



The Planning Act 2008

M5 Junction 10 Improvements Scheme

Examining Authority's Report

of Findings and Conclusions

and

Recommendation to the Secretary of State for

Transport

Examining Authority

Edwin Maund MSc, BA(Hons), Dip UP, MRTPI, Lead Panel Member

Luke Regan MSc, CMILT, Panel Member

4 March 2025

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OVERVIEW

File Ref: TR010063

The application, dated 19 December 2023, was made under section 37 of the Planning Act 2008 and was received by The Planning Inspectorate on 19 December 2023.

The applicant is Gloucestershire County Council.

The application was accepted for examination on 16 January 2024.

The examination of the application began on 4 June 2024 and was completed on 4 December 2024.

The proposed development comprises the construction of:

- An all-movements junction at M5 Junction 10 (Scheme element 1).
- A new West Cheltenham Link Road east of junction 10 from the A4019 to the B4634 (Scheme element 2), and,
- Widening of the A4019 to the east of junction 10, including a bus lane on the A4019 eastbound carriageway from the West Cheltenham Fire Station to the Gallagher Junction (Scheme element 3).

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should make the M5 Junction Improvements Scheme DCO in the form recommended at Appendix D of this Report, subject to the SoS being satisfied regarding the outstanding matters on Crown Land and the NPPF 2024.

REPORT TABLE OF CONTENTS

1.	INTRODUCTION	1
1.1.	BACKGROUND TO THE EXAMINATION	1
1.2.	APPOINTMENT OF THE EXAMINING AUTHORITY	1
1.3.	THE APPLICATION	1
1.4.	THE EXAMINATION	6
1.5.	CHANGES TO THE APPLICATION	9
1.6.	UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS	10
1.7.	OTHER CONSENTS	10
1.8.	STRUCTURE OF THIS REPORT	10
2.	HOW THE APPLICATION IS DETERMINED	12
2.1.	INTRODUCTION	12
2.2.	LEGISLATION AND POLICY	12
2.3.	NATIONAL POLICY STATEMENTS	13
2.4.	OTHER NATIONAL POLICY	14
2.5.	LOCAL IMPACT REPORT	14
2.6.	ENVIRONMENTAL IMPACT ASSESSMENT	15
2.7.	HABITATS REGULATIONS ASSESSMENT	15
2.8.	TRANSBOUNDARY EFFECTS	15
2.9.	WATER FRAMEWORK DIRECTIVE ASSESSMENT	16
3.	THE PLANNING ISSUES	17
3.1.	INTRODUCTION	17
3.2.	THE NEED CASE	18
3.3.	ALTERNATIVES	29
3.4.	TRAFFIC AND TRANSPORT	33
3.5.	GREEN BELT	51
3.6.	AIR QUALITY	59
3.7.	BIODIVERSITY AND ECOLOGY	66
3.8.	FLOOD RISK, DRAINAGE and WATER ENVIRONMENT	80
3.9.	HISTORIC ENVIRONMENT	91
3.10.	LANDSCAPE AND VISUAL	101
3.11.	NOISE AND VIBRATION	112
3.12.	OTHER PLANNING MATTERS	121
3.13.	ASSESSMENT OF CUMULATIVE EFFECTS	136
4.	HRA SUMMARY	143
4.1.	INTRODUCTION	143
4.2.	INFORMATION AND EVIDENCE	143
4.3.	SUMMARY OF MATTERS CONSIDERED	144
4.4.	SUMMARY OF FINDINGS IN RELATION TO LSE	144
4.5.	SUMMARY OF FINDINGS IN RELATION TO AEol	145
4.6.	HRA CONCLUSIONS	146
5.	CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT	147

5.1.	INTRODUCTION	147
5.2.	SUMMARY OF THE MAIN PLANNING ISSUES.....	147
5.3.	FINDINGS AND CONCLUSIONS	153
6.	LAND RIGHTS AND RELATED MATTERS	154
6.1.	INTRODUCTION	154
6.2.	LEGISLATIVE REQUIREMENTS.....	154
6.3.	THE REQUEST FOR CA AND TP POWERS	155
6.4.	THE PURPOSES FOR WHICH LAND IS REQUIRED	158
6.5.	THE APPLICANT'S GENERAL CASE	158
6.6.	EXAMINATION OF THE CA AND TP CASE.....	166
6.7.	STATUTORY UNDERTAKERS AND PROTECTIVE PROVISIONS	186
6.8.	THE EXA'S CONSIDERATION OF THE CASE FOR COMPULSORY ACQUISITION AND TEMPORARY POSSESSION.....	192
6.9.	CONCLUSIONS	199
7.	DRAFT [DEVELOPMENT CONSENT] ORDER AND RELATED MATTERS...	202
7.1.	INTRODUCTION	202
7.2.	THE ORDER AS APPLIED FOR.....	202
7.3.	CHANGES DURING EXAMINATION	204
7.4.	CONCLUSIONS	219
8.	SUMMARY OF FINDINGS AND CONCLUSIONS	220
8.1.	INTRODUCTION	220
8.2.	CONSIDERATION OF FINDINGS AND CONCLUSIONS.....	220
8.3.	RECOMMENDATION.....	222
APPENDIX A: REFERENCE TABLES		II
APPENDIX B: LIST OF ABBREVIATIONS		I
APPENDIX C: HABITATS REGULATIONS ASSESSMENT .Error! Bookmark not defined.		
C.1	INTRODUCTION.....	Error! Bookmark not defined.
C.2	HRA ISSUES.....	Error! Bookmark not defined.
C.3	HRA ISSUES.....	Error! Bookmark not defined.
C.4	HRA ISSUES.....	Error! Bookmark not defined.
C.5	HRA ISSUES.....	Error! Bookmark not defined.
APPENDIX D: THE RECOMMENDED DCO		I

List of Figures

Figure 1 Location Plan - Source [APP-005]	2
Figure 2 Key Plan for Work No's – Source [REP10-004].....	4
Figure 3 Allocation Sites from the JCS relative to the DCO Order Limits - Source [REP1-011]	6
Figure 4 Extent of the PARAMICS Model - Source [REP4-021].....	35

Figure 5 Location of Personal Injury Accidents (2017-2021)	36
Figure 6 Green Belt boundary relative to the Order Limits - Source [AS-044]	54
Figure 7 Extent of Study Area for Assessment of Ecology and Biodiversity - Source [APP-105]	69
Figure 8 Extract identifying non-designated heritage assets - Source [REP9A-002]	95
Figure 9 Landscape Character Areas - Source [REP3-030]	103
Figure 10 Visual Receptors identified in LVIA - Source [REP3-030]	104
Figure 11 Landscape Visualisation Viewpoint Locations. Source [REP2-003].	105
Figure 12 Baseline Situation at Viewpoint 3 - Source [REP-2-003]	106
Figure 13 Year 1 at Viewpoint 3 - Source [REP2-003]	107

List of Tables

Table 1 Summary of Main Work Numbers	4
Table 2 Summary of the scheme elements as presented and assessed in the PEIR - Source [APP-062]	31
Table 3 Crown Land Interests	158
Table 4 Submissions of the dDCO during Examination	204
Table 5 Notable Changes to the dDCO during Examination	207
Table 6 DCO Provisions Recommended to be Changed	214



ERRATA SHEET – M5 Junction 10 Improvements Scheme DCO

Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport dated 4 March 2025.

Page No.	Paragraph	Error	Correction
13	2.3.1	Consistency of references: This para refers to the NPSNN 2014 , rather than 2015 which is used earlier at para 2.2.2 and elsewhere.	Amend text to read: NPSNN 2015 (2015 is more widely accepted and ensures consistency with rest of Report).
18	3.1.10	Incorrect text: Biodiversity and Equality	Amend text to read: Biodiversity and Ecology
68	3.7.16	Consistency of references: Chartered Institute of Ecology and Environmental Management (CIEEM)	Amend text to read: (CIEEM) It is used as CIEEM at 3.7.45 and Appendix B.
115	3.11.26	Repetition: 'Noise barriers'	Delete repeated text
115	3.11.29, bullet points below	Missing Text: No paragraph number for the text below 3.11.29	None suggested. Our decision letter will reflect the format of the report.
118	3.11.48, 2nd bullet point	Incorrect text: '..would acceptability address..'	Amend text to read: '..would acceptably address..'
136 - 142	3.13.49 - 3.13.52	Incorrect conclusion: the ExA concluded that this matter should attract moderate positive weight. Although we note that both the ExA and the Joint Councils are satisfied with the Applicant's assessment of these effects, the assessment does identify adverse effects for both intra and inter	Amend conclusion as confirmed by ExA/PINS in their email of 21 March 25: "3.13.52. The ExA conclude that the Applicant's cumulative effects assessment (as amended during the Examination) fulfils the requirements of the EIA Regulations and meets the tests set out in

Page No.	Paragraph	Error	Correction
		project scenarios, which can only be partly mitigated by the REAC.	NPSNN. The ExA considers that matters relating to cumulative effects attract little weight against the making of the Order. The ExA do not therefore propose to make any modifications to the Applicant's final dDCO in respect of the cumulative issues raised This then also requires a correction to paragraph 5.2.54 which should read: 5.2.54. Taking all matters into consideration, we ascribe matters relating to the cumulative effects of the Proposed Development little weight against the making of the Order. In assigning this weighting, we have had regard to the extent to which the project alone effects in relation to the relevant matters have been considered and assigned weight under separate planning issues discussed earlier in this Chapter to avoid any double counting of effects."
167	6.6.8	Missing conclusion: the ExA note at 6.6.8 that the objection from Affected Parties Mrs Mary Bruton and Ms Elizabeth Counsell had not been formally withdrawn. However, the ExA do not appear to then set out their explicit consideration or conclusion in respect of this AP in their Report.	Inclusion of an additional paragraph with the conclusions confirmed by the ExA in their email of 9 April 25: "the report should have had a paragraph recognising the CA issue for Mary Bruton and Ms Counsell, but the conclusions would be consistent with those already set out for JW Bruton and Sons as set

Page No.	Paragraph	Error	Correction
			out in paragraphs 6.6.123 – 6.6.124. For completeness, there could have been a cross reference to the transport section, as we set out in the Transport Section 3.4.124 – 131 the ExA concluded that the access arrangements for existing and future uses were regarded as acceptable to enable ongoing agricultural use of these plots.”
176	6.6.99	Repetition: ‘represented at’	Delete repeated text
Additional Issues raised (if necessary)			

1. INTRODUCTION

1.1. BACKGROUND TO THE EXAMINATION

- 1.1.1. An application (the Application) for the M5 Junction 10 Improvements Scheme (the Proposed Development), Planning Inspectorate (the Inspectorate) reference TR010063, was submitted by Gloucestershire County Council (the Applicant) to the Inspectorate on 19 December 2023 and accepted for Examination under s55 of the PA2008 on 16 January 2024 [[PD-001](#)]. This Report sets out the Examining Authority's (ExA) findings, conclusions and recommendations to the Secretary of State for Transport ([SoST]).
- 1.1.2. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the then Secretary of State for Levelling Up, Housing and Communities (SoSLUHC) in its decision to accept the application for Examination in accordance with s55 of the PA2008 [[PD-001](#)].
- 1.1.3. The Proposed Development meets the definition of a Nationally Significant Infrastructure Project (NSIP) set out in s14(1)(h) of PA2008. The Proposed Development is wholly within England, is an alteration to a highway within s22(1)(b), s22(3) and s22(4) of PA2008, and so requires development consent pursuant to s31 of PA2008. An application for an order granting development consent was therefore made in accordance with s37 PA2008.
- 1.1.4. The [Examination Library](#) (EL) provides a record of all application documents and submissions to the Examination, each of which is given a unique reference number eg [[APP-001](#)]. The reference numbers are used throughout this Report and hyperlinks are included to allow the reader to access them directly.
- 1.1.5. This Report does not contain extensive summaries of the documents and representations received. Readers are referred to relevant material using linked EL references. Full regard has been had to all such material and to all important and relevant matters arising from it in all conclusions drawn by the ExA and the recommendation made in this Report.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

- 1.2.1. On 30 January 2024, Edwin Maund and Luke Regan were appointed as the ExA for the application under s61 and s65 of the Planning Act 2008 as amended (PA2008) [[PD-004](#)]. Edwin Maund was appointed as the Lead Member, on the same date.

1.3. THE APPLICATION

LOCATION OF THE PROPOSED DEVELOPMENT

- 1.3.1. The Proposed Development lies to the west and northwest of the town of Cheltenham, in the county of Gloucestershire. Within Gloucestershire County Council (GCC), Cheltenham Borough Council (CBC) and Tewkesbury Borough Council (TBC) administrative areas and is wholly in England It centres around junction 10 of the M5, which currently connects to the A4019 but only allows two-way movement onto or off the motorway. Exiting via a southbound off slip or joining via a north bound on slip.

1.3.2. The location of the Proposed Development is shown in the Location Plan [\[APP-005\]](#) and the final version of the Land Plans [\[REP5-002\]](#).

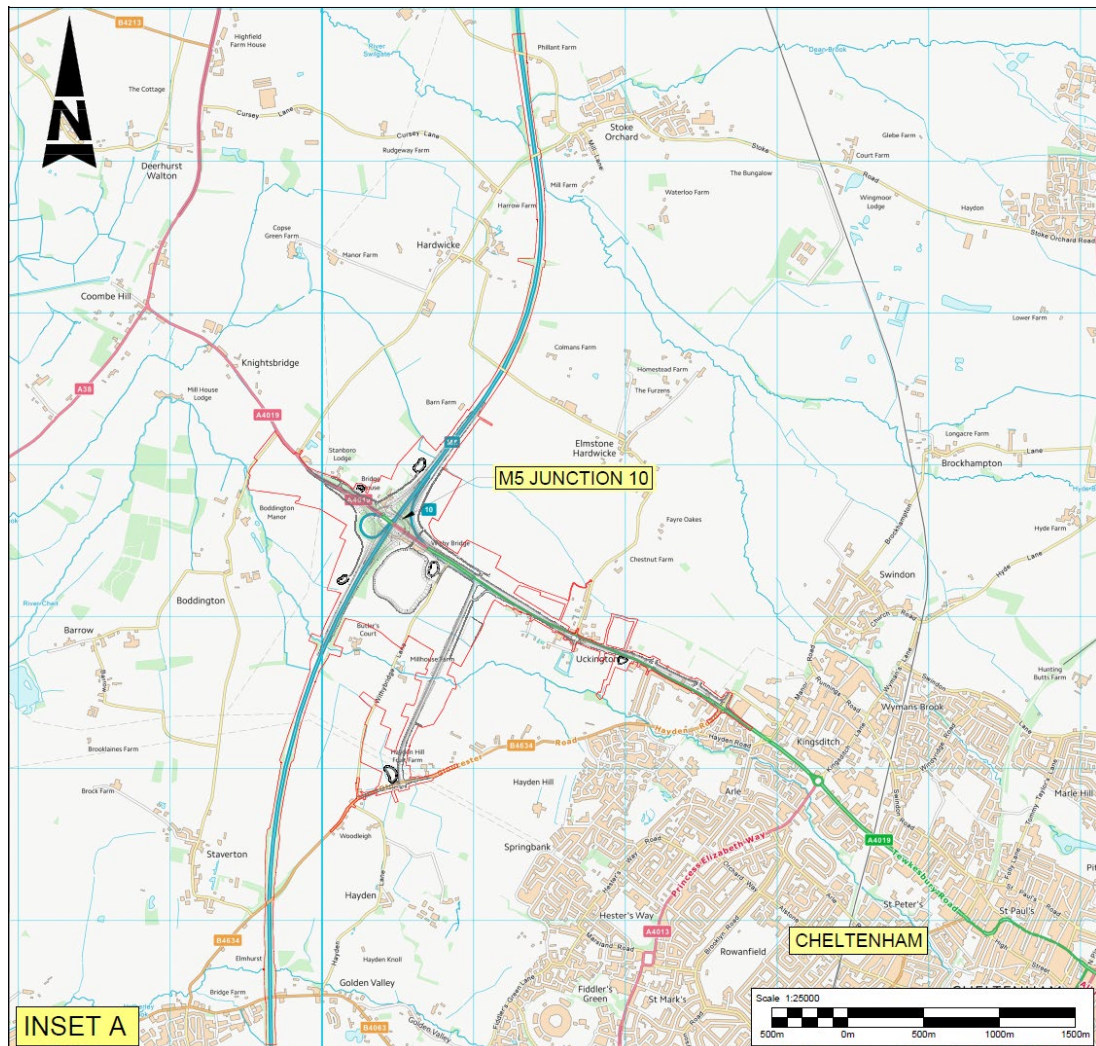


Figure 1 Location Plan - Source [\[APP-005\]](#)

1.3.3. Chapter 2 'The Scheme' of the Environmental Statement (ES) [\[APP-061\]](#) provides a detailed description of the site and the surrounding area. In summary, the characteristics are:

- The site is predominantly rural in nature; being areas of grazing pasture and arable, made up of Grade 3a (good) and Grade 3b (moderate) agricultural value;
- Includes important areas of lowland meadow and floodplain grazing marsh and traditional orchards;
- The Cotswold Area of Outstanding Natural Beauty (now National Landscape) is located some 6km to the east with the land rising to the Cotswold scarp from the Severn Vale to the east of Cheltenham;
- A number of water courses cross the scheme most notably the River Chelt, Leigh Brook, and River Swilgate forming tributaries to the River Severn. The estuary of which is designated as a Special Area of Conservation (SAC), Special Protection Area (SPA), Ramsar and Site of Special Scientific Interest

(SSSI). The point that the River Chelt joins the River Severn is greater than 7.5km from the order Limits.

- To the north of the A4019 and east of the M5 the land is affected by river and surface water flooding, while to the south of the A4019 the floodplain of the River Chelt extends either side of M5 Junction 10;
- Within the Order Limits there are two groundwater bodies, the Severn Vale - Secondary Combined, and the Warwickshire Avon - Secondary Mudrocks.

1.3.4. Beyond the Order Limits but worthy of note, there are two SPAs Severn Estuary SPA and Walmore Common SPA (17.5 km south-west of the Order Limits)

1.3.5. There are eight Noise Important Areas (NIA) within the boundary of the scheme, one of which is at the current M5 Junction 10 with a further six along the A4019.

1.3.6. The Cheltenham Air Quality Management Area (AQMA) is 1.5km southeast of the scheme.

1.3.7. In addition to these sensitive environmental sites 32 residential properties are included within Table 13-1 of ES Chapter 11 Population and Human Health [[APP-072](#)] as needing to be demolished to facilitate the Proposed Development. These are included within the following Work No.s from the dDCO:

- Work No.2 (e) the demolition of 14 properties at Withybridge Gardens southeast of Junction 10,
- (g) the demolition of Barn Farm Cottage north of Junction 10;
- (h) the demolition of Wayside northwest of Junction 10;
- (i) the demolition of Bridge House northwest of Junction 10.
- Work No. 4 (a) the demolition of Withy Bridge and Laburnum properties north of the A4019 (Tewkesbury Road),
- (e) the demolition of three properties (Nos 1 - 3 The Row) in Uckington south of the A4019 (Tewkesbury Road,
- (w) the demolition of ten properties to the north of the A4019 (Tewkesbury Road) between Uckington and the Gallagher Junction.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

1.3.8. The Proposed Development consists of three main elements:

- alterations to the existing motorway junction 10 on the M5;
- widening of the A4019 to a two-lane carriageway from Withybridge Lane to the Gallagher Retail Park; and
- the construction of a link road to the west of Cheltenham between the A4019 and the B4634.

1.3.9. The Applicant provides more detailed descriptions of the proposed works in their Introduction to the application [[APP-001](#)] (pages 6-9) and these are shown on the General Arrangements Plans [[APP-014](#) and [APP-015](#)] the Environmental Master Plans [[APP-027](#) and [APP-028](#)] and the Engineering Drawings and Sections [[APP-016](#), [APP-017](#) and [APP-018](#)].

1.3.10. The Proposed Development has been divided up into 36 Work No's the full details of which can be found in Schedule 1 of the draft Development Consent Order (dDCO) in [[REP11-003](#)]: The main works, dealing with the three key elements of the Proposed Development are set out below, and the key plan identifying the individual

sheet numbers is provided to aid the understanding of the spatial relationship of the respective works.

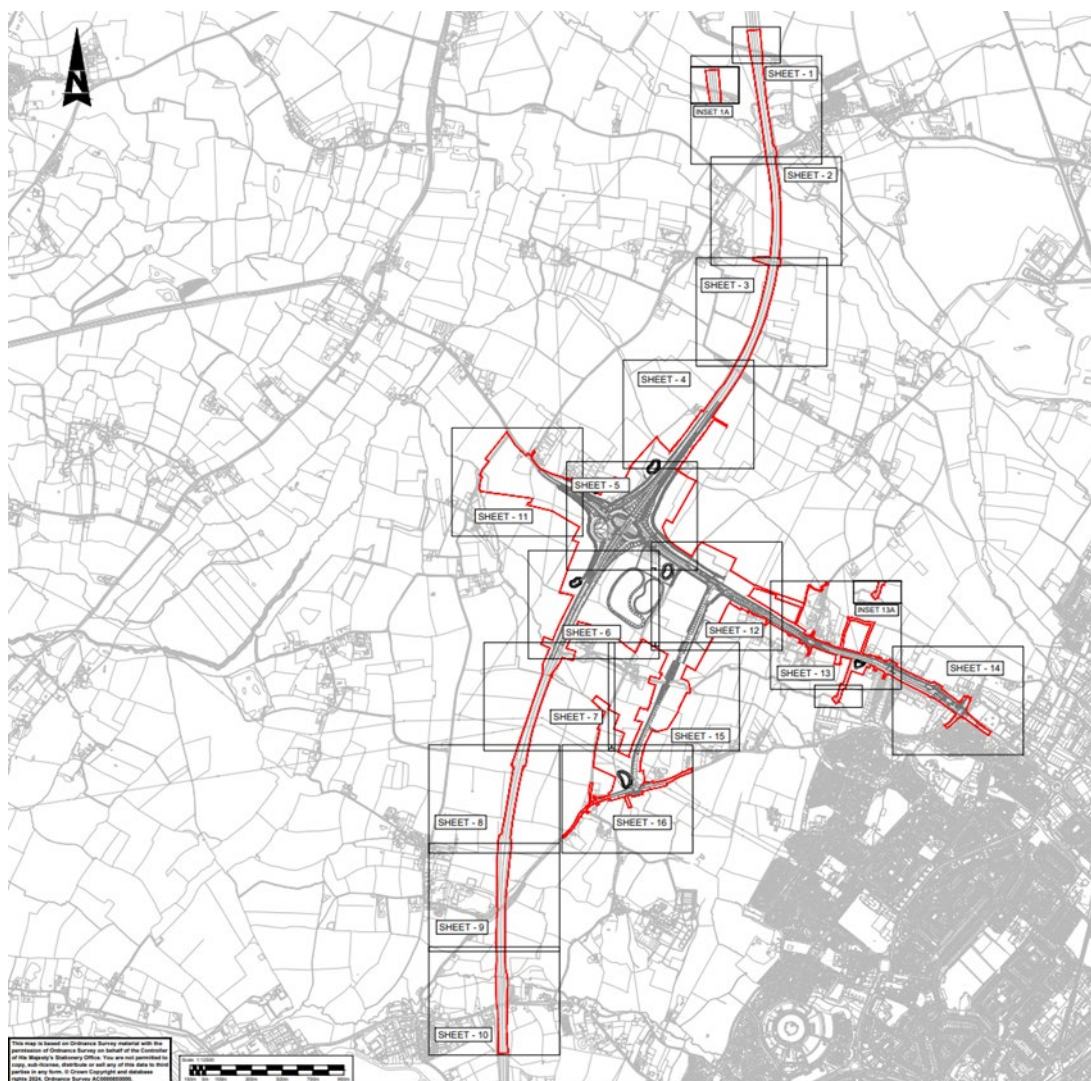


Figure 2 Key Plan for Work No's – Source [\[REP10-004\]](#).

Table 1 Summary of Main Work Numbers.

Work No.	Work Description	Works Plans Sheet No.
Work No. 1	the construction of a new Junction 10 on the M5 Motorway made up of four new slip roads	1 to 10, 12 and 15
Work No. 2	the construction of a new grade separated roundabout junction and maintenance bays	4 and 5
Work No. 3	the realignment and widening of the A4019 (Tewkesbury Road) northwest of Junction 10 for 550 metres with associated	5, 6 and 11

	footway; cycle track; shared use path; private access points; and signage and ducting	
Work No. 4	the realignment and dualling of the A4019 (Tewkesbury Road) with associated footway; cycle track; shared use paths; private means of access; and signage and ducting southeast of Junction 10 for 2.7 kilometres to a point east of the Gallagher Junction	5, 6, 12, 13 and 14
Work No. 5	the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) for 1.4 kilometres to join with the B4634 with footway and cycle track to the west and private access, signage and ducting	6, 12, 15 and 16
Work No. 6	the realignment of the B4634 for 490 metres connecting to the new West Cheltenham Link Road with shared use path, private access, signage and ducting	7, 15 and 16
Work No. 7	the construction of a flood storage area of 102,421 square metres and associated works to the east of the M5 and south of the A4019	5, 6 and 12
Work No 36a and 36b	the relocation of an existing national roads telecommunications service transmission station and associated infrastructure, to include— a. demolition of the existing national roads telecommunication service transmission station and associated infrastructure; and b. construction of a new national roads telecommunication service transmission station and associated infrastructure.	5 and 8

RELEVANT PLANNING HISTORY AND LOCAL PLAN ALLOCATIONS

- 1.3.11. The relevant planning applications and allocations which could be influenced by or have a bearing on the proposed development are set out in the Planning Statement [\[APP-135\]](#). This also explains the Applicant's case with regard to the stated need for the Proposed Development.
- 1.3.12. To help the reader Figure 3 below, an extract from the Environmental Statement Non-Technical summary [\[REP1-011\]](#) shows the DCO scheme relative to the strategic allocation sites from the JCS to the west and northwest of Cheltenham.



Figure 3 Allocation Sites from the JCS relative to the DCO Order Limits - Source [REP1-011]

- 1.3.13. Plans and projects which have the potential to give rise to cumulative effects are set out in the Applicant's Planning Statement [APP-135] updated by [REP1-028], and Appendix 15.1 the Reasonably Foreseeable Future Projects (RFFP) Long List [APP-132] and the Cumulative Effects Assessment Chapter [APP-074]. Where such projects are relevant to the case for development consent, they are reported in Section 3.13 (Chapter 3) of this Report.

1.4. THE EXAMINATION

LOCAL AUTHORITIES

- 1.4.1. The scheme is located within the areas served by Gloucestershire County Council (GCC) an upper tier County authority, Cheltenham Borough Council (CBC) and Tewkesbury Borough Council (TBC) both lower tier district authorities. These three authorities (the Joint Councils) confirmed in their RR [RR-039] that they would prepare a joint Local Impact Report and work together in preparing and presenting evidence to the Examination.

START OF THE EXAMINATION

- 1.4.2. The Preliminary Meeting (PM) took place on 4 June 2024 [\[EV3-003\]](#). The ExA's Procedural Decisions (PD) and the Examination Timetable took full account of matters raised at the PM. They were provided in the Rule 8 Letter of the 14 June 2024 [\[PD-009\]](#).
- 1.4.3. The Examination began on 4 June 2024 and concluded on 4 December 2024. The principal components of and events around the Examination can be seen in the [Examination Timetable](#) and are summarised below.
- 1.4.4. Forty-four Relevant Representations (RRs) were received at the outset following consultation on the application. One of these [\[RR-011\]](#) from Dana Wotton was subsequently withdrawn [\[AS-076\]](#).
- 1.4.5. A further four RRs were received following publicity and consultation in respect of the Change Request.

PROCEDURAL DECISIONS

- 1.4.6. The PDs taken by the ExA are recorded in the EL referenced [\[PD-\]](#). They detail the ExA's decisions relating to the procedure of the Examination and did not bear on the ExA's consideration of the planning merits of the Proposed Development. All were broadly discharged as intended and no further reference is made to them in this Report except those that specifically sought additional information.

STATEMENTS OF COMMON GROUND

- 1.4.7. In its Rule 6 letter [\[PD-005\]](#) Annex F, the ExA requested the submission of Statements of Common Ground (SoCG) between the Applicant and various IPs. The Applicant's final Statement of Commonality [\[REP11-008\]](#).
- 1.4.8. In addition, the ExA requested a Principal Areas of Disagreement Summary Statement to be undertaken with National Highways. The first version [\[REP1-059\]](#) received at Deadline 1 was updated through the Examination, the final version being [\[REP10-114\]](#).
- 1.4.9. By the end of the Examination, the following bodies had concluded and signed SoCG with the Applicant:
- Joint Councils [\[REP10-072\]](#),
 - National Highways [\[REP10-074\]](#),
 - The Environment Agency [\[REP10-076\]](#),
 - Natural England [\[REP10-078\]](#),
 - Historic England [\[REP10-080\]](#),
 - Bloor Homes (Safeguarded Land adjacent to Junction 10) [\[REP10-084\]](#),
 - Bloor Homes and Persimmon Homes (Northwest Cheltenham (Elms Park)) [\[REP10-082\]](#), and
 - Henry Boot Developments and Midland Land Portfolio Limited – (West Cheltenham (Golden Valley)) [\[REP10-086\]](#).
- 1.4.10. The signed SoCGs have been taken fully into account by the ExA in all relevant sections of this Report. Where matters remain outstanding, these are considered within the relevant sections of Chapter 3.
- 1.4.11. There were no unsigned or incomplete SoCG at the end of the Examination.

WRITTEN QUESTIONS

- 1.4.12. The ExA asked three rounds of written questions:
- ExQ1 on 9 July 2024 [\[PD-010\]](#),
 - ExQ2 on 10 September 2024 [\[PD-012\]](#) and
 - ExQ3 on 7 November 2024 [\[PD-021\]](#).
- 1.4.13. The ExA made the following requests for further information and comments under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010:
- A procedural decision letter [\[PD-005\]](#) on 9 February 2024, requesting updated Transport Assessment, Flood Risk Assessment, landscape and visual montages, and outline management plans,
 - [\[PD-006\]](#) on 27 March 2024, seeking clarification of the role of Gloucestershire County Council as Applicant, County Planning, Highway and Street Authority,
 - [\[PD-007\]](#) on 23 April 2024 seeking clarification on the funding from Homes England, and updates on operational unexploded ordnance and a severe weather plan,
 - [\[PD-014\]](#) on 17 September 2024 to accept Change Application No.1 for Change Number 8,
 - [\[PD-016\]](#) on 4 October 2024 seeking clarification in respect of Transport Assessment sensitivity testing, and
 - [\[PD-017\]](#) on 18 October 2024 to accept Change Application no.2 for Change Numbers 1-7.

SITE INSPECTIONS

- 1.4.14. The ExA carried out the following Unaccompanied Site Inspections (USIs):
- USI1 took place on Wednesday 31 January and Thursday 1 February 2024 [\[EV1-001\]](#)
 - USI2 took place on Thursday 2 May 2024 [\[EV1-002\]](#).
- 1.4.15. The ExA carried out in addition an Accompanied Site Inspection (ASI) with notice to and in the company of parties:
- Friday 7 August 2024 [\[EV7-001\]](#).

HEARINGS

- 1.4.16. Hearings were held under s91 PA2008 into specific issues (ISHs), under s92 PA2008 into the compulsory acquisition of land and rights (CAHs) and under s93 PA2008 providing for open floor hearings (OFHs).
- 1.4.17. The following ISHs were held with the EL references listed for the Agendas of the hearings:
- [\[EV2-001\]](#) Issue Specific Hearing 1 (ISH1) on Policy, Need and Alternatives 5 June 2024,
 - [\[EV2-002\]](#) ISH2 on the dDCO 6 June 2024,
 - [\[EV8-001\]](#) ISH3 on Traffic and Transport, Flooding, Funding, Mitigation and Other environmental matters 13 and 14 August 2024,
 - [\[EV10-001\]](#) ISH4 on Traffic and Transport, Funding, the DCO, Noise, Flooding and the Water Environment 15 and 16 October 2024, and
 - [\[EV14-001\]](#) ISH5 on the DCO, Traffic and Transport, Heritage, the Water Environment, Noise and Other environmental matters 20 November 2024.

- 1.4.18. The following CAHs were held:
- CAH1 on 15 August 2024 [[EV9-001](#)] and
 - CAH2 on 20 November 2024 [[EV11-002](#)].

- 1.4.19. The following OFHs were held:
- OFH1 on 4 June 2024 [[EV4-001](#)] and
 - OFH2 on 20 November 2024 [[EV11-001](#)].

1.5. CHANGES TO THE APPLICATION

- 1.5.1. Changes to the key application documents, including the wording of the dDCO, were submitted and updated during the Examination. The changes sought to address points raised by Interested Parties (IP) and the ExA and to update or provide additional information resulting from changes and discussions that had occurred during the Examination.
- 1.5.2. The Applicant's changes to the application documents, together with any additional information submitted, are detailed in the Guide to the Application submitted at D11 [[REP11-022](#)]. This provides a guide to all documents submitted as part of the application and was updated at each deadline when new or revised documents were submitted. It provides a full record of all documentation submitted into the Examination.

CHANGE REQUESTS

- 1.5.3. On the 12 August 2024 the Applicant notified the ExA of its intention to submit a change request [[AS-061](#)]. The ExA responded on 21 August 2024 [[PD-011](#)], setting out advice on the process to follow in line with the Planning Inspectorate Advice Note 16.
- 1.5.4. This initial notification request set out 8 separate changes which the Applicant intended to seek to the Proposed Development. In the event these 8 changes were incorporated into two subsequent formal change request applications which are set out below.
- 1.5.5. The Applicant's Change Application No.1, submitted on 4 September 2024 contained one change to the application, described as Change 8 the details of which are set out in [[AS-062](#) to [AS-073](#)]. The change relates to land rights to cover the following:
- A change is proposed to the Land Plans to align them with the extent of dormice hedgerow mitigation shown on the General Arrangement plan and Environmental Master plan This change is not a design change and relates to an upgrade in the rights sought from temporary possession to new rights which will enable the Applicant to undertake a more efficient maintenance of the hedgerows within 5/4c, 5/4c(i), 5/4d, 5/4d(ii), 5/4d(iii), 5/4d(iv) and 5/4d(v).
- 1.5.6. A further change request was submitted on 1 October 2024, Change Application No.2, which included a further 7 changes which are summarised below:
- Change 1- Link road replacement of swales with filter drain,
 - Change 2 - Link road replacement of box culverts with bridges,
 - Change 3 - Link road River Chelt bridge structural form,
 - Change 4 - Link road vertical alignment,
 - Change 5 - Relocation of NRTS Transmission Station,

- Change 6 - Flood storage area reconfiguration, and
- Change 7 - Infill of existing northbound on-slip loop.

- 1.5.7. The ExA agreed with the Applicant that neither of the proposed changes were so material that either individually or collectively they constituted a materially different project. Nor were the proposed changes considered, individually or cumulatively, to lead to the project being different in nature or substance to that which was originally applied for.
- 1.5.8. The ExA therefore issued two PDs [\[PD-014\]](#) and [\[PD-018\]](#) to accept both changes into the Examination, subject to the subsequent fulfilment of duties under Regulations 7, 8 and 9 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (CA Regulations).
- 1.5.9. The Applicant subsequently provided a Regulation 9a notice [\[REP6-004\]](#) and Regulation 9b certificate [\[REP6-003\]](#) to demonstrate that it fulfilled those duties.

1.6. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

- 1.6.1. During the Examination, the Applicant confirmed that no agreements and obligations were being entered into except for a side agreement with National Highways. This agreement was not submitted into the Examination but was material to the final position of the parties.

Commercial agreements

- 1.6.2. Some Statutory Undertakers have confirmed that, during the Examination, they have reached private agreements with the Applicant regarding protection of their assets and/ or interests. These are referred to, where relevant, in subsequent sections of this Report.

1.7. OTHER CONSENTS

- 1.7.1. In addition to the consents required under the PA2008, the Applicant would require other consents to construct, operate and maintain the Proposed Development. These are identified in the Consents and Agreements Position Statement [\[REP3-016\]](#).

1.8. STRUCTURE OF THIS REPORT

- 1.8.1. The structure of the remainder of this Report is as follows:
- [Chapter 2](#) identifies how the application is to be determined and summaries the key legislation and policy context that applies to the decision.
 - [Chapter 3](#) sets out the findings and conclusions in relation to the individual planning issues that arose from the application and during the Examination.
 - [Chapter 4](#) summarises considerations arising from Habitats Regulations Assessment (HRA).
 - [Chapter 5](#) sets out the balance of planning considerations arising from Chapters 2, 3 and 4 in the light of important and relevant factual, legal and policy considerations.
 - [Chapter 6](#) sets out the ExA's examination of land rights and related matters.
 - [Chapter 7](#) considers the implications of the matters arising from the preceding chapters for the Development Consent Order (DCO).
 - [Chapter 8](#) summarises all relevant considerations and sets out the ExA's recommendation to the SoS.

1.8.2. This Report is supported by the following appendices:

- [Appendix A](#) – Reference Tables.
- [Appendix B](#) – List of Abbreviations.
- [Appendix C](#) – Habitats Regulations Assessment.
- [Appendix D](#) – The Recommended DCO

2. HOW THE APPLICATION IS DETERMINED

2.1. INTRODUCTION

- 2.1.1. This chapter identifies the key legislation, policy and Local Impact Report (LIR) that the Examining Authority's (ExA) recommendations have taken into account.

2.2. LEGISLATION AND POLICY

- 2.2.1. This section identifies the key legislation and policy that the ExA considers to be important and relevant to its findings and recommendations to the SoS. More detail is provided in Section A3 of **Appendix A** to this Report.

PLANNING ACT 2008

- 2.2.2. The Planning Act 2008 (PA2008) provides a different basis for decision-making for Nationally Significant Infrastructure Project (NSIP) applications where a relevant National Policy Statement (NPS) (s104) has effect from that where no NPS has effect (s105). This application being submitted in January 2024 needs to be considered against, the NPS for National Networks (NPSNN) (2015) which was designated at the time.
- 2.2.3. Following submission of the application but prior to the start of examination the NPSNN 2024 was designated in May 2024. The content of this NPS the ExA regards as important and relevant as it shows the latest Government policy for the consideration of applications on the strategic road network.
- 2.2.4. A NPS has effect once it has been designated as such by Parliament. It continues then to have effect until it is withdrawn. The transitional provisions made clear that the NPSNN 2015 continued to have effect until the NPSNN 2024 was designated.
- 2.2.5. We consider the content of the NPSNN 2024 designated post submission is a matter that is capable of forming an important and relevant matter (PA2008 s104(2)(d)) to be considered by the Secretary of State for Transport (SoST) in their decision.
- 2.2.6. Section 104(2) of the PA2008 sets out the matters to which the SoS must have regard when making its decision. These include:
- any relevant NPS,
 - any duly submitted Local Impact Report (LIR),
 - any matters prescribed in relation to the development, and
 - any other matters the SoS thinks are both important and relevant to the decision.
- 2.2.7. Section 104(3) of the PA2008 requires the SoS to decide the application in accordance with any relevant NPS that has effect in relation to the application, subject to the exceptions in s104(4) to (8) as follows:
- where deciding the application in accordance with any relevant NPS would lead to the UK being in breach of any of its international obligations,
 - where deciding the application in accordance with any relevant NP would lead to the SoS being in breach of any duty imposed on her or him by or under any enactment,
 - where deciding the application in accordance with any relevant NPS would be unlawful by virtue of any enactment,

- where the adverse impact of the Proposed Development would outweigh its benefits, and /or
- where any condition prescribed for deciding an application otherwise than in accordance with a NPS is met.

2.2.8. This Report sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying s104 of the PA2008.

OTHER LEGISLATION

2.2.9. A full list of relevant primary and secondary legislation, including but not limited to duties arising under the Equality Act 2010, Human Rights Act 1998 and the Climate Change Act 2008 (as amended), can be found in Section A3 of Appendix A of this Report. All applicable legislation has been considered by the ExA as required and the findings and recommendations in this Report are framed so as to identify and enable the SoS to discharge all applicable statutory considerations or duties.

2.3. NATIONAL POLICY STATEMENTS

2.3.1. Having regard to the purposes of s104(2)(a) of the PA2008, the ExA considers that the National Policy Statement for National Networks 2014 (NPSNN) is relevant to the application:

2.3.2. The NPSNN forms the primary policy context for this Examination. This Report sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying the approach set out in s104 of the PA2008. The purpose and broad content of the NPSNN is summarised here.

NPSNN Summary

2.3.3. The NPSNN sets out the summary of need with the Government's vision and strategic objectives for the national networks. Requiring the system to provide:

- *"Networks with the capacity and connectivity and resilience to support national and local economic activity and facilitate growth and create jobs.*
- *Networks which support and improve journey quality, reliability and safety.*
- *Networks which support the delivery of environmental goals and the move to a low carbon economy.*
- *Networks which join up our communities and link effectively to each other."*

2.3.4. The NPSNN makes clear that *"well connected and high-performing networks with sufficient capacity are vital to meet the country's long-term needs and support a prosperous economy."*

2.3.5. At paragraph 2.2 the NPSNN states *"There is a critical need to improve the national networks to address road congestion ... to provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a transport network that is capable of stimulating and supporting economic growth."*

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

NATIONAL POLICY STATEMENTS NATIONAL NETWORKS 2024

- 2.3.7. NPSNN 2024 reaffirms the need for the investment in and improvement of the strategic road network. It has moved on from its' predecessor in so far as it has a greater recognition of the role to play in conserving and enhancing the natural environment with sustainability at the forefront of how the Strategic Road Network (SRN) present opportunities for the environment.
- 2.3.8. There is also a greater emphasis upon the need to decarbonise with further development of the Government approach to meeting Net Zero emissions targets as set out in the Climate Change Act 2008 (as amended).
- 2.3.9. NPSNN 2024 also identifies the importance of the SRN to supporting economic growth. Paragraph 3.8 states *"Transport infrastructure is a catalyst and key driver of growth, and it is important that the planning and development of infrastructure fully considers the role it can play in delivering sustainable growth, how it can support local and regional development plans and the growth aspirations of local authority areas."*

2.4. OTHER NATIONAL POLICY

- 2.4.1. Other important and relevant Government policy has been taken into account by the ExA, including the following:
- The National Planning Policy Framework (December 2023);
 - The National Infrastructure Strategy (2020);
- 2.4.2. Section A4 of [Appendix A](#) provides further detail on the relevance of each of the above policies to the Proposed Development. These policies are also discussed in more detail in [Chapter 3](#).
- 2.4.3. The ExA are aware that an amended version of the NPPF was published on 11 December 2024, this revision was published after the close of the Examination and therefore has not formed part of our consideration of this proposal.

