met and measures that may be required to ensure that the limit value can be met in the shortest timescale possible.

4.2.5 The East Midlands zone<sup>7</sup> is expected to be compliant in 2021 according to modelled annual mean NO<sub>2</sub> concentrations from Defra's PCM model. Five PCM links were predicted to be above the limit value in 2020 in the PCM model. They are the A45 in Northampton and A52 in Nottingham both of which have a reported NO<sub>2</sub> concentration of 42 µg/m<sup>3</sup>. There are two sections of the A52 in Derby (Eastgate and Brian Clough Way) at 41 µg/m<sup>3</sup> and a section of the A38 in Bolsover District at 40µg/m<sup>3</sup>. DCiC's own modelling which is more detailed than the national PCM model, which has not been updated since the DCO examination and predicts that the only area in Derby that would be non-compliant in 2020 is the northern end of Stafford Street near Burleigh Mews which is predicted to have concentrations of 46 to 49 µg/m<sup>3</sup> with no traffic management measures in place. The implementation of DCiC's traffic management measures is predicted to meet the annual mean NO<sub>2</sub> limit value in 2021 for Stafford Street.

4.2.6 Highways England has also been commissioned by DfT at a national level to look at two links on the A38 in Derby, that are within the East Midlands zone.

<sup>6</sup> Available at <https://uk-air.defra.gov.uk/library/no2ten/2020-no2-pm-projections-from-2018-data>

<sup>7</sup> The East Midlands zone can be seen in in Figure 1 of the Air Quality Plan for the East Midlands [https://uk-air.defra.gov.uk/assets/documents/no2ten/2017-zone-plans/AQplans\\_UK0032.pdf](https://uk-air.defra.gov.uk/assets/documents/no2ten/2017-zone-plans/AQplans_UK0032.pdf)

Highways England modelling has identified that one of two links is modelled to be above the annual mean NO<sub>2</sub> limit value and this could persist for a number of years beyond 2020. The proposed Derby Junctions scheme makes a notable improvement to air quality in these locations as the qualify feature i.e. the adjoining footpaths, alongside the A38 are moved further back away from the road, where air quality concentrations would be lower.

### **Updated modelling of air quality impacts during construction of the Scheme**

- 4.2.7 A commitment was made by Highways England in the Outline Environmental Management Plan (OEMP) as submitted with the DCO application that air quality modelling was to be carried out at the detailed design stage to assess impacts during Scheme construction as based on updated traffic management proposals. The purpose of the assessment was to assess whether the actual traffic management proposals would give rise to materially new or materially worse environmental effects to those as reported in the Environmental Statement (ES). This assessment has been completed and the results included in the Construction Environmental Management Plan (CEMP). The assessment demonstrates that construction of the Scheme will not give rise to materially worse or materially new air quality effects. Air quality in Stafford Street is predicted to remain compliant with limit values throughout Scheme construction with DCiC's traffic management measures in place, with negligible impacts predicted in Stafford Street due to Scheme construction. Air quality is predicted to be compliant in 2021 across the study area with Scheme construction underway.
- 4.2.8 The conclusions of the air quality assessments taking account of more recent work remains the same as set out in the examination and reported in the ES. The Scheme will **not** lead to the following effects in Stafford Street or the wider area:
- A significant air quality impact
  - A deterioration in a zone/ agglomeration
  - Cause delays in achieving compliance in areas not compliant
  - Cause any compliant areas to become non-compliant

## **5 Secretary of State request for further representations (point 2, 4th bullet)**

- 5.1 The Secretary of State requests that the Applicant provides further representations on:

*Any change in whether the Development would be consistent with the requirements and provisions of relevant local or national policies, given the length of time since the examination closed. This will include those policies included in the Applicant's Planning Statement and National Policy Statement Accordance table and any updated versions thereof (including the updated*

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*Derwent Valley Mills World Heritage Site Management Plan 2020-25), as well as any wholly new policy that may be applicable*

## 5.2 Applicant's response

5.2.1 Since the DCO examination closed, there has been some changes to the requirements and provisions of national planning policies policy however the Development remains consistent with them.

5.2.2 The recent Written Ministerial Statement (HCWS235) and Transport Decarbonisation Plan commits the Government to undertake a review of the National Policy Statement for National Networks. This Statement also confirms the NPSNN remains relevant and has a proper basis on which the Planning Inspectorate can examine, and the Secretary of State can make decisions on applications for development consent.

5.2.3 In addition to the above guidance on the process for carrying out a review of existing National Policy Statements sets out that "Where a review is undertaken and a decision is made not to suspend the existing National Policy Statement (in whole or in part), it will continue to have effect for the purposes of the Planning Act".

5.2.4 At a national level the National Planning Policy Framework (NPPF) was updated in July 2021. The revisions of the document do not create inconsistencies with the development and policies as referenced in the Planning Statement and National Policy Statement Accordance Table (Planning Inspectorate Scheme Reference TR10022).

5.2.5 The key Local Planning policy documents that form the development plans for the Local Authority areas in which the Scheme is located remain unchanged, as detailed in the Planning Statement and National Policy Statement Accordance Table (Planning Inspectorate Scheme Reference TR10022), these are as follows:

- City of Derby Local Plan Review saved policies (2006)
- Derby City Local Plan – Part 1 Core Strategy (2017),
- Derby Local Transport Plan LTP3 (2011 - 2026),
- Derbyshire Local Transport Plan (2011 - 2026)
- Erewash Core Strategy, including saved local plan policies (2014)

5.2.6 Erewash Borough Council consulted upon a Revised Growth Options document in March 2021. Whilst at an early stage it is important to note specific reference in this document to development not being able to commence at sites until the A38 junctions works are complete, emphasising the importance of the Scheme and investment for the local development and economy particularly in enabling sustainable housing number growth.

5.2.7 The Derwent Valley Mills World Heritage Site Management Plan (WHSMP) has been updated since the DCO examination closed, with a revised version



covering the period between 2020-2025 now in place. This document retains importance but the boundary to the Derwent Valley Mills World Heritage Site has not changed and there are no significant changes or themes to the revised Derwent Valley Mills WHSMP. As such the Scheme is considered to remain consistent with the aims of the revised WHSMP in particular Aim 1 which is to "Protect and conserve the Outstanding Universal Value of the DVMWHS to ensure its transmission to future generations."

## **6 Secretary of State request for further representations (point 2, 5th bullet)**

6.1 The Secretary of State requests that the Applicant provides further representations on:

*Other than the matters set out above, the adequacy of the environmental information produced in support of the application for the Development1 and whether further or updated environmental information is now necessary given the length of time since the examination closed*

6.2 Applicant's response

6.2.1 Since the close of the DCO examination a range of pre-construction surveys and assessments have been undertaken, including surveys to identify changes in the presence and/ or distribution of protected and notable species. Surveys and assessments undertaken are summarised in Table 1. These effectively monitor for potential changes to baseline conditions since the examination closed, as well as define whether there have been any changes to the significance of effects as reported in the Environmental Statement (ES).