2.5. LOCAL IMPACT REPORT

- 2.5.1. A single Local Impact Report (LIR) was submitted on behalf of Gloucestershire County Council, Cheltenham Borough Council and Tewkesbury Borough Council (the Joint Councils) at D1 [\[REP1-069\]](#). The LIR sets out the key issues arising from the scheme, but it does not provide detail of the Joint Councils' positions on the merits of the application. These details are addressed separately in the Statement of Common Ground (SoCG) the original draft of which was submitted by the Applicant [\[APP-146\]](#).
- 2.5.2. The content of the LIR has been considered through the Examination and in this Report. It must be considered during the decision by the SoS pursuant to PA2008 s104(2)(b).
- 2.5.3. The issues raised are considered in further detail in relation to relevant planning issues in Chapter 3 of this Report.
- 2.5.4. The LIR identifies local policies (including those from the Development Plan) which are capable of being important and relevant considerations under s104(2)(d) of the PA2008. Section A6 of [Appendix A](#) lists the individual local policies that are relevant to the Proposed Development.

- 2.5.5. For an application proceeding under s104 PA2008, subsection (3) requires that the SoS must decide the application in accordance with any relevant NPS, except to the extent that one or more of the exceptions set out in subsections (4) to (8) applies. Where a relevant local policy and designated NPS policy are in conflict, the effect of this duty (subject to any applicable exception) is to establish a presumption in favour of NPS policy in the SoS' decision-making.

2.6. ENVIRONMENTAL IMPACT ASSESSMENT

- 2.6.1. The Applicant provided a notification under Regulation 8(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations) of its intention to provide an Environmental Statement (ES). Therefore, in accordance with Regulation 6(2)(a) of the EIA Regulations, the ExA determined that the Proposed Development was EIA development.
- 2.6.2. On 20 July 2021, the Applicant submitted a Scoping Report to the SoS under Regulation 10 of the EIA Regulations in order to request an opinion about the scope of the ES to be prepared. On 23 August 2021 the Planning Inspectorate provided a Scoping Opinion [[APP-040](#)].
- 2.6.3. Overall, the ExA considers that the ES, as supplemented with additional information during the Examination, is sufficient to enable the SoS to take a decision in compliance with the EIA Regulations.
- 2.6.4. The ExA considered that changes to the documentation, comprising the ES during the Examination, together with the change requests (see section 1.5 of this Report) did not individually or cumulatively undermine the scope and assessment of the ES.
- 2.6.5. Chapter 3 of this report will summarise the environmental effects under each topic section.

2.7. HABITATS REGULATIONS ASSESSMENT

- 2.7.1. The SoS is the Competent Authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). The Habitats Regulations were amended by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.
- 2.7.2. 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 a Habitats Regulations Assessment (HRA).
- 2.7.3. As is the convention and to inform SoS decisions prepared under the PA2008, a separate record of considerations relevant to HRA has been set out in Appendix C of this Report, a summary of which can be found in Chapter 4.

2.8. TRANSBOUNDARY EFFECTS

- 2.8.1. A transboundary screening under Regulation 32 of the EIA Regulations was undertaken on behalf of the SoS on 26 November 2021 [[OD-003](#)] following the Applicant's request for an EIA Scoping Opinion. No significant effects were identified on the environment in a European Economic Area (EEA) member state.

- 2.8.2. A second screening was published on 24 April 2024 [\[OD-003a\]](#). Again, no EEA states were identified as being likely to have significant effects on their environment in terms of extent, magnitude, probability, duration, frequency or reversibility.
- 2.8.3. The Regulation 32 duty is an ongoing duty, and on that basis, the ExA has considered whether any facts have emerged to change these screening conclusions, up to the point of closure of the Examination. The ExA is satisfied, on the basis of the information provided by the Applicant and Natural England's agreement that the correct sites had been considered in the HRA [\[REP3-026\]](#), that the Proposed Development would not have an LSE on European sites in any EEA States.

2.9. WATER FRAMEWORK DIRECTIVE ASSESSMENT

- 2.9.1. Directive 2000/60/EC (the Water Framework Directive or WFD) sets objectives to prevent and reduce pollution, improve aquatic ecosystems and mitigate the effects of floods. It provides for the production of River Basin Management Plans for the sustainable management of rivers. The Directive is transposed into law in England and Wales by The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.
- 2.9.2. The Applicant submitted a WFD Compliance Assessment [\[APP-108\]](#) supported by a Surface water impact assessment [\[APP-109\]](#) and a groundwater impact assessment [\[APP-110\]](#). Together they considered the impact of the construction and operation of the Proposed Development. They conclude that none of the scheme components affecting the River Chelt and Leigh Brook water bodies would cause deterioration at a water body scale. Furthermore, the cumulative effects of the Scheme components are also considered to be negligible at the water body scale and are not considered to have any adverse cumulative effects on downstream (or adjacent) WFD water bodies.
- 2.9.3. The WFD was updated by [\[REP1-026\]](#) with a tracked version [\[REP1-027\]](#) reaffirming the conclusion that "assuming the best practice guidelines for design and construction, and identified specific mitigation measures are adhered to, this assessment concludes that the Scheme is likely to be WFD-compliant."

3. THE PLANNING ISSUES

3.1. INTRODUCTION

3.1.1. This chapter sets out the Examining Authority's (ExA) findings and conclusions on the planning issues. The chapter is structured firstly to review the initial assessment of principal issues (IAP1) and explains how the issues identified there have been managed. It then examines matters of principle, including need and alternatives. It then addresses individual planning issues, set out in individual sections. The order in which these section headings are presented should not be taken to imply any order of merit.

3.1.2. In each section, the ExA identifies the policy background, followed by a summary of the application as made, then reports on the main issues for each topic. Findings and conclusions are drawn for each topic. These in turn identify whether the effects carry little weight, moderate weight, great weight, or very great weight for or against the making of the Development Consent Order (DCO).

INITIAL ASSESSMENT OF PRINCIPAL ISSUES (IAP1)

3.1.3. As required by section (s) 88 of the Planning Act 2008 (PA2008) and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR), the ExA made an IAP1 arising from the application in advance of the Preliminary Meeting (PM). This formed an initial assessment of the issues based on the application documents and submitted Relevant Representations (RR). The list of issues relates to all phases of the Proposed Development. The IAP1 was raised at the PM and the only additional item which was identified by parties was the question of funding for the Proposed Development.

3.1.4. Having sought views of the Interested Parties (IPs) the Applicant confirmed they also considered it appropriate to examine the funding for the scheme.

3.1.5. The IAP1 can be found in Annex C of the Rule 6 letter [\[PD-008\]](#). The issues identified in the IAP1 are as follows:

- Air Quality;
- Climate Change Adaption and Carbon Emissions;
- Biodiversity, Ecology and the Natural Environment;
- Draft Development Consent Order (dDCO);
- Flood Risk, Water Quality and Resources;
- Good Design;
- Green Belt;
- Heritage;
- Land Rights, Compulsory Acquisition and Temporary Possession;
- Landscape and Visual;
- Noise and Vibration;
- Policy including the assessment of need and alternatives;
- Geology and soils; and
- Traffic and Transport.

3.1.6. The application is also subject to a change that seeks additional land and rights, promoted by the Applicant under the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regs). As required by Regulation 11 of the CA Regs, the ExA also reviewed the IAP1 having regard to matters raised in relevant representations pertaining to the additional land and rights sought. The ExA

concluded that no change to the IAPI was required as a consequence of this change request.

THE PLANNING ISSUES IN THIS REPORT

- 3.1.7. The ExA considers that the issues raised by IPs were broadly in line with the IAPI with the additional issue of funding and were subject to written and oral questioning during the Examination. These are the issues that the ExA has used to structure most of the following sections in this Report.
- 3.1.8. While the IAPI was not challenged at the PM or later during the examination, a number of topics quickly became apparent were not in dispute as such we have covered these in the 'Other Planning Matters' section of Chapter 3.
- 3.1.9. To facilitate efficient consideration of the relationships between certain issues and to avoid repetition in analysis, the ExA has varied the order of its consideration of issues arising from the IAPI. It should also be noted that the IAPI is a high-level framework. The ExA has nevertheless had regard to all important relevant matters arising from submissions from IPs and has reported on these, if required, within each chapter below.
- 3.1.10. The planning issues considered in this Report are as follows:
- Section 3.2: The need case,
 - Section 3.3: Alternatives,
 - Section 3.4: Traffic and Transport,
 - Section 3.5: Green Belt,
 - Section 3.6: Air Quality,
 - Section 3.7: Biodiversity and Equality,
 - Section 3.8: Flood Risk, Drainage and Water Environment,
 - Section 3.9: Historic Environment,
 - Section 3.10: Landscape and Visual,
 - Section 3.11 Noise and Vibration,
 - Section 3.12 Other Planning Matters, and
 - Section 3.13 Assessment of Cumulative Effects.

3.2. THE NEED CASE

- 3.2.1. In addition to the issues arising from the IAPI, the ExA has also given consideration on an overarching basis to the principle of the development in terms of:
- Need;
 - Conformity with designated NPS policy;
 - Applicability of other NPS policy;
 - Applicability of other policy; and
 - Applicability of legislation

INTRODUCTION

- 3.2.2. This Section considers the need for the Proposed Development.

POLICY BACKGROUND

The National Planning Policy Statement for National Networks 2015 (NPSNN)

- 3.2.3. The need for the development of the national networks and relevant wider Government policy is detailed in Chapters 2 and 3 of the NPSNN.

- 3.2.4. Paragraph 2.1 of the NPSNN identifies that *“Well-connected and high-performing networks with sufficient capacity are vital to meet the country’s long-term needs and support a prosperous economy.”*
- 3.2.5. Paragraph 2.2 of the NPSNN recognises that there is a critical need to improve the national networks to address road congestion in order *“...to provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a transport network that is capable of stimulating and supporting economic growth”*.
- 3.2.6. Paragraph 2.4 of the NPSNN identifies an overarching need for development of the strategic road network which addresses existing congestion points and addresses the forecast rise in road traffic of 30% from 2014 to 2030.
- 3.2.7. At paragraph 2.10 the NPSNN concludes that *“at a strategic level there is a compelling need for development of the national networks – both as individual networks and as an integrated system.”*
- 3.2.8. Paragraph 2.21 and Table 1 go on to find that, whilst there are a range of options for meeting the identified need, including maintenance and management, demand management and modal shift, relying solely on these alternatives is not viable or desirable.
- 3.2.9. Paragraph 2.22 advises that improvements to the road network will help to support further economic development, employment and housing. As such, the Government concludes that, at a strategic level, there is a compelling need for development of the national road network.
- 3.2.10. Paragraph 2.23 finds that works may take the form of *“junction improvements, new slip roads and upgraded technology to address congestion and improve performance and resilience at junctions, which are a major source of congestion.”*
- 3.2.11. In addition, paragraph 2.24. makes clear *“Individual schemes will be brought forward to tackle specific issues, including those of safety, rather than to meet unconstrained traffic growth (i.e. ‘predict and provide’).”*
- 3.2.12. Paragraph 4.2 of the NPSNN states that: *“Subject to the detailed policies and protections in this NPS, and the legal constraints set out in the Planning Act 2008, there is a presumption in favour of granting development consent for national network Nationally Significant Infrastructure Projects (NSIPs) that fall within the need for infrastructure established in this NPS.”*
- 3.2.13. Paragraph 4.3 states that: *“In considering any proposed development, and in particular, when weighing its adverse impacts against its benefits, the Examining Authority 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.”*
- 3.2.14. Paragraph 4.27 requires all projects to be subject to an options appraisal. However, it states that: *“For national road and rail schemes, proportionate option consideration of alternatives will have been undertaken as part of the investment*

decision making process. It is not necessary for the Examining Authority and the decision maker to reconsider this process, but they should be satisfied that this assessment has been undertaken.”

NPSNN 2024

- 3.2.15. The NPSNN 2024 was designated on 24 May 2024 and has effect for any applications for development consent accepted for examination after 24 May. This proposal was accepted for examination on 16 January 2024 prior to this and therefore the 2015 NPSNN remains the primary basis for decision making.
- 3.2.16. Nevertheless, it is recognised that the NPSNN 2024 is potentially capable of being important and relevant to considerations in the decision-making process.
- 3.2.17. Section 3 of the NPSNN 2024 reiterates the need case made in the earlier NPSNN, it continues to recognise the importance of the Strategic Road Network (SRN) in amongst other things supporting economic growth, maintaining network performance, and maintaining and enhancing the safety of the national networks. The conclusion remains that at a strategic level (paragraph 3.22) there is a compelling need for development of the SRN.
- 3.2.18. There is also a clear recognition of the role the SRN has in supporting economic growth and how such transport infrastructure can support development plans and growth aspirations for local authorities. Paragraph 3.8 recognises *“This will include exploring options to unlock sites for housing and employment growth.”*

The National Planning Policy Framework December 2023

- 3.2.19. The NPPF sets out the Government’s planning policies for England and how these should be applied strategically in the development plan system and in the management of development. Paragraph 5 of the NPPF makes clear that it does not contain specific policies for NSIPs. These are determined in accordance with the decision-making framework in the PA2008 and relevant NPSs for major infrastructure, as well as any other matters that are relevant to the that project (which may include the NPPF).

Local Plan Policies

- 3.2.20. The Cheltenham Plan, Tewkesbury Local Plan, Gloucestershire Local Transport Plan, and Joint Core Strategy (JCS) between them set out the local policy pertinent to the issues affected by the Proposed Development.
- Joint Core Strategy (adopted 2017).
 - Gloucestershire’s Local Transport Plan (LTP) 2020-2041 (adopted 2020).
 - The Cheltenham Plan 2011-2031 (adopted 2020).
 - The Tewkesbury Borough Plan 2011-2031 (adopted 2022).
 - Golden Valley SPD (adopted 2020).
- 3.2.21. The Cheltenham, Tewkesbury and Gloucestershire local and transport plans provide support for the potential the junction and highway improvements would have for unlocking safeguarded residential and employment land. Paragraph 4.1.12 of the JCS notes that there is agreement that junction improvements on the M5 at Junction 10 would support the economy of the JCS area and that of wider Gloucestershire.
- 3.2.22. Both the Cheltenham and Tewkesbury Borough Plan acknowledge that a key part of economic development in the area is centred around the M5 growth zone and there is support for investment to improve the highway infrastructure.

THE APPLICATION

- 3.2.23. The Applicant's Planning Statement [[REP11-007](#)] sets out in Section 3 its case for the need for the proposed development. It states that the development is necessary to enable planning growth and in particular two Strategic Allocations and one area of safeguarded land for development as included in the Gloucester, Cheltenham, and Tewkesbury JCS (adopted in December 2017).
- 3.2.24. Within the Transport Assessment [[REP4-021](#)] at paragraph 1.8 the Applicant states *"the Scheme has been developed from the limitations of the existing M5 Junction 10, and the identification in the JCS of land for development in the vicinity of the existing junction."*
- 3.2.25. The existing Junction 10 of the M5 has no connectivity to the south which affects traffic flows within and across Cheltenham as well as affecting Junction 11 to the south, the Applicant states that this significantly contributes to traffic flows across Cheltenham which can cause significant congestion at peak times.
- 3.2.26. The upgrading of the junction to an all-movements junction is key to resolving the current problems, but also in supporting the growth in economic development and housing identified in the JCS. The Applicant also identifies that this is a central part of the Gloucestershire Local Transport Plan (LTP) and has also been proposed by the Local Enterprise Partnership Strategic Economic Plan.
- 3.2.27. To respond to each of these the Applicant has defined five objectives for the scheme:
- Support economic growth and facilitate growth in jobs and housing by providing improved transport network connections in west and north-west Cheltenham.
 - Enhance the transport network in the west and north-west of Cheltenham area with the resilience to meet current and future needs.
 - Improve the connectivity between the SRN and the local transport network in west and north-west Cheltenham.
 - Deliver a package of measures which is in keeping with the local environment, establishes biodiversity net gain and meets climate change requirements.
 - Provide safe access to services for the local community, including for users of sustainable transport modes within and to west and north-west Cheltenham.
- 3.2.28. The JCS includes two strategic allocations A4 (Northwest Cheltenham) and A7 (West Cheltenham) with the capacity for 5,385 homes, 10ha of office space, 13ha of employment land and 45ha of B Class led employment land.
- 3.2.29. The A7 allocation has also been considered and addressed within the Golden Valley Development Supplementary Planning Document (SPD) adopted in July 2020 [[APP-135](#)]. The work in preparing this undertook a master planning process which identified a capacity for residential development of 2,370 dwellings, 1,270 higher than the figure within the JCS. The Applicant considers this supplements rather than replaces the JCS.
- 3.2.30. A further area of restraint the 'Safeguarded Land' was set aside to provide the potential for future growth directly to the east of M5 J10 for the longer-term development needs of the area.
- 3.2.31. The Applicant identifies that the Scheme is needed to support planned housing and economic growth as the current highway network would not be able to

accommodate such growth. The scheme as a whole is needed (all three scheme elements) to achieve this; these being:

- An all-movements junction at M5 Junction 10 (Scheme element 1).
- A new West Cheltenham Link Road (the link road) east of junction 10 from the A4019 to the B4634 (Scheme element 2).
- Widening of the A4019 to the east of junction 10, including a bus lane on the A4019 eastbound carriageway from the West Cheltenham Fire Station to the Gallagher Junction (Scheme element 3).

3.2.32. The Applicant then sets out how the Proposed Development accords with the NPSNN and in summary concludes the scheme is both compliant with the NPSNN but also meets the strategic objectives of the need case by providing:

- *Networks with the capacity and connectivity to support national and local economic activity and facilitate growth and create jobs.*
- *Networks which support and improve journey quality, reliability, and safety.*
- *Networks which support the delivery of environmental goals and the move to a low carbon economy.*
- *Networks which join up our communities and link effectively to each other.*

3.2.33. The Applicant also considers the scheme is in accordance with the NPPF, concluding that the delivery of the Scheme would provide improved capacity, safety and amenity to the SRN which would contribute towards the more efficient and sustainable functioning of the infrastructure of Gloucestershire County, and the wider M5 corridor between Birmingham and Bristol.

3.2.34. The scheme is also identified and supported by local policy which have recognised the importance of the scheme in the delivery of the broader economic and housing objectives set out in local policy documents. These are important and relevant to the SoS decision and include the following:

- Joint Core Strategy (adopted 2017).
- Gloucestershire's Local Transport Plan (LTP) 2020-2041 (adopted 2020).
- The Cheltenham Plan 2011-2031 (adopted 2020).
- The Tewkesbury Borough Plan 2011-2031 (adopted 2022).
- Golden Valley SPD (adopted 2020).

3.2.35. The scheme will increase the connectivity and consequently support economic growth and complies with the national and local policy.

3.2.36. The Proposed Development is also compliant with the Department for Transport (DfT) transport strategies with the Government commitment to invest in the SRN to meet future growth and maintain economic activity.

3.2.37. The Road Investment Strategy (RIS) and RIS2 recognises the need to create a network which supports the economy and recognises that it is *“essential that the management of the road network is linked up with all those working to support growth and deliver the housing the nation needs.”*

3.2.38. Part 3 of the RIS2 identifies the M5 J10 Scheme that the Government has committed with funding under the Housing Infrastructure Fund (HIF).

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.2.39. Within the Initial Assessment of Principal Issues (IAP1) included in our Rule 6 letter [\[PD-008\]](#) we identified that the need case and the conformity of the scheme to the NPSNN were principal issues. This was pursued during ISH1 [\[EV2-001\]](#) and through ExQ1(Sections 1 and 13) [\[PD-010\]](#).
- 3.2.40. The Applicant provided a detailed response to the concerns identified regarding the question of need for the Proposed Development in a Technical Note [\[REP4-042\]](#) and responded to the concerns raised by IPs through RRs in [\[REP1-043\]](#) and [\[REP1-048\]](#).

- 3.2.41. The key issues raised during the Examination can be summarised under the following headings:

- Support in principle;
- Policy position relative to strategic need and local need,
- Support in principle but objection to the assessment approach, and
- Objection in principle.

Support in Principle

- 3.2.42. Several representations were received setting out support in principle for the Proposed Development including the following Relevant Representations.
- 3.2.43. In the JCs LIR [\[REP1-069\]](#) the Councils whilst raising some concerns of detail all confirmed their support for the principle of the Proposed Development and in doing so stated that “*the need for the Scheme has long been recognised by the Joint Councils.*” The JCs consider the need for the scheme is well documented, and the options considered robust.
- 3.2.44. St. Modwen and Midlands Land Portfolio Ltd (SM&MLPL) [\[RR-034\]](#) recognise and support the importance of this project for the region’s growth subject to clarification on a number of detailed matters.
- 3.2.45. Hallam Land Management [\[RR-015\]](#), consider that the proposed improvements are a key infrastructure requirement, enabling economic growth around Cheltenham, Gloucester and Tewkesbury, and consequently they support the scheme due to the positive impacts that would result in terms of connectivity, sustainable transport and reduced traffic impact on the local highway network.
- 3.2.46. Cheltenham Borough Council Property and Asset Management [\[RR-008\]](#) support the improvements as they will enhance access to Cheltenham and surrounding area from the motorway network, support economic growth and improve connections for non-motorised users over the M5 motorway.
- 3.2.47. Cheltenham Borough Council [\[RR-007\]](#) support the scheme in principle. They consider the Proposed Development to be a fundamental part of the economic growth strategy. It unlocks the land at Golden Valley and the full potential of the West Cheltenham allocation (and other strategic sites).
- 3.2.48. The ExA having considered each of these representations and the position of the Applicant. The ExA sees no reason to disagree with the position stated by each party that the principle of the scheme is appropriate and aligns with both national and local policy.

Policy position relative to strategic need and local need

- 3.2.49. The Proposed Development incorporates three elements, two of which would in due course form part of the local road network. The Applicant, sought to justify the need for the widening of the A4019 and the creation of the link road, as the Applicant considered them to be integral to achieving the key objective of the scheme to unlock development of the allocations within the JCS and the identified safeguarded sites. [\[REP3-043\]](#) (response to ExQ 1.2.2)].
- 3.2.50. In assessing the alternative scenarios as part of the preparation of the application the Applicant considers that the evidence shows the interdependence of the M5 J10 all movements junction with the improvements to the local road network.
- 3.2.51. The Applicant considers this to be a similar approach to that taken in Essex for the A12 Chelmsford to A120 Widening Development Consent Order 2024 granted consent on 12 January 2024.
- 3.2.52. The Applicant goes on to explain in response to ExQ 1.2.4 how the Associated Development (AD) complies with the four principles set out in the DCLG Guidance (2013) on associated development applications for major infrastructure projects. These being:
- The AD has a direct relationship to the principle development;
 - The AD should not be an aim in itself but should be subordinate to the principal development;
 - Development should not be treated as associated development if it is only necessary as a source of additional revenue for the applicant, to cross-subsidise the cost of the principal development; and
 - AD should be proportionate to the nature and scale of the principal development.
- 3.2.53. Having examined the Applicant's approach and justification for including the AD within the DCO application, the ExA agree that the AD aligns with the four principles set out within the MHCLG Guidance (2013), as such should be assessed against the NPSNN in the first instance. The ExA can find no argument why this should not be the case, and no IP sought to suggest that any part of the proposed development should not be included as part of the scheme.
- 3.2.54. The ExA concur with this approach.

Support in Principle but objection to the approach

- 3.2.55. Bloor Homes [\[RR-005\]](#) and Bloor with Persimmon Homes [\[RR-006\]](#) while supporting the principle of the proposed development did not agree with either the assessment of need, or the conclusions reached in how, in particular the need for the improvement to the A4019 was justified. The case made includes the following concerns:
- assessment undertaken by the Applicant in justifying the need case includes the safeguarded land which has no basis in policy terms;
 - the JCS does not require the M5 Junction 10 and the A4019 to be improved to facilitate the development of the A4 allocation,
 - the JCS only refers to the provision of a link road in relation to the need for road improvements in relation to the A7 allocation, and

- the support for road improvements from the allocated sites must only be based upon the NPPF, and CIL legislative requirements, not the assessment the Applicant has undertaken.

- 3.2.56. In setting out the objections, the IPs made clear that their position started from a need to ensure that the planning applications that were either currently before the local planning authorities or may come to be submitted in due course should be appropriately assessed by the LPA under the TCPA.
- 3.2.57. That in determining the need case it was important to distinguish between the individual planning applications and any strategic need that might arise from the broader case being presented by the Applicant for the DCO.
- 3.2.58. Bloor and Persimmon reiterated their stance in their WR [\[REP1-050\]](#) Maintaining that the Applicant's starting point is that the Scheme is the starting point for development identified in the JCS as a key infrastructure requirement. This Bloor argue is incorrect as far as Elms Park is concerned as is evident as from the stages of the JCS. The Applicant's case is that no development can occur without the Scheme.
- 3.2.59. Bloor and Persimmon have evidenced the contrary in the documents submitted with the Elms Park Application, which provides mitigation and sustainable transport improvement on the local network. The additional highway modelling undertaken by their highway consultants and submitted to National Highways demonstrates alternative mitigation could be delivered on the Strategic Road Network for their application.
- 3.2.60. Bloor and Persimmon maintained throughout the Examination that the need case presented by the Applicant, did not properly reflect local policy, in two respects:
- That the JCS did not identify a need for road improvements directly linked to the northwest Cheltenham allocation, and
 - To rely on the safeguarded land as part of the justification for the need case was contrary to policy as this parcel of land has no formal designation.
- 3.2.61. Bloor and Persimmon go on to say in their post hearing submission [\[REP4-045\]](#) that they do not invite the ExA to reach any conclusion on need in respect of Northwest Cheltenham (A4 allocation) as they consider this a matter for the LPA.

Objection to the Proposed Development

- 3.2.62. Christopher Rose in writing in [\[RR-010\]](#) does not consider the scheme is needed for the foreseeable future and is totally unnecessary.
- 3.2.63. In responding to this IP the Applicant in [\[REP1-043\]](#) states that the Proposed Development is needed to provide the necessary infrastructure to support the planned economic and housing growth around Cheltenham and to ensure the M5 continues to function as a reliable link within the region.
- 3.2.64. No further response was received during the examination from the IP.

ExA's Conclusions

Considerations of National Policy position

- 3.2.65. Throughout the Examination, the JCs were supportive of the principle of the development, and this position was set out in the LIR [\[REP1-069\]](#) and reaffirmed in

the final SoCG [\[REP10-072\]](#). The JCs consider the need case is significant and well documented.

- 3.2.66. The IPs, including Bloor, Persimmon, St Modwen also wrote letters of support to the principle of the Proposed Development [\[REP3-062\]](#).
- 3.2.67. Arguments were not presented that the scheme was not compliant with, or in conflict with the need case presented in the NPSNN and the ExA find this compelling.
- 3.2.68. We are also mindful of the case presented by the Applicant in response to our ExQs and the issues raised at ISH1 [\[EV2-001\]](#) with regard to the justification for the Associated Development.
- 3.2.69. The ExA are content that the Proposed Development would meet the defined scheme objectives set out earlier under paragraph 3.1.27, and in doing so would accord with the strategic need case set out in the NPSNN and would also be consistent with the NPSNN 2024.

Considerations of the Local Policy position

- 3.2.70. We recognise that the Applicant sought to justify much of their case in respect of local policy, however while we recognise this can be regarded as important and relevant, we are less persuaded by the arguments presented by the Applicant.
- 3.2.71. The part of the case presented by the Applicant that at the outset sought to rely upon the JCS as a justification for the Proposed Development the ExA do not find convincing. The timeline for the adoption of the JCS (2017) and the subsequent LTP (2020) makes clear that at the time of the adoption of the JCS the improvements to the M5 J10 were not part of a specific policy.
- 3.2.72. As the Applicant acknowledges in the Accordance Table (page 126) of [\[REP11-007\]](#)
- “Whilst the Scheme seeks to unlock the Strategic Allocations established by the JCS it should be noted that the housing and employment growth does not represent a need for the Scheme in itself. However, it has been established in the JCS Transport Strategy Evidence Base (See Section 6 of REP3-049), the Traffic Forecasting Report (TFR) submitted as part of the HIF Outline Business Case (see Section 6 of Appendix C of REP1-046) and confirmed by the Joint Council’s GC3M Assessment (see Section 5 of the GC3M Assessment (REP3-065)), in order to meet the identified housing and employment need a major scheme intervention is required to address the associated impacts on both the strategic and local road networks.”.*
- 3.2.73. A number of the documents the Applicant references in their explanation postdate the JCS adoption:
- JCS Transport Strategy Evidence Base (2017),
 - Traffic Forecasting Report 2019 (Appendix C) of [\[REP1-046\]](#), and
 - the Joint Council’s GC3M Assessment (2024) [\[REP3-065\]](#).

and reflect the ongoing work that has been undertaken since the adoption of the JCS in seeking to support the Proposed Development and in preparation of the business case for the HIF bid and this application. Under these circumstances, we are of the view that the Applicant has overstated the local policy case.

- 3.2.74. The JCS policies were written making clear that for each of the allocations, applications when submitted would need to provide appropriate mitigation in line with the tests in the NPPF and if planning obligations were required these would need to be secured in a way which was compliant with the CIL Regulations.
- 3.2.75. Additionally, the approach the Applicant has taken to include an area of 'safeguarded land' as a mechanism to calculate a need for future infrastructure improvements is not one which can in the ExA's view be justified. The inclusion of this land in advance of due process for the allocation of sites through the next iteration of the Local Plan is in the view of the ExA hard to justify. We agree with the approach of Bloor and Persimmon in this regard, that the calculation of quantum of development from this site relies upon assumptions that have no basis in policy and as a consequence cannot be relied upon to be an appropriate justification of need in of itself.
- 3.2.76. Even in accepting that the Applicant, developed their approach through the Examination seeking to explain the Safeguarded Land could be a reasonable proxy representing the likely future needs for development beyond the current plan period. Again, the ExA are not persuaded this is a reasonable approach. It is our view that in advance of significant progress on the Local Plans, the extent of development they might identify in due course, and the location of that development, and the consequential infrastructure needs are unknown.
- 3.2.77. Relying on this as part of the need case, the ExA do not consider presents a robust argument in favour, for the inclusion of the safeguarded land, or its potential use as a proxy.
- 3.2.78. The LTP on the other hand at paragraph 4.2.31, states that the Central Severn Vale Strategic Vision will require improvements to M5 Junction 10 and 11 to maintain the safe operation of the highway and that these improvements will also support the delivery of the North West Cheltenham, (Policy A4 of the JCS) and West Cheltenham (Policy A7 of the JCS) strategic allocations, addressing traffic congestion issues on the A40 and A4019 corridors and facilitating both the housing and employment need that the Proposed Development seeks to unlock.
- 3.2.79. We also recognise that the final SoCG [\[REP10-072\]](#) with the JCs Item 22.5 confirmed that following review of the 'Traffic Modelling Sensitivity Tests' that the modelling submitted to the DCO by the Applicant supports the need for the Proposed Development.
- 3.2.80. While we acknowledge that there are some shortcomings in how the Applicant has sought to present its case relative to local policy, the overall need case in our view remains robust.
- 3.2.81. We are strongly of the view there needs to be a clear distinction between the cases being presented by IPs in favour of how their planning applications need to be considered, and our role in examining the DCO case.
- 3.2.82. Irrespective of the ExA's findings in respect of some of the shortcomings in the Applicant's assessment there remain a strong case that the Proposed Development is needed to achieve the broad objectives the Applicant identified, and that in delivering the scheme the local policy objectives would be supported.

OVERALL CONCLUSIONS

- 3.2.83. Legislative and policy tests for assessing individual planning applications are set out within the Town and Country Planning Act, the NPPF and Local Policy. It is therefore appropriate that these remain to be determined by the Local Planning Authorities in due course and are not for the ExA or the SoS in deciding a DCO for a strategic highway scheme.
- 3.2.84. Despite the shortcomings we set out above, the NPSNN is clear that the need to improve the Strategic Road Network (SRN) is established in National Policy. The Proposed Development being a NSIP must be assessed against the NPS as per s104 of the Planning Act, and it is this which the ExA consider to be satisfied.
- 3.2.85. The ExA also attribute weight to the in principle support received from both the JCs [[AS-081](#), [REP1-068](#), [RR-039](#)], National Highways (NH) [[RR-026](#), [AS-077](#), [REP1-060](#)] and the main development industry representatives who are currently progressing with individual planning applications for the allocations currently in place as part of the JCS [[REP3-062](#), [REP5-031](#), [REP9A-005](#)].
- 3.2.86. On the basis of the submitted evidence, the ExA is satisfied that there is at a strategic level a compelling need for development of the M5 J10 – both as part of the SRN and facilitating accessibility to it through improvements to the LRN in this locality.
- 3.2.87. Consequently, we are satisfied that the need for the Proposed Development has been demonstrated in accordance with the provisions of the NPSNN. In light of this finding, and having regard to paragraph 2.10 of the NPSNN, the ExA ascribes very great weight to the contribution that the Proposed Development would make toward satisfying the need for national network infrastructure.
- 3.2.88. In drawing this conclusion, the ExA note the direction of travel of the NPSNN 2024 towards supporting economic growth for the development of the national networks to encouraging new infrastructure development that would facilitate and support new economic activity and in particular housing.
- 3.2.89. The NPSNN makes clear in paragraph 2.1 that the national road network plays a significant role in supporting economic growth, and the country's needs rely upon well connected and high performing networks. The ExA are firmly of the view that in line with paragraph 4.3 of the NPSNN the benefits of job creation, facilitation for future housing would clearly outweigh the adverse impacts that may arise from the development.
- 3.2.90. The ExA are also content that while there is not a direct requirement within the JCS for the improvements that this scheme would provide, it does not create a conflict with local policy which would weigh against the granting of the DCO, and it will create additional capacity which will support the aspirations of local policy which would allow for future much needed housing and employment development, which must in the present context be regarded positively and be attributed moderate positive weight in the overall planning balance.
- 3.2.91. Finally, the ExA consider that the Proposed Development falls within the need for infrastructure development that is established in the NPSNN and has a presumption in favour of the development being granted consent, this would also be consistent with the NPSNN 2024 need case which follows through in similar terms.

3.3. ALTERNATIVES

INTRODUCTION

- 3.3.1. This section covers the alternatives considered by the Applicant in defining and designing the Proposed Development.
- 3.3.2. There is a general requirement under Regulation 14(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ('the EIA Regulations') to consider alternatives as part of the Environmental Impact Assessment (EIA) process.
- 3.3.3. Schedule 4 of the EIA Regulations requires an ES to provide "A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects".

POLICY BACKGROUND

- 3.3.4. NPSNN, paragraphs 4.26 and 4.27 deal with the assessment of alternatives. Paragraph 4.26 states the following:

"Applicants should comply with all legal requirements and any policy requirements set out in this NPS on the assessment of alternatives. In particular:

- *The EIA Directive requires projects with significant environmental effects to include an outline of the main alternatives studied by the applicant and an indication of the main reasons for the applicant's choice, taking into account the environmental effects.*
- *There may also be other specific legal requirements for the consideration of alternatives, for example, under the Habitats and Water Framework Directives.*
- *There may also be policy requirements in this NPS, for example the flood risk sequential test..."*

- 3.3.5. Paragraph 4.27 of the NPSNN states:

"All projects should be subject to an options appraisal Where projects have been subject to full options appraisal in achieving their status within Road Investment Strategies..., option testing need not be considered by the Examining Authority or the decision maker. For national road ... schemes, proportionate option consideration of alternatives will have been undertaken as part of the investment decision making process. It is not necessary for the Examining Authority and the decision maker to reconsider this process, but they should be satisfied that this assessment has been undertaken."

NPSNN 2024

- 3.3.6. The NPSNN 2024 replicates similar considerations for assessing alternatives as its predecessor.

THE APPLICATION

- 3.3.7. The Applicant's consideration of alternatives is set out in the Planning Statement in [\[REP1-028\]](#) and ES Chapter 3 [\[APP-062\]](#) sets out the Applicant's Consideration of Alternatives. It sets out the main reasons for the options selected for the Proposed Development and the reasons for not opting to select the other alternatives considered.
- 3.3.8. The scenarios considered were:
- Do minimum - delivering only the committed network improvements to 2031. The Applicant concludes this scenario failed to support the required JCS housing growth.
 - DS1 (Do Something 1) - a low-cost transport solution, primarily schemes fully within existing highway boundaries. The Applicant also considered this scenario also failed to support the required housing delivery.
 - DS2 to DS6a - introduced increasing levels of investment alongside demand management interventions. DS6 introduced the 'all movements' Junction 10 which was shown to meet the needs of the JCS site allocations in West Cheltenham and North-west Cheltenham (i.e. those which are the subject of the Homes England Bid) but not to meet the wider demands.
 - DS7 - incorporating Junction 10 improvements, plus additional works. This scenario was developed further to support housing delivery requirements, as set out in the identification of options.
- 3.3.9. Nine options were identified from the studies and sifting exercises undertaken of which five options were taken forward into the preliminary environmental assessment. Three of these were then taken forward to non- statutory public consultation which are summarised in Table 4.1 of the Planning Statement [\[REP1-028\]](#).
- 3.3.10. In respect of the improvements to M5 Junction 10 three options were included:
- Option 2: Upgrade the existing junction with grade separated roundabout centred on the existing junction;
 - Option 2A: Upgrade existing junction with grade separated roundabout offset to the north; and
 - Option 2B: Upgrade existing junction with grade-separated roundabout offset to the south.
- 3.3.11. In addition to the changes at the motorway junction the dualling of the A4019 and the provision of a link road to the west of Cheltenham were included. Full details of the options considering the link road corridor are set out in [\[REP3-052\]](#).
- 3.3.12. The Housing Infrastructure Fund (HIF) Outline Business Case (OBC) Traffic Forecasting Report (TFR) for the Scheme, appended as Appendix C to [\[REP1-046\]](#), describes the methodologies and tools adopted to generate traffic forecasts and determine the scheme-dependent sites used to support the scheme development.
- 3.3.13. The development of the options progressed following the adoption of the JCS and the allocations of sites to the west and northwest of Cheltenham. Option DS7 was deemed capable of supporting the delivery of around 5200 homes up to 2031.
- 3.3.14. Upon securing funding through the HIF in 2020 the scenario had evolved to seek to accommodate 8,914 homes up to 2041.
- 3.3.15. Further refinement of options was considered for each of the three main elements of the Proposed Development. Table 3-3 of [\[APP-062\]](#) duplicated below sets out the

final three options selected and presented to the Preliminary Environmental Information Report (PEIR).

Table 2 Summary of the scheme elements as presented and assessed in the PEIR - Source [APP-062]

Scheme Element	Description of the element selected
M5 Junction 10	Option 2 - upgrading the existing junction with a gyratory roundabout centred around the existing A4019 bridge. The existing bridge will be demolished.
A4019	Road alignment option 1 - an urban all-purpose dual carriageway with an active travel corridor on the northern side of the A4019. Widening of the existing A4019 will be to the south of the current alignment through Uckington. Improvements on the A4019 will extend eastwards to the Gallagher junction (A4019/B4634 junction).
The link road	A new road along route corridor 3. Within route corridor 3, option 3 was selected as the preferred route alignment (Figure 3-5). The road will comprise a two-way single carriageway road, with an active travel corridor along the western side. New signalised junctions will connect the link road into the A4019 (to the north), and the B4634 (to the south).

3.3.16. A range of options were considered. The Applicant concluded that only one scenario (DS7) would enable the delivery of the development proposed in the Joint Core Strategy (JCS).

3.3.17. [\[APP-077\]](#) The Environmental Statement Figures provides plans detailing the different options considered for the alterations to the M5 as well as different configurations for and locations of a junction. While [\[APP-062\]](#) provides illustrations of the alternative options for the link road.

Design changes following statutory consultation

3.3.18. Section 3.9 of [\[APP-062\]](#) explains the design changes following the statutory consultation in December 2021-February 2022. These included changes to M5 junction 10:

- to provide additional bat mitigation,
- embankment design for the A4019 to safeguard an area of priority habitat, and
- the design of the flood storage area to ensure a more efficient use of land.

In respect of the link road:

- use of a concrete box design for flood mitigation under the River Chelt, and
- identification of riverbank protection along the banks of the river through the new bridge.

In respect of the A4019:

- removal of the connection between Cooks Lane and Moat Lane to protect the setting of the scheduled monument and Moat House;
- alignment of Moat Lane with A4019 and The Green to create a more straightened crossroads,
- adjustments to junctions along the A4019 with Homecroft Drive, Gallagher Retail Park and the planned connection to the Northwest Cheltenham development site junction,
- improved provision for buses,
- changes to lighting design, and
- mitigation for dormice.

ISSUES CONSIDERED DURING THE EXAMINATION

3.3.19. The ExA sought evidence in respect of:

- an explanation of the ES consideration of alternatives and how that aligns with the requirements of the NPSNN, and
- the appropriate tests in respect of EIA Regulations and the Water Frameworks Directive (WFD).

Consideration of alternatives and how that aligns with the requirements of the NPSNN

3.3.20. We sought clarity on the alternatives that had been assessed through ExQ1 and at ISH1. In responding to ExQ1.3.2 [\[REP3-043\]](#) the Applicant set out its case as to why they considered the Proposed Development was appropriate and justified having considered a range of alternatives in advance of choosing the preferred route options as well as why the Associated Development (AD) was needed in the form proposed.