**Table 1: Updated Environmental Information**

<b>Details</b>	<b>Findings</b>
<b>Updated Phase 1 habitat survey (2020)</b>	No changes found that change the overall conclusions of the biodiversity assessment reported in the ES.
<b>Updated and further bat surveys (2020 and 2021)</b>	The number and status of bat roosts within buildings to be demolished at Queensway has changed since the DCO examination closed. Additional mitigation measures will be captured within both the Construction Environmental Management Plan (CEMP) and within the European Protected Species Mitigation Licenses (EPSML) to be submitted to Natural England – this accords with the planned approach as defined within the Outline Environmental Management Plan (OEMP) as submitted with the DCO application. As such, there will be no effect on the favourable conservation status of bats and no change to the significance of effects on bats as compared to those reported in the ES.
<b>Updated and further badger surveys (2020 and 2021)</b>	There have been some changes in badger sett locations, but no substantial changes in overall sett status. Mitigation measures will be captured within the CEMP and the badger license to be submitted to Natural England - this accords with the planned approach as defined within the OEMP. As such, there will be no change to the significance of effects on badgers as compared to those reported in the ES.
<b>Updated Great Crested Newt (GCN) surveys (2020)</b>	Positive eDNA tests confirming GCN presence were recorded within waterbodies at Little Eaton junction, noting that GCN had not been recorded previously. The Scheme will not directly affect these waterbodies and will only affect a portion of terrestrial habitat within 500m of those ponds. Mitigation measures will be captured within the CEMP and the EPSML to be submitted to Natural England - this accords with the planned approach defined within the OEMP. As such, there will be no significant effects on GCN which is consistent with the findings reported in the ES.
<b>Updated and further water vole surveys (2021 and 2021)</b>	The most recent surveys have identified that water voles are absent at Little Eaton junction. As such, there are no changes to the mitigation approach and the significance of effects on water vole as reported in the ES.
<b>Updated otter surveys (2020)</b>	No changes found that change the mitigation approach and significance of effects as reported in the ES.
<b>Updated reptile surveys (2020)</b>	No changes found that change the mitigation approach and significance of effects as reported in the ES.
<b>Updated fish surveys at Dam Brook (2020)</b>	No changes found that change the mitigation approach and significance of effects as reported in the ES.
<b>Species rich grassland surveys at the A38 Kingsway Roundabout (donor site) and at Markeaton Park (receptor site) (2020)</b>	The receptor site for a species rich grassland in Markeaton Park has been agreed with Derby City Council. The location selected for the species rich grassland is in a slightly different location within Markeaton Park to that assumed in the ES. In accordance with the OEMP, the alternative location within Markeaton Park does not give rise to any materially new or materially worse environmental effects in comparison with those reported in the ES.

Details	Findings
<b>Updated breeding bird (including barn owl) surveys (2020)</b>	No changes found that change the mitigation approach and significance of effects as reported in the ES.
<b>Updated overwintering bird surveys (2020/ 2021)</b>	Surveys record a reduction in the number and range of overwintering birds as compared to the findings reported in the ES. Nevertheless, the mitigation approach and significance of effects remains the same as reported in the ES.
<b>Habitat condition assessment surveys (2020)</b>	Survey undertaken to support the landscape design in order to maximise biodiversity delivery. No changes or implications for the biodiversity assessment as reported in the ES.
<b>Noise monitoring (2021)</b>	Noise monitoring undertaken to inform the construction noise assessment and support monitoring required during Scheme construction. No changes or implications for the noise assessment as reported in the ES.
<b>Geotechnical investigation surveys (2020)</b>	Surveys undertaken in 2020, with the results used to inform the remediation strategy for the Scheme - this accords with the planned approach as defined within the OEMP. No change to the significance of effects on geology and soils as compared to those reported in the ES.
<b>Arboricultural walkover survey (2020)</b>	Updated arboricultural walkover survey recorded no substantial changes in tree number or condition. As such, there is no change to the mitigation approach and the significance of effects as reported in the ES.
<b>Scheme design changes</b>	The Scheme design has been subject to a number of minor changes within the limits of deviation defined within the draft DCO. Such changes have been subject to assessment which verify that they will not result in any materially new or materially different environmental effects to those as reported in the ES. This accords with the requirements of the draft DCO.

6.2.2 Table 1 illustrates that, as expected, there have been some minor changes to environmental conditions in the vicinity of the Scheme, as well as a number of minor changes to the Scheme design (within the limits of deviation as defined in the draft DCO). The minor changes to the Scheme design have been assessed and do not result in any materially new or materially different environmental effects to those as reported in the ES – this accords with the requirements of the draft DCO. Where changes to baseline environmental conditions have been detected, the planned control procedures put in place via the draft DCO and the OEMP mean that environmental effects remain as reported in the ES.

6.2.3 The surveys and assessment undertaken since the close of the SCO examination indicate that there is adequate environmental information available to support of the DCO application, that there are no changes to the significance of environmental effects as reported in the ES, and that further or updated environmental information is not necessary to enable the re-determination of the DCO application..

## 7 Secretary of State request for further representations (point 2, 6th bullet)

7.1 The Secretary of State requests that the Applicant provides further representations on:

*Any other matters arising since 8 January 2021 which Interested Parties consider are material for the Secretary of State to take into account in his re-determination of the application*

7.2 Applicant's response

7.2.1 The Applicant is not aware of any other matters arising since 8 January 2021 which Interested Parties may consider to be material for the Secretary of State to take into account in his re-determination of the application at this stage.

## 8 Secretary of State request for updates he should be made aware of (point 4)

8.1 The Secretary of State requests that the Applicant provides him with any updates he should be made aware of in relation to the Scheme since the end of its examination:

*This should include an update on the potential loss of the veteran oak tree in Markeaton following the survey work undertaken by the Applicant on 18 May 2021, and confirmation of whether the Framework Agreement between the Applicant and Network Rail has been fully agreed upon.*

8.2 Applicant's Response:

### **Veteran Oak Tree**

8.2.1 The situation regarding the veteran oak tree T358 is largely as it was during the DCO Examination and reported in the Technical Note submitted to the Examination at Deadline 7 [REP7-008]  
(<https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR010022/TR010022-001095-8.85%20Veteran%20Tree%20loss%20T358.pdf>).

8.2.2 The Scheme that was submitted for Examination would, as a result of the combined impacts on the veteran tree and its associated Root Protection Area (RPA), result in the unavoidable loss of the veteran tree due to the proposed works and construction traffic within the vicinity of the tree. As such, the Environmental Statement reported the loss of this veteran tree and explained and assessed this as a worst-case scenario.

8.2.3 However, as agreed at the DCO Examination and included in the Outline Environmental Management Plan (OEMP), during the Scheme's detailed design stage, the Applicant has examined further options that increase the potential to

retain the tree and reduce the Scheme impacts upon its RPA. Actions that have been undertaken in this regard include the repositioning the footbridge foundations, moving service diversions, moving the combined footpath/ cycleway and moving the highway drainage outfalls - such actions have reduced the Scheme's direct impact on the tree RPA. However, it is important to note that whilst a number of infrastructure items have been repositioned, the A38 main carriageway and the new footbridge cannot be moved sufficiently to avoid the tree's RPA. In addition, the associated construction traffic movements within close proximity to the tree's RPA in order to deliver the works would still pose a risk to impacting the RPA, although some construction plant access restrictions could be put in place.

- 8.2.4 The purpose of the survey planned to be completed in May 2021 was to establish whether the Applicant could identify any primary roots of the veteran tree where the new footbridge foundations are to be built. However, due to protestor action the survey works were prevented from being carried out, and in recognition of the sensitive nature of any works in the vicinity of the tree, they have been suspended indefinitely.
- 8.2.5 As such, it remains the case that whilst it may be possible to retain the tree itself and measures taken to reduce the Scheme impacts upon the tree's RPA, the Scheme works would still inevitably have a significant effect on the tree's RPA. It thus remains the most likely scenario (despite best endeavours) that the veteran tree will be unavoidably lost due to the Scheme (as assumed in the Environmental Statement). As noted above, given the assumed loss of this veteran tree, it is proposed that the felled tree with its potential bat roost features will be made into a totem pole feature and installed at the edge of Markeaton Park as part of the bat mitigation strategy.
- 8.2.6 In terms of the policy tests within the NPS NN, the loss of the veteran tree should be weighed in the balance against the clear national and local need for the Scheme coupled with the significant benefits of that the Scheme will bring, including unlocking future investment in the City of Derby and the time savings a less congested route will bring.