3.3.21. The selection of the route corridor for the link road, the dualling of the A4019 and the modification of the M5 J10 had all considered a range of effects, and the scheme design had responded to a combination of local factors, engineering considerations, cost and environmental factors which meant the proposal should minimise the adverse effects while achieving the scheme objectives.

3.3.22. The Applicant concluded that the overall scheme design had been developed through sustainability principles which would lead to meeting the necessary infrastructure alongside improved connectivity and a net gain in biodiversity.

Acquisition by Agreement

3.3.23. The Applicant had sought to engage with all Affected Persons (APs) with a view to acquiring land by agreement. The final position statement on the progress of negotiations is set out in Appendix B of the SoR [\[REP10-029\]](#).

CONCLUSIONS

3.3.24. In terms of the strategic question of alternatives, it is the ExA's view that the Applicant has demonstrated that a systematic and logical appraisal of strategic alternatives, routing and siting options was carried out in designing and refining the Proposed Development. We therefore find that adequate regard has been had to alternatives and that the legislative (EIA Regulation 14) and policy (NPSNN) requirements outlined earlier in this Section have been met.

- 3.3.25. The Applicant has also demonstrated how, through this process, it has had due regard to the flood risk assessment. There is also no conflict with NPSNN 2024 in respect of the assessment of alternatives.
- 3.3.26. Consequently, we are satisfied that at a strategic level, the Applicant has adequately considered alternatives to the Proposed Development to which this application relates.
- 3.3.27. Where matters arose during the Examination in respect of site-specific alternatives for example in connection with mitigation options or alternative access points, these are dealt with under subsequent Sections of this Chapter. We consider the specific matters relating to alternatives in a flood risk context under our consideration of the Sequential Test and the Exception Test in Section 3.8 of this Chapter. Our consideration of alternatives in a Habitats Regulations Assessment context is set out in Appendix C and summarised in Chapter 4 of this Report. Having regard to all relevant matters, the ExA's final findings in respect of the Applicant's consideration of alternatives are set out in Chapter 5 of this Report.
- 3.3.28. Where the question of alternatives arose in the specific context of Compulsory Acquisition and land rights, those matters are considered in Chapter 6 of this Report.

3.4. TRAFFIC AND TRANSPORT

INTRODUCTION

- 3.4.1. This section considers the effects of the Proposed Development in relation to traffic and transport.

POLICY BACKGROUND

National Policy

NPSNN 2015

- 3.4.2. The National Policy Statement National Networks 2015 (NPSNN) confirms in paragraph 2.1 that the national road network plays a significant role in supporting economic growth. It also acknowledges that well connected and high performing networks with sufficient capacity are vital to address the country's long terms needs and support the economy.
- 3.4.3. It explains in paragraph 2.23 that enhancements to the existing national road network will include junction improvements, new slip roads, and upgraded technology to address congestion and improve performance and resilience at junctions, which are a major source of congestion. To that end the Government's policy is for individual schemes to be brought forward "*... to tackle specific issues, including those of safety, rather than to meet unconstrained traffic growth*".
- 3.4.4. With respect to sustainable transport the Government expects Applicants to "*use reasonable endeavours to address the needs of cyclists and pedestrians in the design of new schemes*" (paragraph 3.17 of the NPSNN).
- 3.4.5. Paragraph 2.24 in the NPSNN highlights that policy favours integrated solutions to specific issues, including safety, rather than simply meeting unconstrained traffic growth in a generic sense.

- 3.4.6. Accessibility requirements are set out at paragraphs 3.19 to 3.22. In particular, paragraph 3.20 confirms the Government expectation that access should be improved wherever possible on and around national networks.
- 3.4.7. Paragraph 4.3 requires consideration to be given, when weighing its adverse impacts against its benefits to, include benefits including job creation and housing etc.
- 3.4.8. Paragraphs 4.60 – 4.66 in the NPSNN set out guidance and policy with respect to safety considerations. Paragraph 4.60 recognises that new highway development provides an opportunity to make significant safety improvements and can generate significant accident reduction benefits when they are well designed. Ultimately, as confirmed at Paragraph 4.66 consent should not be granted unless all reasonable steps have been taken to ensure that the development proposals minimise the risk or road safety casualties and contribute to an overall improvement in the safety of the Strategic Road Network.
- 3.4.9. Paragraph 5.206 requires that for road developments which are subject to an EIA and could have significant environmental impacts, the Applicant should describe those impacts and mitigating commitments. In other cases, a proportional assessments of transport impacts should be undertaken.
- 3.4.10. NPSNN paragraph 5.211 to 212 make clear that the SoS must consider impacts on the local transport network and local transport policies, including those in local plans.

NPSNN 2024

- 3.4.11. The NPSNN 2024 does not raise any significant different policy concerning traffic and transport matters.

THE APPLICATION

- 3.4.12. The Applicant's assessment of traffic and access issues is primarily contained in the Transport Assessment (TA) report [[APP-138](#)] and its appendices, which accompanied the application for the Proposed Development. The final version was submitted at Deadline 4 [[REP4-021](#)].
- 3.4.13. The TA provides an assessment of the following:
- Baseline Conditions
 - Future network performance.
 - Road safety.
 - Sustainable transport.
 - Construction impacts.

Transport Modelling

- 3.4.14. The TA presented four future traffic modelling scenarios as follows:
- Scenario P – Future year scenario, without the Proposed Development, and without the dependent development (the Joint Core Strategy developments which the Applicant has identified as dependent on provision of the Proposed Development) (includes nearby independent improvements at Coombe Hill and Arle Court roundabout)

- Scenario S - Future year scenario, with the Proposed Development, and without the dependent development shows the outcomes of the Proposed Development in isolation
- Scenario R - Future year scenario, with the Proposed Development, and with the dependent development
- Scenario Q - Future year scenario, without the Proposed Development, and with the dependent development

3.4.15. The first three listed scenarios (P, S and R) were assessed in the TA and subject to Strategic countywide (SATURN) and detailed microsimulation (PARAMICS) modelling. SATURN modelling of Scenario Q only was undertaken in accordance with the requirements of the Department for Transport (DfT) Transport Analysis Guidance (TAG) and reported in the Traffic Forecasting Report [\[REP5-012, Appendix L\]](#). This is because the Applicant considers that this is a theoretical scenario (Q) because they consider that the dependant developments cannot come forward without the Proposed Development based upon the Joint Core Strategy (JCS) policy position.

3.4.16. The SATURN model has a base year of 2015. Future assessment years of 2027 (planned opening year) and 2042 (design year) were developed. The modelling included the AM and PM peak hours (0800 – 0900 and 1700 – 1800 respectively).

3.4.17. The geographic extent of the PARAMICS model is shown below [\[REP4-021\]](#), in Figure 4.



Figure 4 Extent of the PARAMICS Model - Source [\[REP4-021\]](#).

3.4.18. **Baseline Conditions**

- 3.4.19. The TA provides baseline transport conditions including the site location, local highway network, traffic conditions, existing sustainable transport provision proximate to the Proposed Development (including pedestrian and cycle facilities) and public transport.
- 3.4.20. It also provides an assessment of personal injury accidents between 2017 and 2021 which have occurred in a study area comprising within the Order limits of the Proposed Development as shown in the extract below (source TA, [\[REP4-021\]](#), Figure 5).
- 3.4.21. The TA confirms that there was a total of 30 personal injury accidents over this period, including one which was fatal (on the M5 northbound, north of Junction 10). The TA confirms that National Highways has reviewed the accident collision data associated with the fatal collision and concluded that the causation factor was unrelated to any highway design or capacity issue.
- 3.4.22. With respect to the accidents within the study area overall the TA summarises that there are no specific existing accident problems within the study area. However, during the AM peak hour (eastbound) congestion along the A4019 has been observed to result in instances whereby queuing on the M5 southbound off-slip extends to the M5 mainline.

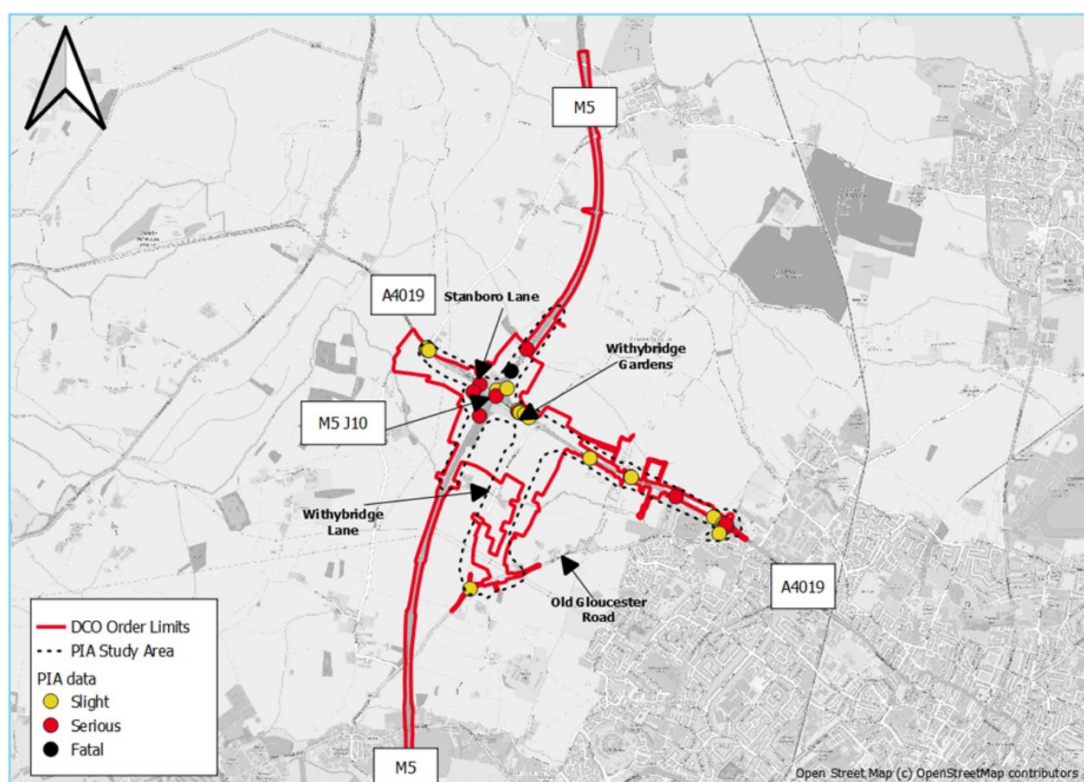


Figure 5 Location of Personal Injury Accidents (2017-2021)

Construction Phase

- 3.4.23. Section 10 of the TA provides an assessment of the highway network during construction resulting from traffic management measures. These include those associated with the closure of the existing M5 J10 slip roads and along sections of the A4019.
- 3.4.24. The Applicant provided a programme of traffic management including slip road closures etc in the TA [[REP4-021](#), Table 21].
- 3.4.25. The construction of the Proposed Development is estimated to take 30 months and during this time the northbound on-slip would be closed for 15 months and the southbound off-slip closed for 9 months. The Applicant confirms that both slip roads would be closed concurrently for a period of 9 months.
- 3.4.26. With respect to construction vehicle activity, the Applicant sets out an estimate which suggests that the maximum daily number of vehicle movements (transporting materials and equipment etc) would be 200 (e.g. 100 arriving and 100 departing). These would be directed to (but not limited to) the use of preferred construction traffic routes and maximum activity would be outside of the AM and PM peak periods.
- 3.4.27. The TA also provides an estimate of construction worker associated vehicle movements and on the basis that the workforce will be a maximum of 400 persons, concludes that this could result in up to 185 vehicle movements during the AM and PM peak periods respectively. However, the Applicant considers that these are likely to occur outside of the traditional AM and PM peak hours. This is because the workforce would be on site in advance of commencement of daily operational and arrive prior to the morning peak hour and the workers would be expected to depart the site in advance of the evening peak hour.
- 3.4.28. The construction traffic was not included in the traffic modelling undertaken to assess the Proposed Development. However, the Applicant considers this appropriate given the levels of traffic predicted compared to background traffic levels which would not materially impact operational performance of the road network.
- 3.4.29. The TA confirms at Section 10.5.3 that there will be signposted diversion routes directing traffic during slip road closures and that regular users of the slip roads will find alternative routes during the construction stage. Therefore, the modelling assumed that traffic would have free choice over routes.
- 3.4.30. Transport modelling for five construction phase scenarios was included in the TA at Table 22. In addition to a 'Do Minimum' scenario, they comprised four scenarios which covered the implementation of key traffic management activities during different stages of the construction programme, including slip road closures, M5 mainline speed reductions on the approaches to Junction 10, lane closures and speed reductions on the A4019 and the closure of the Witherbridge Lane / A4019 junction etc.
- 3.4.31. Volume over capacity (V/C) results for the construction stage assessment scenarios are presented in the TA. The Applicant concludes that during construction there are no significant increases in the V/C ratios and links which are predicted to experience

congestion were already predicted to be operating close to their capacity prior to construction commencing.

3.4.32. The TA also provides an assessment of journey time increases during construction associated with users of the M5, Junction 10 slip roads and the M5 mainline. It concludes that journey increases associated with the slip road closures (when both are closed) would be highest in the AM peak and could increase a 'typical' journey (represented as a northbound and southbound journey between a zone north of Worcester to a zone in central Cheltenham) which would take 42 minutes to 46 minutes (e.g. a 4 minute increase / 10%). However, most journey increases associated with the slip road closures are assessed as generally being less than a 1 minute increase in all modelled assessment periods.

3.4.33. The predicted increases in journey times along the M5 mainline between J9 and J11 for all modelled scenarios and time periods during the construction phase are all estimated to be less than 30 seconds.

Construction Phase Mitigation

3.4.34. The Applicant confirms that a Traffic Management Plan (TMP) will set out mitigations of construction phase impacts address impacts to protect all road users, including:

- appropriate traffic management measures to ensure that there will be safe access for pedestrians and cyclists,
- management of construction traffic and other traffic onto appropriate routes, and
- advanced notice of roadworks using signage etc.

3.4.35. A Register of Environmental Actions and Commitments (REAC) [APP-137] formed part of the application. That set out mitigation measures or commitments to maintain appropriate access for all road users during construction. It was updated through the Examination with the final version being [REP10-066].

Operational Phase

3.4.36. The TA presented 2027 (planned year of opening) and 2042 (design year) operational stage assessments. Chapter 7 provided a comparison of Scenario P (Future years scenario, without the Proposed Development, and without the dependent development) and Scenario S (Future year scenario, with the Proposed Development, and without the dependent development) as the Applicant considers that this shows the impact of the Proposed Development in isolation. However, as the Proposed Development will enable the delivery of wider developments (including three major developments located along the A4019 and Old Gloucester Road, e.g. the 'Dependant Development' (DD)) that is presented in the TA as a cumulative assessment scenario (Chapter 8).

Proposed Development Assessment (without DD)

The assessment of the Proposed Development (without the DD) showed that average journey times across the network would reduce by up to 21% (2042 AM peak hour, 5.83 to 4.58 minutes) when comparing Scenario S to Scenario P [REP4-021, Table 7]. Mean maximum queue lengths on the M5, Junction 10 southbound off-slip are also forecast to reduce because of the Proposed Development as shown in [REP4-021, Figure 16].

- 3.4.37. With respect to this forecast queuing the TA confirms at Section 7.6.4 that “In terms of queuing, the Scheme reduces the length of the queue on the southbound off slip, which is predicted to exceed storage and extend into the mainline in the AM peak without the Scheme. This is considered as a safety benefit of the Scheme as queues will no longer extend back towards live lanes of motorway.”

Cumulative Assessment (with DD)

- 3.4.38. The cumulative assessment of the Proposed Development (with the DD) showed that average journey times across the network would reduce by up to 13% (2042 AM peak hour, 5.83 to 5.05 minutes) when comparing Scenario P to Scenario R which includes the DD and the Proposed Development [[REP4-021](#), Table 15]. Again, mean maximum queue lengths on the M5, Junction 10 southbound off-slip are also forecast to reduce as a result of the Proposed Development as shown in [[REP4-021](#), Figure 25].
- 3.4.39. Again, there is predicted to be a significant reduction in queue lengths and hence the potential for queues of traffic to extend to the mainline. This represents a safety benefit of the Proposed Development.
- 3.4.40. The TA [[REP4-021](#)] provides assessment of road safety at Section 9.2 that shows that when comparing Scenario P (Without the Proposed Development) and Scenario S (With the Proposed Development but without DD) shows that there are accidents and casualties saved by the Scheme. It is estimated that there will be about 195 accidents and about 250 casualties saved under this scenario over the assessment period across the Gloucestershire highway network. However, it should be noted that accident savings are not predicted in the assessment scenario which include the DD (Scenarios R) when comparing to the baseline Scenario P as accident savings are offset by increased traffic flows.
- 3.4.41. Chapter 11 set out an assessment of the impact of the Proposed Development on the Strategic Road Network so that National Highways can understand the impacts including at M5 Junction 11 and the A40 Elmsbridge roundabout.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.4.42. Main issues concerned during examination:
- Adequacy of transport modelling to support decision making
 - Usage of sign posted diversion routes during construction
 - Road safety
 - DMRB Departures from Standards
 - Access Provisions into existing and future land uses
 - Active Travel Provision

Adequacy of transport modelling to support decision making.

- 3.4.43. NH originally raised concerns in their Relevant Representation [[IRR-026](#)] that they had not received full traffic modelling from the Applicant to enable them to review and hence support the Proposed Development.
- 3.4.44. The NH concerns regarding the adequacy of the traffic modelling was set out in more detail in the Principal Areas of Disagreement Summary Statement (PADSS) submitted at Deadline 1 [[REP1-059](#)].

- 3.4.45. The appropriateness of the transport modelling was explored by the ExA including in First Written Questions [\[PD-010\]](#) which sought to understand the different positions between the Applicant and National Highways.
- 3.4.46. In their response to EXQ1 [\[REP3-075\]](#), NH expressed concerns that the SATURN model was not sufficient and did not meet appropriate Transport Analysis Guidance (TAG) compliance requirements. This was principally associated with journey time validation issues on the A4019 which led to concerns that delays in the model may not be representative.
- 3.4.47. ISH3 (13 and 14 July 2024) included examination by the ExA with NH and the Applicant about their respective position with regard to the modelling that has been undertaken in support of the Proposed Development and compliance of the base model with TAG requirements, including journey time validation (delay) on the A4019. The ExA also explored the position at that time with respect to the Transport Assessment and modelling and its ability to support the examination of the DCO proposals (including need, geometric design etc).
- 3.4.48. As a consequence of the questioning that took place at ISH3, the Applicant agreed to undertake sensitivity testing of the modelling to address the NH concerns relating to TAG compliance as a result of the A4019 journey time issue. The sensitivity testing technical note was submitted to the examination at Deadline 5 (1 October 2024) as [\[REP5-029\]](#).
- 3.4.49. It set out that there was a discrepancy between the base year (2015) traffic model and the observed journey times on routes 208 and 209 due to a divergence of the modelled and observed journey times mainly along a c. 800m section of the A4019 between the Kingsditch and Gallagher junctions. The journey time routes are shown in the Traffic Modelling Sensitivity Tests Technical Note [\[REP5-029\]](#), Figure 2-1].
- 3.4.50. The technical note sought to establish if the discrepancy between the base year (2015) traffic model and the observed journey times was addressed would result in any material impacts with respect to the base year model submitted by the Applicant in support of the DCO application. This was assessed through a sensitivity test through alternations to changes to modelling traffic signal timings and the use of a Speed Flow Curve model intervention.
- 3.4.51. The technical note concluded that the sensitivity testing found that the journey time interventions to address TAG compliance did not materially impact the base year model submitted for the DCO process.
- 3.4.52. The updated respective positions with the adequacy and consequential effects of the Transport modelling following the sensitivity testing was explored by the ExA at ISH4 (15 and 16 October). This included questions with respect to if the sensitivity test traffic flows were materially different from those within the DCO application traffic modelling through exploring the Applicant's position presented in the sensitivity tests. The Applicant's written submissions [\[REP7-008\]](#) explains the ExA consideration at ISH4 regarding the sensitivity testing.
- 3.4.53. National Highways confirmed in [\[AS-077\]](#) (4 October 2024) that the technical note (and associated work) have been reviewed and that they were now content with the traffic modelling work that supports the application.
- 3.4.54. The Joint Councils in their ISH4 written submission [\[REP7-017\]](#) confirmed that they have not identified any issues on the transport modelling that has been submitted to

Examination. Furthermore, the Final JC SoCG at Deadline 10 [\[REP10-072\]](#), Item 22.5 confirmed that following review of the 'Traffic Modelling Sensitivity Tests' that the modelling submitted to the DCO by the Applicant supports the need for the Proposed Development.

- 3.4.55. Relevant Representations including [\[RR-010\]](#), [\[RR-030\]](#), [\[RR-036\]](#) raised concerns with respect to the overall need for the scheme or matters such as that the Proposed Development is traffic focused. However, no specific evidence was provided to support their position. The Applicant provided a response to the issues raised in [\[REP1-043\]](#) to clarify the need for the Proposed Development.

Usage of sign posted diversion routes during construction

- 3.4.56. The Applicant set out three official diversion routes in the TMP [\[REP10-094\]](#), Appendix A] which are approved by NH as there is a requirement to close parts of the M5 that affect Junction 10 during construction (the TMP was first submitted to the examination as an additional submission). The three routes provide an alternative relating to closures of the northbound on slip, southbound off-slip and motorway mainline during the construction programme respectively.
- 3.4.57. The Applicant confirmed that the diverted vehicles will be directed, but not limited, to use the preferred construction traffic routes as set out in the TMP [\[REP10-094\]](#), Section B.11.2.14]. The usage of these preferred construction traffic routes by construction traffic will vary depending on the different phases of construction and the associated temporary traffic management arrangements, such as temporary closures of the M5 junction 10 slip roads.
- 3.4.58. The Transport Assessment [\[REP4-021\]](#) confirmed that diverted traffic would have free choice over routes and that this represents a 'worst case scenario'. Therefore, with respect to the slip road closure diversions (due to the length of the closures) the ExA sought to understand through 1WQ and ISH3 how that could be a worst-case scenario as it would in effect result to less traffic using the sign posted / promoted diversion routes. The designated diversion routes associated with the closure of the existing southbound off-slip and northbound on-slip roads is shown in [\[AS-080\]](#), Figure 2-1].
- 3.4.59. The Applicant undertook an assessment based upon all diverted traffic using the sign posted routes when the slip roads were closed. This was provided by the Applicant as an additional submission [\[AS-080\]](#). The ExA examined the Applicant's assessment whereby all diverted traffic would use the sign posted routes when the slip roads were closed at ISH4. The Applicant's written submission of their ISH4 oral case [\[REP7-008\]](#) summarises their position.
- 3.4.60. In response to the ExA questions regarding highway safety, road user severance and congestion, the Applicant's Action Point 4 response [\[REP7-010\]](#) confirms that the changes in traffic caused by the closure of both of the slip roads would result in minor adverse effects on access and severance are at the road connecting Elmstone Hardwick with Uckington over the M5, and at Piffs Elm Road/Boddington Road, due to increases in traffic in these locations. Minor beneficial effects in terms of accessibility and reduced severance along the A4019, as a result of a decrease in traffic flows along this road for the duration of the slip road closures.
- 3.4.61. The Joint Councils in their ISH4 written submission [\[REP7-018\]](#) confirmed that they will continue to review the assessment and raised no concerns at that time. The

Joint Councils agreed that some of the diverted traffic will not actually follow the sign posted diversion routes.

Road Safety

- 3.4.62. The Applicant's Introduction to the Application [\[APP-001\]](#) set out five scheme objectives, of which the fifth was to:
- "Provide safe access to services for the local community and for users of sustainable transport modes within and to west and northwest Cheltenham."*
- 3.4.63. This included through improving road safety, with a reduction in accident rates and providing safer access for all road users.
- 3.4.64. With respect to the design of the DCO proposals, the Applicant submitted a Safety Report [\[REP2-011\]](#) at Deadline 2 which set out safety objectives, governance and safety risk management. It states that the Proposed Development can address the following existing safety issues:
- Congestion and collisions at junctions 9 and 11 and along local routes (which will be bypassed by the creation of new south-facing slip roads at junction 10)
 - Congestion-related collisions involving southbound vehicles exiting the M5 at Junction 10 towards the A4019 (which will be addressed through creation of the new gyratory and southbound off slip)
 - The poor safety record along the A4019 east of the M5 junction. (New pedestrian, cycle and equestrian facilities introduced by the Proposed Development are aimed at reducing KSIs and pedestrian and cycle collisions)
- 3.4.65. It confirms that safety objectives relating to Fatal and Weighted Injuries (FWI) annual average casualty rate in the scheme area (including M5, M5 slip roads and A4019 etc) would be better than the baseline (covering a period 3 years prior to the commencement of Start of Works).
- 3.4.66. A Stage 1 Road Safety Audit [\[AS-045\]](#) was also undertaken and the Applicant prepared a Designer's Response Report [\[REP3-054\]](#) which provided the Applicant's response to the problems raised by the audit. It comprised a designer's response, which provided actions on how the issues would be addressed at the detailed design stage. It also confirmed that the overseeing authority was happy with the position.
- 3.4.67. In ExQ3, the ExA asked NH if there were any outstanding safety concerns in respect of the SRN beyond those relating to finance (Q1.0.7). In their response [\[REP9-017\]](#) NH confirmed that there was one concern relating to possible queuing on slip roads at Junctions 9 and 11 during construction. The Applicant submitted modelling which showed that all M5 J9 and M5 J11 slips, with the exception of the M5 J11 southbound off-slip, have capacity and would not result in queuing on the mainline at peak times as a result of the expected increase in traffic that the closure of M5 J10 would cause.
- 3.4.68. NH were satisfied that suitable traffic management, including temporary traffic lights at M5, Junction 11 could avoid queuing on the mainline of the motorway. NH requested that this would be secured in the TMP [\[REP10-095\]](#).
- 3.4.69. Mr Hadley raised issues with respect to possible road safety issues associated with access provision into Plot 16/9a in [\[RR-028\]](#). Furthermore, Mrs Bruton [\[RR-023\]](#) and

Bloor Homes [\[RR-005\]](#) commented on possible road safety issues associated with access into the safeguarded land (existing and possible future use). These are covered within the access provisions section of this Report. There were two other concerns raised by IPs about road safety (Mr Musson [\[RR-003\]](#) regarding speeding and traffic at the Old Spot public house junction and through Stoke Orchard and Mr Dorling [\[RR-001\]](#) who raised safety concerns on Hayden Lane). However, no specific evidence was provided in support of these concerns.

- 3.4.70. The Applicant provided a response to the matters raised in Relevant Representations in [\[REP1-043\]](#). This included confirmation that the scheme had been designed in accordance with design guidance and standards and had been subject of an independent road safety audit which did not identify any safety issues that could not be resolved at the detailed design stage.

DMRB Departures from Standards

- 3.4.71. The Safety Report [\[REP2-011\]](#) also identified 4 departures from standards (DfS) on the strategic road network (SRN) related to the configuration of the slip road diverges / merges on each of the proposed slip roads and the 10 DfS on the local road network (LRN) (at Table 3-4). The ExA explored the acceptability of the DfS at ISH3 with the Applicant, NH and JC.
- 3.4.72. At Deadline 4, in the written post hearing ISH3 submissions, NH [\[REP4-049\]](#) confirmed that Provisional Agreement to the departures had been provided, but that full Departure from Standards, would be required following resubmitted with updated and validated traffic data and modelling figures.
- 3.4.73. The Applicant submitted a Departures from Standards report at Deadline 4 [\[REP4-044\]](#). It confirmed that all of the proposed DfS on the LRN had been approved. In their subsequent Deadline 5 Applicant Response to Second Written Questions (Q15.0.4) [\[REP5-027\]](#), they confirmed that:
- They had engaged with the Overseeing Organisation for the local roads, Gloucestershire County Council.
 - Their method of assessing Departures from Standards is to receive them in report format and to assess them in an independent Departures Panel.
 - The Departures Panel accepted all of the local road departures contained in the submission, some with comments to be addressed at the detailed design stage.
 - Full Departures from Standards submissions will be submitted to the two overseeing Organisations for formal acceptance as part of the detailed design phase.
 - There is no outstanding requirement for the JC to provide any further agreements to the proposed Departures from Standards
- 3.4.74. The Joint Council provided a Deadline 4 'Design Statement' [\[REP4-048a\]](#) which agreed with the Applicant's position.
- 3.4.75. The Departures from Standards report [\[REP4-044\]](#) did not include any departures associated with the strategic road network as they were addressed separately via NH (and their Departures Approval System (DAS)). However, with respect to 4 SRN departures from standards, the Deadline 10 NH SoCG [\[REP10-074\]](#), Item 5.34 confirmed that a safety report had been submitted and signed off by NH who have confirmed provisional agreement to the departures.
- 3.4.76. Furthermore, the Deadline NH 11 SoCG [\[REP11-010\]](#) confirms that DfS were included in revised NH Protective Provisions (PP25(4)) which protects their

interests. The Deadline 11 DCO final version [REP11-003] includes the corresponding item as 26(1) which requires (a) road safety audits, all recommendations raised by them or any exceptions approved by NH. Furthermore, Clause 26(c) requires detailed designs of the specified works to be submitted and approved by NH.

Access Provisions

- 3.4.77. During the Examination specific parties (Mr Hadley [RR-028], Mrs Bruton [RR-023] and Bloor Homes [RR-005]) raised issues with regards to possible access issues associated with existing and possible future land uses. They were considered throughout the Examination and are described below.

Existing Land Uses

Mr Hadley

- 3.4.78. Mr Hadley owns a parcel of land (Plot 16/9a) within the West Cheltenham Allocation. He had concerns [RR-028] with respect to the altered access into his land parcel. Mr Hadley maintained this position throughout the examination including in his responses to ExQ1 [REP3-080] and [REP7-021] and [REP9A-009]. In particular:
- He had not seen any plans which show satisfactory detail regarding access from the B4634 (including levels and landscaping).
 - His view is that the Proposed Development would sterilise (access) into his field. For reasons including the proposals not including a right turn lane into his site which he considers necessary to accommodate the large size of modern agricultural vehicles and the present agricultural access as proposed representing a highway safety issue associated with vehicles turning right into and out of the site.
 - He had engaged with the Applicant to seek to agree on the provision of a roundabout on the B4634 at the southern end of the proposed link road and to the east of his land. This was on the basis that he believed that would address issues associated with tail backs of traffic, traffic movement and visibility.
- 3.4.79. Mr Hadley set out his position at ISH4 and in the capacity of the local highway authority, the JC responded (see also the post hearing written submission [REP7-018]) confirming:
- The JC did not raise any concerns with respect to the appropriateness of, or any highway safety concerns associated with the proposed agricultural access into Mr Hadley's land via the B4634.
 - The JC agreed with the Applicant's position that the proposed traffic signals at the link road / A4634 junction would provide sufficient gaps in traffic to enable agricultural vehicles to turn into the replacement access.

Mrs Bruton

- 3.4.80. Mrs Bruton owns land forming part of the safeguarded land. Concern was expressed [RR-023] that the closure of the existing two field access points and the proposed replacement by a shared access road which would form a traffic signal controlled junction with the A4019, would have unacceptable impacts on agricultural access through introducing bends and width constraints. Given that the proposed arrangement would be shared by three landowners (and potentially the contractor

building the Proposed Development), it was felt that it could create a bottleneck and a road safety issue during peak farming activities (e.g. harvest). On this basis an alternative access arrangement was requested. However, throughout the Examination, the Applicant maintained the position that the proposed access arrangements were adequate, and no alternative was offered.

- 3.4.81. Mrs Bruton's access concerns were discussed at ISH4 (16 October 2024) and the ExA sought to understand through questions what the levels of peak vehicular activity could be and why that would be unacceptable. A Deadline 7 response [REP7-021] provided an estimate of agricultural vehicle activity on the shared access road and concluded that could result in 192 tractor and trailer movements per hour (including activity generated by adjacent landowners).
- 3.4.82. Concern was also expressed at ISH5 that the vehicle swept path analysis provided by the Applicant assumed the use of smaller tractor and trailers than would be the case and the turns on the shared access road would represent a particular problem. Updated swept path assessments were requested from the Applicant, however the written submission [REP10-115] of oral case of ISH5 maintained concerns with respect to the adequacy of the shared farm access track.
- 3.4.83. In response to EXQ3 [Q.15.0.1 REP9-011] the Applicant set out reasons including the provision of parallel connector road and traffic signal-controlled junction as representing an Improvement compared to the existing situation.

Bloor Homes

- 3.4.84. Bloor Homes have a legal interest in the safeguarded land and expressed similar concerns to Mrs Bruton in [RR-005] at Section 4.12. This was explored at ISH3 whereby the ExA sought to understand why it was considered that the proposed shared access into the safeguarded land was inappropriate and not safe and suitable for existing farm operations. The post hearing submissions [REP4-045] set out concerns regarding vehicle size used in the Applicant's swept path analysis and also regarding levels of vehicular activity on the access road resulting in conflicts.
- 3.4.85. In response to Mrs Bruton and Bloor Homes concerns regarding the shared access arrangements, the ExA posed written questions [PD-021] which challenged the Applicant's submitted swept path analysis. This was on the basis that it appeared to result in conflicts with opposing lanes and kerbs etc. The also ExA sought to establish if the JC considered the provided estimates of tractor and trailer movements per hour as reasonable and if the shared access could adequately provide a safe and suitable design arrangement.
- 3.4.86. The Applicant updated the vehicle swept path analysis and considered the shared access arrangements to represent an improvement to the existing access arrangements in response to EXQ3 [Q.15.0.1 REP9-011].
- 3.4.87. The JC consider the cited number of agricultural access movements to be 'wholly unrealistic' and raised no issues regarding the shared access track design or its ability to accommodate appropriate vehicle movements [REP9-014].

Future Uses

Mr Hadley

- 3.4.88. Mr Hadley explained in ISHs and written submissions including [REP7-021] that in his view a roundabout is required which should also provide direct access into his

land parcel instead of the proposed signal controlled B4634 / link road junction which provides access into the wider West Cheltenham allocation via the land to the east of Plot 16/9a. Alternatively, the link road should terminate at the northern edge of the B4634 to enable (West Cheltenham allocation) landowners to resolve the access arrangements.

3.4.89. Mr Hadley also sought an alternative pre-application agreement with Gloucestershire County Council to secure access off Hayden Lane [\[REP9A-009\]](#).

3.4.90. The JC response [\[REP9-014\]](#) stated that future access into Mr Hadley's land directly from the B4634 was not supported by the Highway Development Management team. However, an access into Mr Hadley's land via its southern boundary, Hayden Lane would be preferred.

Bloor Homes

3.4.91. In their [\[RR-005\]](#), Bloor Homes suggested that the shared access that the Proposed Development would provide into the safeguarded land is a consolidated agricultural access that in design terms would not be suitable for future development of the land. Further, the safeguarded land currently has a long frontage which provides scope for an access to be constructed.

3.4.92. Additionally, post completion, the new shared access junction would terminate on land owned by Gloucester County Council (as shown in the land plans Sheet 12 REP10-003] and that could create an impediment to the delivery of a development access.

3.4.93. Bloor Homes remained concerned about the possible creation of ransom strip due to the termination of the shared access road and also in respect of the ability to provide a sufficiently wide road as per their answers to EXQ2 [\[REP5-033\]](#).

3.4.94. In response to this, Bloor provided two alternative possible access arrangements [\[REP7-014\]](#) (to the east of the shared access) which they considered would facilitate future access into the safeguarded land based upon the existing highway layout and with the Proposed Development in place (subject to adopted highway boundaries etc) respectively.

3.4.95. Bloor Homes also cited issues regarding if the future adopted highway boundary along the northern edge of Tewkesbury Road would be contiguous with the safeguarded land to not create a possible additional ransom strip.

3.4.96. The future highway boundary and possible ransom strip positions are explored by the ExA within the Compulsory Acquisition chapter of this Report.

Active Travel Provision

3.4.97. The Joint Council's SoCG [\[REP4-022\]](#), identified (Item 1.2) that whilst the Proposed Development had good cycle and pedestrian provisions within its extent, they requested a plan which showed sustainable transport connections through the Proposed Development to connect local development sites and ensure that they were adequately accessible.

At Deadline 5 and in response, the Applicant submitted Plan 2 which shows Active Travel Provision within the Proposed Development [\[REP5-030\]](#). It shows that segregated cycle and footway connection (compliant with LTN 1/20) would connect the Safeguarded land, North West Cheltenham and West Cheltenham sites (shown

in Figure 8 as A, B and C respectively). The proposals also include shared use (pedestrian and cycle) connections offering onward connections through the Proposed Development to adjacent areas to the east and west.

- 3.4.98. AT ISH4, the ExA asked the Applicant to explain the design rationale behind the sustainable connections provided as part of the Proposed Development. The ExA also requested that the Applicant confirm how, given the timing of its submission, the plan aligns with the Joint Council's concerns in the SoCG at Item 4.2. That suggested that sustainable mode provision within the Proposed Development was considered once options had already been assessed (e.g. after the road-based options assessment) as included in The Assessment of Alternatives Chapter in the Environmental Statement [[REP10-037](#)].
- 3.4.99. The ExA asked the Applicant to signpost how the associated local plan policies about sustainable transport are met by the DCO proposals as required by NPSNN Paragraph 5.211. That was provided by the Applicant in response to ISH4 Action Point 2, at Appendix A of their Action Point response [[REP7-010](#)]. It concluded that:
- In considering the Proposed Development's proposed active travel provision and its compliance with Local Plan policy it is the Applicant's position that the Proposed Development adheres to all relevant policies.
 - When considered as a combined package of works the active travel provision across the Proposed Development and Strategic Allocations A4 and A7 ensure that pedestrian, cycling and public transport links are improved across the area, helping to form a continuous and accessible network accessing town centres, residential areas, employment areas, and routes to schools, facilitating connections into the strategic and LCWIP desire lines.
 - In complying with local plan policy relating to active travel provision and contributing to a beneficial impact on the local transport networks the Proposed Development also satisfies the paragraph 5.211 of the NPSNN (2014).
- 3.4.100. The Final JC SoCG at Deadline 10 [[REP10-072](#)], agreed that the Proposed Development is in compliance with the requirements of paragraph 5.211 of the NPSNN (2014), (Item 22.6) and fully integrates active travel provision (Item 22.7).

Public Rights of Way

- 3.4.101. It should also be noted that there are Public Rights of Way (PRoWs) which cross and intersect with the Proposed Development as confirmed in the Planning Statement [[REP11-007](#)]. The Applicant's position with respect to these is set out at Appendix A (Scheme accordance with national, regional and local development plan policies) to the planning statement where it is confirmed that the Proposed Development design includes the provision of (footways, crossings and) PRoWs.
- 3.4.102. The Applicant also submitted an Environmental Management Plan (EMP), Public Rights of Way Management Plan [[AS-042](#)] which sets out a methodology which will address measures including the programming of construction works, design and phasing of temporary diversion routes for PRoWs, signage and associated measures.
- 3.4.103. No issues were raised during examination or by stakeholders with respect to PRoWs.

General Concerns raised in RRs

3.4.104. In addition to the RRs set out alongside the main issues presented in previous sections, the ExA note that there were additional representations citing issues including:

- the Proposed Development being car dependent
- various traffic impacts including traffic flow implications at M5, Junction 9
- alternative design options

3.4.105. The Applicant provided a response to all matters in [\[REP1-043\]](#).

ExA's CONCLUSIONS

3.4.106. It is recognised that the LIR [\[REP1-069\]](#) confirms that the JC are in full support of the Proposed Development. It did not raise any issues with the main issues upon which the ExA draws conclusions, with the exception of noting that the content of the Transport Assessment and Walking, Cycling, Horse Riding Assessment (WCHAR) should be summarised separately. This matter has been set out by the ExA under the Active Travel Provision headings.

3.4.107. There are also no outstanding matters in the NH PADSS [\[REP10-114\]](#) or the JC SoCG [\[REP10-072\]](#).

3.4.108. It is noted that further changes were made to the dDCO at D11 once the Applicant and NH had concluded their discussions, and a side agreement had been reached as confirmed by NH in [\[AS-113\]](#). The final dDCO [\[REP11-003\]](#) provided by the Applicant included the full suite of PPs requested by NH, leading to NH withdrawing all objections to the scheme on 4 December 2024 [\[AS-113\]](#).

Adequacy of transport modelling to support decision making

3.4.109. The ExA note that the Applicant has followed a standard modelling approach using a strategic county wide traffic model and micro-simulation for the Proposed Development.

3.4.110. NH raised concerns with respect to the TAG compliance of the SATURN model and therefore how that could acceptably inform the micro-simulation modelling or decision making regarding the impacts of the Proposed Development. These matters were considered by the ExA through the examination and future work was undertaken by the Applicant in the form of sensitivity testing (regarding journey time and TAG compliance) to the satisfaction of NH.

3.4.111. No other parties raised any specific concerns with respect to the adequacy of the transport modelling.

3.4.112. Furthermore, the Final JC SoCG [\[REP10-072\]](#), Item 22.5 confirmed that following review of the 'Traffic Modelling Sensitivity Tests' that the modelling submitted by the Applicant supports the need for the Proposed Development in accordance with the intentions of NPSNN paragraph 4.6.

3.4.113. In conclusion, we find that the transport modelling is appropriate to support decision making and identify the potential impacts of the Proposed Development.

Usage of sign posted diversion routes during construction

3.4.114. Even if that were not the case the Applicant has undertaken an assessment with all traffic using the sign posted route(s). The ExA find that is a proportionate

assessment of transport impacts as required by NPSNN 5.206. The ExA accepts its findings which indicates that there is sufficient capacity on the sign posted diversion routes so as to not have any material matters of road safety, severance or congestion that should stand against the diversion routes. Furthermore, we note that road users could reduce impacts on the sign posted route by choosing alternatives.

- 3.4.115. The ExA are satisfied that the Applicant has identified measures which are secured in the TMP / REAC to effectively mitigate associated construction diversion issues during construction. These are also appropriately secured via provisions in the dDCO.