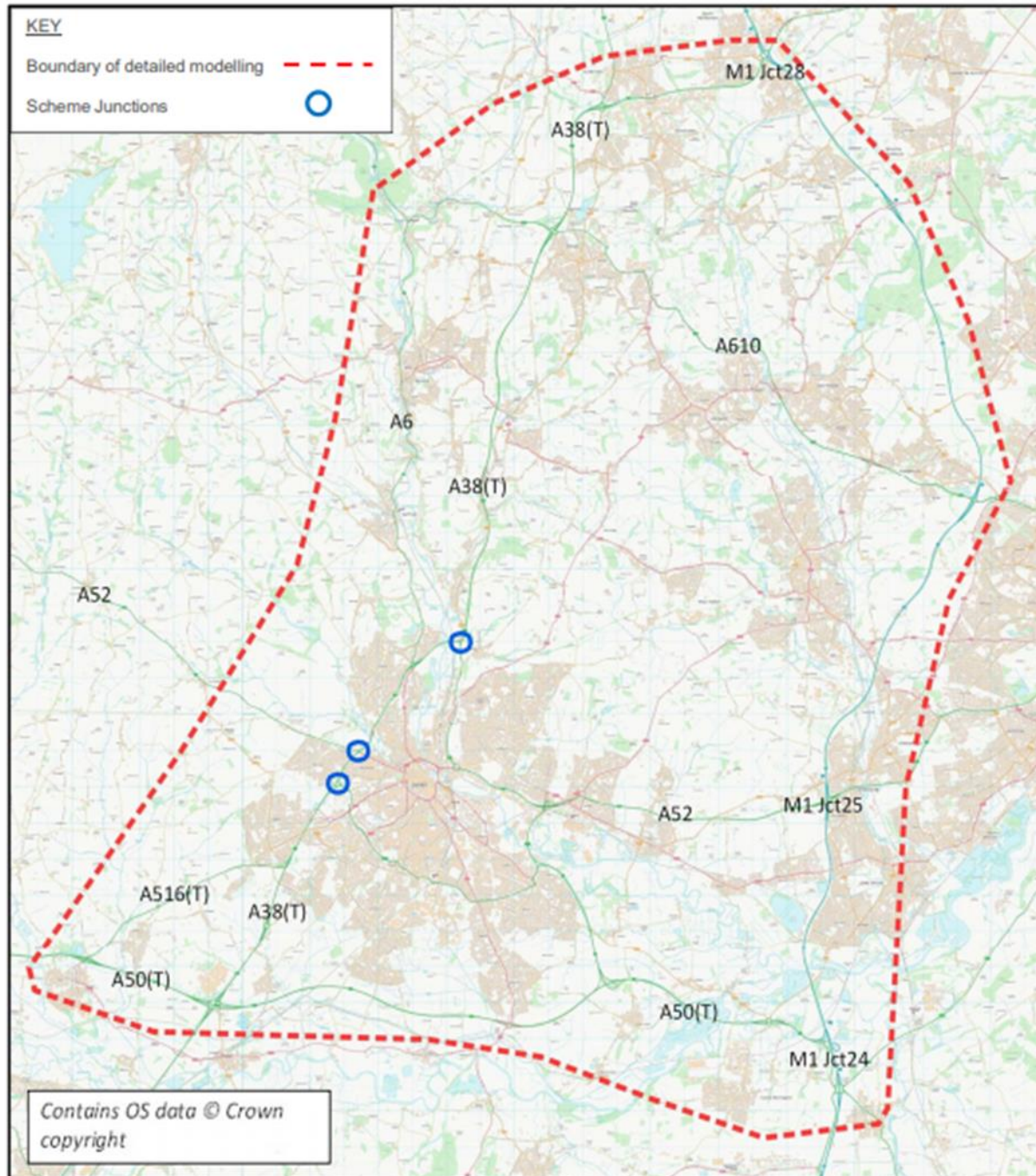
#### **Framework Agreement between the Applicant and Network Rail**

- 8.2.7 The final version of the Bridge Agreement has been agreed by Highways England and Network Rail. This is now awaiting digital signatures from Network Rail and Highways England. This is expected to be complete in Sept 2021
- 8.2.8 The Framework Agreement is still being progressed, Network Rail's legal team are awaiting final comments before they are able to issue for final approval. This will not be ready in time for the Statement of Matters deadline. We will keep you updated on the progress of both agreements as and when they are received.