Road safety

- 3.4.116. The ExA accepts the Applicant's position that suggests that in the absence of additional network traffic associated with the DD the Applicant finds that the Proposed Development would give rise to fewer accidents and casualties over the assessment period across the Gloucestershire highway network. The Applicant's assessment of safety is found to meet the requirement of NPSNN paragraph 4.61.
- 3.4.117. The ExA logically finds that this improves highway safety when compared to the baseline highway network. There is a benefit when comparing the future year scenarios with and without the Proposed Development in the absence of DD additional traffic. Therefore, it represents a highway safety improvement when comparing the positions with and without the Proposed Development in place with equivalent levels of network traffic. In that regard, the Proposed Development is aligned with NPSNN paragraph 4.60.
- 3.4.118. It is also noted that with particular reference to the M5, J10 southbound off-slip road, the TA shows that traffic queues are less likely to extend to the mainline of the motorway representing a highway safety issue with the Proposed Development in place compared to the existing junction layout.
- 3.4.119. The ExA acknowledge the NH concerns regarding diverted construction traffic at J9 and J11 slip roads and note that they have been addressed by additional modelling and TMP measures (slip road signals). The TMP measures are secured in the dDCO via requirement 3(e).
- 3.4.120. The also recognise that the Applicant has also undertaken a Stage 1 Road Safety Audit which is recognised as a mandatory requirement for all trunk road highway improvement schemes at NPSNN paragraph 4.62. We accept the findings of that including the subsequent confirmation from the overseeing authority that all matters could be addressed at the detailed design stage.
- 3.4.121. ExA conclude that overall, the national policy tests (NPSNN Sections 4.60 to 4.66) which deal with road safety are satisfied.

DMRB Departures from Standards

- 3.4.122. It is noted that the Proposed Development requires departures from standards on both the Strategic and local road elements. The ExA recognises that through the consideration of those during examination, that the local road departures have been accepted by the JC. With respect to the strategic road network (slip road) departures it is noted that NH has provided provisional agreement to the departures and there is adequate detail in the Protective Provisions 26(1) to ensure that they are appropriately dealt with during the design process to the satisfaction of NH.

- 3.4.123. Therefore, the ExA is satisfied that the Proposed Development would contribute to an overall improvement in the safety of the SRN and minimise the risk of road casualties in accordance with NPSNN paragraph 4.66.

Access Provisions into existing land uses

- 3.4.124. The ExA have noted the concerns raised by Mr Hadley, Mrs Bruton and Bloor Homes with respect to the adequacy of the replacement agricultural accesses which the Proposed Development would provide into Mr Hadley's land and the safeguarded land respectively.
- 3.4.125. It is also noted that the Applicant has provided swept path assessments and evidence to assist the examination in forming a view on the adequacy of the access proposals. The swept path analysis shows that agricultural vehicles (tractor and trailer) can adequately negotiate the replacement accesses provided by the Proposed Development.
- 3.4.126. With respect to access into the safeguarded land, the shared access road would reduce the number of existing access points onto the A4019 and provide a traffic signal controlled connection point. The Applicant has provided swept path analysis and the ExA consider the arrangement to be adequate and represent an improvement in terms of highway safety through reducing possible conflict points with traffic travelling along the A4019 and providing a traffic signal-controlled junction with the A4019.
- 3.4.127. With respect to Mr Hadley's land, the ExA conclude that the Applicant's swept path analysis shows that the replacement access arrangement is adequate. Furthermore, we agree with the JC and Applicant position that the proposed traffic signals at the link road / A4634 junction would provide sufficient gaps in traffic to enable agricultural vehicles to turn into the replacement access.
- 3.4.128. On the basis of that evidence and the fact that the JC take no issue with the replacement accesses, including on matters such as road safety, the ExA consider the proposals to be adequate.
- 3.4.129. ExA find that there is increased potential for vehicles to have to wait to enable oncoming vehicle to pass on the access road. However, overall, the improvements including those associated with safety due to the provision of a shared access road and single traffic controlled junction onto the A4019 represent an improvement and is aligned with the requirements of NPSNN Paragraph 3.20.

Access Provisions into future uses

- 3.4.130. With respect to future land uses, it is noted that Mr Hadley forms part of the wider West Cheltenham strategic allocation. There is nothing before the ExA which suggests that in highway and transportation considerations, Mr Hadley's land could not be accessed via the B4634 / link road junction that the Proposed Development would provide. There are also opportunities for access into the land via the southern boundary and Hayden Lane. Therefore, the ExA conclude that there is potential for Mr Hadley's land to be accessed for a future use.
- 3.4.131. Turning to the safeguarded land, the ExA note that its status does not mean that it should be considered as an allocated site. The Applicant is therefore reasonable insofar as not pre-empting any planning matters (including approvals) with respect to any future development of that land. Furthermore, Bloor Homes submitted a plan during examination which showed that there would be potential to provide an

access junction into the safeguarded land (to the east of the shared access track arrangement) which suggests that an appropriate access solution into the safeguarded land can be achieved without third party land.

Active Travel Provision

- 3.4.132. The ExA consider that the Applicant has used to reasonable endeavours by including connections through the Proposed Development (including segregated facilities where possible) to address the needs of cyclists and pedestrians in accordance with Paragraph 3.17 of the NPSNN.
- 3.4.133. Also, the ExA conclude that the Applicant has adequately met the requirements of Paragraph 5.211 by giving due consideration to impacts on the local network and local transport policies.
- 3.4.134. The ExA also find that the Proposed Development meets the requirements of NPSNN paragraph 5.180 and has identified measures to mitigate any adverse impacts to Public Rights of Way as set out in the Public Rights of Way Management Plan.

OVERALL CONCLUSION

- 3.4.135. The ExA has had regard to the traffic and transport aspects of the proposal including those relating to the ability of the Proposed Development to contribute to a well-connected network with sufficient capacity as per NPSNN Section 2.1. We have also considered the adequacy of the Applicant's transport modelling, road safety implications of the Proposed Development, accessibility and sustainable transport provision.
- 3.4.136. Section 9.2 of the Transport Assessment provided an assessment of road safety which shows that there are accidents and casualties saved by the Proposed Development (without the dependant development. However, the ExA note that accident savings are not predicted in the assessment scenario which include the dependant development as accident savings are offset by increased traffic flows.
- 3.4.137. The Applicant also submitted a Safety Report which shows that the Proposed Development can address specific existing road safety issues. Therefore, the ExA conclude that the national policy tests (NPSNN Sections 4.60 to 4.66) which deal with road safety are satisfied.
- 3.4.138. Taking all matters into account, the ExA conclude that overall, the traffic and transport considerations of the NPSNN have been met. The traffic and transport issues address the impacts of the Proposed Development and bring additional benefits of improving safety and creating capacity for future growth. On this basis the overall effect of the Proposed Development on traffic and transport carries great weight in favour of the making of the Order.

3.5. GREEN BELT

INTRODUCTION

- 3.5.1. This Section considers the effects of the Proposed Development on the Green Belt.

POLICY BACKGROUND

National Policy

- 3.5.2. Paragraphs 5.170 and 5.171 of NPSNN states that the general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. Such development should not be approved except in very special circumstances. Applicants should therefore determine whether the proposal, or any part of it, is within an established Green Belt and, if so, whether its proposal may be considered inappropriate development within the meaning of Green Belt policy.
- 3.5.3. Paragraph 5.171 of NPSNN states that linear infrastructure linking an area near a Green Belt with other locations will often have to pass through Green Belt land. The identification of a policy need for linear infrastructure will take account of the fact that there will be an impact on the Green Belt and as far as possible, of the need to contribute to the achievement of the objectives for the use of land in Green Belts.
- 3.5.4. Paragraph 5.178 of NPSNN states that when located in the Green Belt national networks infrastructure projects may comprise inappropriate development. Inappropriate development by definition is harmful to the Green Belt and there is a presumption against it except in very special circumstances.
- 3.5.5. The SoS will need to assess whether there are very special circumstances to justify inappropriate development. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the SoS will attach substantial weight to the harm to the Green Belt, when considering any application for such development.

NPSNN 2024

- 3.5.6. The NPSNN 2024 reaffirms the approach in the NPSNN in recognising the purposes of Green Belt designation to prevent urban sprawl by keeping land permanently open, with the essential characteristics being one of openness and permanence.
- 3.5.7. It continues to recognise the presumption against inappropriate development in the Green Belt and that such development should not be approved except in very special circumstances.

The National Planning Policy Framework (NPPF)

- 3.5.8. Section 13 of the NPPF contains similar wording in setting out Green Belt Policy. Reaffirming that inappropriate development is harmful by definition and identifying that very special circumstances do not exist unless the harm to the Green Belt is outweighed by other considerations.
- 3.5.9. The notable difference is the recognition in the NPSNN of the need for linear infrastructure which may pass through an area of Green Belt. The NPPF (Paragraph 155) instead identifies operations that are not inappropriate provided that they preserve the openness of the Green Belt and do not conflict with the purposes of the land within it.
- 3.5.10. The NPPF is clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances (paragraph 152). At paragraph 154 and 155, it identifies some exceptions to the definition of inappropriate development.

- 3.5.11. Of note in this case are the exceptions set out in sub paragraphs b) engineering operations and c) local transport infrastructure (where the latter is able to demonstrate a requirement for a Green Belt location).
- 3.5.12. The NPPG (paragraph 001) sets out Government guidance on the role of the Green Belt in the planning system, including on assessing the impact of a proposal on the openness of the Green Belt. The NPPF and NPPG are important and relevant considerations in this context.

Local Plan Policies

- 3.5.13. Policy SD5 of the JCS seeks to protect the Green Belt from harmful development mirroring the policy position set out in the NPPF limiting development to those types deemed appropriate by the NPPF unless very special circumstances justify otherwise.

THE APPLICATION

- 3.5.14. The Applicant's consideration of Green Belt matters is principally set out within its Planning Statement [\[APP-135\]](#) Section 7.6. The existing M5 passes through the Green Belt to the west of Cheltenham.
- 3.5.15. As set out in the Applicant's Planning Statement [\[APP-135\]](#) and subsequently in [\[AS-044\]](#) most of the scheme sits within the Gloucester and Cheltenham Green Belt. The plan showing the location of the scheme relative to the Gloucester and Cheltenham Green Belt is included below.
- 3.5.16. The Applicant makes the case that the proposed development would comprise an engineering operation which benefits from the exception in NPPF paragraph 155 and would provide local transport infrastructure which can demonstrate a requirement for a Green Belt location and as such would be a form of development which is not inappropriate development.
- 3.5.17. The Applicant considers the majority of the Proposed Development being undertaken on the existing highway (bar the link road), which demonstrates a requirement for its location within the Green Belt.
- 3.5.18. In considering the five purposes of the Green Belt, the Applicant argues each are met, these being:
- To check the unrestricted sprawl of large built-up areas;
 - To prevent neighbouring towns from merging into one another;
 - To assist in safeguarding the countryside from encroachment;
 - To preserve the setting and special character of historic towns; and
 - To assist in urban regeneration by encouraging the recycling of derelict and other urban land.
- 3.5.19. The Applicant also concludes that the effect on openness (paragraph 7.6.16) of [\[APP-135\]](#) "it is not anticipated that it would significantly reduce the feeling of openness in this small area. The proposed roadside planting would help embed the road, whilst also allowing filtered views through and across the link road."
- 3.5.20. The Applicant considers the location is required to be in the Green Belt as it is an improvement to the existing Junction 10 of the M5, and this would also meet

strategic improvements in and around the junction with regard to the land removed from the Green Belt as part of the adoption the Joint Core Strategy (JCS) which in turn unlock the housing and job opportunities which would arise.

- 3.5.21. Consequently, the Applicant concludes that the scheme is not considered to be inappropriate development in policy terms, the scheme preserves the Green Belt openness and does not conflict with the purposes of the Green Belt in line with NPPF paragraph 143.

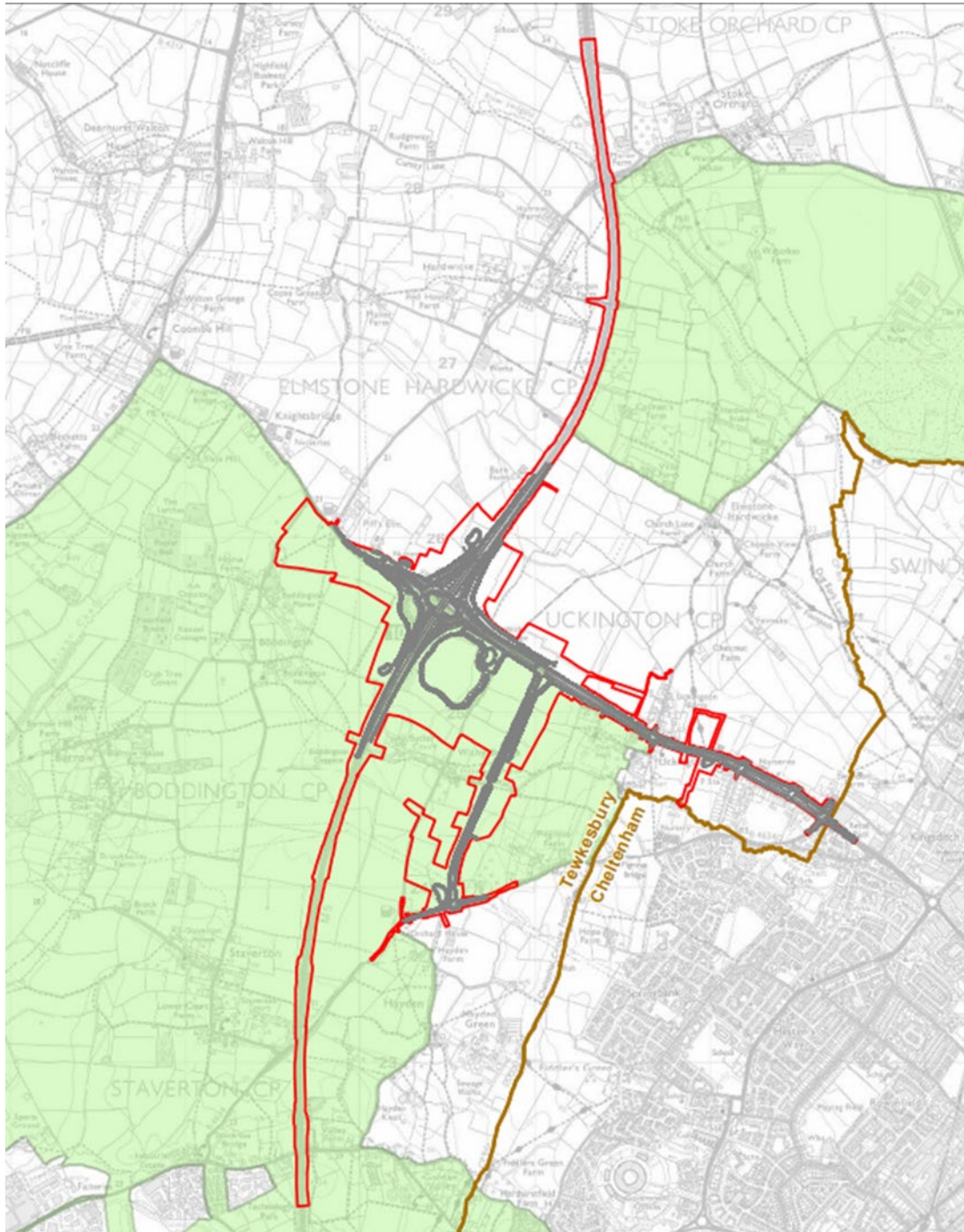


Figure 66 Green Belt boundary relative to the Order Limits - Source [\[AS-044\]](#)

- 3.5.22. Without prejudice to the Applicant's primary case an alternative is presented in the event the SoS does not agree with the Applicant that the scheme can be properly regarded as appropriate development.
- 3.5.23. Paragraph 5.170 of the NPSNN, states *"The general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition a general presumption against inappropriate development within them. Such development should not be approved except in very special circumstances."*
- 3.5.24. Paragraph 152 of the NPPF further states *"Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances."* And at paragraph 153 *"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."*
- 3.5.25. The scheme is in the main on the footprint of the M5 and the A4019, although additional greenfield land is required for the link road and attenuation ponds both being within the Green Belt. The encroachment is limited and as the landscape mitigation fulfil their function and certainly by year 15 of operation there should be an overall beneficial effect on landscape character.
- 3.5.26. The key benefits of the scheme that amount to very special circumstances include:
- The economic benefits;
 - The provision of infrastructure which is required at both a local and regional level to resolve the congestion that arises in Cheltenham at peak times, which in turn adversely effects air quality;
 - Providing the necessary infrastructure to bring forward housing and employment allocations in the JCS of up to 9,000 dwellings; and
 - The employment sites provide the opportunity for supportive industries to the nationally important GCHQ.
- 3.5.27. Cumulatively therefore these benefits would amount to 'very special circumstances' for development to take place within the Green Belt in the event the SoS considers the development to be inappropriate.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.5.28. The potential effect of the Proposed Development on the Green Belt was raised in one Relevant Representation from an Interested party, and in the LIR from the JCs, as set out in our Rule 6 letter [\[PD-008\]](#) we identified the following issues which needed to be examined within the Initial Assessment of Principal Issues (IAP):
- To consider the effect of the Proposed Development on the Green Belt and the relevant policy tests
- Local Impact Report**
- 3.5.29. The Joint Councils LIR [\[REP1-069\]](#) set out at paragraphs 3.11.3-3.11.5 that none of the Local Plans had Green Belt Policies in addition to those set out in the JCS.
- 3.5.30. The Joint Councils (JC) in their LIR [\[REP1-069\]](#) advised in Section 3.11 that they considered there were no particular locations within the Green Belt where the effects on openness would be particularly pronounced. The only area where some minor reduction in openness is possible would be along the link road, where the

proposed roads cross the River Chelt via a bridge, where the road will be on an embankment to rise up to the level of the bridge abutment in this section. In doing so, a visual barrier will be created, dividing open field areas on either side. However, the effects on openness in this area of green belt are only likely to be reduced when in close proximity to the raised section of road and would affect users of the two public rights of way that run parallel to the River Chelt.

- 3.5.31. The JCs consider that from further afield, views of the raised road should blend into the layers of field boundary vegetation, and it should still be possible to view hills and countryside in the distance. This will be the same as views currently had, so this should not reduce the sense of openness to the greater extent of the Green Belt area. Notwithstanding the impacts mentioned, it is considered that the benefits of the scheme would clearly and demonstrably outweigh the harms, and the area is not subject to any other landscape constraints.
- 3.5.32. The JCs reaffirmed that they considered the Applicant's assessment of the Proposed Development relative to Green Belt policy was a reasonable interpretation and met the exception in paragraph 155 (c) of the NPPF applies.

Interested Party

- 3.5.33. The effect on the Cheltenham and Gloucester Green Belt was also raised by Kenneth Martin Pollock [\[RR-021\]](#) who objects to the new link road through the Green Belt to service the 'Cyber Park' element of the West Cheltenham urban extension.
- 3.5.34. The ExA probed the issue through written question Q8.0.3 [\[PD-010\]](#) and orally at ISH 1 [\[EV2-001\]](#). We also observed relevant areas of the Green Belt during both of our USIs [\[EV1-001\]](#) and [\[EV1-002\]](#) and ASI [\[EV7-001\]](#).
- 3.5.35. In further response to our enquiries during ISH 1 the Applicant provided a detailed note in response setting out their position in respect of Green Belt Policy (Appendix A) of [\[REP1-046\]](#).

Whether or not the Proposed Development would be Inappropriate development

- 3.5.36. The final SoCG with the JCs [\[REP10-072\]](#) indicates that at the end of the Examination the Councils did not oppose the development within the Green Belt or raise a concern in policy terms.
- 3.5.37. The Applicant in their Technical Note Appendix A to [\[REP1-046\]](#) suggest that the Proposed Development is not inappropriate development.

ExA Conclusions

- 3.5.38. We are satisfied that the Proposed Development can reasonably be described as engineering operations (exception b of paragraph 155 of the NPPF), and in respect of the link road and the widening of the A4019 elements of the scheme can reasonably be described as local transport infrastructure (exception c of paragraph 155).
- 3.5.39. In order to benefit from the exceptions test under NPPF paragraph 155, development must preserve the openness of the Green Belt and not conflict with its purposes, while local transport infrastructure should also demonstrate a requirement for a Green Belt location.

3.5.40. We therefore go on to consider each of these elements in turn.

Openness

3.5.41. The Applicant maintains that openness would be preserved, and this is dealt with predominantly in the Landscape and Visual assessment in ES Chapter 9 [\[REP10-047\]](#).

3.5.42. We do not consider this conclusion is fully justified, it does not deal with the question of effect on openness but on landscape and we do not concur with this conclusion in this respect. The introduction of a new road, with a section of elevated embankment leading to the bridge over the River Chelt, would add a significant new engineered structure into what is currently a broadly flat landscape between the current M5 alignment and the west of Cheltenham.

3.5.43. Both during construction and in the initial 15 years after construction, the new highway would have a marked effect on the openness of this area, and in our view, openness will be affected to an extent even after this period.

3.5.44. In further considering the openness of the Green Belt the ExA are of the view that the introduction of the Proposed Development will affect openness both visually and spatially.

3.5.45. The new link road in the location proposed will in effect visually divide in two the area between Cheltenham and the M5, and this will be particularly noticeable from Withybridge Lane and the Gloucester Old Road when looking towards Cheltenham, but also from the more elevated land to the southeast when looking north or northwest to the new M5 Junction 10.

3.5.46. From this area the road will far more obviously reduce the degree of openness, and in this respect, we do not consider that the Applicant's assessment fully recognises that the loss of openness would make this element of the Proposed Development inappropriate in the Green Belt.

3.5.47. In the ExA's view the appreciation of this space contributes to the sense of the openness of this area, which will be materially affected by the new link road in particular and would result in a significant change to the current position and would as a consequence be materially harmful to openness.

3.5.48. We consider the effect of the widening of the A4019 and the changes to the M5 junction on openness to be negligible. We come to this view on the basis of the alignment of the A4019 along the existing road corridor and it being constructed at level. While the junction modifications would be elevated, they will in our view be read as part of the motorway, in a similar way to the current arrangements.

3.5.49. We also find that there would be adverse effects on openness as a result of the temporary construction works compounds associated with the Proposed Development, those located within the Green Belt are listed below:

- No.1 (Work No.1i, 37,300 square metres) to the west of the M5 south of A4019,
- No.5 (Work No.5b, 36,400 square metres) south of A4019, west of proposed link road,
- No.6 (Work No.5c, 12,100 square metres) south of A4019, east of proposed link road,

- No.7 (Work No.5g, 28,100 square metres) south of River Chelt, east of proposed link road,
- No.8 (Work No.5h, 9,600 square metres) west of proposed link road, north of Old Gloucester Road, and
- No.9 (Work No.1p, 48,300 square metres) to the southeast of the M5 J10.

3.5.50. While we recognise the areas specified are a maximum and in effect a worst case scenario it still represents up to 171,800 square metres of construction compounds within the Green Belt. They are anticipated to be in place for the 30 month construction period, will require site clearance, and have facilities for parking, staff welfare, and storage of materials. All features which would affect the openness of the Green Belt in this location.

3.5.51. Even where existing landscape features or proposed planting may be capable of reducing the effect on Green Belt openness from a visual perspective, there can be no doubt that introduction of a new road which is in part elevated above ground level would have a substantial spatial effect which would undermine openness.

3.5.52. We also find that there would be adverse effects on openness as a result of the temporary construction works associated with the Proposed Development, particularly the temporary construction compounds. Whilst the land at the compounds would be reinstated post construction, meaning that the works would be temporary, in our view the scale and duration of the works are such that they would have a harmful effect on the openness of the Green Belt for the period they are there.

3.5.53. In considering the purposes of including land within the Green Belt, we find that the proposed link road and to a lesser extent the widening of the A4019, albeit to a limited extent, represent encroachment into the countryside. We are satisfied that they would not conflict with the four other Green Belt purposes set out in NPPF paragraph 143.

3.5.54. Even in accepting that the character and appearance of the area is influenced by the existence of the motorway, we conclude that the openness of the Green Belt would be harmed, and the ExA consider this results in substantial harm, which we give significant weight.

Demonstrate a requirement for a Green Belt location

3.5.55. The A4019 is the current local road connecting to the M5 at junction 10. Having considered a range of alternatives, which we covered earlier in Section 3.3 of this Report we confirmed we are content that the Applicant has addressed the approach to alternatives appropriately.

3.5.56. It therefore follows that we accept that the widening of the A4019 in this location is appropriate and demonstrates a requirement to be undertaken in this Green Belt location.

3.5.57. In seeking to understand the approach to alternatives for the link road we sought further clarification from the Applicant during ISH1 as to why it did not appear that the Green Belt designation was a critical factor in determining an appropriate corridor for the link road. The Applicant provided a written response as part of their Technical Note [\[REP1-046\]](#) (Section 6 of Appendix A) which we regard as a reasoned justification to the approach taken and the conclusions reached.

- 3.5.58. We are also mindful that no party sought to dispute this position during the Examination. Taking all of the above matters into consideration, the ExA finds that it is an acceptable approach, and those parts of the Proposed Development which will form in due course part of the local road network can reasonably be regarded as local infrastructure which has demonstrated a requirement for a Green Belt location.

CONCLUSIONS

- 3.5.59. Taking all of the above considerations into account, the ExA conclude that overall, the Proposed Development would result in harm to Green Belt openness and would conflict with the purpose of the Green Belt to safeguard the countryside from encroachment.
- 3.5.60. NPSNN paragraph 5.178 recognises that national network infrastructure may comprise inappropriate development in the Green Belt and by definition be harmful. In such circumstances the SoS will need to assess whether there are very special circumstances that would justify inappropriate development.
- 3.5.61. In Chapter 5 of this Report, we go on to consider the question of whether very special circumstances exist to clearly outweigh the harm by reason of inappropriateness and any other harm.

3.6. AIR QUALITY

INTRODUCTION

- 3.6.1. This Section considers the impact of the Proposed Development on air quality.

POLICY BACKGROUND

National Policy

NPSNN 2015

- 3.6.2. Paragraph 5.6 of NPSNN states that where the impacts of the project are likely to have significant air quality effects, the Applicant should undertake an assessment of the impacts of the proposed project as part of the ES. The NPSNN paragraphs 5.7 to 5.9 set out the methodological requirements for this assessment.
- 3.6.3. Paragraph 5.10 of NPSNN states that where a project is likely to lead to a breach of the air quality thresholds, the Applicant should work with the relevant authorities to secure appropriate mitigation measures with a view to ensuring so far as possible that those thresholds are not breached.
- 3.6.4. Paragraph 5.11 notes that air quality considerations are likely to be particularly relevant where schemes are proposed within or adjacent to Air Quality Management Areas (AQMAs).
- 3.6.5. Paragraph 5.13 of NPSNN states that the SoS should refuse consent where, after taking into account mitigation, the air quality impacts of the Proposed Development will: result in a zone/agglomeration which is currently reported as being compliant with the Air Quality Directive becoming non-compliant; or affect the ability of a non-compliant area to achieve compliance within the most recent timescales reported to the European Commission at the time of the decision.
- 3.6.6. With respect to the possible impacts on amenity from emissions of odour, dust, steam, smoke and artificial light, the NPSNN confirms at Paragraph 5.87 that the

SoS should be satisfied that all reasonable steps have been taken to minimise impact on amenity. Paragraph 5.89 states that the SoS should consider if it is necessary to require the Applicant to abide to mitigation and management of any such impacts and that a construction management plan may be appropriate in this context.

NPSNN 2024

- 3.6.7. Relevant changes included in the revised NPSNN 2024 are summarised below.
- 3.6.8. Paragraph 5.12 confirms that the Applicant should undertake an assessment including where the impacts are likely to have significant effects regarding meeting environmental assessment requirements or affect the UK's ability to comply with the Air Quality Standards Regulations 2010.
- 3.6.9. NPSNN 2024 paragraph 5.13 identifies additional content that the Applicant's assessment should describe including the predicted emissions, concentration change and absolute concentrations of the Proposed Development after mitigation, potential impacts on nearby designated habitats and the proximity and nature of nearby receptors which could be impacted.
- 3.6.10. NPS2024 paragraph 5.22 confirms that the SoS should have regards to relevant guidance including the Air Quality Strategy (AQS), local air quality management guidance and any relevant PM2.5 target guidance.

THE APPLICATION

- 3.6.11. Chapter 5 of the ES [[APP-064](#)] assesses the impacts of the Proposed Development on air quality. The final version was submitted as [[AS-012](#)]. The air quality assessment for both the construction and the operational phase of the Proposed Development has been undertaken in line with the methodology detailed in National Highways' Design Manual for Roads and Bridges (DMRB) LA 105, which the Applicant considers to be the most appropriate approach for assessing the effects of road schemes on air quality.
- 3.6.12. The Applicant has confirmed on page 250 [[REP11-007](#)] that the ES assesses the Scheme's compliance with Air Quality Regulations (The Air Quality Standards Regulations 2010 (SI 2010/1001) for EU limit values and the Air Quality (England) Regulations (SI 2000/928) as amended.

Baseline

- 3.6.13. The ES confirms that there is one AQMA within 200m of the air quality Affected Road Network (ARN), Cheltenham AQMA 2020 which is located in an area north west of the town centre. Baseline air quality monitoring data indicates that the only exceedances of the annual mean AQS objective for NO2 within the study area were located within the Cheltenham AQMA. There are no estimated exceedances of the annual mean NO2 air quality limit value in the Defra PCM model links within the ARN in 2019.

Construction Phase

- 3.6.14. The potential impact of the Proposed Development was assessed at receptors sensitive to construction dust. 646 sensitive receptors were identified within 200 m of the boundary of the Order limits for the Proposed Development, 219 of which are

located less than 50 m from the boundary of the Order limits of the Proposed Development.

- 3.6.15. Paragraph 5.8.1 [\[AS-012\]](#) confirms that the construction activities represent a ‘high’ construction dust risk potential and that mitigation measures to control dust have been included in the REAC as listed in the ES chapter under Paragraph 5.8.2 (including water spraying of roads, use of wheel washes and enforcing speed limits for vehicles on unmade surfaces etc).

Construction vehicle activity

- 3.6.16. Paragraphs 5.7.7 to 5.7.13 [\[AS-012\]](#) set out the Applicant’s position with respect to construction vehicle activity. It provides an assessment of averaged annual Heavy Duty Vehicle (HDV) and Annual Average Daily Traffic (AADT) flows during construction during a 24 hour period and compares those to the DMRB LA 105 corresponding thresholds which necessitate further consideration of construction vehicle movements with respect to Air Quality effects. These thresholds equate to a change of more than 200 HDV movements or more than a 1000 increase to AADT flows.
- 3.6.17. The Applicant calculates [paragraph 5.7.12 [AS-012\]](#) that over the 30 month construction period, there would be lower vehicle movements than these thresholds.
- 3.6.18. With respect to the impact of the existing (northbound on and southbound off) slip roads at Junction 10 during construction, Paragraphs 5.7.14 to 5.7.16 [\[AS-012\]](#) state that construction traffic management measures diverting roads would be in place between month 11 and month 30 and are not expected to be in place for longer than 19 months. Moreover, as the duration of local traffic management at all locations would be less than two years, the Applicant states that (in accordance with DMRB LA 105) further consideration of the construction traffic management is not necessary. Furthermore, the effects of construction traffic and local traffic management measures would be temporary and considered unlikely to significantly affect air quality.
- 3.6.19. Paragraph 5.9.1 [\[AS-012\]](#) confirms that with the adoption of the mitigation measures detailed at Paragraph 5.8.2 (and included in the REAC), and additional dust mitigation and construction traffic management measures agreed with the Principal Contractor included in the EMP (2nd iteration), no significant air quality effects are likely during the construction phase.

Operational Phase

- 3.6.20. The ES confirms that the Applicant’s assessment has been undertaken for NO_x, NO₂, PM₁₀ and PM_{2.5}.

Particulate Matter (PM₁₀ / PM_{2.5})

- 3.6.21. Paragraphs 5.7.32 and 5.7.33 confirms that there are no exceedances of PM₁₀ or PM_{2.5} AQS objectives in the 2019 base year. Therefore, assessments of concentrations in the Scheme opening year were not undertaken. This is because it is considered unlikely that there would be any exceedances as confirmed at paragraph 5.12.9 [\[AS-012\]](#).

Designated Habitats (NO_x)

- 3.6.22. Paragraph 5.7.37 confirms that total nitrogen deposition rates have been estimated for ecological receptors within relevant designated habitats. Paragraph 5.7.39 concludes that the change in nitrogen deposition rates at all receptors were either decreased or unchanged. The Applicant concludes that there is no deterioration as a result of the Proposed Development and therefore no significant effect on designated habitats.

Operational Phase (N02)

- 3.6.23. Paragraph 5.7.20 [\[AS-012\]](#) confirms that the opening year 2027 is the worst-case scenario for air quality at human health receptors, as results are higher than in the future year DS scenario with the strategic development sites. Paragraph 5.7.19 indicates that at the strategic development site receptors within the transect locations in the future year, estimates are all less than 75% of the annual mean NO2 objective, with no exceedances expected.
- 3.6.24. Paragraph 5.7.21 states that there are three receptors expected to exceed the annual mean NO2 AQS objective in 2027 without the Proposed Development. Receptor R_59 (along High Street west of Cheltenham) is within the Cheltenham AQMA (relating to 2 residential properties on the northern side of the High Street), while receptors R_66 and R_67 are outside the AQMA (and are 13 and 3 residential properties on High Street and Albion Street respectively). However, as presented in Table 5-13, all three receptors are expected to have a small decrease in annual mean NO2 concentrations with the Proposed Development in place and there would not be an overall significant adverse effect.
- 3.6.25. The Applicant confirms at Paragraph 5.9.4 that the results at the remaining 87 receptors included in the assessment are expected to be below the annual mean NO2 AQS objective (both with and without the Proposed Development).

Overall Operational Impacts

- 3.6.26. With respect to operational potential impacts on air quality, Paragraph 5.9.2 concludes that there was not considered to be an overall significant adverse effect, and that no mitigation measures would be required.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.6.27. In 1WQs [\[PD-010\]](#), the ExA included a question to the Applicant regarding the method of identifying sensitive receptors and a question to the Joint Councils regarding the Applicant's use of model corrections in the assessments. These questions were answered in [\[REP3-043\]](#) and [\[REP3-064\]](#) and not taken any further.
- 3.6.28. The key issues considered during the examination were:
- Assessment of Slip Road Closures during construction,
 - Dust emission adequately mitigated and secured,
 - Impacts on the AQMA, and
 - General Concerns raised in RRs.

Assessment of slip road closures during construction

- 3.6.29. The Applicant's response to 1WQs [\[REP3-043\]](#) confirmed that during the slip road closures, as shown in the Traffic Management Plan [\[AS-041\]](#), diverted traffic would be directed to use preferred construction traffic routes such as the A4019

Tewkesbury Road / Cheltenham Road, A38 Gloucester Road / Jubilee Road, A4013 Princess Elizabeth Way and A40 Gloucester Road.

- 3.6.30. The impacts of the closure of the existing southbound off-slip and northbound on-slip roads was raised as a potential issue in the JC [\[RR-039\]](#) with respect to air quality impacts associated with traffic management/ diversion routes including those associated with HDV movements during construction.
- 3.6.31. The JC LIR [\[REP1-069\]](#) confirmed that the JC were satisfied that there should not be any significant residual adverse effects on air quality at human health receptors (Paragraph 3.1.10) including during construction.
- 3.6.32. With respect to the securing of the mitigation within the dDCO, at Paragraph 3.1.11, the JC LIR [\[REP1-069\]](#) welcomed the dust management measures outlined within ES Chapter 5 and noted that they would be further developed in the 2nd iteration of the EMP. The JC requested that should be submitted to the JCs for comment and approval prior to commencement of works.
- 3.6.33. The Transport Assessment [\[REP4-021\]](#) confirmed that diverted traffic would have free choice over routes and that this represents a 'worst case scenario'. Therefore, with respect to the slip road closure diversions (due to the length of the closures) the ExA sought to understand through 1WQ and ISH3 how that could be a worst-case scenario as it would in effect result to less traffic using the sign posted / promoted diversion routes. The traffic and transport and noise and vibration matters associated with this are addressed in the relevant sections of this Report.
- 3.6.34. With respect to air quality implications, the ExA tested through written questions ExQ1 [\[PD-010\]](#) (Q2.0.4) the Applicant's position that a separate assessment of the slip road closures is not required as the duration of this is 19 months and therefore less than the 2-year threshold given in DMRB LA105. The ExA noted that this would be concurrent with the overall construction period, which is greater than 2 years, and therefore the slip road closures have the potential to further alter the existing traffic flows.
- 3.6.35. In response [\[REP3-043\]](#), the Applicant set their reasoning for the approach and confirmed again that *'although there may be changes to existing traffic flows over the 30 month construction period as a result of additional construction traffic movements and slip road closures, changes over the DMRB criteria would only potentially occur over a 19 month period, and as such there is no requirement for assessment.'*

Dust emission adequately mitigated and secured

- 3.6.36. In the JC relevant representation [\[RR-039\]](#), they requested that dust mitigation measures were submitted as part of an updated Environmental Management Plan (EMP). The ExA sought to establish the current position through written question ExQ1 [\[PD-010\]](#) (Q2.0.1).
- 3.6.37. In response [\[REP3-043\]](#) the Applicant confirmed that the Applicant has set out detailed dust mitigation measures in the REAC [\[REP10-066\]](#) and the 1st iteration of the EMP, Air Quality Management Plan, Annex B4 [\[AS-034\]](#).
- 3.6.38. In the JC response to the same ExQ1 [\[PD-010\]](#) question (Q2.0.1), they confirm that all air quality matters are now agreed and that Environmental Health Officers at both CBC and TBC confirmed that the measures set out for dust mitigation in Air Quality

Management Plan, Annex B4 [AS-034] were acceptable. They would welcome the submission of the second iteration of the EMP for comment and approval prior to commencement of works.

- 3.6.39. The ExA note that the requirement for the second iteration of the EMP to be prepared in consultation '*with the relevant planning authority*' and '*submitted to and approved in writing by the Secretary of State*'. Is secured by Requirement 3 in the dDCO [REP11-003].

Impacts on the AQMA

- 3.6.40. The ExA sought the position of the Joint Councils at ExQ1 [PD-010] (Q2.0.5) with respect to establishing their confidence that the Proposed Development would not compromise the ability to manage the AQMA or result in a worsening of effects.
- 3.6.41. In their response [REP3-064] the JC confirmed that forecast pollutant concentrations are reduced with the Proposed Development in place. With respect to management of the AQMA they found that the Proposed Development would not adversely affect measures to improve air quality within the AQMA.

Matters raised in Relevant Representations

- 3.6.42. Two relevant representations (submitted by Mr Badham [RR-030] and (Ms) Sally Black [RR-032]) made general comments with respect to air quality impacts as a result of increased vehicle movements and emissions and also the detrimental effect on mental and physical wellbeing from effects including vehicle emissions and fine dust particles. However, no specific evidence or detail was provided in support of these concerns.
- 3.6.43. The Applicant provided a response in [REP1-043]. This included summarising the Applicant's position in the ES with respect to air quality, including the findings. It also summarised the position concerning population and human health including relevant mitigation measures (specific to identified adverse impacts during the construction and operational phases) relevant to protect mental and physical wellbeing.

ExA's CONCLUSIONS

- 3.6.44. The ExA note that the LIR [REP1-069] raised no issues with respect to the key issues with the exception of dust mitigation. Furthermore, with respect to air quality matters generally it concluded at Paragraph 3.1.10 that 'The Joint Councils are satisfied that during both construction and operation there should not be any significant residual adverse effects on air quality at human health receptors.'
- 3.6.45. There were also no outstanding matters concerning air quality as per the JC SoCG [REP10-072]. The ExA also note that by the close of the examination, there were no outstanding matters related to air quality with National Highways in the Principal Areas of Disagreement Summary Statement (PADSS) [REP10-114].

Assessment of slip road closures during construction

- 3.6.46. The ExA accept the Applicant's position regarding there being no requirement for additional assessments of the slip road closures based on relevant standards. It is also noted that the JC are satisfied with the methodology of the air quality assessments as confirmed in the JC SoCG [\[REP10-072\]](#) at Item 5.1.
- 3.6.47. Therefore, the ES is deemed to reflect the requirements of NPSNN paragraph 5.7 by assessing significant air quality effects, including taking account of the impact of road traffic generated by the project including during the construction stage associated with the slip road closures.

Dust emission is adequately mitigated and secured

- 3.6.48. With respect to NPSNN Paragraphs 5.87 and 5.89, the ExA finds that an EMP has been adequately secured in dDCO to mitigate possible impacts on amenity from emissions of odour, dust, steam, smoke and artificial light. We agree with the JC that the detailed dust mitigation measures in the REAC and the 1st iteration of the EMP, Air Quality Management Plan, adequately address these possible impacts.
- 3.6.49. The ExA consider that dust mitigation is adequately secured by the dDCO. The requirement for the second iteration of the EMP to be prepared in consultation '*with the relevant planning authority*' and '*submitted to and approved in writing by the Secretary of State*' is secured by Requirement 3 in the dDCO [\[REP11-003\]](#).

Impacts on the AQMA

- 3.6.50. ExA finds the ES has satisfied requirements of NPSNN Paragraph 5.6, 5.7 – 5.9 through undertaking an appropriate assessment of the air quality impacts. Furthermore, there are no breaches of air quality thresholds which put the DCO proposals in conflict with the requirements of Paragraph 5.10 – 5.13.
- 3.6.51. The ES is also considered to meet the requirements with respect to air quality assessment in the NPSNN 2024 at paragraphs 5.12 and 5.13.
- 3.6.52. ExA finds that the DCO proposals would result in improvements in air quality in the in the AQMA as the forecast pollutant concentrations are reduced with the Proposed Development in place. The proposals therefore also comply with purpose of Paragraph 186 (Paragraph 199 in the December 2024 version) of the National Planning Policy Framework.
- 3.6.53. Having regard to the Applicant's submission and the position of the JC, the ExA conclude that the Proposed Development would not compromise the ability to manage the AQMA or result in a worsening of effects. Furthermore, the forecast pollutant concentrations are reduced with the Proposed Development in place.

Matters raised in Relevant Representations

- 3.6.54. The ExA find that the Applicant has responded satisfactorily to all matters raised in relevant representations and no issues regarding air quality were subsequently maintained.

OVERALL CONCLUSION

- 3.6.55. The ExA finds that there would be no significant residual adverse effects during construction or operation as a result of the Proposed Development. Furthermore, the completed Proposed Development would lead to a betterment in (reduced)

pollutant concentrations in the AQMA. Therefore, we find that the issue of air quality does carry little weight for the Order being made.

- 3.6.56. Taking account of the conclusions in the Section, the ExA considers that the Proposed Development, in terms of air quality complies with the policy aims of the NPSNN, and NPSNN 2024 and NPPF where important and relevant.

3.7. BIODIVERSITY AND ECOLOGY

INTRODUCTION

- 3.7.1. This section considers the biodiversity and ecology issues that arise from the Proposed Development.
- 3.7.2. Consideration of matters that fall to be considered under the Habitat Regulations are considered under Chapter 4 and Appendix C of this Report.

POLICY BACKGROUND

National Policy

The National Planning Policy Statement for National Networks (NPSNN)

- 3.7.3. The assessment for ecology and biodiversity matters as set out in the NPSNN requires the Applicant to:
- set out any likely significant effects on internationally, nationally and locally designated sites of ecological or geological conservation importance on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity.
- 3.7.4. The development should as a general principle avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives.
- 3.7.5. The SoS in making a decision *“should ensure that appropriate weight is attached to designated sites of international, national and local importance, protected species, habitats and other species of principal importance for the conservation of biodiversity, and to biodiversity and geological interests within the wider environment.”*

NPSNN 2024

- 3.7.6. The NPSNN 2024 reiterates the approach of the 2015 NPSNN in recognising the importance of ecology and ecosystems.
- 3.7.7. **The National Planning Policy Framework (NPPF)**
- 3.7.8. Paragraph 180 states that *“planning policies and decisions should contribute to and enhance the natural and local environment by:*
- *Protecting sites of biodiversity value.*
 - *Minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.”*

- 3.7.9. While paragraph 186 states that *“if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.”*

Local Plan Policies

- 3.7.10. The JCS has a strategic objective to conserve and enhance the environment, which is supported by Policy SD9 which aims to ensure that policy and decisions should ‘Conserve, manage and enhance the area’s unique natural environment and great biodiversity. The policy aims to avoid harm to biodiversity and where adverse effects cannot be avoided appropriate mitigation should be provided.
- 3.7.11. Policies BG1 and BG2 of the Cheltenham Plan seeks to protect the Cotswold Beechwoods SAC from both recreation pressures and any adverse changes to air quality that might arise from increased traffic.
- 3.7.12. The Tewkesbury Borough Plan relies on the JCS for overarching policies but has local policy NAT1 which allows development that conserve, restore and enhance biodiversity.
- 3.7.13. The Gloucestershire Local Transport Plan (LTP) Policy PD 0.2 amongst other things seeks to minimise the impact of transport on the environment, protect and avoid harm to geodiversity and biodiversity and take opportunities to enhance the natural environment wherever possible.
- 3.7.14. While the LTP Policy PD 4.1 confirms that the highway network will be maintained using green infrastructure principles in the design, operation, and maintenance of the highway.

THE APPLICATION

- 3.7.15. The consideration of ecological and biodiversity matters .is contained in ES Chapter 7 Biodiversity [\[APP-066\]](#), which was updated by [\[REP1-012\]](#) with a final version provided at D10 [\[REP10-043\]](#). This was supported by the following documents and plans:
- [\[APP-019\]](#) Biodiversity Sites and Features Plan Part 1 updated by [\[AS-002\]](#)
 - [\[APP-020\]](#) Biodiversity Sites and Features Plan Part 2
 - [\[APP-086\]](#) Appendix 7.1 Phase 1 Habitat Survey
 - [\[APP-087\]](#) Appendix 7.2 Hedgerow Survey
 - [\[APP-088\]](#) Appendix 7.3 Bat Survey Part 1, updated by [\[AS-022\]](#)
 - [\[APP-089\]](#) Appendix 7.3 Bat Survey Part 2
 - [\[APP-090\]](#) Appendix 7.4 Dormouse Survey
 - [\[APP-091\]](#) Appendix 7.5 Badger Survey
 - [\[APP-092\]](#) Appendix 7.6 Otter Survey
 - [\[APP-093\]](#) Appendix 7.7 Water vole Survey
 - [\[APP-094\]](#) Appendix 7.8 Breeding birds Survey
 - [\[APP-095\]](#) Appendix 7.9 Winter breeding birds Survey
 - [\[APP-096\]](#) Appendix 7.10 Reptiles Survey,
 - [\[APP-097\]](#) Appendix 7.11 Great Crested Newt Survey
 - [\[APP-098\]](#) Appendix 7.12 Aquatic ecology Survey
 - [\[APP-101\]](#) Appendix 7.15 Bat Mitigation Strategy
 - [\[APP-102\]](#) Appendix 7.16 Barn Owl Survey
 - [\[APP-103\]](#) Appendix 7.17 Validation Report
 - [\[APP-104\]](#) Appendix 7.18 Biodiversity Net Gain

- [\[APP-105\]](#) Appendix 7.19 Biodiversity Chapter Figures

- 3.7.16. In setting out the assessment the Applicant has relied upon guidance from the Chartered Institute of Ecology and Environmental Management (CIEMM) as well as the Design Manual for Roads and Bridges (DMRB) LA 104 Environmental Assessment and Monitoring, LA108 Biodiversity, and LA118 Biodiversity and Design.
- 3.7.17. The significance of effects on biodiversity resources identified has been categorised, where appropriate, according to LA 108 and considers both on-site impacts and those that may occur to adjacent and more distant biodiversity resources.
- 3.7.18. The study area extends beyond the DCO boundary to take into account the potential environmental effects of the Proposed Development as shown in Figure 7A from [\[APP-105\]](#).
- 3.7.19. A Biodiversity Net Gain (BNG) assessment was also carried out using the NE metric creating three separate assessments for rivers and streams, terrestrial habitats, and hedgerows. Technical information regarding the BNG assessment is set out within [\[APP-104\]](#) and [\[APP-105\]](#), subsequently supported by a Technical Note [\[REP4-040\]](#).

Terrestrial habitats and species

- 3.7.20. The ES sets out the baseline findings for European designated sites:
- Wye Valley and Forest of Dean Bat Sites SAC
 - Severn Estuary SAC/SPA/Ramsar Site
 - Walmore Common SPA/Ramsar Site, and
 - Cotswold Beechwoods SAC.
- 3.7.21. In addition, the Coombe Canal Hill SSSI, and one potential non-statutory designated Local Wildlife Site within 1 km of the Order Limits: Hayden Sewage Treatment Works, located approximately 680 m south of the Order Limits were also assessed.
- 3.7.22. A further six non-statutory designated nature conservation sites within 200m of the Affected Road Network (ARN) were included. The location of each of the sites is shown in Figure 7 within [\[AS-002\]](#).
- 3.7.23. The Applicant included a draft Statement of Common Ground (SoCG) with Natural England (NE) [\[APP-149\]](#) which at the time of submission indicated that the only matter which remained outstanding were concerns NE had identified in respect of gaps in survey data for bats, and the subsequent mitigation which would need to be provided.
- 3.7.24. The Applicant also undertook surveys of notable species including for bats, dormice, badger, otter, and water vole. In addition, other priority mammals were also recorded including brown hare, harvest mouse, pole cat and hedgehog, with suitable habitat for these species recorded throughout the study area.
- 3.7.25. Breeding and wintering birds were also identified through Gloucestershire Centre for Environmental Records (GCER) and subsequent fields surveys. Of the 64 species recorded, 7 species are classed as uncommon or scarce (barn owl, chiffchaff, kingfisher, lesser whitethroat, raven, red kite and stonechat) and a further two were qualifying species of the Severn Estuary SPA (lapwing and mallard).

- 3.7.26. Two further species (Herring gull and lesser black backed gull) were also recorded and are noted on the Severn Estuary Ramsar Information Sheet.
- 3.7.27. Two species of reptiles were recorded within the Order Limits in the GCER, the common lizard and slowworm. Targeted reptile surveys undertaken in 2019, 2020 and 2021 however, found no reptiles, although the walkover surveys identified suitable habitat.
- 3.7.28. Great crested newt was identified as present in five water bodies within 500m of the Order limits, the ES assumes that they are formed from two meta populations.

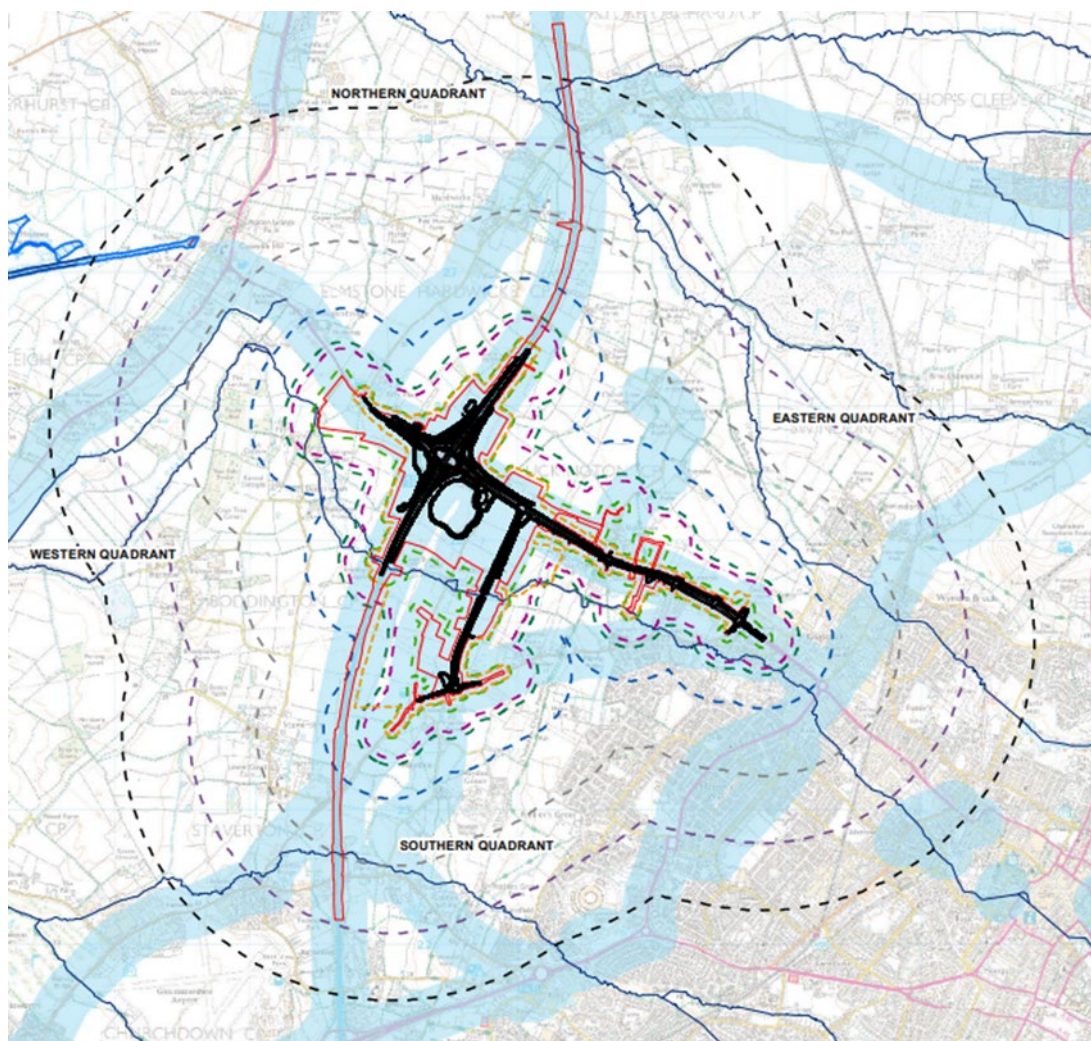


Figure 77 Extent of Study Area for Assessment of Ecology and Biodiversity - Source [APP-105]

- 3.7.29. Two priority terrestrial invertebrate species were recorded in the study area, the small heath butterfly and cinnabar moth.

Aquatic habitat and species

- 3.7.30. The River Chelt, Leigh Brook and 12 unnamed ordinary water courses were identified as having potentially important biodiversity pathways. Details of the surveys are included in the Technical Appendix [APP-098] along with the location of the water courses on Fig 7-12A.

- 3.7.31. The River Chelt is a reportable WFD surface water body, with the ES stating that the water body has an “*overall Ecological Status of ‘Poor’, with its biological quality elements classified as ‘Poor’, with invertebrates at ‘Good’, and macrophytes at ‘Poor’. Fish are not assessed under the WFD at this location.*” (paragraph 7.6.138).
- 3.7.32. The Leigh Brook within the ES study area is identified as a heavily managed ephemeral feature that exhibits limited habitat complexity and is typically choked with terrestrial herbs and scrub species.
- 3.7.33. The ES states that “*As an intermittently flowing watercourse that is significantly altered from its natural state, the watercourse exhibits limited marginal and in-channel habitat complexity and supports a species poor aquatic ecological assemblage.*” (paragraph 7.6.155).
- 3.7.34. The ordinary watercourses identified were considered to be minor tributary systems with a limited range of habitat typologies for aquatic species.
- 3.7.35. The ES concludes that there it is not anticipated that there would be any impact on the Wye Valley and Forest of Dean SAC, Walmore Common SPA/Ramsar, Cotswold Beechwoods SAC, Severn Estuary SPA, Coombe Hill Canal SSSI, non-statutory designated nature conservation sites, or upon veteran trees, woodland or priority habitat.
- 3.7.36. Despite the number of potential impacts being identified in respect of biodiversity resources, with the embedded mitigation in place, in addition to the essential mitigation identified significant residual effects are not anticipated.
- 3.7.37. In addition, with the biodiversity net gain (BNG) included the Proposed Development has the potential to provide an improvement, with a BNG potential of in excess of 10%.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.7.38. As set out in our Rule 6 letter [\[PD-008\]](#) we identified the following issues within the Initial Assessment of Principal Issues (IAP):
- the effect of the construction and operation of the Proposed Development on designated sites, including European sites, nationally designated sites, regionally and locally designated sites and habitats of nature conservation importance;
 - permanent and temporary effects on protected species and habitats including the potential for river bank erosion and any need for bank protection;
 - protected species licensing, including in relation to bats, dormice and badger;
 - effects on hedgerows, ancient woodland and veteran trees;
 - the adequacy and security of the proposed mitigation and monitoring measures, Habitats Regulations Assessment; and
 - Biodiversity Net Gain.
- 3.7.39. During the Examination, ES Chapter 7 was updated to address issues that arose but also to address the Change Requests, the final version being [\[REP10-043\]](#). In addition, the Applicant provided a BNG Technical Note [\[REP4-040\]](#) in response to NE’s answer to ExQ1 [\[REP3-076 Q3.0.2.\]](#)

Local Impact Report

- 3.7.40. The LIR identifies that the principal concern for biodiversity is that the Proposed Development will result in loss and disturbance of habitats and introduction of structures and artificial lighting which will, in turn, result in severance and fragmentation of ecological connectivity. Potential impacts to Severn Estuary SAC and Ramsar site are also identified.
- 3.7.41. As reported 110.65ha of habitats would be lost including broad-leaved and mixed woodland, scrub, trees, arable fields and grassland; a further 9.15 km of hedgerow habitats; 2.40 km of ditches; and 0.04 km of open channel along the River Chelt.
- 3.7.42. The LIR advises that the River Chelt, some unimproved neutral grassland/lowland meadow, hedgerows and a number of habitat complexes are either priority habitat, or habitats of County or Local value.
- 3.7.43. As a consequence of the Proposed Development loss of habitats has the potential to disturb or result in the loss of *“breeding, sheltering hibernating, foraging, commuting and dispersal habitats of priority or protected species including bats, hazel dormouse, otter, badger, reptiles, harvest mouse, barn owl, great crested newt and common toad.”*
- 3.7.44. The LIR considers that the most significant effect could be on bats during construction as a result of loss of roosts, temporary loss of foraging, and commuting habitat in advance of replacement becoming established.
- 3.7.45. The LIR acknowledges that the methodology for assessment, following CIEEM and National Highways guidance, is appropriate for the Proposed Development. Survey methodologies and study are explained and appropriate. The baseline data and assessment are considered sufficient, despite some limitations. Any limitations, and the impact of limitations on the assessment, are clearly described with appropriate assumptions made and mitigation outlined to overcome these limitations.

Joint Councils

- 3.7.46. The Joint Councils (JC) [\[RR-039\]](#) identifies the principal concern for biodiversity is that the Proposed Development will result in loss and disturbance of habitats and introduction of structures and artificial lighting which will, in turn, result in severance and fragmentation of ecological connectivity.
- 3.7.47. The JCs do however, welcome the inclusion of a suite of embedded mitigation measures including habitat creation which aim to enhance and improve the habitats on site through increasing the area and quality of more valuable habitats, through creation and subsequent management.
- 3.7.48. A BNG assessment report was submitted by the Applicant [\[APP-104\]](#) concludes the Proposed Development has the potential to achieve a net gain in excess of 10 % for habitats units.
- 3.7.49. The JCs request that an Outline Landscape and Ecology Management Plan (LEMP) be submitted to give assurance about the aims and objectives of proposed habitat creation and subsequent management and that this will deliver right habitats required to reduce the effect of the Proposed Development on priority species. The Joint Councils welcome that an outline LEMP has been requested by the Examining Authority.
- 3.7.50. This was submitted by the Applicant [\[AS-035\]](#) in response to the ExA letter [\[PD-005\]](#) of the 9 February 2024.

- 3.7.51. The SoCG with the JCs was updated through the examination [[APP-146](#), [REP1-034](#), [REP4-022](#), [REP10-072](#)] with the final version confirming all matters in respect of ecology and biodiversity were now agreed.

Natural England (NE)

- 3.7.52. In their relevant representation [[RR-027](#)] NE confirmed that there were no matters that required further detail, evidence, or assessment. The mitigation in respect of air quality monitoring, the River Chelt mitigation strategy (outlined in the HRA), bat, dormouse and badger mitigation (outlined in the draft license applications) were all secured in the dDCO. For clarity the River Chelt Mitigation Strategy is not a single document, but a series of measures set out in the REAC including the fish rescue plan. This was explained further in response to ExQ1. Q3.1.12 [[REP3-043](#)].
- 3.7.53. In respect of air quality, the designated nature conservation sites being:
- Wye Valley and Forest of Dean Bat Sites SAC,
 - Walmore Common SPA/Ramsar,
 - Cotswold Beechwoods SAC,
 - Severn Estuary SAC/SPA/Ramsar, and
 - Coombe Hill Canal SSSI
- could potentially be impacted by the proposed development however the comprehensive assessment shows that air pollution from road traffic would reduce as a result of the project, none of the designated sites will therefore be harmed.
- 3.7.54. Cotswold Beechwoods SAC, Severn Estuary SAC/SPA/Ramsar, and Coombe Hill Canal SSSI are particularly sensitive to increased recreational pressure which has the potential to come off the back of increased housing which the Proposed Development indirectly can facilitate. There are policies and strategic schemes in place to protect these sites and housing schemes that may benefit from the Proposed Development will require their own impact assessments. NE therefore do not consider the designated sites would be harmed by increased recreational pressure.
- 3.7.55. NE confirm that the project will not have a likely significant effect (LSE) on the Wye Valley and Forest of Dean Bat Sites SAC due to the distance from the proposed development nor do they consider there to be a LSE on the Walmore Common SPA/Ramsar due to the distance from the Proposed Development and as no Bewick Swan have been found during extensive survey.
- 3.7.56. The Severn Estuary SAC/SPA/Ramsar is located some 47.5km downstream of the project and despite a number of potential impact pathways being identified for the SAC and Ramsar Site NE conclude there would be no adverse effect on integrity of this site.
- 3.7.57. Letters of No Impediment have been issued by NE in respect of badger, dormouse, and bats based on the draft license applications. The Applicant has also advised of their intention to protect great crested newt from adverse impact using a NatureSpace District Licensing scheme [[REP3-051](#)] to mitigate for these impacts. NE have confirmed that it is appropriate for this approach to be used [[REP10-078](#)].
- 3.7.58. We sought clarification from NE in ExQ1 [[PD-010](#)] with regard to the matters raised by the EA and the JC in their LIR. NE Responses to ExQ1 are provided in [[REP3-076](#)].

- 3.7.59. The SoCG with NE was updated through the examination [[APP-149](#), [REP1-037](#), [REP10-078](#)] with the final version confirming all matters were now agreed.

The Environment Agency (EA)

- 3.7.60. The EA [[RR-013](#)] identifies concerns in respect of permitting within their environmental remit including for biodiversity, stating that it is considered to be premature to conclude *“it is not likely that the Scheme could give rise to impacts on any European Sites, either for the Scheme alone, or in combination with other plans or projects. This is because the watercourses being affected are in hydrological continuity with the Severn Estuary SAC/Ramsar and there are mechanisms to impact on the designated fish assemblage which use the tributaries of the Severn as functionally linked habitat.”*
- 3.7.61. The EA also sought commitment to net environmental gain thus going beyond the scheme objective of delivering something in keeping with the local environment and minimising adverse environmental effects. This matter was agreed as per Section 7.7 of the final SoCG with the EA [[REP10-076](#)].
- 3.7.62. The EA considered there to be the potential for significant effects on bats, otter, breeding and wintering birds, great crested newt and aquatic habitats and species, and did not agree with the conclusions reached that the majority of residual effects on biodiversity would be reduced to neutral with mitigation in place. The EA state in [[RR-013](#)] that *“The residual operational impacts will adversely affect connectivity for a wide range of biodiversity including aquatic and riparian species, as well as herptiles, birds and bats.”*
- 3.7.63. The EA also sought further mitigation detail to ensure that culvert design was environmentally sensitive, taking into account otters and other species and seeking to ensure that the design was committed to deliver an environment appropriate to the protected species in the area. In doing so there should be recognition that many species are in decline and that the design should seek to achieve an environment which achieves a greater abundance and diversity of species and habitats to enhance population resilience.
- 3.7.64. We sought clarification from the EA in ExQ1 [[PD-010](#)] and the EA response can be found in [[REP3-070](#)].
- 3.7.65. The SoCG with the EA was updated through the examination [[APP-148](#), [REP1-036](#), [REP10-076](#)] with the final version confirming all matters were now agreed.

Gloucestershire Wildlife Trust (GWT)

- 3.7.66. The GWT in their RR [[RR-014](#)] expressed concern over the impact of the proposed development on the Coombe Hill Canal Site of Specific Scientific Interest (SSSI). Whilst GWT acknowledge NE identify that the new housing sites will need deliver their own mitigation the scheme will of itself make the nature reserve at the SSSI more accessible, and this has not been assessed or mitigated for.
- 3.7.67. In addition to this the scheme would result in the loss of *“very high distinctiveness habitats as part of this scheme, including lowland meadow and native species rich hedgerow with trees, valuable, core areas of habitat and an important part of Gloucestershire’s nature recovery network.”*
- 3.7.68. The mitigation for this relies upon a Road Verge Compensation Strategy which is not due to be prepared until the detailed design stage. To meet the requirements of

the NPPF (paragraph 186a) this strategy cannot be said to deliver on the NPPF requirements.

- 3.7.69. The BNG calculation of 11.59% relies upon the natural grassland within the road verges, any failure to deliver this to a good standard would be likely to result in the BNG assessment falling below this level. The GWT also note the BNG Metric used is version 3.0 rather than 4.0 a newer version which is now available.
- 3.7.70. GWT in their later submission at D9 [\[REP9-012\]](#) reiterate their concern with regard to increased recreational pressure which they consider would arise due to the improvement to the M5 corridor and the addition of slip roads which create an all-movements junction where one does not currently exist. Mitigation for this additional pressure is not currently envisaged via the housing schemes and a scheme should be developed to deal with this harm.

The Woodland Trust (WT)

- 3.7.71. The WT [\[RR-041\]](#) expressed concern that the Arboricultural Impact Assessment [\[APP-116\]](#) and [\[APP-117\]](#) while identifying one veteran tree had not recognised the potential for other trees (notably T052, G081, G149, T165, T208, T211, T225, T232, T233. Tree T233), to be classified as ancient or veteran trees. The Trust disagree with the assessment undertaken by the Applicant which appears to rely upon all three criteria to be met for a tree to be classified as veteran (age, size, condition) this is contrary to the guidance in the PPG for Natural Environment as recommended by Government.
- 3.7.72. The WT conclude that as the assessment has not been undertaken correctly the necessary protection and mitigation such as increased buffer zones or greater root protection has not been properly set out.

The ExA Considerations

The effect of the construction and operation of the Proposed Development on designated sites, including European sites, nationally designated sites, regionally and locally designated sites and habitats of nature conservation importance

- 3.7.73. During the Examination the areas of dispute that arose were raised by GWT in respect of:

- the nature reserve at Coombe Hill Canal SSSI,
- loss of very high distinctiveness habitats,
- the reliance upon the road verge compensation scheme, and
- use of the BNG Metric v3.0 as opposed the more up to date v4.0.

and by the Woodland Trust in respect of ancient and veteran tree assessment.

Nature reserve at Coombe Hill Canal SSSI

- 3.7.74. The Applicant responded in [\[REP1-043\]](#) Section 14 explaining that the policies in the JCS and the Tewkesbury Borough Plan required mitigation in respect of the allocations, and as such any additional recreational pressure was already appropriately catered for. In addition, the Applicant reported that NE had reviewed the approach and were in agreement with the conclusions.
- 3.7.75. We sought NE's advice on this matter in ExQ1 (Q3.1.14), and in their response [\[REP3-076\]](#) NE recognised that the housing schemes would each require their own

HRA Assessment. However, they went on to say that of more concern was that there may be a direct link between the road improvement scheme and reduced journey times to the canal, which may cause more people to visit.

- 3.7.76. [\[REP4-035\]](#) The Applicant's response considers that improving the road infrastructure as the Scheme proposes would not facilitate access to the SSSI, which is located almost 2 km northwest of Junction 10.
- 3.7.77. The Applicant did not consider this to be a credible impact pathway and that no further investigation into this is necessary. The Scheme does not provide direct access to the SSSI. The existing M5 Junction 10 already provides access and egress to and from the M5 north, with no connectivity to the M5 south. It is this southern connectivity that will be improved because of the Scheme.
- 3.7.78. The ExA accept that the HRA Screening [\[REP3-024\]](#) report concluded no Likely Significant Effect on the basis that any potential increase in recreational pressure may come from an increase in housing, that the Scheme may facilitate but would not directly cause.
- 3.7.79. In addition the potential in-combination effects of the combined housing developments around the junction, and within the wider area, there are already existing policy requirements in place within the JCS and the Tewkesbury Borough Plan that have been designed specifically to mitigate the potential in-combination recreational effects of the combined housing developments, and which must be met by the housing developments if planning permission is granted.
- 3.7.80. The Applicant's response to Interested Parties [\[REP10-109\]](#) Deadline 9 Submissions provides further clarification by explaining "*Visitor survey information provided by Gloucestershire County Council (Footprint Ecology (2022) Severn Estuary Visitor Survey 2022) suggests that Coombe Hill SSSI is a 'local' destination. The visitor surveys undertaken at Coombe Hill Canal SSSI indicate that the majority of interviewees were on a day trip from home/short visit, with 50% of interviewees visiting a location that they go to at least once a week, with dog walking the most common activity.*"
- 3.7.81. As set out by NE [\[REP3-076\]](#) and the JCs [\[REP4-048\]](#) and [\[REP4-048c\]](#) they are in agreement with the Applicant on the assessment conclusions.
- Loss of very high distinctiveness habitats/ the reliance upon the road verge compensation scheme*
- 3.7.82. The Applicant acknowledges that there would be the loss of 0.1ha of valuable habitat which it was not possible to avoid, however the strategy for the Proposed Development includes 22.56ha of species rich road verge. The Applicant acknowledges that this can be challenging to achieve a 'good condition' (the target) the Applicant does not consider unreasonable, with good management in place.
- 3.7.83. The Road Verge Compensation Strategy (RVCS) aims to mirror the guidance that NH and GCC have in place for the management of road verges to achieve biodiversity value. The RVCS will be produced at detailed design stage in collaboration with NH and GCC, and the principles are committed to within the REAC (B10) and the LEMP [\[AS-035\]](#).

Use of the BNG Metric v3.0 as opposed the more up to date version

- 3.7.84. The Applicant confirms that the BNG assessment undertaken uses v3.0 however advice has been issued that v3.0 should continue to be used where a project assessment has already been carried out. (NE publication¹ (April 2022).

Ancient and Veteran tree assessment

- 3.7.85. The Applicant advises that AIA [APP-116 and APP-117] sets out the methodology used in the assessment of trees, which follows standing advice from NE, the Forestry Commission and as set out in the NPPF. This approach was also used at other DCO schemes including the M25 Junction 10, M25 Junction 28, the A14 and A57.
- 3.7.86. No further response was received from the Woodland Trust.

ExA Conclusions

- 3.7.87. The ExA is satisfied that the assessment reported in ES Chapter 7 [APP-066], as supplemented and updated during the Examination, provides a satisfactory assessment of the likely significant effects of the Proposed Development on biodiversity receptors as required by the EIA Regulations, and the NPSNN. It follows that the ExA accepts the assessment's conclusion that there would be no significant residual effects on biodiversity or ecology receptors as a result of the Proposed Development when taking into account the incorporated mitigation secured through the DCO.
- 3.7.88. The ExA's detailed consideration of the potential for effects on designated sites of international importance is set out in Appendix C of this Report and summarised in Chapter 4.
- 3.7.89. We are also content with the explanation provided by the Applicant in response to the concerns identified by the GWT. We find the agreement of NE in the SoCG to be compelling, in addition to the detailed response the Applicant provided.
- 3.7.90. The reference to the survey material that explain current usage, in combination with the separation distance to the SSSI and the lack of any evidence being presented showing a direct link to any additional recreational pressure that may arise from changes to the transport infrastructure are sufficiently robust that the concerns of the GWT should not count against the scheme.
- 3.7.91. The provision of the RVCS is secured via the REAC and LEMP and we have no evidence before us that shows such schemes do not achieve the necessary benefits that are planned for, and as such while there is recognition that achieving a 'good standard' can be challenging, there remain a commitment to achieve this, which is secured, and will continue to be monitored. This in due course has the potential to provide a far larger area of biodiversity relative to the area that would be lost.
- 3.7.92. The ExA are mindful that as matters stand it is not a requirement when considering national infrastructure projects that they achieve a BNG benefit of 10% or greater, as such it is not material in our minds whether the Metric used is the most up to date.

¹ Natural England Joint Publication JP039 (April 2022) Biodiversity metric 3.1 Frequently Asked Questions available at: <https://publications.naturalengland.org.uk>

- 3.7.93. Having, said that we do regard what the scheme aims to achieve as apposite benefit that should be counted in favour the scheme. The metric used is a recognised metric, which has been applied consistently, and the evidence before us is that there would be a BNG benefit once the mitigation is in place.
- 3.7.94. The ExA are also satisfied with how the Applicant has recorded ancient and veteran trees within their assessment. The Applicant has explained their approach and made clear that this approach has been used elsewhere on other DCO Schemes, we have no evidence before us to dispute this, or to suggest that their approach is inappropriate.

Permanent and temporary effects on protected species and habitats including the potential for riverbank erosion and any need for bank protection

- 3.7.95. The EA confirmed in the final SoCG [\[REP10-076\]](#) that the design of the River Chelt bridge has developed and there is a requirement to look into inclusion of bank protection under the single span structure due to potential for erosion and risk to the crossing.
- 3.7.96. In the ES, the worst case scenario was assessed which included rip-rap bank protection. Further investigation is required at the detailed design stage to determine the need for bank protection and the requirements of that bank protection. The Applicant has committed to endeavour to soften this bank protection to green infrastructure.
- 3.7.97. The mitigation measures described in the HRA for the River Chelt are secured as embedded design features and detailed in the Environmental Masterplans [\[REP10-018\]](#) and [\[REP10-019\]](#) or as items within the Environmental Management Plan [\[REP10-064\]](#) and the REAC [\[REP10-066\]](#). This is appropriately secured via requirement 11 of the dDCO.
- 3.7.98. The Environmental Management Plan [\[REP9-006\]](#) incorporates Annex B17 River Realignment and Channel Diversion Management Plan under G4 of the REAC [\[REP10-066\]](#).

Protected species licensing, including in relation to bats, dormice and badger

- 3.7.99. Change Request No. 1 was specifically sought to accommodate additional land rights to facilitate access arrangements for hedgerow maintenance to further aid future dormice protection.
- 3.7.100. NE have confirmed they are content that the draft licences prepared by the Applicant ensure best practice and legislative tests will be met in respect of protected species. This is confirmed in the final SOCG [\[REP10-078\]](#) and was not an area of dispute between parties at the end of the Examination.
- 3.7.101. The respective licences are secured by way of commitments through the REAC and LEMP which are in turn secured through Requirement 3 of the dDCO.
- 3.7.102. The ExA have no evidence before us that this is not an appropriate approach to protect species in this case.

Effects on hedgerows, ancient woodland and veteran trees

- 3.7.103. The Applicant's response to RRs [\[REP1-043\]](#) advised that in respect of veteran trees, they had followed the National Planning Policy Framework, and the Core Standing Advice provided by Natural England and the Forestry Commission in the classification of veteran trees in support of this DCO Application. The methodology is detailed in section 2 of the submitted Arboricultural Impact Assessment [\[APP-116\]](#) and [\[APP-117\]](#). It is noted that this approach has been utilised in a number of previous successful DCO applications, namely the M25 J10, M25 J28, A14 and A57 DCOs.
- 3.7.104. A single veteran tree was identified within the ES and while the WT questioned the suitability of the assessment, the ExA are satisfied with the response provided by the Applicant in [\[REP1-043\]](#) that their assessment has followed recognised best practice.
- 3.7.105. As confirmed in [\[REP3-043\]](#) in response to ExQ1 even had we agreed the approach advocated by the WT was appropriate, all the trees referenced by the WT are retained bar 4 individual recorded trees, each being fast growing willow. The AIA [\[APP-116\]](#) includes an Outline Arboricultural Method Statement which the principal contractor will need to develop into a final agreed version which allows for further review of the trees referenced by the WT.
- 3.7.106. While a degree of hedgerow removal is unavoidable in constructing the Proposed Development, the ExA is satisfied that appropriate measures would be in place to minimise the loss of hedgerows and provide appropriate new planting, this accords with the expectations of NPSNN paragraph 5.23 which requires Applicant's to conserve and enhance biodiversity interests.

The adequacy and security of the proposed mitigation and monitoring measures

- 3.7.107. Mitigation of potential biodiversity effects is secured via the following mechanisms:
- Environmental Management Plan [\[REP10-064\]](#),
 - Bat Mitigation Strategy [\[APP-101\]](#),
 - Landscape and Ecological Management Plan [\[AS-035\]](#)
 - Air Quality Management Plan [\[AS-034\]](#),
 - Arboricultural Impact Assessment [\[APP-116\]](#) and [\[APP-117\]](#), and
 - Register of Environmental Actions and Commitments (REAC) [\[REP10-066\]](#).
- 3.7.108. The EMP includes the requirement Management Plans for certain environmental topic areas as the detailed design is developed, to include as a minimum the plans listed in Annex B of the EMP [\[REP10-064\]](#), this is supported by DCO Schedule 2, Requirement 3 which requires the EMP to include a series of management plans, which will require to be prepared in consultation with the relevant regulatory organisation, relevant planning authority, county planning authority and strategic highway authority and submitted to and approved in writing by the Secretary of State.
- 3.7.109. The EMP at Annex C [page 37 of [\[REP10-064\]](#)] in addition sets out a series of environmental method statements that need to be produced for specific species (bats, badgers, dormice, great crested newts, breeding birds, reptiles and other amphibians) as well as for habitats and site clearance.as part of the EMP 2nd iteration stage.
- 3.7.110. The ExA are satisfied that these obligations are appropriately secured, and that the mitigation offered would meet the appropriate tests of the NPSNN.

Habitats Regulations Assessment

- 3.7.111. This is considered in Chapter 4 and Appendix C of this Report.

Biodiversity Net Gain.

- 3.7.112. The Applicant confirmed that the principles of the Road Verge Compensation strategy have already been committed to in the Environmental Statement (paragraphs 7.8.141 – 7.8.145 in the Biodiversity Chapter [\[APP-066\]](#), B10 within the REAC [\[APP-137\]](#) updated by [REP10-066](#) and paragraphs B.5.11.2 and B.5.11.3 in the Landscape and Ecological Management Plan [\[AS-035\]](#)).
- 3.7.113. There is no requirement to deliver BNG for NSIPs at the current time, however the scheme has the potential to achieve in excess of 10%. The v4.0 of the BNG Metric was not issued until February 2024 well after the assessment had been prepared for this scheme, guidance has been followed to continue to use the v3.0 metric for projects which predate the latest version.
- 3.7.114. The ExA has considered BNG in respect of NPSNN which encourages the taking of opportunities to build beneficial biodiversity features into the design of projects (paragraph 5.33) and enhancement of existing habitats where possible (paragraph 5.36). Whilst provision of BNG is not currently a statutory requirement for NSIPs or stipulated in NPSNN, there can be no doubt that there is a clear direction of travel toward this objective. Section 99 of The Environment Act 2021 provides for the introduction of a statutory requirement for NSIPs (not yet brought into force) and NPSNN2024 also reflect the strengthening of net gain expectations. A number of the local plan policies also support this objective, as summarised in [\[REP11-007\]](#).
- 3.7.115. The ExA conclude that while the requirement to achieve a minimum of 10% BNG is not a statutory test, the Applicant has committed to the delivery of an approach which has the potential to deliver BNG at or above this level. This approach is secured through the management plans.

CONCLUSIONS

- 3.7.116. Drawing together all of the above considerations, the ExA conclude that reasonable alternatives have been considered and appropriate biodiversity mitigation measures are adequately secured under the provisions of Requirements 3 (EMP), 5 (Landscaping), 6 (Maintenance of landscaping), 10 (Protected Species) of the Applicant's final dDCO [\[REP11-003\]](#). As such, we consider that significant harm to biodiversity would be avoided and the effects of construction and operation of the Proposed Development on biodiversity features would be minimised, in line with the duties under paragraph 5.36 of NPSNN.
- 3.7.117. We also conclude that with the mitigation in place, secured through the REAC and the Requirements of the dDCO that scheme has the potential to provide habitat benefits through the RVCS as well as the habitat creation at the flood storage area. These benefits have the potential to achieve a BNG across the Proposed development which exceeds the current policy requirements.
- 3.7.118. In arriving at these conclusions, the ExA has taken account of the need for European Protected Species and Protected Species licences to be obtained from Natural England (NE) in accordance with paragraph 5.38 of NPSNN. The Applicant's Details of Other Consents and Licences [\[REP10-027\]](#), summarises the position on such licences at the end of the Examination.

- 3.7.119. A District Level Licence for great crested newts, badgers, dormice, and bats are the licences identified. Agreement with this approach is confirmed by NE, as relevant licensing body, in [\[REP10-078\]](#), SoCG.
- 3.7.120. Should pre-construction surveys indicate invasive non-native species (INNS), the EMP [\[REP10-064\]](#) requires that an INNS Plan be prepared prior to commencement of the Proposed Development.
- 3.7.121. On the basis of the above considerations, the ExA ascribes the overall effects of the Proposed Development on biodiversity moderate weight in favour of the making of the Order. No further changes to the Applicant's final dDCO [\[REP11-003\]](#) are recommended for this topic.

3.8. FLOOD RISK, DRAINAGE and WATER ENVIRONMENT

INTRODUCTION

- 3.8.1. This Section considers the impact of the Proposed Development on matters relating to flood risk, drainage and water environment.

POLICY CONSIDERATIONS

National Policy

NPSNN 2015

- 3.8.2. NPSNN paragraphs 5.94 sets out the requirement for a Flood Risk Assessment (FRA) to be submitted with the application and provides guidance on the methodology to be used.
- 3.8.3. Paragraph 5.99 of the NPSNN requires that when determining an application, the SoS should be satisfied that flood risk will not increase elsewhere and will only consider development appropriate in areas at risk of flooding where it can be demonstrated that:
- The most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different location.
 - Development is appropriately flood resilient and resistant and any residual risk can be safely managed.
- 3.8.4. Paragraph 5.105 of NPSNN states that, under the Sequential Test, preference should be given to locating development in Flood Zone 1 but acknowledges that if there are no reasonably available sites then projects can be located in Flood Zone 2. If no suitable land is available in Flood Zone 2 the land in Flood Zone 3 can be used subject to the Exception Test.
- 3.8.5. Paragraph 5.226 is concerned with water quality and resources. It stipulates that the Secretary of State should be satisfied that a proposal has had regard to the River Basin Management Plans and the requirements of the Water Framework Directive.
- 3.8.6. Paragraph 5.227 confirms that consideration should be given to the proposals put forward by the applicant to mitigate adverse effects on the water environment. It also states that the Secretary of State can grant consent but, if the EA have any concerns with respect to water quality, be satisfied that all reasonable steps have been taken by the Applicant and EA to resolve those and are satisfied.

3.8.7. Paragraph 5.108 of NPSNN details the Exception Test. It states that following application of the Sequential Test, if it is not possible for the project to be located in zones of lower probability of flooding than Flood Zone 3a, the Exception Test can be applied. It needs to:

- demonstrate that the project provides wider sustainability benefits to the community that outweigh flood risk; and
- FRA must demonstrate that the project will be safe for its lifetime, without increasing flood risk elsewhere and, where possible, will reduce flood risk overall.