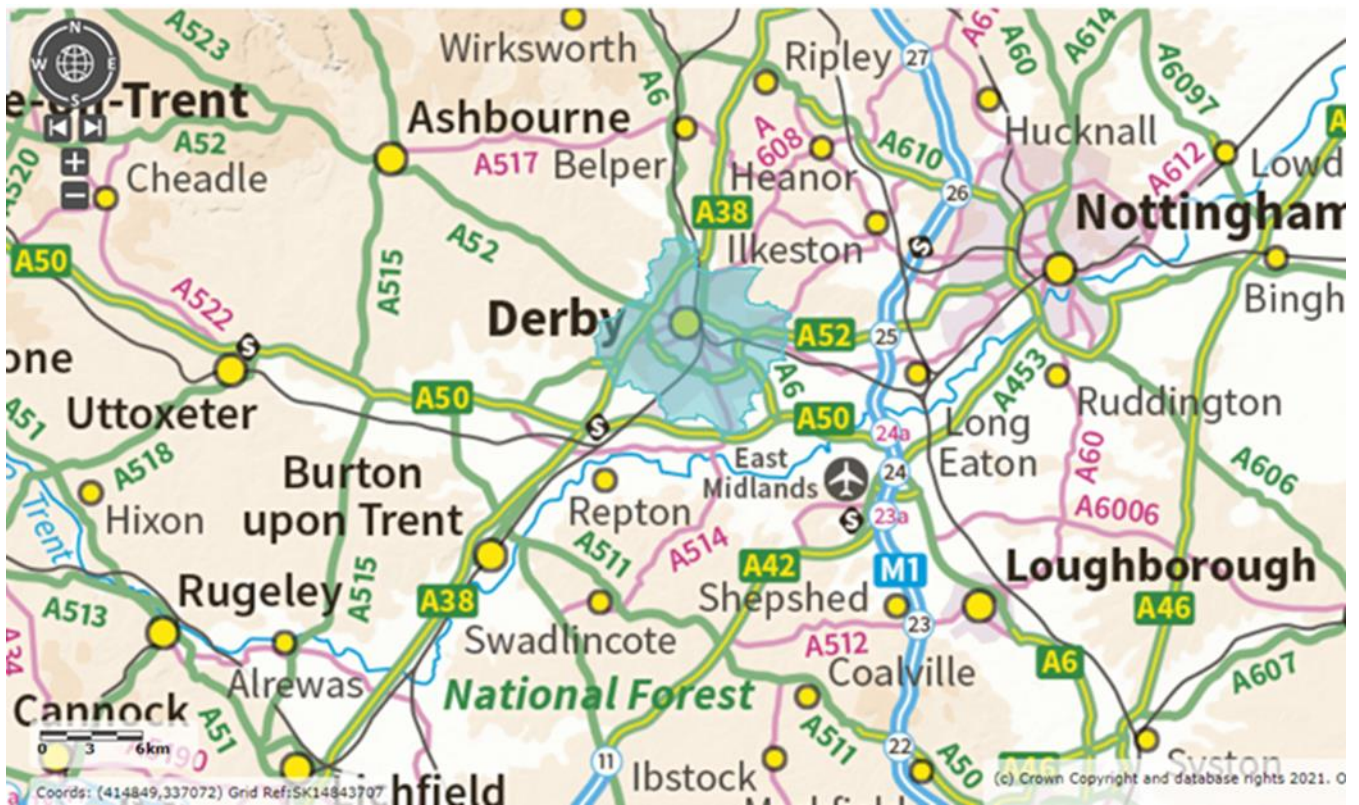
# Appendices

## Appendix A. Figures

### A.1 Figure 1 – Local view of Scheme showing transport routes that surround it – (includes boundary of detailed traffic modelling)



**A.2. Figure 2 – Regional map showing key transport networks**

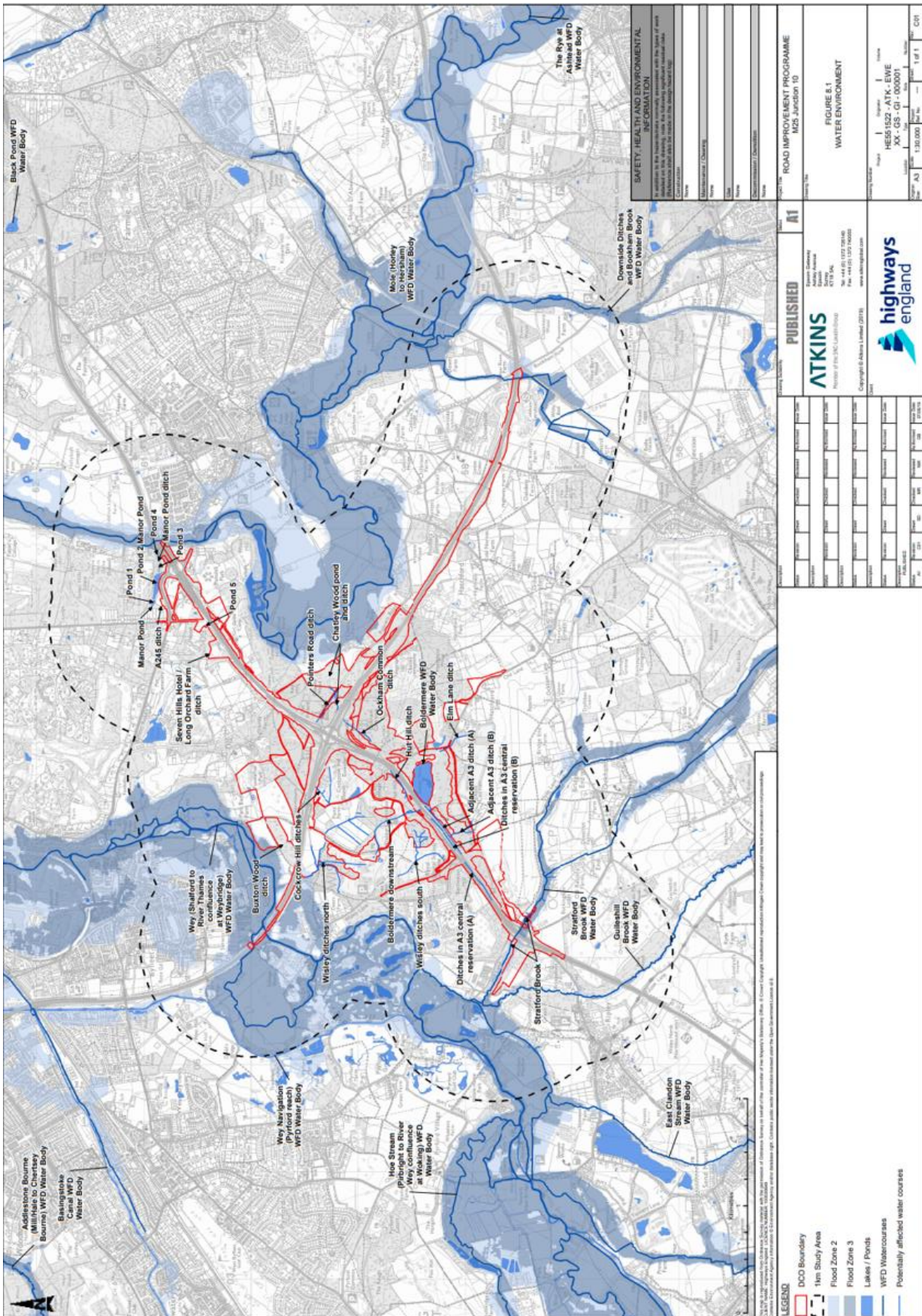




### A.3. Figure 3 – Regional rail connections



### A.4. Figure 4 Risk of flooding



A38 Derby Junctions  
Response to Secretary of State's Statement of Matters

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