3.8.8. The NPPF (December 2023) has equivalent requirements as per paragraphs 165 – 171.

NPSNN 2024

3.8.9. The NPSNN 2024 does not raise any significant different policy concerning flood risk, drainage and water environment matters.

THE APPLICATION

3.8.10. Chapter 8 of the ES was submitted as part of the application [[REP10-045](#)] provides the assessment of road drainage and the water environment.) The assessment has included the impacts (construction and operation) on surface water (quality and hydromorphology), groundwater (quality, levels and flows), and flood risk.

3.8.11. A WFD Compliance Assessment is appended to the ES as Appendix 8.2 [[APP-108](#)]. With respect to the alignment of the Proposed Development with the WFD objectives it is deemed to be compliant, however additional assessments are required at the detailed design stage to include a scour assessment and consultation with the Environment Agency to determine the most pragmatic approach to bank protection under the link road River Chelt Bridge.

3.8.12. A FRA has been carried out and is submitted in support of the ES [[REP5-008](#) and [REP5-010](#)]. A summary of the methodology and findings of the FRA are also presented in Chapter 8 of the ES.

Baseline

3.8.13. Section 8.6 [[REP10-045](#)] sets out baseline conditions relating to surface water within the study area. Table 8-5 confirms the current WFD status for the existing six surface water body catchments within the study area. They are:

- River Chelt (source to M5),
- River Chelt (M5 to River Severn),
- Leigh Brook,
- River Swilgate,
- Hatherley Brook, and
- River Severn.

3.8.14. The 2019 overall status of the above catchments is described as 'moderate' with the exception of the River Chelt (M5 to River Severn) which is described as 'poor'.

3.8.15. A summary of baseline water environment receptors (surface water, groundwater, and flood risk) and their importance is included at Table 8-11.

Construction Phase

3.8.16. Potential construction stage impacts relevant to surface water quality, hydromorphology, groundwater and flood risk are set out at Section 8.7.20 to 8.7.33 [\[REP10-045\]](#).

3.8.17. The ES chapter confirms that the 1st iteration EMP [\[APP-136\]](#) (latest version [\[REP10-064\]](#)) outlines the mitigation measures which would be implemented to mitigate any potential impacts to the water environment during construction of the Proposed Development.

Surface Water Quality

3.8.18. Section 8.7.23 [\[REP10-045\]](#) confirms that there are expected to be negligible impacts on surface water quality during construction resulting in a slight significance of effect.

3.8.19. This is subject to the implementation of appropriate measures regarding soil handling, pollution prevention and control, and site waste management as set out at Section 8.7.22.

3.8.20. The 1st iteration EMP, [\[REP10-064\]](#) outlines the plans that would be produced by the contractor as part of the 2nd iteration EMP and includes plans covering the above matters.

Hydromorphology

3.8.21. Section 8.7.25 [\[REP10-045\]](#) confirms that construction would have negligible impacts on the hydromorphology of the water environment resulting a worst case Slight significance of effect. This is subject to implementation of embedded mitigation measures (outlined in the 1st iteration EMP) and summarised in Section 8.7.24.

Groundwater

3.8.22. The ES confirms that subject to embedded mitigation measures (described at Section 8.7.26), negligible impacts to groundwater during construction are expected resulting in a Slight significance of effect.

Flood Risk

3.8.23. The FRA [\[REP5-008\]](#) confirms at Section 5.1.7 that the Proposed Development would result in construction work on the flood plains of the River Chelt and Leigh Brook. This involves works in Flood Zones 2 and 3 and no specific hydraulic modelling of temporary construction conditions has been undertaken.

3.8.24. Section 5.1.8 sets out possible causes for a change in flood risk during construction, when no embedded mitigation is included. These include blockages in the floodplains and sediment runoff etc.

3.8.25. Furthermore, the ES [\[REP10-045\]](#) at Section 8.7.28 confirms construction activities in the floodplain would be minimised and phased so that storage basins and compensation areas would be in place prior to the loss of any existing floodplain volume to ensure that there is no overall adverse impact.

Operational Phase

- 3.8.26. Potential construction stage impacts relevant to surface water quality, hydromorphology, groundwater and flood risk are set out at Section 8.7.34 to 8.7.68 [REP10-045].

Surface Water Quality

- 3.8.27. A drainage strategy [APP-079] has been prepared to manage the volumes and quality of any surface water runoff. The drainage strategy comprises six attenuation basins along the M5, A4019 and the proposed link road. The ES [REP10-045] describes these at Section 8.7.35.
- 3.8.28. The drainage catchments, receiving watercourse, areas and baseline and scheme mitigations are set out in [REP10-045] Table 8-13. With the Proposed Development in place there are predicted to be beneficial impacts to surface water quality for the combined basin and S2 catchments (with Leigh Brook being the receiving watercourse). The remaining drainage catchments (with Leigh Brook or the River Chelt being the receiving watercourse) all have a negligible magnitude of impact. The ES concludes that the significance of effect is slightly adverse as the importance of the receiving watercourses is high.

Hydromorphology

- 3.8.29. Table 8-17 [REP10-045] identifies the surface water receptors which may be impacted by the Proposed Development in terms of hydromorphology and has outlined the magnitude and significance of impact. All impacts to the River Chelt and Leigh Brook are expected to be minor. Furthermore, with the embedded mitigation applied, any potential impacts would be mitigated to a level which is not significant.
- 3.8.30. However, the ES [REP10-045] confirms that there could be potential for riverbank erosion along the River Chelt which could interfere with the bridge abutments, footpaths and fences proposed under the link road River Chelt Bridge. The Applicant has concluded that some form of bank protection would be required through the structure to protect the bridge abutments, footpath and fencing from potential future erosion. Further assessments (including a scour assessment) are proposed at the detailed design stage and further consultation with the EA would be required as part of the necessary Flood Risk Activity Permit process (FRAP).
- 3.8.31. The Section 8.7.57 concludes that impacts to the River Chelt and Leigh Brook are expected to be minor with either a Slight or Moderate significance (based on guidance in LA 104). The significance of impact was identified as Slight as localised impacts are expected. With the embedded mitigation applied, any potential impacts are expected to be mitigated to a level which is not significant.

Groundwater

- 3.8.32. Table 8-18 [REP10-045] in the ES summarises the effect on groundwater receptors and confirms the relevant embedded mitigation in the design. The receptors comprise all superficial and bedrock aquifers associated with the following scheme activities:
- Embankments,
 - The link road River Chelt Bridge,
 - Piffs Elm (M5, Junction 10) Interchange Bridge North,
 - Piffs Elm (M5, Junction 10) Interchange Bridge South,
 - Cuttings, and

- Compensatory Flood Storage Area.

3.8.33. All receptors are identified as medium importance. The table concludes that the potential magnitude of impact on all receptors is 'negligible' with a potential slight significance of effect.

Flood Risk

3.8.34. The ES [\[REP10-045\]](#) confirms that the Proposed Development would displace flood water and significantly impact on the flood risk of its neighbours in the absence of embedded mitigation. The embedded mitigation in terms of flooding is set out in the ES at Section 8.7.64.

3.8.35. The ES concludes that with embedded mitigation there are still potential significant adverse effects localised to the River Chelt floodplain on the existing farmland. These effects are not considered to increase flood risk but would result in localised adverse impacts in terms of increases in flood depth (10mm to 230mm).

3.8.36. However, a reduction in flooding of between 10mm and 140mm is identified across the majority of the River Chelt floodplain.

3.8.37. Table 8-19 confirms the magnitude and significance of effects on all receptors for flood risk during construction. With respect to the River Chelt floodplain, it identifies the potential magnitude of impact as 'Some areas of Major Adverse but majority is Major Beneficial', and 'Some Large Adverse, but majority is Large Beneficial' significance of effect

ISSUES CONSIDERED DURING THE EXAMINATION

3.8.38. The key issues considered during the examination were:

- Water Framework Directive Assessment and compliance with the WFD objectives,
- The scope and appropriateness of the Applicant's FRA including findings regarding Riverbank erosion (deferred scour assessment ISH3),
- Development through flood plain / Exception Test (re. development in Flood Zone 3),
- The appropriateness of the reservoir proposal and its maintenance,
- The adequacy of the drainage proposals / strategy, and
- The adequacy of the mitigation and how that is secured.

Water Framework Directive Assessment and compliance with the WFD objectives

3.8.39. The EA [\[RR-013\]](#) raised an issue with respect to the WFD Assessment on the basis that measures needed to achieve the environmental objectives in the river basin district was not given due consideration. There was a concern that the Proposed Development could restrict the options for future plans and projects to achieve good ecological status in the Severn Estuary and result in unacceptable residual impacts from proposed development.

3.8.40. Therefore, the ExA requested [Q.16.1.1 [PD-010](#)] that the Applicant provide an updated WFD Assessment which considered if the proposed development could restrict the options for future projects to achieve good ecological status in the Severn Estuary.

- 3.8.41. The Applicant confirmed that an updated WFD Assessment had been provided [\[REP3-028\]](#) in response which included a review of the Cycle 3 Programme of Measures for the Severn River Basin District. The assessment concluded that Proposed Development does not have the potential to restrict any future plans and project to achieve status Objectives in the Severn River Basin District which includes the Estuary.
- 3.8.42. In response to [Q.16.1.2 PD-010] the EA [\[REP3-070\]](#) confirmed that they were satisfied that there is a negligible risk of deterioration to water quality elements in the affected WFD waterbodies.
- 3.8.43. Furthermore, the ExA explored at ISH3 with the JC their position with regards to compliance with WFD and if the appropriate measures are secured by the dDCO. Their response [\[REP4-048c\]](#) confirmed:
- the JC have reviewed the information and assessment provided as part of the ES and this indicates compliance with the WFD
 - The JC note that the ES includes the embedded mitigation and the specific mitigation in the Register of Environmental Actions and Commitments (REAC)
 - It was acknowledged by the JC that further assessments (including a scour assessment) would be made available at the detailed design stage.
 - The JC confirmed that they were content that some items would be deferred for review at detailed design stage

The scope and appropriateness of the Applicant's flood risk assessment including findings regarding Riverbank erosion

- 3.8.44. The ExA explored the scope, appropriateness and findings of the Applicants FRA through ExQ1 [\[PD-010\]](#). To establish:
- If the EA were satisfied with the scope of the FRA (including the omission of any hydraulic modelling of temporary construction conditions) [Q16.0.1 [PD-010](#)],
 - If the EA were satisfied with the Applicant's position regarding riverbank erosion and if that would be adequately addressed in the REAC via a flood risk activity permit [Q16.0.2 [PD-010](#)], and
 - If the EA can be satisfied there would be no significant construction phase flood effects in the absence of any construction phase assessments and how adequate flood plain storage (and compensation) would be in place to avoid any overall adverse impacts during construction [Q16.0.3 [PD-010](#)].
- 3.8.45. In response [\[REP3-070\]](#) the EA confirmed that in the absence of a final detailed design, a commitment has been made to undertake further detailed assessment which would be used to finalise the mitigation requirements and that would be reviewed by the EA.
- 3.8.46. With respect to modelling of temporary construction conditions, the EA noted that they would be consulted on that in the future as per Item WE15 in the REAC which highlights a requirement for detailed hydraulic modelling of the construction phase which would be undertaken to support a temporary flood risk activity permit.
- 3.8.47. The EA confirmed that *'Riverbank erosion is considered a natural process and any proposals to mitigate against this as part of the scheme will be regulated through the Environmental Permitting Regulations (2016) by the Environment Agency under the Flood Risk Activity Permitting process.'*

- 3.8.48. Whilst the EA could not confirm that there would not be any significant construction phase effects in the absence of assessments, they concluded that *'item WE15 in the REAC [REP1-030] commits the Applicant to assessing the impacts of both the final permanent and temporary works within the flood plain of the River Chelt through detailed modelling to ensure appropriate flood plain compensation measures are constructed to mitigate impacts'*.
- 3.8.49. The phasing of attenuation basin construction and the associated consenting process was also raised with the EA by the ExA at ISH3. In their post hearing written submissions [REP4-046], the EA confirmed that they had no concerns regarding the construction and consenting process but requested that additional wording was added to the REAC to trigger additional assessments if any form of contamination is identified. The Applicant changed Requirement 8 to meet EA request in [dDCO Rev 6 REP7-002].
- 3.8.50. Furthermore, the scope of the FRA was subject to discussions between NH and the Applicant, EA and JC during the examination. With respect to the strategic road network the ExA note that there are no outstanding matters [REP10-074].

Development through flood plain / Exception Test

- 3.8.51. The ExA explored through hearings and WQs with the Applicant, JC and the EA if the link road could be deemed to be essential infrastructure on the basis that it is located within Flood Zone 3(b) lands.
- 3.8.52. In the Applicant's response to ISH1 [REP1-046] (pages 39) it confirms that all alternative route options for the link road would encroach on Flood Zone 3 land and there are no reasonably available lower risk alternative routes available. The Applicant included the NPPF Sequential Test at Table 4-1 [REP5-008].
- 3.8.53. [REP1-046] (pages 41-42) also set out various other road schemes whereby road proposals had been considered to be essential infrastructure. This included local road elements in addition to the strategic highway network.
- 3.8.54. The ExA sought the respective positions of the EA and JC with respect to their consideration of the Sequential and Exception Test as included in the Deadline 1 draft EA SoCG [REP1-036] Items 8.2 and 8.3.
- 3.8.55. The ExA sought the position of the JC [REP5-036] with respect to this matter and they confirmed that the link road is essential infrastructure as whilst it is an individual element, it is essential to the whole Proposed Development and should be considered on the basis of the holistic proposed development.
- 3.8.56. The JC concluded [Q16.0.2 response REP5-036] that they thought it would be appropriate for the Proposed Development to be considered as Essential Infrastructure and acceptable (subject to passing the Exception Test). The response also confirms that Essential Infrastructure should / would pass the Exception test.
- 3.8.57. In response to ExA questions, the EA [REP4-046] subsequently set out two possible positions with respect to the Sequential and Exception Test on the basis that the with respect to essential infrastructure, confirming *'it could be considered that the West Cheltenham link road (the link road) is proposed to support future development only, which would fall outside of this definition'*.

- 3.8.58. In the event that the Proposed Development is not deemed to be essential infrastructure on the basis that the link road is deemed to be outside of that definition, the EA noted that *'according to Table 2, Flood Risk vulnerability and flood zone 'incompatibility' of paragraph 079 of the NPPG, development should not be permitted, because the scheme would then contain different elements of vulnerability and therefore the highest vulnerability category should be used'*.

The appropriateness of the reservoir proposal and its maintenance

- 3.8.59. NH initially raised issues in [\[RR-026\]](#) with respect to the ownership and maintenance of flood storage area 7, principally on the basis that the M5 southbound on-slip embankment would form part of the flood storage area, the responsibility for both the construction and the maintenance of the M5 southbound on-slip embankment (up to the formation level), would remain with the Applicant in accordance with the requirements of The Reservoirs Act 1975.
- 3.8.60. NH stated that they do not have the operational capacity to maintain any aspect of the flood storage area but required the ownership and maintenance of the drainage asset as proposed to become the responsibility of National Highways.
- 3.8.61. This issue was explored with the Applicant and NH through written questions and at ISH3. The (then) position of NH was set out in their post hearing written submissions [\[REP4-049\]](#).
- 3.8.62. This matter was ultimately resolved (as confirmed in the final NH SoCG [\[REP10-074\]](#) items 8.2 and 8.3) during the examination on the basis that appropriate scheme changes were introduced by the Applicant within Change Application 2 (Change 6). This change introduces two separate basins to store flood water, with culverts to carry flood water under the M5 and the A4019.
- 3.8.63. On the basis that this would remove the M5 and the A4019 road embankments as impoundment structures for the reservoir, it would reduce the maintenance responsibilities (when compared to the previous proposals) required under the Reservoirs Act 1975.

The adequacy of the drainage proposals / strategy

- 3.8.64. At ISH3, the ExA explored the appropriateness of the drainage proposals including surface water run-off during construction and the subsequent operation of the proposed development. NH and the JC provided their positions with respect to the strategic road network as subsequently documented in their post hearing submissions [\[REP4-049\]](#) and [\[REP4-048c\]](#) respectively.
- 3.8.65. NH confirmed that, having regard to the Applicant's submission (principally set out in Chapter 8 of the ES [\[REP1-014\]](#) and the Drainage Strategy Report in Appendix 2.1 of the ES [\[APP-079\]](#):
- 'National Highways will require further, more substantive information to be provided via the detailed design and completion of all appropriate plans in the 2nd iteration EMP to confirm that the management of surface water is sufficient during construction and operation (3rd iteration EMP) including assessment of water quality in line with DMRB LA113.'*
- 3.8.66. The JC raised no issues with respect to the adequacy of the drainage proposals.

The adequacy of the mitigation and how that is secured

- 3.8.67. Following ExA questions at ISH3, the EA [\[REP4-046\]](#) confirmed:
- The Flood Risk Activity Permit (FRAP) only related to temporary works as the final, permanent proposals would be secured via the DCO.
 - The EA consider that the dDCO (Requirements 11 & 13) and the REAC WE15 should address temporary mitigation requirements covered by the FRAP.
 - With respect to drainage consents more generally the EA confirmed that they were content with Requirements 11 and 13 and the REAC WE15 to WE24 which covers all flood risk works temporary and permanent.
 - With regards to the phasing of flood storage area construction and the associated consenting process (via the REAC / FRAP), the EA had no concern regarding the approach proposed (subject to the inclusion of wording in the REAC confirming that additional assessments would be undertaken if any form of contamination is identified).
 - The requirement for a scour assessment to assess and adequately mitigate riverbank erosion has also been secured by the REAC / FRAP.
- 3.8.68. The JC agreed with the above as per their submissions at ISH3 [\[REP4-048c\]](#).

Matters raised in Relevant Representations

- 3.8.69. The JC, EA and NH raised issues with respect to various matters in their relevant representations [\[RR-039\]](#), [\[RR-013\]](#) and [\[RR-026\]](#) respectively. They principally related to the water environment, WFD objectives, modelling and flood storage proposals. These issues were addressed as part of the examination.
- 3.8.70. One relevant representation (submitted by The Mercer Family [\[RR-040\]](#)) made general comments with respect to flooding and raised concerns that the proposals could worsen matters. However, no specific evidence or detail was provided in support of these concerns.
- 3.8.71. Mr Hadley [\[RR-028\]](#) also raised issues with respect to the proposals affecting the existing ditch between the edge of the B4634 and his land. Mr Hadley did not raise any additional matters during the examination.
- 3.8.72. The Applicant provided a response to all matters raised in [\[REP1-043\]](#).

EXA'S CONCLUSIONS

- 3.8.73. The ExA note that the LIR [\[REP1-069\]](#) confirms that the JC agree with the Applicant's conclusions in the ES that no significant effects on water quality, hydromorphology or groundwater are identified. However, significant adverse effects localised to the River Chelt floodplain are reported. The principal concern identified by the JC in the LIR relates to the lack of water quality data however that was resolved during the examination.
- 3.8.74. The ExA also note that by the close of the examination, the Principal Areas of Disagreement Summary Statement (PADSS) [\[REP10-114\]](#), that a side agreement had been signed that there are no outstanding areas of disagreement.

Water Framework Directive Assessment and compliance with the WFD objectives

- 3.8.75. The ExA note the positions of the EA and JC and considers that a satisfactory WFD Compliance assessment has been undertaken and has shown that the Proposed

Development would not result in a deterioration of the WFD status or prevent achieving 'good' status by 2027 in accordance with the WFD objective.

- 3.8.76. Furthermore, the submitted WFD Assessment concluded that Proposed Development does not have the potential to restrict any future plans and project to achieve status Objectives in the Severn River Basin District which includes the Estuary.
- 3.8.77. In response to [Q.16.1.2 [PD-010](#)] the EA [[REP3-070](#)] confirmed that they were satisfied that there is a negligible risk of deterioration to water quality elements in the affected WFD waterbodies.
- 3.8.78. The Applicant's assessment and the development proposals therefore align with the requirements of Paragraph 5.226 of the NPSNN. Moreover, the EA have no outstanding concerns with respect to water quality / resources which would conflict with Paragraph 5.227 of the NPSNN.

The scope and appropriateness of the Applicant's flood risk assessment including findings regarding Riverbank erosion

- 3.8.79. The ExA consider that the scope and appropriateness of the FRA is acceptable having regard to the positions of the EA and JC.
- 3.8.80. The Applicant is therefore considered to have satisfied the requirements of NPSNN paragraphs 5.94 with respect to the requirement to submit, and guidance with respect to, the FRA.
- 3.8.81. The ExA note the Applicant's position with respect to the requirement for additional construction phase modelling including detailed hydraulic modelling. However, those assessments, and a scour assessment to assess (and adequately mitigate riverbank erosion) have been adequately secured by the REAC / FRAP as agreed with the EA and JC.

Development through flood plain / Exception Test

- 3.8.82. The ExA acknowledge that the EA has identified that it could be considered that the link road proposal which is in Flood Zone 3(b) could fall outside of the definition of 'essential infrastructure'.
- 3.8.83. We consider that the Applicant has assessed alternative routes and with respect to the application of the Sequential Test (NPSNN paragraph 5.105) demonstrated that there is no reasonably available site which would avoid Flood Zone 3 or cross lower risk sites. We note that this position has also not been challenged by any party.
- 3.8.84. With respect to the requirements of the NPSNN at Paragraph 5.105, the ExA consider it logical that the Proposed Development, including an upgrade to the M5, Junction 10 has to be located in the area that it is. That also provides support for the location of the link road on the basis of the connections that it needs to provide between Junction 10 and other existing and future transport infrastructure.
- 3.8.85. The position of the Applicant and JC is noted which is that the link road is essential to the whole Proposed Development and should be taken as a single entity. Therefore, the development should be considered to be essential development and acceptable, subject to passing the Exception Test. We also have regard to the JC view that Essential Infrastructure in Flood Zone 3, should pass the Exception Test.

- 3.8.86. Having regard to the requirements of Paragraph 5.108 of the NPSNN regarding the Exception Test, it is noted that it is the Applicant's case that there would be no increase in flood risk (noting that there is potential for increased depth of flooding on the flood plain) and that position has been accepted by the JC and EA. The ExA have found no reason to disagree with this.
- 3.8.87. Furthermore, there is also no evidence which suggests that the Proposed Development would not be safe for its lifetime. The Proposed Development is deemed to offer community benefits for reasons including improving accessibility for local residents and businesses as included within the Population and Human Health Chapter of the ES.
- 3.8.88. Therefore, the ExA consider that the Proposed Development passes the requirements of sequential and exception tests.

The appropriateness of the reservoir proposal and its maintenance

- 3.8.89. The ExA note that this matter was ultimately resolved during the examination to the satisfaction of NH on the basis that appropriate scheme changes were introduced by the Applicant within Change Application 2 (Change 6).
- 3.8.90. The changes included those which would remove the M5 or the A4019 road embankments as impoundment structures for the reservoir (and introduce two separate basins) and reduce the maintenance responsibilities (when compared to the previous proposals) required under the Reservoirs Act 1975.

The adequacy of the drainage proposals / strategy

- 3.8.91. The ExA note the JC raised no issues with respect to the adequacy of the drainage proposals during the examination. The position of NH is also noted in that they require further information through subsequent iterations of the EMP to confirm that the management of surface water is sufficient during construction and operation phases.
- 3.8.92. The ExA find that the drainage proposals and strategy are adequate subject to the secured mitigations.

The adequacy of the mitigation and how that is secured

- 3.8.93. ExA note that all parties agree that appropriate mitigation is secured (in the FRAP, REAC and dDCO Requirements) and agreed by all parties.

Matters raised in Relevant Representations

- 3.8.94. The ExA find that the Applicant has responded to all matters raised in relevant representations and no issues regarding flood risk, drainage and water environment were subsequently maintained.
- 3.8.95. With regards to the concerns raised by the Mercer Family and Mr Hadley, the ExA also note the EA and JC position that the submitted FRA and their findings were satisfactory.

OVERALL CONCLUSION

- 3.8.96. The ExA finds that there would be potential for slight adverse operational effects associated with surface water discharges due to the importance of the receiving

watercourses. There is also potential for slight adverse operational effects of ground water receptors.

- 3.8.97. There is also the potential for significant construction phase adverse effects in respect of flood risk in the absence of construction phase assessments and mitigations although it is noted that the EA is satisfied with the Applicant's approach and how these are secured via the REAC / FRAP.
- 3.8.98. The Applicant's submissions also recognise that there are potential significant adverse effects localised to the River Chelt floodplain on the existing farmland due to increase flood depth. However, these are not considered to increase flood risk per se.
- 3.8.99. Therefore, we find that the issue of flood risk, drainage and water environment does carry a little weight against of the Order being made.
- 3.8.100. Taking account of the conclusions in this Section, the ExA considers that the Applicant's assessment of flood risk, drainage and water complies with the policy aims of the NPSNN.

3.9. HISTORIC ENVIRONMENT

INTRODUCTION

- 3.9.1. This Section considers the impact of the Proposed Development on the historic environment.

POLICY BACKGROUND

National Policy

The National Planning Policy Statement for National Networks (NPSNN)

- 3.9.2. The assessment for heritage matters as set out in NPSNN requires the Applicant to:
- undertake an assessment of any likely significant heritage impacts;
 - describe the significance of any heritage assets affected, including any contribution made by their setting; and where a site includes or has the potential to include heritage assets with archaeological interest, the Applicant should include an appropriate desk-based assessment and where necessary a field evaluation.
- 3.9.3. In reaching a decision the SoS should:
- seek to identify and assess the particular significance of any heritage asset that may be affected including the setting of the heritage asset (paragraph 5.128),
 - take account of the particular nature of the significance of the heritage assets and the value they hold for this and future generations (paragraph 5.129),
 - take into account the desirability of sustaining and enhancing the significance of heritage assets, the contribution of their settings and the positive contribution their conservation can make to sustainable communities (paragraph 5.130),
 - presume in favour of conserving designated heritage assets such that the greater the significance of the designated asset, the greater the presumption in favour of its conservation (paragraph 5.131),
 - weigh any harmful impact on the significance of a designated heritage asset against the public benefit of development, recognising that the greater the harm to the significance of the heritage asset the greater the justification will need to

be for any loss. Where the application will lead to substantial harm to or total loss of significance of a designated heritage asset the decision-maker should refuse consent unless it can be demonstrated that the substantial harm to or loss of significance is necessary in order to deliver substantial public benefits that outweigh that loss or harm (paragraphs 5.131 to 5.133), and

- impose requirements to secure appropriate identification and treatment of such assets discovered during construction where the decision maker considers there is a high probability of as-yet undiscovered assets (paragraph 5.142).

NPSNN 2024

- 3.9.4. The NPSNN 2024 reiterates the approach of the 2015 NPSNN in recognising that the construction and operation of national networks infrastructure can result in adverse effects on the historic environment. In doing so it recognises the distinction between designated and non-designated heritage assets and advises that the SoS should consider the impacts on *“the basis of clear evidence that the assets have a significance that merit consideration in the process.”*

The National Planning Policy Framework (NPPF)

- 3.9.5. Paragraph 200 of the NPPF reiterates the approach set out in the NPSNN for assessing effects and considering the historic environment.
- 3.9.6. Paragraph 205 of the NPPF requires that: “When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.”
- 3.9.7. Paragraph 208 of the NPPF states that: “Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.”

National Planning Practice Guidance (NPPG)

- 3.9.8. The NPPG references the NPPF in regard to the historic environment and provides further clarification on the setting of a heritage asset and how the understanding of setting goes beyond the visual and physical considerations. (Reference ID: 18a-013-20190723).
- 3.9.9. The NPPG (Reference ID: 18a-020-20190723) also provides guidance on what is meant by the term public benefits. It states that: *“Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and not just be a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits...”*

Local Plan Policies

- 3.9.10. Policy SD8 of the Joint Core Strategy (JCS) for Gloucester, Cheltenham, and Tewkesbury Policy requires development to make a positive contribution to local character and distinctiveness and give regard to valued and distinctive elements of the historic environment. It states that designated and undesignated heritage assets, and their settings will be conserved and enhanced as appropriate to their

significance and for their important contribution to local character, distinctiveness, and sense of place.

- 3.9.11. The Cheltenham Plan Policy HE2 and Tewkesbury Borough Plan Policy HER4, support the presumption in favour of preserving archaeological assets in situ, and developments that result in harm to or loss of these assets should be wholly exceptional.
- 3.9.12. Tewkesbury Borough Plan Policies HER2 and HER5 support the protection of listed buildings, non-designated heritage assets and their settings.

THE APPLICATION

- 3.9.13. The consideration of heritage, historic landscape character and archaeological matters is contained in ES Chapter 11 Cultural Heritage [\[APP-070\]](#) updated by [\[REP9-002\]](#) the final version being [\[REP10-049\]](#). This was supported by the following documents and plans:
- Historic environment sites and features plan– non designated receptors parts 1 and 2 [\[APP-021\]](#) and [APP-022](#) updated by [\[REP10-017\]](#);
 - Historic environment sites and features plan – non designated receptors – ridge and furrow parts 1 and 2 [\[APP-023\]](#) and [APP-024](#) updated by [\[REP10-016\]](#);
 - Historic environment sites and features plan– designated receptors parts 1 and 2 [\[APP-025\]](#) and [APP-026](#) updated by [\[REP10-015\]](#);
 - Appendix 11.1 Gazetteer of designated and non-designated heritage assets [\[APP-126\]](#) updated by [\[REP10-054\]](#);
 - Appendix 11.2 Cultural heritage Figures [\[APP-127\]](#) updated by [\[REP9A-002\]](#);
 - Appendix 11.3 Geophysical Survey [\[APP-128\]](#);
 - Appendix 11.4 Evaluation trenching [\[APP-129\]](#), and
 - A draft Statement of Common Ground (SoCG) with Historic England (HE) [\[APP-150\]](#).
- 3.9.14. As described in paragraph 11.5.1 of [\[APP-070\]](#) the Applicant's assessment methodology identifies two study areas that comprise the following:
- the DCO boundary plus 500m for non-designated heritage assets, and
 - the option alignments plus a 1km buffer for designated heritage assets.
- 3.9.15. The development of the extent of the appropriate study area relied upon the application of professional judgement and the guidance set out in the Design Manual for Roads and Bridges (DMRB) LA 106 Cultural Heritage. No Conservation Areas were scoped into the assessment.
- 3.9.16. This was further developed utilising guidance in DMRB LA 104 to assess environmental impacts upon cultural heritage, defining the sensitivity of the receptor and the magnitude of impact and determining the significance of effect.
- 3.9.17. The assessment was further informed by section 16 of the NPPF, local policy and guidance produced by Historic England (HE).
- 3.9.18. As such a series of Tables within the Environmental Statement (ES) Chapter define the approach:
- Table 11-2 - Factors in determining the value (sensitivity) of heritage assets,
 - Table 11-3 - Determining the magnitude of impact on heritage assets, and
 - Table 11-4 - Significance of effect matrix.

Designated Heritage Assets

3.9.19. Within the study area 31 designated heritage assets have been identified including the following which the assessment considers have the potential for being affected by significant impacts:

- The Scheduled Monument (1016835) and four Grade II listed buildings (1091874, 1154528, 1303797, and 1340069) located at Moat House, c. 100 m south of the A4019 at Moat Lane.
- Two Grade II listed buildings (1091875 and 1303770) c. 160 m north of the A4019 near the Uckington & Elmstone Hardwicke Village Hall.
- Two Grade II listed buildings (1088722 and 1305182), c 200 m west of the new link road between the B4634 and the A4019 and associated with archaeological remains of Withybridge Mill (GHER 6474). An additional Grade II listed building, 1172272, is located nearby, but not associated with Withybridge Mill.

Non-Designated Heritage Assets

3.9.20. There are several non-designated heritage assets within the study area ranging from archaeological remains from the prehistoric and historic use of the region. Excavations at All Saints Academy to the eastern end of the Proposed Development confirmed activity dating to the Bronze Age, while Roman- British archaeology has been identified throughout the study area.

3.9.21. Information was submitted during the Examination at ISH4 that the properties at Elton Lawn, Post Box Cottage, and Landean (all in Uckington) were non-designated heritage assets [\[REP7-022\]](#). Tewkesbury Borough Council (TBC) confirmed subsequently that none of these properties are on the GHER or the local heritage lists maintained by TBC or Cheltenham Borough Council (CBC), but that all three properties meet the criteria for local listing due to their age, form, and presence on the Tewkesbury Road (A4019).

3.9.22. A further five non-designated heritage assets were identified by the TBC Conservation Officer following ISH5. These being:

- The House in the Tree Public House, Withybridge Lane,
- Elm Cottage, Old Gloucester Road,
- Orchard House, Hayden Lane,
- Barn Close, Old Gloucester Road, and
- Mill Cottage, Withy Bridge, off Withybridge Lane.

3.9.23. As with the three properties in Uckington, none of these five properties are on the GHER or the local heritage lists maintained by TBC or CBC, but all five properties were considered to meet the criteria for local listing due to their age, and form. All of these properties were added to the plans [\[REP9A-002\]](#) and are marked in a different colour so they can be easily identified. An extract from the plan is included below.



Figure 88 Extract identifying non-designated heritage assets - Source [REP9A-002]

Historic Landscape

- 3.9.24. Utilising information from the Gloucestershire Historic Landscape Characterisation (HLC) reports assisted in the understanding of the historic character of the area, which shows the majority of the area to be predominantly enclosed fieldscapes developing from parliamentary enclosures. The exception being the area around the Moat House Scheduled Monument which retains a medieval moat, and other features associated with the historic development of the site.

Geophysical Survey and Trial Trenching

- 3.9.25. A programme of survey and trial trenching was undertaken along the length of the proposed link road in order to develop an understanding of the archaeological remains. The results can be found in [APP-128] Appendix 11.3 of the ES.
- 3.9.26. The trenching revealed complex archaeological features relating from the middle Iron Age to middle Romano-British (3rd century AD) periods and indicative of a long period of use with good preservation, including waterlogged deposits (The details are set out in [APP-129] Appendix 11.4 of the ES).

Potential Construction Effects

- 3.9.27. The Applicant concludes that there is the potential for impacts to arise through the removal of heritage assets due to the construction activities as well as to changes to settings that affect the significance of the asset.
- 3.9.28. The Applicant accepts in paragraph 11.11.1 of [APP-070] that “*The construction of the scheme is expected to remove all or part of the remains associated with significant archaeological deposits within the footprint of the Scheme.*”
- 3.9.29. Six known archaeological sites could be affected in this way:

- GHER 29641: Ditches, pits, and post-holes probably representing a Roman field system,

- GHER 5437: Roman site,
- GHER 8637: Area of cropmarks of later prehistoric or Romano-British settlement and field systems,
- GHER 22314: post-holes and linear features associated with post-medieval pottery,
- GHER 48027: Linear and curvilinear cropmarks visible on aerial photographs, and
- GHER 27052: Site of World War II heavy anti-aircraft battery (A12) composed of mounted four 3.7-inch static guns and GL Mark II radar, mostly demolished by 1970.

3.9.30. Construction could also affect the setting of heritage assets through disruption that could interfere with the heritage value being appreciated although this would be temporary and mitigated through the management of the construction process.

3.9.31. In addition to the six locations listed above there is the potential for the loss of unknown archaeological remains identified during the surveys undertaken and detailed in Appendix 11.5 [\[REP9-007\]](#) which the Applicant has assessed as having low to medium importance, but this requires mitigation.

Potential Operational Effects

3.9.32. The operation of the scheme is not expected to further impact upon below ground archaeology, however the setting of heritage assets has the potential to be affected by the introduction of the infrastructure.

3.9.33. The Applicant considers that 8 assets have the potential to have their setting affected: and have been assessed at medium sensitivity apart from the Moat House Moated Site which is assessed at high.

- 1016835: Moat House Moated Site scheduled monument,
- 1091874: Moat House (GII),
- 1154528: Bridge and Attached Pair of Lodges at Moat House (GII),
- 1303797: Moat Cottage (GII),
- 1340069: Barn circa 40 metres north-west of Moat House (GII),
- 1172272: Butler's Court Farmhouse (GII),
- 1088722: Cottages by Drive to Butler's Court (GII), and
- 1305182: Withybridge Mill and Adjoining Barn (GII).

Mitigation

3.9.34. Embedded mitigation includes the lighting and noise mitigation design to alleviate both visual and noise impacts. The scheme design was also changed to remove a connecting road in proximity to Moat House.

3.9.35. An Archaeological Management Plan [\[AS-038\]](#) updated by [\[REP10-092\]](#) is proposed to provide a programme of works and over-arching Written Scheme of Investigation (WSI) to further identify, characterise, and record the significant archaeological remains impacted by the Scheme construction. These are included in the Register of Environmental Actions and Commitments (REAC) [\[REP10-066\]](#).

Moat House Group

3.9.36. The Applicant concludes that the connection between the assets at Moat House and the village of Uckington should be maintained through sensitive landscaping that would allow for the village and moated site to be understood and appreciated as part of a discrete historic settlement. This can be achieved by limiting the roadside

developments between the moated site and the village. The current landscape design includes woodland hedges along the A4019 that would provide a visual buffer between the Scheme and the assets at Moat House. Lighting design to aid in the creation of bat corridors will leave unlit stretches of road on either side of the Moat Lane / The Green junction, which aids in maintaining the connection between Uckington and the assets at Moat House by offering a night-time buffer.

- 3.9.37. With regard to the increase in noise levels caused as a result of the Scheme the Applicant does not consider that they would alter the settings of the Moat House scheduled monument or its associated listed buildings in a manner that would detract from their ability to express their heritage significance and the impact from the change in noise levels would be slight adverse.

Butlers Court and Withybridge Mill

- 3.9.38. The introduction of the link road would impact the significance of these designated heritage assets through changes in setting, should the infrastructure dominate the landscape to the point of being unable to appreciate the connection between the archaeological and built heritage. The landscape proposals include woodland planting on either side of the link road to limit visual intrusion, and the lighting levels for the link road are limited to aid in bat conservation which would have the added benefit of protecting the assets along Withybridge Lane from light pollution. Whilst the landscaping is being established, there may be the potential for noticeable changes, but the Applicant concludes the long-term residual impact would be slight.

- 3.9.39. The Applicant concludes that *“with mitigation in place the Scheme would have a slight adverse effect on the historic environment, which is not considered to be significant. Major adverse impacts to buried archaeological remains would be mitigated through preservation by record in the form of archaeological excavation, recording, and reporting through the creation of a site archive to preserve the significant evidential values of the remains.*

- 3.9.40. *As no significant effects are expected once all embedded and additional mitigation measures are in place, the Scheme is considered to have less than substantial harm on the historic environment”.*

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.9.41. As set out in our Rule 6 letter [\[PD-008\]](#) we identified the following issues which needed to be examined within the Initial Assessment of Principal Issues (IAP1):

- 3.9.42. The effect of the Proposed Development on the significance of designated and non-designated heritage assets, including:

- the special architectural or historic interest of Listed Buildings and their setting;
- the desirability of preserving scheduled monuments and sites of archaeological interest;
- the desirability of preserving the character and appearance of conservation areas;
- adequacy and security of any mitigation proposed, and
- the effect of additional Non-Designated Heritage Assets being identified.

Local Impact Report

- 3.9.43. The LIR identifies the relevant local policies that apply and from this that the principal concern is the potential for adverse effects on archaeology during

construction as the area has “a high archaeological sensitivity related to late prehistoric and Romano-British settlement. There are six known archaeological sites which may be partially or completely removed during construction.”

- 3.9.44. The setting of Moat House a scheduled monument would be affected as would 8 Grade II Listed Buildings.
- 3.9.45. The Archaeological Management Plan (AMP) [\[REP10-092\]](#) that has been submitted is quite generic, and the 1st iteration AMP is restricted to guiding principles rather than identifying mitigation. The JCs however, welcome the commitment to a 2nd iteration AMP for approval and an overarching Written Scheme of Investigation (WSI) secured in Schedule 2 Requirement 3 ((e) part viii) of the dDCO.
- 3.9.46. The LIR also acknowledges the 2nd iteration Environmental Management Plan (EMP) provides for mitigation during construction on the settings of the heritage assets.
- 3.9.47. The JCs in their relevant representation [\[RR-039\]](#) advised they would expect that the DCO to be supported by an Archaeological Management Plan (AMP). The JCs advise that no consultation on the AMP had been carried out and requested an update from the Applicant. The JCs welcome that an outline LEMP has been requested by the ExA.
- 3.9.48. As confirmed in the final SoCG [\[REP10-072\]](#) the JCs confirmed they were content that outstanding concerns had been resolved. The Applicant had undertaken further geophysical surveys and assessment during the Examination in September 2024.
- 3.9.49. The County Archaeologist considers the details at the flood storage area to be of local, possibly regional significance and that the project now has sufficient baseline information for a decision to be made.
- 3.9.50. The Applicant confirmed that the AMP 1st Iteration has been updated (Rev 1.0) and shared with the JCs whose comments have been received and incorporated into the submission of the revised AMP at Deadline 10 [\[REP10-092\]](#).

Historic England (HE)

- 3.9.51. The Applicant prepared a draft SoCG with HE submitted with the application which was updated through the Examination [\[APP-150, REP1-038, REP10-080\]](#) The final iteration of the SoCG confirms that HE was content with the methodology of assessment, the conclusions drawn on the effect on heritage assets, and that with mitigation in place the harm overall to the heritage assets is less than substantial.
- 3.9.52. HE agrees the degree of impact and effect, once all the embedded mitigation is completed is slight adverse and not significant. While there is some harm caused to the Scheduled Monument at Moat House through the increase in traffic and road infrastructure (especially lighting) closer to the monument. This is partially mitigated through planting, landscaping and reduced lighting for ecology reasons. HE agrees the impact is equivalent to less than substantial harm in NPPF terms.
- 3.9.53. The written representation from HE [\[REP1-071\]](#) in addition to the above issues referenced concern over how any human remains found during archaeological investigation would be dealt with. Article 38 of the dDCO only refers to burials over 100 years old and does not refer to archaeological remains.

- 3.9.54. The Applicant explained that the purpose of article 38 of the dDCO is to set up a process in substitution for section 25 Burial Act 1857. The dDCO doesn't contradict the 1857 Act but replaces it, and this article being proposed follows that set out in the Model Provisions. This was followed through as agreed in the final SoCG.
- 3.9.55. HE in response to ExQ1 at [\[REP3-072\]](#) reiterated they were content with the approach taken by the Applicant and the ongoing progress of the AMP and the wording of Requirement 9 of the dDCO provided sufficient security for the conclusions within the ES to be appropriate.

IPs

- 3.9.56. Mr Badham expressed concern both during ISH4 and in subsequent written submissions [\[REP7-022\]](#) and [\[REP7-023\]](#) that there would be adverse effect on his property a non-designated heritage asset if the noise barrier is not enhanced and appropriately screened. He also stated that there should be certainty at this stage of the design of the barriers, the material to be used and whether they should be screened.
- 3.9.57. In response the Applicant confirmed discussions had been undertaken [\[REP9-008\]](#) and that the noise barrier design was preliminary and there would be an opportunity for stakeholder engagement in the detailed design stage.

EXA'S CONCLUSIONS

- 3.9.58. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, we have had regard to the desirability of preserving designated heritage assets, including listed buildings and their settings, the character and/or appearance of Conservation Areas and Scheduled Monuments or their settings.
- 3.9.59. The ExA are of the view that the Applicant has undertaken a proportionate and reasoned assessment of and described the significance of each of the heritage assets within the Order Limits, and to an appropriate distance beyond where there might potentially be an affect from the construction or subsequent operation of the Proposed Development.
- 3.9.60. The Applicant has subsequently undertaken an assessment on the significance on each of the assets identified and the ExA do not disagree with any of the conclusions reached in this respect.
- 3.9.61. Drawing together the considerations the ExA note that the Applicant's assessment of impacts on non-designated heritage assets as "Not Significant" has not been disputed by any of the IPs and the ExA has not been presented with any substantive evidence to disagree with this.
- 3.9.62. The ExA notes that programmes of geophysical survey and trial trenching were undertaken. By the close of the Examination there were no outstanding concerns regarding the assessment methodology and predicted impacts on archaeology, and this was an agreed matter in the final SoCGs with the JCs [\[REP10-072\]](#), and HE [\[REP10-080\]](#).
- 3.9.63. Taking this into account, the ExA considers that the AMP [\[REP10-092\]](#) that is secured in Requirement 3 of the Applicant's final dDCO would represent an appropriate approach towards monitoring, investigating and recording any features of archaeological interest that might be encountered during the construction phase.

- 3.9.64. The ExA considers that the Applicant's assessment of effects on designated assets represents a realistic worst-case assessment which has been agreed with by the JCs in their final SoCG [\[REP10-072\]](#) and, by Historic England in [\[REP10-080\]](#).
- 3.9.65. The ExA has no reason to disagree with this. Furthermore, the ExA considers that appropriate mitigation would be secured through the AMP that is required under Requirement 3 of the Applicant's final dDCO [\[REP11-003\]](#).
- 3.9.66. The effects of the detailed design with regards to specific impacts to designated heritage assets at Moat House will be reviewed as the detailed design is developed (at the detailed design stage). Developments to the design are secured by dDCO Schedule 2 Requirement 11(1).
- 3.9.67. Landscaping requirements to address specific impacts including in respect of the noise barriers identified will be included in the LEMP produced as part of the EMP (2nd iteration), and secured by dDCO Schedule 2, Requirement 3(2)(e)(v). Completion, approval and implementation of the 2nd iteration EMP, is secured by dDCO Schedule 2, Requirement 3(1) and 3(3).
- 3.9.68. Implementation of the AMP, detailed in Annex B of the EMP (1st iteration) [\[REP10-064\]](#) to be produced in the EMP (2nd iteration), and is secured under Schedule 2, Requirement 3(2)(e)(viii) of the dDCO. Completion, approval, and implementation of the 2nd iteration EMP, is secured by dDCO Schedule 2, Requirements 3(1) and 3(3).
- 3.9.69. Implementation of the archaeological investigation works identified within the ES Chapter on Cultural Heritage, supported by the AMP within the EMP is secured by dDCO Schedule 2, Requirement 9.
- 3.9.70. The ExA are content that the requirements proposed would secure appropriate identification and treatment of the heritage assets discovered during construction in line with (paragraph 5.142) of the NPSNN.
- 3.9.71. We have not identified any instances, during construction or operation, in which the Proposed Development is likely to result in substantial harm.
- 3.9.72. We are satisfied that the Applicant has assessed the effect of the proposed development on the significance of the heritage assets, described the significance of any heritage assets affected, including any contribution made by their setting; and where a site includes or has the potential to include heritage assets with archaeological interest, the Applicant has included an appropriate desk-based assessment and where necessary a field evaluation.
- 3.9.73. The ExA considers that the necessary monitoring, mitigation, and controls are incorporated within the latest revisions of the dDCO requirements, the AMP, the LEMP and the EMP. We are satisfied that they would be adequately secured via the dDCO.
- 3.9.74. For each of the individual identified assets, the ExA is satisfied that the Proposed Development would result in less than substantial harm to the historic significance of those assets (NPSNN, paragraph 5.1.34).
- 3.9.75. The ExA is also satisfied that no oversight or omission has occurred in respect of the assessment undertaken which may prejudice the SoS duty to consider the desirability of preserving listed buildings and their settings.

- 3.9.76. We are also content that the Applicant has undertaken a comprehensive assessment of the heritage assets that could be affected by the proposal, despite late evidence being provided by the JCs in respect of the additional non designated heritage assets. As such the Applicant has identified and assessed the particular significance of the heritage assets that may be affected including the setting of heritage assets in accordance with (paragraph 5.128) of the NPSNN.
- 3.9.77. The Applicant has taken account of the particular nature of the significance of the heritage assets and the value they hold for this and future generations in line with (paragraph 5.129) of NPSNN.
- 3.9.78. The desirability of sustaining and enhancing the significance of heritage assets, the contribution of their settings and the positive contribution their conservation can make to sustainable communities has been properly assessed and presented within the ES in line with (paragraph 5.130) of NPSNN.
- 3.9.79. The ExA's conclusions in relation to the effects of the Proposed Development on the historic environment are carried forward to Chapter 5 of this Report.

3.10. LANDSCAPE AND VISUAL

INTRODUCTION

- 3.10.1. This Section considers the landscape and visual effects that would arise from the Proposed Development. There are connections with good design and effects on biodiversity which are reported in Sections 3.12 and 3.7 of our Report respectively.

POLICY BACKGROUND

National Policy

- 3.10.2. Paragraphs 5.144 to 5.148 of NPSNN set out what should be included for assessment in an application. It should include any significant effects during construction of the project and/or the significant effects of the completed development and its operation on landscape components and landscape character as well as the visibility and conspicuousness of the project during construction and of the presence and operation of the project and potential impacts on views and visual amenity.
- 3.10.3. With respect to landscape effects, paragraph 5.156 of NPSNN states that where a local development document in England has policies based on landscape character assessment, these should be given particular consideration. However, local landscape designations should not be used in themselves as reasons to refuse consent, as this may unduly restrict acceptable development. Paragraph 5.157 states that the SoS should consider whether the project has been designed carefully, taking account of environmental effects on the landscape and siting, operational and other relevant constraints, to avoid adverse effects on landscape or to minimise harm to the landscape, including by reasonable mitigation.
- 3.10.4. In respect of visual effects, paragraph 5.158 of NPSNN states that the SoS will have to judge whether any negative visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the development.
- 3.10.5. Paragraph 5.160 of NPSNN states that adverse landscape and visual effects may be minimised through appropriate siting of infrastructure, design (including choice of

materials), and landscaping schemes, depending on the size and type of proposed project.

NPSNN 2024

- 3.10.6. Section 5 of the NPSNN identifies the generic impacts that should be considered including the effect on landscape and visual matters. At paragraph 5.169 it states *“Projects need to have regard to siting, orientation, height operational and other relevant constraints. The aim should be to avoid or minimise harm to the landscape, where adverse impacts are unavoidable providing reasonable mitigation and deliver landscape enhancement measures where possible and appropriate.”*

The National Planning Policy Framework December 2023

- 3.10.7. The NPPF at paragraph 131 sets out that the planning process should achieve high quality, beautiful and sustainable places. That policies and decisions should ensure that developments are visually attractive as a result of good architecture with appropriate and effective landscaping as well as being sympathetic to local character, environment, and landscape setting.

Local Plan Policies

- 3.10.8. The JCS includes policies SD4: Design Requirements, SD6: Landscape, INF3: Green Infrastructure all aiming to ensure development is undertaken in a way which incorporates good design aided by appropriate landscape planting and incorporating green infrastructure.
- 3.10.9. The Cheltenham Plan Policy L1: Landscape and Setting and, Tewkesbury Borough Plan LAN2: Landscape Character, along with NAT3: Green Infrastructure further support similar aims, while the Gloucestershire Local Transport Plan Policy PD0.2: Local Environmental Protection sets out similar aims.

THE APPLICATION

- 3.10.10. The Landscape and Visual Chapter of the ES [\[APP-068\]](#) sets out the Applicant's assessment of effects on the landscape. This was updated during examination [\[REP1-016\]](#), [\[REP7-005\]](#), the final version being [\[REP10-047\]](#) The assessment is supported by a series of Appendices:

- [\[APP-113\]](#) LVIA Chapter Figures, updated by [\[REP3-030\]](#),
- [\[APP-114\]](#) LVIA Chapter Assessment Table, updated by [\[REP10-059\]](#),
- [\[APP-115\]](#) LVIA Chapter Photo Sheets, updated by [\[REP10-061\]](#),
- [\[APP-116\]](#) Arboricultural Impact Assessment Part 1, and
- [\[APP-117\]](#) Arboricultural Impact Assessment Part 2.

- 3.10.11. The Applicant in undertaking its assessment undertook an analysis of the study area, an assessment of the local landscape character and the current visual amenity of the area.
- 3.10.12. The Proposed Development is identified as wholly within the National Character Area (NCA) No.106 Severn and Avon Vales being broadly defined as low lying agricultural vale. At the county level, the Gloucestershire Landscape Character Assessment (GLCA) further refines this into 33 landscape character types with the scheme being wholly within 'Settled Unwooded Vale.' These character types and the areas they cover are set out in Figure 9-2 of [\[REP3-030\]](#).

- 3.10.13. It was agreed at the scoping stage that due to the scale of these landscape areas and the nature of the effects likely to arise the scheme was highly unlikely to adversely affect the areas at this scale and so the effect was not considered further.
- 3.10.14. At the county level the scheme is wholly within the landscape and typology area SV6B 'Vale of Gloucester' as defined in the GLCA. The JCS Landscape Characterisation did further assessment and set out more focussed landscape character areas on the outskirts of each of the three towns (Gloucester, Cheltenham and Tewkesbury), and further breaks down these areas into Landscape Sensitivity Areas (LSA), providing an analysis of their sensitivity to change.
- 3.10.15. These areas are shown in Figure 2 of [\[REP3-030\]](#). An extract is copied below.

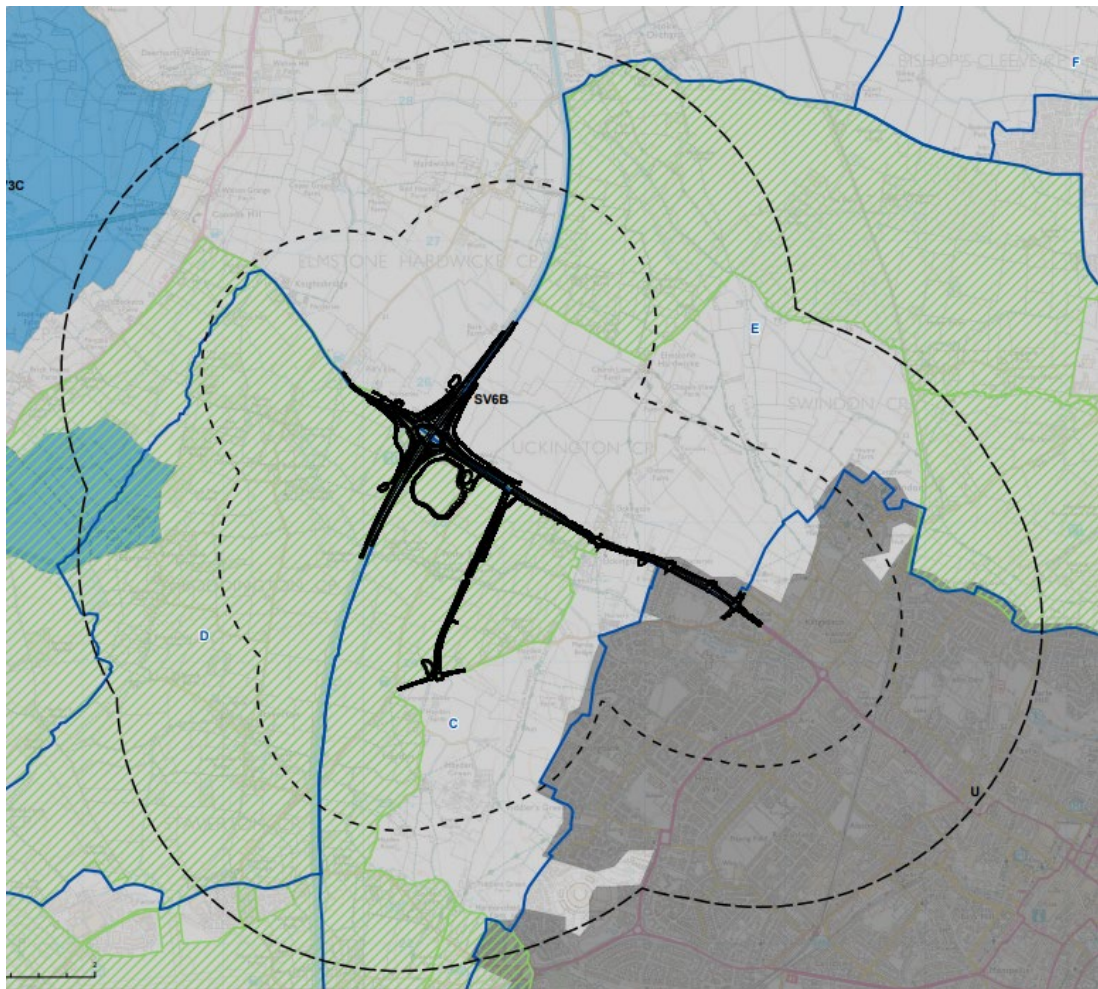


Figure 99 Landscape Character Areas - Source [\[REP3-030\]](#)

Key:

LCA C West Cheltenham, Bamfurlong to Uckington (covering the area between Cheltenham, south of the A4019 and east of the M5),

LCA D West of M5, Knightsbridge to Down Hatherley (covering the area between Boddington, south of the A4019 and west of the M5)

LCA E Swindon Village to Stoke Orchard (covering the area between north of the A4019 and east of the M5).

- 3.10.16. The visual receptors were identified to represent the most affected areas. A plan identifying the location of these receptors is included in [\[REP3-030\]](#) This is copied below.



Figure 1010 Visual Receptors identified in LVIA - Source [\[REP3-030\]](#).

- 3.10.17. In response to our procedural decision seeking further information on 9 February 2024 [\[PD-005\]](#) the Applicant also provided at [\[AS-035\]](#) a Landscape and Ecological Management Plan (LEMP) which forms an additional annex to the Environmental Management Plan (EMP).
- 3.10.18. Following the issuing of a request for further information [\[PD-005\]](#) on the 9 March 2024, the Applicant submitted a series of landscape visualisations from 6 different viewpoints [\[REP2-003 – REP2-007\]](#), Viewpoint 2 was updated following the acceptance of Change Request 2 [\[REP9A-004\]](#).
- 3.10.19. The location from which the 6 viewpoints were taken is shown on the viewpoint location plan [\[REP2-003\]](#). An extract is copied below.



Figure 1111 Landscape Visualisation Viewpoint Locations. Source [REP2-003].

- 3.10.20. The Applicant identified mitigation measures which were embedded as defined by DMRB LA104 and are set out in the EMP [REP10-064] which is secured via dDCO Requirement 3 [REP11-003].
- 3.10.21. This incorporates mitigation during construction and subsequent operation which is summarised in paragraphs 9.10.8 – 9.10.9 of [APP-068] but includes protection of existing vegetation in line with the Arboricultural Impact Assessment (AIA) [APP-116 and APP-117].
- 3.10.22. The Applicant sets out the embedded mitigation measures and where and how they are secured in the Register of Environmental Actions and Commitments (REAC) [REP10-066] pages 50-52. For construction stage adverse effects, the mitigation would be secured through dDCO Schedule 2 Requirement 5, and the AIA while the planting and landscape maintenance for subsequent operation is secured via the EMP dDCO Requirement 3.
- 3.10.23. The Applicant addressed the issue of lighting within their ES Section 9.10.8 [REP10-047] (during construction) and subsequently during operation. To minimise the effect on landscape and also on biodiversity issues, lighting is not proposed for the new link road beyond the junctions with the A4019 and the Gloucester Old Road. (paragraph 9.11.15) of [REP10-047].
- 3.10.24. Lighting is controlled during construction via commitment G13 of the REAC to ensure that it is located and maintained to cause minimal effect. This is secured through Schedule 2 Requirement 3 of the dDCO as part of the EMP.
- 3.10.25. Subsequently for operation the lighting design is committed to be minimal and to limit light pollution through commitment LV5 of the REAC. The lighting design would be reviewed with regards to impacts from light spill and light pollution as part of the development of preliminary design, at the detailed design stage. Developments of

the design are secured by DCO Schedule 2 Requirement 11(1). The lighting requirement is secured through Requirement 15.

- 3.10.26. In respect of the final design of the noise barriers, REAC commitment LV6 requires consultation with the LPA and directly affected receptors which is secured via Schedule 2, Requirement 14 of the dDCO. The design of the noise barriers will be reviewed as part of the development of preliminary design, at the detailed design stage. Developments to the design are secured by DCO Schedule 2 Requirement 11(1).

Residual effects identified in the ES

Landscape Character

Construction

- 3.10.27. The Applicant sets out in Section 9.11 of [\[REP10-047\]](#) that during construction extensive vegetation clearance is expected to take place which would result in the loss of a small area of woodland near the north bound on-slip of the M5. In addition, the widening of the A4019 would result in the loss of roadside hedgerows and trees, and field hedgerows would be removed along the alignment of the new link road.
- 3.10.28. Earthworks and construction activities would be extensive creating embankments for the new slip roads and link road as well as for the right to flood/drain areas, attenuation basins, the flood compensation area, and the flood storage area.
- 3.10.29. The Applicant concludes that the overall effect on the SV6B landscape character area would be minor adverse, with a sensitivity of medium, and magnitude of minor the significance of effect is concluded to be slight adverse.
- 3.10.30. In respect to f the JCS Landscape Character Areas C, D and E the Applicant concludes there would be major adverse effects during construction, with a sensitivity of medium, and major magnitude of effect the significance of effect is concluded to be moderate adverse, which is regarded as significant but temporary.

Operation

- 3.10.31. The loss of the vegetation to the M5 and A4019 and the buildings on Withybridge Gardens, at Sheldon and along the A4019, would remain obvious locally, as is illustrated by the two following visualisations, where the Applicant concludes at a local level the loss of the mature vegetation *“would result in an overall magnitude of effect at year 1 which is considered to be Moderate Adverse resulting in a Moderate Adverse and significant effect at year 1.”*



Figure 1212 Baseline Situation at Viewpoint 3 - Source [\[REP2-003\]](#)

- 3.10.32. Above is the visualisation of the current baseline situation as viewed from Viewpoint no.1 outside of Sheldon Nurseries. While below is the same viewpoint at Year 1.



Figure 1313 Year 1 at Viewpoint 3 - Source [REP2-003]

- 3.10.33. For Landscape Character Area SV6B the Applicant concludes at year 1 the mitigation planting would not have fulfilled its function and there would remain a magnitude of a minor adverse effect with a slight adverse degree of significance. At the more localised level, the extensive loss of mature vegetation would be regarded as moderate adverse, with a moderate adverse and significant effect.
- 3.10.34. In addition, the Applicant recognises that the introduction of the new bridge over the River Chelt, and the earth works for the flood storage areas and attenuation basin would not be typical, the proposed naturalistic approach, however, would ensure there would not be a conflict with the current character of the landscape, even though these works would remain obvious until planting had become established.
- 3.10.35. At Year 15 the Applicant concludes that the landscape mitigation although not fully mature would have begun to fulfil its potential and achieve the function to screen and integrate the scheme into the landscape. With the typical characteristics of the landscape area SV6B being retained and potentially enhanced. The Applicant expects there would be negligible beneficial effect on Character Area SV6B resulting in a neutral degree of significance of effect.
- 3.10.36. In localised areas such as at Sheldon, Withybridge Gardens and the eastern end of the A4019 the character is likely to have changed. The introduction of the flood storage areas would be a new habitat area and the planting to the widened A4019 is expected to enhance the character of the road by introducing a more varied plant species and trees to the central reservation of the A4019 creating an avenue effect.
- 3.10.37. For the JCS Character Area as a whole the Applicant concludes there would be significant but temporary effects during construction and immediately upon completion. However, as the proposed landscape mitigation measures gradually fulfil their function there would on balance be the potential for a slight beneficial significance of effect.

Visual Amenity

Construction

- 3.10.38. The ES [REP10-047] at Section 9.12 summarises the conclusion of the effects on visual amenity.

- 3.10.39. At VR3a (Sheldon Cottages) the receptors are expected to experience major adverse effects, which the Applicant concludes would have a degree of significance regarded as Very Large Adverse during construction.
- 3.10.40. At VR4-6 (Barn Farm, the informal Traveller site and Butlers Court adjacent to the M5) and VR8-12, 16, 18-20, 24 and 26 (receptors on Withybridge Lane, B4634 and the A4019 and users of the SRN) are all assessed as likely to have a moderate adverse effect with a degree of significance as Large or Moderate Adverse.
- 3.10.41. Properties in Boddington and Elmstone Hardwicke (VR13 and 17) are considered to have a moderate adverse effect with a moderate adverse degree of significance all other receptors being rated as moderate adverse during construction.

Operation

- 3.10.42. VR3a Sheldon Cottages are expected to experience Major Adverse effects at Year 1 regarded as a large adverse degree of significance given that the M5J10 would be approximately 80 m closer to the property and all the intervening vegetation and buildings would have been removed.
- 3.10.43. VR6, 8, 9, 10 & 18a (Butler's Court, Elm Cottage group, Hayden Fruit Farm & The Green) are anticipated to experience Moderate Adverse and moderate adverse degree of significance, mainly due to the proximity to the Scheme and loss of screening vegetation.
- 3.10.44. VR9 and 18 (Elm Cottage Group, The Green/Holly Bank) would also have a Moderate Adverse effect with a moderate adverse degree of significance due to the lack of replacement/new screening features and impact of lighting.
- 3.10.45. VR7b, 10-12 & 26c (Withybridge, Hayden Hill & Cheltenham Circular, users of B4634) are expected to experience Moderate Adverse effects with a moderate adverse degree of significance due mainly to the presence of the link road in their view. All other receptors are judged to experience Slight Adverse or Neutral effects.
- 3.10.46. At Year 15 the replacement and mitigation planting would be beginning to provide its intended functions of visual screening and amenity.
- 3.10.47. VR3a Sheldon Cottages are expected to experience Moderate Adverse effects with a moderate adverse degree of significance at year 15 given that the increased proximity of J10 cannot be fully mitigated.
- 3.10.48. VR7b, 8, 9-12, 18-20, 24 & 26c (Withybridge PRow, Withybridge, Elm Cottage Group, Hayden Hill, Cheltenham Circular, properties around Uckington and users of B4634) have all been assessed as having a minor adverse effect with a slight adverse degree of significance on their views largely due to the presence of new lighting or the link road.
- 3.10.49. The ES concludes there would be significant but temporary effects during construction for 19 VR groups, with 9 VR groups likely to experience Moderate - Slight Adverse - but not significant effects.
- 3.10.50. On completion it is anticipated that only 1 receptor (VR3 Sheldon Cottages) would experience Large Adverse effects; 4 VR groups (VR6 Butlers Court, VR9 Elm Cottage group, VR10 Hayden Fruit Farm & VR18a The Green) may experience Moderate Adverse significant effects; with 21 VR groups likely to experience Moderate - Slight Adverse, but not significant effects.

- 3.10.51. By year 15, no materially significant effects are anticipated, with VR3a being assessed as Moderate Adverse but not significant, 12 VR groups expected to have Slight Adverse significance of effects, 7 VR groups Neutral and 8 VR groups having Moderate – Slight Beneficial effects.
- 3.10.52. Overall, it is considered that, with the designed in mitigation, the Scheme would not have any long-term significant adverse effects on visual amenity with the exception of VR3a.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.10.53. As set out in our Rule 6 letter [\[PD-008\]](#) we identified we should examine the effect of the Proposed Development (including artificial lighting) on existing landscape character and views within the Initial Assessment of Principal Issues (IAP1).

Local Impact Report

- 3.10.54. The LIR [\[REP1-069\]](#) Section 3.5 identifies the policies pertinent to landscape and visual effects and that much of the Proposed Development lies within the Cheltenham and Gloucester Greenbelt.
- 3.10.55. It recognises that the construction activities would result in the loss of vegetation, and the expansion of infrastructure which would significantly alter the landscape character while residents are likely to experience adverse effects on visual amenity.
- 3.10.56. These construction effects would be temporary and over time the mitigation proposed it is envisaged that the Proposed Development could create beneficial effects on landscape character particularly by year 15.
- 3.10.57. In respect of visual amenity, the LIR makes clear the JCs do not agree with the conclusions reached in terms of effects on visual receptors at Barn Farm, the Informal Travellers Site and at the properties on the south side of the A4019 east of West Cheltenham Fire Station due to the introduction of noise barriers. The JCs, however accept that with mitigation delivered through the Environmental Management Plan (EMP) and identified in the REAC that any outstanding detailed design matters can be resolved in due course.
- 3.10.58. The JCs in [\[RR-039\]](#) make a slightly different point from that in the LIR in stating that they did not agree with the reported operational effect on visual receptor VR4 at Year 15, the reported magnitude of change at visual receptor VR5 at Year 1, and the reported operational effects of visual receptor VR24 at Year 1 and 15. Consequently the JCs disagree with the conclusions on these reported effects mainly because existing vegetation on all three receptors would be removed and proposed planting could not replace their current situations. These would result in a change of views from vegetated buffers to views dominated by infrastructure including noise barriers.
- 3.10.59. The JCs confirmed at D7 [\[REP7-018\]](#) following ISH4 that they were content that the noise barriers are not guaranteed to be landscaped but would be subject to consultation at the detailed design stage.
- 3.10.60. The SoCG with the JCs [\[REP10-072\]](#) confirmed that the detailed design would take into account the most up to date Institute of Landscape guidance, and in respect of the noise barriers proposed at Barn Farm, the Informal Travellers Site and properties on the south side of the A4019 east of West Cheltenham Fire Station there is sufficient space to allow for screen planting.

- 3.10.61. With the consultation with IPs and the space for planting the JCs confirmed they were content with the noise barrier proposals in terms of landscape and visual impact. This matter is agreed subject to detailed design and commitments made in the REAC.

IPs

- 3.10.62. Mr Badham [\[REP7-023\]](#) following on from ExQ2 and ISH4 expressed concern with regard to the effect of the acoustic barriers along the A4019 and the lack of clarity of the design and how this could properly be understood by interested parties when the design was yet to be finalised and planting to screen the barriers was as yet not committed to.
- 3.10.63. Mr Badham suggested that the screen should be an upgraded version, to protect visual amenity.
- 3.10.64. Mr Badham also maintained opposition to lighting columns being directly outside of his property.
- 3.10.65. The Applicant's response [\[REP9-008\]](#) confirmed that with regards to the noise barrier in Uckington to the east of The Green there is space along the entire length of the barrier facing the housing for vegetation planting and with consultation secured via the REAC visual amenity of residents would be safeguarded.
- 3.10.66. With regard to the specific locations of the lighting columns this will be subject to review as part of the detailed design.

EXA's CONCLUSIONS

- 3.10.67. Drawing together the considerations the ExA conclude that the Applicant's assessment of effects on landscape character as set out within the ES meets the tests set out in Paragraphs 5.144 to 5.148 of NPSNN in that the assessment includes an assessment of any significant effects during construction of the scheme and of the completed development and its operation on landscape components and landscape character as well as the potential impacts on views and visual amenity.
- 3.10.68. We are also content that the ES considered the pertinent local policies from the Development Plan which relate to landscape character. (paragraph 5.156 of NPSNN).
- 3.10.69. Paragraph 5.160 of NPSNN states that adverse landscape and visual effects may be minimised through appropriate siting of infrastructure, design (including choice of materials), and landscaping schemes, depending on the size and type of proposed project. The ExA are content that with the mitigation secured via the REAC, the landscape planting proposed and secured via Requirements 5 and 6 of the dDCO the Proposed Development would accord with this policy test.
- 3.10.70. Having viewed the scheme location during our USIs and ASI and having regard to the final agreed position from the JCs as set out in the SoCG we have no evidence before us that the assessment of effect on landscape or the character of the area and the visual amenity is inappropriate or does not properly conclude on the effects that would arise, or the degree of sensitivity that has been assigned.
- 3.10.71. We agree with the Applicant's conclusions that the adverse effect during construction would be major adverse, with a sensitivity of medium, and major

magnitude of effect the significance of effect is concluded to be moderate adverse, which is regarded as significant but temporary.

- 3.10.72. We also agree with the conclusion reached for operation that over time once the planting, and the other environmental features such as the flood storage areas which are proposed to form a wetland habitat have become established there is the potential for a slight beneficial effect in the landscape.
- 3.10.73. The establishment of the landscape mitigation and amelioration of the flood storage areas with the planting and land grading needed to achieve them to create the wetland habitat will be necessary to ensure that in the longer term the scheme achieves this beneficial effect in our view is appropriately secured through a combination of the EMP, LEMP and Requirements in the dDCO.
- 3.10.74. With regard to the provision of the noise barriers, we recognise that they would have a marked visual effect particularly on the approach into or out of Cheltenham along the A4019. 2m hire barriers in the region of 755m in length (in total) would if not carefully designed and screened by suitable planting have the potential as the Applicant recognises to be an eyesore. The further work at the detailed design stage and the consultation with affected parties would need to be carefully considered.
- 3.10.75. Paragraph 5.160 of NPSNN advises that adverse effects may be minimised through amongst other things, design, choice of materials and landscaping schemes. The combination of mitigation proposed, secured through the REAC and dDCO, the ExA consider would meet this policy objective.
- 3.10.76. The commitment through LV6 of the REAC is secured by way of DCO Schedule 2, Requirement 14(1) which requires noise mitigation proposals to have been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority, the county planning authority and strategic highway authority prior to construction.
- 3.10.77. Requirement 14(2)(a) states written details must reflect mitigation measures included in Chapter 6 (noise and vibration) of the ES and Noise and Vibration Management Plan approved as part of the EMP (2nd iteration). Completion, approval and implementation of the 2nd iteration EMP, is secured by DCO Schedule 2, Requirement 3(1) and 3(3). Completion, approval, and implementation of the 3rd iteration EMP, post construction is secured by dDCO Schedule 2, Requirement 3(4) and 3(5).
- 3.10.78. The design of the noise barriers would be reviewed as part of the development of preliminary design, at the detailed design stage. Developments to the design are secured by DCO Schedule 2 Requirement 11(1).
- 3.10.79. In respect of paragraph 5.157 of the NPSNN the ExA are satisfied that should the SoS make a positive decision in respect of the DCO, the design of the Proposed Development has had due regard to the environmental effects on the landscape and consideration of the siting, operational and other relevant constraints such that they avoid adverse effects on landscape and that mitigation is appropriately secured.
- 3.10.80. The effect on residential receptors was ultimately not disputed by IPs by the end of the Examination, the JC having agreed the approach to mitigation set out by the Applicant and confirmed in the SoCG [\[REP10-072\]](#).

- 3.10.81. In respect of visual effects, and the tests in paragraph 5.158 of NPSNN we consider the negative visual effects on sensitive receptors, during construction and subsequent operation could not reasonably be said to outweigh the benefits of the scheme overall (as we set out in Section 5 of this Report).
- 3.10.82. Although we recognise there will be adverse effects, particularly during construction, the ExA ascribes a little weight to the landscape and visual matters against the making of the Order in the overall planning balance.

3.11. NOISE AND VIBRATION

INTRODUCTION

- 3.11.1. This Section considers the impact of the Proposed Development on matters relating to noise and vibration.

POLICY BACKGROUND

NPSNN 2015

- 3.11.2. Paragraph 5.195 of NPSNN states that the SoS should not grant development consent unless satisfied that the proposals will meet the following aims, within the context of Government policy on sustainable development:
- 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.
 - Contribute to improvements to health and quality of life through the effective management and control of noise, where possible.
- 3.11.3. Paragraph 5.186 makes clear that in addition to meeting the statutory requirements for noise, regard must be paid to the Government's Noise Policy Statement for England (DEFRA, 2010), which promotes "... good health and good quality of life through effective noise management", with similar considerations applying to vibration.
- 3.11.4. Applicants are advised to use best available techniques to reduce noise impacts (paragraph 5.189 of the NPSNN). For the purposes of decision-making, schemes "... should demonstrate good design through optimisation of scheme layout to minimise noise emissions, and where possible, the use of landscaping, bunds or noise barriers to reduce noise transmission" (paragraph 5.194 of the NPSNN). As set out in paragraph 5.195 of the NPSNN, the SoS "... should not grant development consent unless satisfied that the proposals will meet the following aims, within the context of Government policy on sustainable development:
- 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 new development; and
 - contribute to improvements to health and quality of life through the effective management and control of noise, where possible."
- 3.11.5. To mitigate the effects of noise from the construction and operational phases of NSIPs the SoS "... may wish to impose requirements to ensure delivery of all mitigation measures" (paragraph 5.197 of the NPSNN). As confirmed at paragraph 5.198, mitigation measures should be proportionate and may include containment,

the use of noise reducing materials, layout changes and administrative measures such as the setting of noise levels and the setting of working hours.

NPSNN 2024

- 3.11.6. The NPSNN 2024 does not raise any significant different policy concerning noise and vibration matters.

THE APPLICATION

- 3.11.7. Noise and Vibration effects of the proposed development have been assessed in Chapter 6 of the ES [\[APP-065\]](#). The final version is [\[REP10-041\]](#). It provides information about the existing and the potential noise constraints (including existing development etc) and describes the potential noise and vibration impacts related to the construction and operation of the proposed development.
- 3.11.8. The chapter describes mitigation and assesses the residual and cumulative effects. The assessments have been carried out in accordance with National Highways Design Manual for Roads and Bridges (DMRB) LA 111 'Noise and Vibration' - 2020 Revision 2.

Baseline

- 3.11.9. Baseline) noise levels have been identified for 39 key receptor locations, using Defra strategic noise mapping as set out in [\[REP10-041\]](#) (Table 6-11).
- 3.11.10. The Applicant considers that the assessments presented are a 'worst case' on the basis that the lower value of the Defra noise contour banding has been taken as the baseline.

Construction Phase

- 3.11.11. The ES confirms in [Section 6.4.5 to Section 6.4.10 [REP10-041](#)] the study areas for construction noise and vibration. It states that the study areas have been defined based upon DMRB LA 111. and comprises a study area of 300m from the Order limits. The construction vibration study area is also in accordance with DMRB LA 111 and has been determined to be 100m from the Order limits.
- 3.11.12. Furthermore, a diversion route study area has been defined in accordance with DMRB LA 111 where a project requires full carriageway closures during the night (23:00-07:00). Three nights of M5 closures are expected during the installation of the two new bridge decks and removal of the existing A4019 overbridge. Closure of the two existing slip roads at Junction 10 would also occur for 15 and 9 months for the northbound on slip southbound off slips respectively. During that time there would be a 5 month period when both slip roads are closed. The study area for the diversion route was defined as 25m from the kerb line of the diversion route.
- 3.11.13. The construction traffic study area was defined to include all noise sensitive receptors within 50m from the kerb line of public roads with the potential for an increase in basic noise level of at least 1dB LA10,18h because of construction traffic.
- 3.11.14. [Section 6.4.11 [REP10-041](#)] explains how the significance of noise effect was determined. The ES has used Lowest Observed Adverse Effect Level (LOAEL) (which was set to be equal to baseline noise levels as per DMRB LA 111) to select an appropriate Significant Observed Adverse Effect Level (SOAEL) (a value that if

exceeded has the potential to result in a significant effect depending on duration and context).

- 3.11.15. The assessment establishes a threshold for a significant adverse effect for construction activity noise and construction traffic as set out in [\[REP10-041\]](#) Table 6-2 whereby 'Moderate' (above or equal to SOAEL and below SOAEL +5dB) and 'Major' (above or equal to SOAEL +5dB) magnitudes of impacts are deemed to exceed the threshold.
- 3.11.16. Potential construction impacts are described in [Section 6.7 [REP10-041](#)]. It confirms that construction effects to nearby receptors would comprise; noise and vibration associated with demolition and construction activities; or construction traffic (e.g. additional HDV noise associated with construction activities within the construction traffic study area.
- 3.11.17. [Table 6-18 [REP10-041](#)] summarises the construction noise assessment of representative properties (within 300m of the Proposed Development and corresponding with the 'key receptor locations') associated with daytime, evening and nighttime activities. It identifies properties which are predicted to experience minor, moderate, major (SOAEL + 5dB) being the identified threshold for potential noise insulation and major (SOAEL + 10 dB) being the identified threshold for temporary rehousing.
- 3.11.18. The table confirms that there are no residual moderate or major impacts during any time periods once mitigation is in place.
- 3.11.19. Notwithstanding, this the ES concludes at [Section 6.9.22 [REP10-041](#)] that construction noise is not likely to lead to a significant effect, resulting in temporary rehousing or noise insulation as the associated duration threshold would not be exceeded.
- 3.11.20. With regards to vibration associated with construction activity the [Section 6.12.10 [REP10-041](#)] concludes that this is likely be a minor to moderate impact during ground compaction. However, given the temporary nature of the works, this is unlikely to lead to a significant effect.

Operational Phase

- 3.11.21. The operational phase study area for road traffic noise is described at [Section 6.4.39 to Section 6.4.44 [REP10-041](#)] in accordance with DMRB LA 111 and includes the area 600m from the Proposed Development. The assessment makes a distinction between 'residential properties' and other noise sensitive receptors. The study area includes the informal Traveller site, just north of the M5 Junction 10 and next to the southbound carriageway
- 3.11.22. The assessment scenarios are also in accordance with DMRB LA 111 and described at [Section 6.4.47 [REP10-041](#)]. They include opening year (2027) and future assessment year (2042) scenarios.
- 3.11.23. [Table 6-28 [REP10-041](#)] summarises daytime and nighttime short (2027) and long (2027-2042) term operational effects at receptors.
- 3.11.24. Significant adverse effects are identified [Table 6-28 [REP10-041](#)] to receptors including those at:
- Stoke Road,

- Stoke Orchard Village,
- A4019 west of M5, junction 10,
- Gloucester Road, and
- Brooklyn Road / Arle Road.

- 3.11.25. As shown in [Table 6-28 [REP10-041](#)], mitigation in the form of noise barriers for the last three receptor locations were considered and discounted due to access requirements and limited space. The Applicant considers that the effects are unavoidable.
- 3.11.26. With respect to the effects to receptors on Stoke Road and Stoke Orchard Village, noise barriers noise barriers were considered and discounted due to access requirements and limited space. However, the Applicant confirms that Gloucester County Council are investigating measures to mitigate the noise effects, but those measures are not part of this Proposed Development [Table 6-28 [REP10-041](#)].
- 3.11.27. In the short term the ES shows that there would be operational significant minor adverse effects, above the SOAEL, for up to 169 receptors (at night) at the A4019 west of M5 (junction 10), Gloucester Road and Brooklyn Road / Arle Road. There are also significant moderate or major adverse effects in the short term to 4 properties during the day [paragraph 6.12.12 [REP10-041](#)]. In the long term (without the strategic development sites), no significant moderate or major adverse effects are identified, however significant minor adverse effects, above the SOAEL for up to 238 receptors (at night) [paragraph 6.12.14 [REP10-041](#)].
- 3.11.28. However, there would be short term significant minor operational beneficial effects for up to 267 receptors (during the day) and significant (moderate or major) beneficial effects for up to 144 receptors (during the day) [paragraph 6.12.11 [REP10-041](#)]. In the long term (without the strategic development sites), there would be significant (moderate or major) beneficial effects at up to 46 receptors (during the day) and significant minor beneficial effects above the SOAEL at up to 163 receptors (at night) [paragraph 6.12.13 [REP10-041](#)].
- 3.11.29. The Applicant has summarised in [Table 6-12 [REP10-041](#)] relevant embedded (project design principles adopted to avoid or prevent adverse environmental effects) and essential (measures required to reduce and if possible offset likely significant adverse effects) migration measures relevant to noise and vibration for construction and operational phases.

ISSUES CONSIDERED DURING THE EXAMINATION

- Noise Assessment Methodology
- Construction Stage Traffic Diversion Noise Impacts
- Construction Stage mitigation (re housing and noise insulation etc and how that is secured and would work in practice EMP etc)
- Stoke Road Operational Noise Effects and Mitigation

- 3.11.30. The JC SoCG [[REP10-072](#)] included agreement on all matters relating to noise and vibration.

Noise Assessment Methodology

- 3.11.31. The ExA raised various questions in ExQ1 [[PD-010](#)] with respect to the Applicant's assessment approach. This included matters such as:
- Magnitude of impacts methodology (using SOAEL / LOAEL)

- Clarifications that all construction phase 39 receptors had been considered
- Approach regarding noise exceedances below duration threshold (e.g. one-off events)
- Further details with respect to roadworks and how they relate to the duration threshold
- Considerations of the assessment of construction stage vibration and vibration significance threshold
- Construction traffic headroom approach
- Clarifications regarding the specific properties subject to operational phase significant adverse or beneficial effects
- Approach regarding operational phase modelling outputs and assessment of significance

3.11.32. The Applicant's response to ExQ1 [\[REP3-043\]](#) provided a response to the issues raised. The ExA raised no further questions.

Construction Stage Traffic Diversion Noise Impacts

3.11.33. In the Transport Assessment [\[APP-138\]](#), the Applicant confirmed that there would be signed diversion routes during the slip road closures. The manner in which that was covered in the transport modelling, was set out at Section 10.4.3, which states:

'There will be signed diversion routes directing traffic along specified routes during slip road closures, It is acknowledged that some of the regular users of the slip roads who are likely to be familiar with the local road network, will find alternative routes along non-signed diversion routes during the construction phase, The modelling has therefore assumed a reasonable worst case scenario where traffic has free choice over routes, rather than assessing an unrealistic scenario whereby all affected traffic only uses the signed diversion routes.'

3.11.34. The ExA explored with the Applicant via ExQ1, Q15.0.3 [\[PD-010\]](#) and at ISH3 how this could be considered to represent a worst-case scenario as it would result in a lower quantum of traffic using the sign posted route due to the use of alternative routes.

3.11.35. In response, the Applicant provided an assessment [\[AS-080\]](#) of the noise implications whereby all diverted traffic used the sign posted diversion route. That set out 2024 construction phase traffic flows for the AM, Inter and PM peak periods.

3.11.36. Table 2.1 identified the quantum of diverted traffic associated with the closure of the northbound and southbound slip roads.

3.11.37. In accordance with DMRB LA 111 methodology, the Applicant has identified thresholds for minor, moderate and major increases, whereby moderate and major increases in noise are considered to be a potential significant effect. The thresholds are set out in Paragraph 2.1.13 [\[AS-080\]](#).

3.11.38. The Applicant considers that a significant effect would only occur if the moderate or major thresholds are experienced in 10 in any 15 consecutive days or 40 days in 6 consecutive months [paragraph 2.1.13 [\[AS-080\]](#)].

3.11.39. Table 2.1 indicates that noise impacts on all of the diversion route sections would be minor with the exception of the A40 (east of M5 Junction 11) which would be a lower impact than the minor threshold.

3.11.40. The assessment provided the following conclusion at Section 2.1.15:

'Based on the results of the assessment reported in this note, it can be concluded that in the unlikely event that all of the diverted traffic from closure of the M5 J10 slip roads were to follow the diversion routes, which represent an absolute worst case scenario, such an increase in traffic is well below the threshold for a moderate increase in noise and therefore is not expected to lead to a significant change in noise'

3.11.41. ExA explored the content / methodology of the assessment with the Applicant and the JC at ISH4 as per the Applicant [REP7-008] and JC [REP7-018] written summaries to understand the validity of the approach.

Construction Stage Mitigation

3.11.42. At ISH3 the ExA explored with the Applicant the Noise and Vibration Management Plan (1st Iteration) [AS-033] in terms of how the need for noise insulation or temporary rehousing thresholds set out in Table B 3-3 would be applied to ensure that the mitigation was delivered if necessary.

3.11.43. The Applicant provided a response as per the ISH3 post hearing written submission [page 60, REP4-037]. In summary:

- The requirement for rehousing or provision of noise insulation has two trigger points (change in noise level and duration of the impact)
- The monitoring would be undertaken by the principal contractor and that would be managed via commitments in the Register of Environmental Actions and Commitments (REAC) and the Noise and Vibration Management Plan (1st Iteration)

3.11.44. The Applicant provided supplementary information (in response to Action Points, included at Appendix A of the ISH3 post hearing written submission [page 95 REP4-037]) with respect to the above. It also responds to ExA questions regarding Sheldon Cottages / Elms Cottage where noise was predicted to exceed (moderate or major impact) thresholds and if any further details with respect to mitigation could be provided in advance of the 2nd Iteration EMP [pages 96-98 REP4-037].

3.11.45. With regards to construction stage mitigation, the response to ISH3.39 [page 95 REP4-037] confirms that the Applicant would be likely to apply for a Section 61 Consent (seeking Prior Consent and to agree working hours, site noise levels and other measures) prior to work starting every 6 months. This would require additional noise modelling to firstly determine maximum noise levels at sensitive receptors, and secondly review noise levels against the programme to identify any triggers. [REP4-037] also stipulates that:

'The Noise and Vibration Management Plan (Annex B.3 of the 2nd Iteration EMP) will detail the S61 process, including the requirement for noise outputs from the Construction phase to be modelled and assessed against trigger levels.'

3.11.46. In response to Action Point ISH3.40, the Applicant has identified measures that would be adopted by the contractor to mitigate against noise impacts. That includes ensuring that all relevant plant would comply with the permissible noise levels set out in the appropriate European Directives.

3.11.47. With respect to managing possible noise impacts at Elms and Shelton Cottages, the Applicant's response to Action Point ISH 3.41 confirms that:

Noise impacts during the construction stage will be managed through the 2nd iteration of the Noise and Vibration Management Plan (NVMP). This will be produced by the Applicant in advance of construction, and submitted for approval by the Secretary of State, following consultation with the relevant planning authority, county planning authority and strategic highway authority to the extent that it relates to matters relevant to its functions.

The 1st iteration of the NVMP (AS-033) (section B.3.6) sets out that an appraisal for noise insulation or temporary housing six to nine months prior to starting the construction phase of the works or at such time appropriate to the scale and nature of the works will be undertaken.

Stoke Road Operational Noise Effects and Mitigation

- 3.11.48. The ExA explored with the Applicant, the position respect to the Stoke Road mitigation measures in response to the significant adverse effects to receptors on Stoke Road / Stoke Orchard Village. This included questions at EXQ1 [\[PD-010\]](#), ExQ2 [\[PD-012\]](#) and ExQ3 [\[PD-021\]](#). It also was subject to discussions between the ExA, Applicant and JC to establish matters including:
- Details of what the mitigation scheme would comprise.
 - Details of whether the scheme would acceptability address the significant adverse effects.
 - The position with respect to compliance with the requirements of the Noise Policy Statement (March 2010) in the absence of secured mitigation.
 - If there was any indication of when the scheme could be in place and status regarding funding.
- 3.11.49. The Applicant confirmed in their response to ExQ3 [\[REP9-011\]](#), (Question 12.0.1), that the scheme would comprise a speed limit reduction from 30mph to 20mph, priority system build-outs, and new and enhanced speed limit signage and road markings.
- 3.11.50. The response also confirmed that the speed reduction to 20 mph would result in a corresponding reduction in noise of c. 1.8dB. Therefore, no properties would experience an increase in noise of >1dB when compared to the 2027 opening year, no minimum scenario. The Applicant therefore considers that the scheme would adequately mitigate the associated significant adverse effects reported in the ES. The JC agree with this position as per their response [\[REP9-014\]](#) to 3WQ (Question 12.0.1)
- 3.11.51. The ExA explored with the Applicant, their position [\[REP7-008\]](#) with respect to compliance with the Noise Policy Statement (March 2010). The Applicant explained that it is not their position that it is complied with on the basis that measures to avoid, mitigate and minimise noise has been considered. This did ‘*..not go far enough in seeking to represent the Applicant’s position. The Applicant’s position is that it has been applied where practical and appropriate.*’
- 3.11.52. The Applicant provided an update at ISH4 with respect to the status of funding and estimated timescales for completion as per their written submission of oral case [\[REP7-008\]](#).
- 3.11.53. Furthermore, subsequent additional detail was provided by the Applicant in response to ISH4, Action Point 30 [\[REP7-010\]](#). That confirmed:

The Stoke Orchard Scheme traffic calming is being funded separately by GCC from GCC capital funding associated with a wider HIF programme of works.

Stoke Orchard traffic calming is currently in its detail design phase, which is planned to be completed by December 2024. GCC then intend to use their Highways Framework Contractor to construct the scheme starting March / April 2025.

GCC has been in regular liaison with the Stoke Orchard Parish Council since the “options identification” phase to develop a scheme that is supported by the Parish Council and local community. The Preliminary design (completed in Jun 2024) was fully supported by the Parish Council and therefore allowed GCC to progress into detail design phase. Recently, the project team held an information event on 7 September 2024, to provide the local community with an update of the scheme.

Matters raised in Relevant Representations

- 3.11.54. The JC raised an issue in [\[RR-039\]](#) with respect to the Applicant’s assessments which showed that noise levels at residential properties could exceed the acceptable noise threshold and that noise insulation or temporary rehousing mitigation may be necessary. On this basis the JC requested that a Noise and Vibration Management Plan is included in the 2nd iteration of the EMP at the Detailed Design stage.
- 3.11.55. Mr Sexton [\[RR-020\]](#), Mr Badham [\[RR-030\]](#), Ms Black [\[RR-032\]](#), The Mercer Family [\[RR-040\]](#) and Ms Brown [\[RR-045\]](#) raised issues with respect to noise and vibration effects and the adequacy of the mitigation provided by the Proposed Development.
- 3.11.56. The Applicant provided a response to all matters raised in [\[REP1-043\]](#).

ExA’s CONCLUSIONS

- 3.11.57. The ExA note that in the LIR [\[REP1-069\]](#), the JC raise no issues with respect to the scope of the noise assessments. With respect to the adequacy of the dDCO / mitigation, they welcome that the Applicant has confirmed that the principal contractor would prepare a 2nd iteration Noise and Vibration Management Plan at detailed design stage and that would set out necessary noise monitoring during construction.
- 3.11.58. With respect to operational stage mitigation the LIR recognises that all noise barriers would be compliant with DMRB LA 119. Furthermore, that the EMP and Register of Environmental Actions and Commitments (REAC) would ensure the implementation of the operational noise controls.
- 3.11.59. The ExA also note that by the close of the examination, the JC SoCG [\[REP10-072\]](#) contained no outstanding areas of disagreement with respect to noise and vibration.

Noise Assessment Methodology

- 3.11.60. With respect to the appropriateness of the noise assessment methodology, the ExA note that by the end of the examination there were no remaining specific concerns from any other party.
- 3.11.61. Therefore, the ExA find that the Applicant’s noise assessment complies with NPSNN paragraphs 5.189 – 5.191.

Construction Stage Traffic Diversion Noise Impacts

- 3.11.62. The ExA note that by the end of the Examination, there were no matters raised by the JC with respect to the Applicant's approach regarding the assessment of traffic diversions.
- 3.11.63. It is concluded that adverse noise effects on the diversion routes during construction would not be significant.

Construction Stage Mitigation

- 3.11.64. The ExA note that the JC had no outstanding concerns at the end of the examination with respect to construction stage mitigation and how that is secured.
- 3.11.65. It is considered that the 2nd iteration Noise and Vibration Management Plan which would be prepared at detailed design stage, could appropriately identify necessary noise monitoring during construction so that any exceedance of (moderate or major impact) thresholds could be identified to identify the need for noise insulation or temporary rehousing.

Stoke Road Operational Noise Effects and Mitigation

- 3.11.66. The ExA find that there would be significant adverse effects to residential receptors on Stoke Road / Stoke Orchard Village in the absence of mitigation. Whilst the Applicant has provided details of a scheme that would adequately address those effects, and evidence that it is being progressed, it is not secured by the dDCO.
- 3.11.67. The ExA find that in the absence of this mitigation there is a conflict with the requirements of NPSNN paragraph 5.195 and 5.196.

Matters raised in Relevant Representations

- 3.11.68. The ExA find that the Applicant has responded to all matters raised in relevant representations and no issues regarding noise and vibration were subsequently maintained.
- 3.11.69. With regards to the matters raised by the JC, the ExA note they were addressed to the satisfaction of the JC during the examination.

OVERALL CONCLUSION

- 3.11.70. The ExA finds that there is potential for moderate or major noise impacts during construction in the absence of noise insulation or temporary rehousing mitigation. However, there are no moderate or major impacts, and no significant effects anticipated during any time periods once mitigation is in place.
- 3.11.71. We note that the JC agree with all matters including how mitigation is secured via the REAC and the Noise and Vibration Management Plan.
- 3.11.72. Operational significant adverse effects are identified to receptors in Stoke Orchard and on Stoke Road and no mitigation is offered through the dDCO to address this matter. While the Applicant referred the ExA to a GCC scheme that could achieve mitigation, and advised this was progressing, it is neither promoted as a package of measures to be delivered through the DCO or part of the Applicant's case that this should be linked to the DCO. The ExA finds that there is therefore potential for a conflict with the objectives of the Noise Policy Statement for England and the aims of paragraph 5.195 of the NPSNN.

- 3.11.73. Furthermore, significant adverse effects are also identified to receptors on the A4019, west of M5, Gloucester Road and Brooklyn Road / Arle Road. The Applicant's position is that these effects are unavoidable, and that position was not challenged by the JC or any other interested party. Therefore, the ExA find that this creates a conflict with the objectives of the Noise Policy Statement for England and the aims of paragraph 5.195 of the NPSNN as these significant effects would remain unmitigated.
- 3.11.74. Whilst the Applicant's position that they consider that the effects are unavoidable, this weighs against the order being made.
- 3.11.75. However, the ExA note that there would be short term and long term significant operational beneficial effects for receptors with the Proposed Development. These beneficial effects weigh for the Order being made.
- 3.11.76. The ExA finds that there is therefore potential for a conflict with the objectives of the Noise Policy Statement for England and paragraph 5.195 of the NPSNN. However, we note the Applicant's position (and Chapter 13 of the ES: Population and Human Health) that there are no human health significant residual effects identified for the operational phase which relate to the locations where significant adverse effects have been identified. On this basis, the ExA consider that there is no specific conflict with the objectives of the Noise Policy Statement for England and paragraph 5.195 of the NPSNN.
- 3.11.77. Overall, we find that the issue of noise and vibration carries moderate weight against the Order being made in the absence of secured mitigation to protect some receptors from operational significant adverse effects.
- 3.11.78. Taking account of the conclusions in this Section, the ExA considers that (with the exception of any secured mitigation to address the identified operational significant adverse effects) the Applicant's assessment of noise and vibration complies with the policy aims of the NPSNN.

3.12. OTHER PLANNING MATTERS

INTRODUCTION

- 3.12.1. This Section of the Report considers the other planning matters including:

- Climate
- Geology and Soils
- Minerals and Waste
- Population and Human Health
- Socio-Economic
- Good Design

Climate

Planning Policy

NPSNN 2015

- 3.12.2. NPSNN paragraph 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. 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".

- 3.12.3. In terms of decision-making, NPSNN paragraph 5.18 refers to the Government's overarching national carbon reduction strategy (as set out in the Carbon Plan 2011) which is a legal requirement. It states that: *"Therefore, 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".*
- 3.12.4. In relation to mitigation, NPSNN paragraph 5.19 states that: *"the Secretary of State will consider the effectiveness of such mitigation measures in order to ensure that, in relation to design and construction, the carbon footprint is not unnecessarily high."*
- 3.12.5. Paragraph 4.38 of the NPSNN confirms that climate change adaption is necessary to deal with climate change that is already happening. Furthermore, it states that *'New development should be planned to avoid increased vulnerability to the range of impacts arising from climate change'.*
- 3.12.6. Paragraph 4.42 of the NPSNN, requires applicants to consider the potential impacts of climate change using the latest UK Climate Projections available at the time and ensure any ES that is prepared identifies appropriate mitigation or adaptation measures. This should cover the estimated lifetime of the new infrastructure.
- 3.12.7. NPSNN paragraph 4.43 requires the Applicant to demonstrate that there are no critical features of the design of new national network infrastructure that might be seriously affected by more radical climate change beyond that projected in the latest set of UK climate projections.

NPSNN 2024

- 3.12.8. The NPSNN 2024 does not raise any significant different policy concerning climate matters.

The Application

- 3.12.9. Chapter 14 of the ES [\[REP1-024\]](#) provides the Applicant's assessment of climate effects. It identifies the potential for the Proposed Development to impact on the climate and the levels of greenhouse gas emissions during the construction and operational phases. It also sets out the vulnerability of the Proposed Development to climate change, including the impacts of extreme weather during construction and operational phases, and adaptation to mitigate the effects of these impacts.
- 3.12.10. Section 14.18.5 confirms that the assessment of potential impacts of climate change has been undertaken using United Kingdom Climate Projections 2018 which provide the most up-to-date data available.

Baseline

- 3.12.11. The ES sets out the national emissions baseline and the Proposed Development do minimum scenario baseline for the year of opening 2027 and 2042.

Construction Phase

- 3.12.12. The ES confirms that the Proposed Development would lead to an increase in greenhouse gas emissions during construction. The ES identifies embedded mitigation measures in Table 14-6 that seek to reduce greenhouse gas emissions.
- 3.12.13. Climate vulnerability impacts were scoped out of assessment, but as noted in [\[REP1-024\]](#) Section 14.21.2, the current climate is not expected to impact construction unless construction coincides with an extreme weather event.
- 3.12.14. With respect to extreme weather events during construction, the EMP [\[REP10-064\]](#) (secured by the dDCO, Requirement 3) identifies that environmental risks will be recorded and identifies how they will be managed to respond to those environmental risks during the construction of the scheme.

Operational Phase

- 3.12.15. The ES draws the same conclusions for the operational phase, namely that the Proposed Development would lead to an increase in greenhouse gas emissions during operation due to increases in traffic levels across the local highway network.
- 3.12.16. Table 14-7 [\[REP1-024\]](#) sets out embedded mitigation measures to minimise carbon emissions in accordance with DMRB LA 114.
- 3.12.17. Table 14-10 [\[REP1-024\]](#) provides a comparison of the scheme to UK Government Carbon Budgets. The ES concludes at Sections 14.10.12 – 14.10.13 that the emissions produced due to the operation of the Proposed Development would have insignificant impact on the country's overall carbon emissions and would not affect the UK's ability to meet its carbon targets.
- 3.12.18. Climate change effects (trends) including warmer winters, hotter and drier summers, heavy rainfall and wetter winters have been considered along with the potential operational impacts as set out in [\[REP1-024\]](#) Section 14.21.3. All potential operational impacts on end user receptors are found to be 'not significant' as set out in Table 14-16.
- 3.12.19. The ES also identifies potential impacts relating to more radical changes to climate over-and-above those projected by the latest set of UK climate projections at Section 14.21.6 – 14.21.10 [\[REP1-024\]](#). It identifies possible extreme impacts on road safety technology and flood risk design, but notes that most of the road safety technology is advisory and not safety critical and the FRA includes consideration of upper end credible maximum peak river flows.
- 3.12.20. An assessment of climate vulnerability impacts has been undertaken after consideration of the Proposed Development design and mitigation as summarised in Table 14-15 and 14-16 [\[REP1-024\]](#) which also identifies embedded and additional mitigation for each climate trend. No climate trends are shown to result in a significant effect.
- 3.12.21. In conclusion, climate change effects are not expected to have a significant adverse effect on the Proposed Development.

Matters raised during Examination

- 3.12.22. At ISH1, the ExA invited the Applicant to address any implications arising from the Court Judgement (Friends of the Earth and Ors v SSDESNZ, 3 May 2024) for the Proposed Development. This legal case relates to the ability of the Government to meet its legal obligations to achieve net zero greenhouse gas emissions by 2050,

and the Government's obligation to set out in a plan how those targets would be achieved.

3.12.23. The Applicant's response (page 18) [\[REP1-046\]](#) set out their position. They did not consider that the Judgment altered the test that needed to be undertaken to satisfy the policy set out in the NPSNN.

3.12.24. The Applicant explained that in their submission it was for the Government to prepare a Carbon Budget Delivery Plan, and the Court had given them a year to do so. The SoS in deciding the M3 Junction 9 DCO had stated:

"The Secretary of State has no reason to consider that the Proposed Development will hinder delivery of the current Net Zero Strategy or any updated strategy. [...] that consenting the Proposed Development will not affect the delivery of the Net Zero Strategy, or net zero in principle, nor will it have a material impact on the ability to meet the national targets, including 5CB (Carbon Budget) (and overachievement in the Net Zero Strategy) or 6CB".

3.12.25. The Applicant maintained that the judgement does not alter the position in respect of this scheme or the tests against which it needed to be assessed in national policy. That with regard to the updated NPSNN 2024 paragraph 5.38 makes clear

"it would not be feasible or sensible for such an assessment to be done at the time of taking individual development decisions, and there is no legal requirement to do so. That is consistent with the approach of the courts in relation to various DCOs and other infrastructure decisions. The government's duty to produce a revised CBDP does not require any different approach to individual development decisions and the test remains in the NPS as further articulated in the new NPS."

3.12.26. The ExA posed a question (Q4.0.1) in ExQ1 [\[PD-010\]](#) to explore with the Applicant their approach with respect to climate change to seek to understand how the proposed mitigation would provide resilience regarding the future impacts of climate change.

3.12.27. We also asked at (Q4.0.2) with respect to carbon reduction and how the mitigation would be secured within the dDCO so that the Principal Contractor would adhere to the principles of the PAS 2080 – Carbon Management in Infrastructure verification.

3.12.28. The Applicant provided a response to the questions in [\[REP3-043\]](#), that confirmed that in accordance with DMRB LA114, the Applicant's assessment is based upon an assumption that future emissions would be high and greenhouse gases continue to grow. Therefore, they consider that the mitigation is robust even in the event that emissions do not reduce.

3.12.29. The Principal Contractor would adhere to the principles of the PAS2080 by preparing a 2nd Iteration Carbon Management Plan (CMP) which would include this as a target. The commitment to produce a CMP is secured through DCO Schedule 2, Requirement 3(2)(e).

3.12.30. There were no outstanding climate matters at the end of the Examination as per the JC SoCG [\[REP10-072\]](#).

ExA's Conclusions

3.12.31. In accordance with NPSNN paragraph 5.17, the ES presents the carbon impact of the project and an assessment against the Government's carbon budgets. The ES

shows that the Proposed Development would contribute 0.011% of the UK 4th carbon budget, 0.002% of the 5th carbon budget and 0.005% of the 6th carbon budget. The ES concludes that this will not generate a significant impact on the UK ability to meet its carbon budgets. We conclude that the increase in carbon emissions resulting from the Proposed Development would not be so significant that, in isolation, it would have a material impact on the ability of Government to meet its carbon reduction targets and would meet the NPSNN paragraph 5.18 test.

- 3.12.32. We also note the Applicant's position with respect to the Carbon Budget Delivery Plan and any implications arising from the Court Judgement (*Friends of the Earth and Ors v SSDESNZ*, 3 May 2024). No associated matters were raised by any other party during the Examination. The ExA consider that the carbon emissions resulting from the Proposed Development would not materially impact on the ability of Government to meet its carbon reduction targets and no further assessment is required by the NPSNN.
- 3.12.33. The ExA find that the mitigation measures relating to design and construction are adequate and would be effective in ensuring that the carbon footprint of the Proposed Development would not be unnecessarily high. This accords with the requirements of NPSNN paragraph 5.19. The ExA also note that the NPSNN covers Scope 1 and 2 emissions (as described in *R (Finch on behalf of the Weald Action Group & Others) v. Surrey County Council (& Others)*) and the Proposed Development does not contribute specific emissions that would fall within Scope 3.
- 3.12.34. The ES concludes at Section 14.26.2 that after consideration of mitigation there would be no significant adverse potential climate vulnerability impacts. We note that this position was unchallenged by any party. The ExA find that the Applicant has undertaken an assessment of the potential impacts of climate change using the latest UK Climate Projections available in accordance with the requirements of the NPSNN paragraph 4.42. Furthermore, the Applicant's assessment shows that the Proposed Development has been planned to avoid increased vulnerability to impacts arising from climate change (e.g. embedded mitigation such as the proposed landscape design to address climate change) as per the requirements of NPSNN paragraph 4.38. Furthermore, the ExA consider that the secured EMP contains provisions so as to address environmental risks during construction.
- 3.12.35. With respect to NPSNN paragraph 4.43, no evidence was presented that would lead us to have concerns over what the Applicant stated in the ES in this regard. The proposed mitigation and design measures identified by the Applicant would be sufficiently resilient against the possible future impacts of Climate Change.
- 3.12.36. Therefore, the ExA concludes that the effects of the Proposed Development with regard to climate change adaption and carbon emissions would not weigh for or against the Order being made.

Geology and Soils

Policy Background

NPSNN 2015

- 3.12.37. Section 5 of the NPSNN considers the impact of national networks on land stability, geotechnics, geology and soils.

- 3.12.38. Paragraph 5.168 of NPSNN requires Applicants to consider the economic and other benefits of the best and most versatile (BMV) agricultural land and, where significant development of agricultural land is demonstrated to be necessary, to seek to use areas of poorer quality land in preference to that of a higher quality. It also requires Applicants to minimise impacts on soil quality and consider the risks of land contamination and how to address this.
- 3.12.39. Paragraph 5.176 states that the decision-maker should take into account the economic and other benefits of the BMV agricultural land with little weight given to the loss of agricultural land in grades 3b, 4 and 5, except in areas where particular agricultural practices may themselves contribute to the quality and character of the environment or the local economy.
- 3.12.40. Paragraph 174 of the NPPF states that planning decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination, with adequate site investigation information, prepared by a competent person, available to inform these assessments. Paragraph 184 states that where a site is affected by contamination or land stability issues the responsibility for securing a safe development rests with the Applicant.

NPSNN 2024

- 3.12.41. The NPSNN 2024 does not raise any significant different policy concerning geology and soil matters.

The Application

- 3.12.42. The Applicant's assessment of Geology and Soils is included in the ES as Chapter 10 [\[APP-069\]](#). The final version is [\[REP1-018\]](#). It sets out information on the study area, presents the baseline conditions and identifies the likely impacts and effects. Mitigation measures are also set out.
- 3.12.43. The Chapter states that it has been prepared in accordance with the methodology set out in DMRB LA104 (Environmental assessment and monitoring) and LA109 (Geology and Soils).

Baseline

- 3.12.44. Baseline conditions are set out for an agricultural land and soil assessment study area which corresponds with the permanent and temporary footprint of the Proposed Development.
- 3.12.45. Effects relating to land contamination are assessed for a study area corresponding to the footprint of the Proposed Development and additionally land immediately beyond it to a distance of 500m.

Construction Phase

- 3.12.46. The ES sets out that there would be a loss of agricultural land where land is permanently required for the Proposed Development. It also identifies that there would be a loss of BMV agricultural land (including 31.56 ha of subgrade 3a and 22.56 ha of subgrade 3b). Additionally, a further 1.13 ha of Subgrade 3b agricultural land would have permanent reduction in agricultural land classification to Grade 4 and be restricted to grass production. The Applicant considers that this would result in adverse significant effects (including very large).

- 3.12.47. The Applicant provided an assessment of its reasoning of compliance with the requirements of NPSNN Paragraph 5.168 in the accordance table for national policy in Appendix B of the Planning Statement [\[APP-135\]](#). That confirms that the Proposed Development has been designed to minimise permanent loss of BMV agricultural land and mitigation measures have been identified to minimise impacts on soil quality.
- 3.12.48. A land contamination assessment has been undertaken which confirms that new sources of contamination (spillages and leaks) could be introduced along with disturbing existing sources of contamination. These may pose a risk to human health and controlled waters receptors. Therefore, construction mitigation measures as described in paragraph 10.7.8 [\[REP1-018\]](#) will be implemented through the EMP [\[REP10-064\]](#). Construction phase potential land contamination effects following mitigation are assessed as neutral to slight and classed as not significant.
- 3.12.49. The ES confirms that a Soil Handling Management Plan (SHMP) would be produced prior to construction so that the quality of soil in areas within the temporary footprint of the Proposed Development is maintained, in accordance with the Code of Practice for the Sustainable Use of Soils on Construction Sites, 2009. The SHMP would be implemented via the EMP [\[REP10-064\]](#) and REAC [\[REP10-066\]](#).
- 3.12.50. Furthermore, a Materials Management Plan (MMP) would also be implemented via the EMP to facilitate the sustainable reuse of all surplus soils generated from the Proposed Development where appropriate to minimise waste.

Operational Phase

- 3.12.51. The ES concludes that there would be no additional loss of agricultural land when the Proposed Development is operational over-and-above the construction stage impacts. However, there is the potential for soil erosion to occur due to surface water from the new carriageway. Therefore, the Applicant confirms that drainage would be incorporated into the design to minimise the erosion.
- 3.12.52. Environmental impacts such as land contamination are also considered to be greatest during construction. Operational phase potential land contamination effects following mitigation are assessed as neutral to slight and classed as not significant.

Matters Raised during Examination

- 3.12.53. The ExA posed questions (Q10.0.2 – Q10.0.4) in ExQ1 [\[PD-010\]](#) to explore with the Applicant their approach with respect to Best and Most Versatile Agricultural land (as raised in relevant representations including [\[RR-030\]](#) and [\[RR-036\]](#)) to understand matters including if there are areas of poorer quality land which could be used (as per Paragraph 5.168 NPSNN). The ExA also sought to understand how the economic and other benefits of the Proposed Development might outweigh the benefits associated with the retention of the Best and Most Versatile Agricultural land (as per Paragraph 5.176 NPSNN).
- 3.12.54. Questions [\[Q10.0.1 PD-010\]](#) were also raised for the Applicant with respect to Agricultural Land Classification surveys and the results of ground investigation.
- 3.12.55. The Applicant provided a response to the questions in [\[REP3-043\]](#). With respect to if BMV land could be avoided, the Applicant confirmed:

'BMV agricultural land is present across the entire Study Area for the Scheme and no areas of land within the Study Area were assessed as non BMV. Therefore, BMV agricultural land could not be avoided. However, the design of the Scheme has taken into account the most direct routes, minimising permanent land take as far as is possible.'

- 3.12.56. The Applicant did not undertake an assessment to identify any economic impact associated with the loss of BMV as it was not considered necessary as it was not considered reasonable or proportionate.
- 3.12.57. In the LIR [\[REP1-069\]](#) the JC recognised that the loss of BMV agricultural land is necessary to deliver the Proposed Development. Furthermore, they did not identify any significant impacts on geology and land contamination.

ExA's Conclusions

- 3.12.58. The ExA note that there is a permanent loss of BMV agricultural land of Subgrade 3a and 3b which is a significant and adverse effect. However, the Applicant has assessed alternative schemes and demonstrated that the loss of BMV is unavoidable. As set out in Section 3.3, the ExA find the Applicant's assessment of alternatives to be appropriate, and proportionate in considering the route choice, recognising the location of the existing M5 Junction 10 as part of the strategic road network.
- 3.12.59. The ExA find that the loss of BMV agricultural land is necessary to deliver the Proposed Development and this position is accepted by the JC.
- 3.12.60. The ExA recognise the Proposed Development would result in a loss of BMV, but the alternatives assessment confirms that there is no viable way of ensuring the Proposed Development could progress without this, and therefore it is not considered to conflict with paragraphs 5.168 and 5.176 of the NPSNN.
- 3.12.61. The ExA agree that in this instance to undertake an economic appraisal of the loss of BMV agricultural land would have been disproportionate. Furthermore, we note the to the economic benefits that the Proposed Development would deliver and in accordance with the requirements of the NPSNN paragraphs 2.2 and 4.3 as considered in the Socio-Economic section of this Report (Section 3.12).
- 3.12.62. Furthermore, with respect to the suitability of the site in terms of ground conditions and land contamination, the JC did not identify any specific concerns or significant impacts arising from the Proposed Development. The ExA therefore find no conflict with the NPPF, paragraph 174.
- 3.12.63. Taking this into account the ExA concludes that the Proposed Development would comply with NPSNN in regard to all of these matters. Therefore, the ExA concludes that the effects of the Proposed Development for geology and soils would not weigh for or against the Order being made.

Minerals and Waste

Planning Policy

NPSNN 2015

- 3.12.64. Paragraph 5.169 of NPSNN requires Applicants to safeguard any mineral resources on the proposed site as far as possible.

- 3.12.65. Paragraphs 5.39 to 5.41 of the NPSNN details the Government's objectives to protect human health and the environment by producing less waste and disposing of any waste in a way that is least damaging to the environment and human health.
- 3.12.66. Paragraph 5.42 of NPSNN addresses management of waste and waste reduction and states that the Applicant should set out the arrangements that are proposed for managing any waste produced.
- 3.12.67. Paragraphs 5.43 to 5.45 of the NPSNN outline that the SoS should consider the extent and effectiveness of the proposed management of waste and where necessary should use requirements or planning obligations to ensure the measures are applied and relevant permits are obtained.

NPSNN 2024

- 3.12.68. The NPSNN 2024 does not raise any significant different policy concerning minerals and waste matters.

The Application

- 3.12.69. The Applicant's assessment is included as ES Chapter 12 'Minerals and Waste' [\[APP-071\]](#). The final version is [\[REP1-020\]](#).

Baseline

- 3.12.70. The ES confirms that two study areas have been defined in accordance with DMRB LA 110. They are summarised below.
- The first study area corresponds with the DCO order limits and is where construction materials would be used, and waste generated.
 - The second study area equates to the southwest of England where required materials for construction would be sourced and where waste generated would be accepted by waste management infrastructure.

- 3.12.71. [Section 12.6 [REP1-020](#)], the ES confirms the availability of material assets in southwest England including aggregate, asphalt and concrete. It also identifies corresponding landfill and waste infrastructure capacities.

Construction Phase

- 3.12.72. [Section 12.7 [REP1-020](#)] sets out the potential construction impacts of the Proposed Development. It identifies the potential quantities of materials needed and waste generation to construct the Proposed Development.
- 3.12.73. Mitigation has also been identified to reduce the quantum of material needed to construct the Proposed Development and waste generated through design interventions and the reuse / recycling of soils etc as set out at [Section 12.8 [REP1-020](#)].
- 3.12.74. The assessment concludes that following mitigation measures, that will be managed through the implementation of an EMP, during construction, the effect of material asset use and waste generation is estimated to be slight adverse.

Operational Phase

- 3.12.75. As confirmed at [Section 12.7.10 [REP1-020](#)], the ES has scoped out operational assessments as the Applicant considers that negligible material asset use and generation of waste would occur in the opening year as the construction process would have ended (the operational assessment period identified in DMRB LA 110).

Matters raised during examination

- 3.12.76. The ExA did not identify any matters associated with minerals and waste that might be considered a principal issue following the pre application consultation at the beginning of the Examination.
- 3.12.77. In the LIR [[REP1-069](#)] the JC did not identify any significant local impacts regarding minerals and waste or raise any issues with the Applicant's assessment. The only question raised related to the source of primary materials and where they would come from. The Applicant explained their approach to this matter in [page 39 [REP2-009](#)] which the JCs confirmed they were content with in [[REP10-072](#)], the final SoCG with the JCs.

ExA's Conclusions

- 3.12.78. The ExA recognise that the Applicant has sought to identify measures to reduce the amount of waste generation in accordance with NPSNN paragraph 5.39.
- 3.12.79. With reference to paragraph 5.169 of NPSNN, the ExA accept the Applicant's conclusions and JC position that there are no significant local impacts on minerals and the Applicant's identified mitigation to reduce the quantum of material needed to construct the Proposed Development and waste generated through design interventions and the recycling of materials where appropriate, aligns with the expectations set out in paragraph 5.43 of the NPSNN.
- 3.12.80. Taking this into account the ExA concludes that the Proposed Development would comply with NPSNN in regard to all of these matters. Therefore, the ExA concludes that the effects of the Proposed Development for minerals and waste would not weigh for or against the Order being made.

Population and Human Health

Planning Policy

NPSNN 2015

- 3.12.81. Paragraph 2.23 of NPSNN states that the Government's vision and strategic objectives for the national networks include improving overall quality of life, journey quality, reliability and safety and linking up communities. Junction improvement is cited as a measure which would be used to enhance the existing national road network towards this vision.
- 3.12.82. Paragraph 3.3 of the NPSNN establishes the expectation that delivery of new schemes would improve quality of life and avoid and mitigate environmental and social impacts in line with the principles set out in the NPPF and the Government's planning guidance.
- 3.12.83. Paragraphs 4.79 to 4.81 of the NPSNN states that road networks have the potential to affect the health, well-being and quality of life of the population and that new and enhanced infrastructure may have indirect health impacts. It further states that where a proposed project has likely significant environmental impacts that would have an effect on humans, the ES should assess these.

- 3.12.84. Paragraphs 4.82 of the NPSNN states that the Applicant should identify measures to avoid, reduce or compensate for adverse health impacts as appropriate and the SoS should consider the cumulative impact on health.

NPSNN 2024

- 3.12.85. The NPSNN 2024 does not raise any significant different policy concerning population and human health matters.

The Application

- 3.12.86. The ES Chapter 13 'Population and Human Health' [[APP-072](#)] includes an assessment of the effects on people living and working in the vicinity of the Proposed Development. The final version is [[REP3-022](#)]. This includes:
- Private property and housing.
 - Community land and assets.
 - Development land and businesses.
 - Agricultural land holdings.
 - Walkers, cyclists and horse riders (WCH).
- 3.12.87. The Applicant has identified embedded and essential mitigation in the REAC and summarised in the ES at [Table 13-19 [REP3-022](#)] to avoid adverse effects through good design and delivering mitigation of adverse effects. This includes measures to prevent or minimise adverse effects on human health.

Baseline

- 3.12.88. The ES notes that Cheltenham is the only sizeable settlement near to the Proposed Development. However, there are smaller settlements, businesses and the Gallagher Retail Park nearby. Public footpaths and some bridleways also cross the Proposed Development location.

Construction Phase

- 3.12.89. The ES notes that there would be adverse construction stage effects for some residents and local businesses due to demolition and other construction activities. There would also be adverse construction phase effects due to air quality, safety, access, noise and separation from open space and recreational routes and landscape amenity. There is also the potential for construction and traffic management to impact on emergency services at the West Cheltenham Fire Station and several other businesses. These are identified in [Table 13-58 [REP3-022](#)] which provides a summary of the population summary and significant residual effects.
- 3.12.90. Table 13-58 also sets out 32 residential properties that would be demolished and identifies a large associated adverse construction effect. The properties are located on Stanboro Lane in the vicinity of Sheldon Nurseries (3), Withybridge Lane (14), Withy Bridge (to the north of A4019) (2), Uckington (to the south of A4019) (3) and to the east of West Cheltenham Fire Station (10).
- 3.12.91. Human Health impacts during construction are summarised in [Table 13-59 [REP3-022](#)] which shows there would be adverse effects including some which would be 'very large' due to Health and wellbeing outcomes associated with changes in landscape amenity or demolition of property.

Operational Phase

- 3.12.92. The ES identifies a range of beneficial effects due to matters including improved access for a range of transport modes, including improved access to West Cheltenham Fire Station. However, adverse effects are identified for residents located at Uckington, Moat Lane, Cooks Lane, Withybridge Gardens, Withybridge Lane and Stanboro Lane due to landscape amenity changes.
- 3.12.93. Human Health impacts during operation are also summarised in [Table 13-59 [REP3-022](#)]. Those are all identified as moderate or large beneficial except for moderate adverse effects for receptors associated with health and wellbeing outcomes due to changes in landscape amenity.

Matters raised during Examination

- 3.12.94. The ExA posed questions in ExQ1 [[PD-010](#)] to explore with the Applicant their approach with respect to effects on local businesses including the concerns raised in written representations [[RR-017](#) and [RR-019](#)].
- 3.12.95. The Applicant provided a response to the questions in [[REP3-043](#)] which included confirmation that engagement with all affected parties was ongoing.
- 3.12.96. The JC recognised the construction and operational impacts in the LIR [[REP1-069](#)]. All relevant matters concerning population and human health were agreed during the Examination as per the JC SoCG [[REP10-072](#)].

ExA's Conclusions

- 3.12.97. The ExA find that the Applicant has undertaken an assessment of any likely significant adverse health impacts in accordance with the requirements of the NPSNN paragraph 4.81.
- 3.12.98. It is recognised that there would be adverse construction stage effects for some residents and local businesses. However, during the operational phase there would be a range of beneficial effects, although some adverse effects would be experienced for some residents due to landscape amenity changes.
- 3.12.99. With reference to NPSNN paragraph 4.82, the ExA recognise that the Applicant has identified measures to avoid, reduce or compensate for adverse health impacts which are secured in the REAC.
- 3.12.100. Taking this into account the ExA concludes that the Proposed Development would comply with NPSNN in regard to all of these matters. Therefore, the ExA concludes that the effects of the Proposed Development for population and human health would not weigh for or against the Order being made.

Socio-Economic

Planning Policy

NPSNN 2015

- 3.12.101. Paragraph 2.2 confirms that there is a critical need to improve national networks for reasons which include providing a transport network which is capable of stimulating and supporting economic growth.
- 3.12.102. Paragraph 4.3 states that: *"In considering any proposed development, and in particular, when weighing its adverse impacts against its benefits, the Examining Authority 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.”*

NPSNN 2024

- 3.12.103. The NPSNN 2024 does not raise any significant different policy concerning socio-economic matters.

The Application

- 3.12.104. The Applicant's assessment of economic case for the Proposed Development is included in Section 5 of the Planning Statement [[REP11-007](#)]. That confirmed that an appraisal of the economic elements associated with the Proposed Development has been undertaken in accordance with Transport Analysis Guidance (TAG). An estimate of Proposed Development costs is presented which identifies a most likely estimate of £293.210 million (including allowances for risk and inflation).

- 3.12.105. The economic assessment forecasts that the Proposed Development would yield user benefits of £55.3 million over the 60 year appraisal period. The final assessment of Value for Money for the Proposed Development was rated as 'medium to high'.

- 3.12.106. The Applicant has also provided a policy assessment which includes confirmation that:

'The Scheme is compliant with paragraphs 2.2 and 2.3 of the NPSNN in that it will directly contribute towards an improvement in the strategic national road network through the provision of a new all-movements roundabout junction at M5 Junction 10. This will reduce congestion in and around the junction which will in turn contribute towards economic growth at the local and national scales.'

- 3.12.107. The Applicant has also noted that the Proposed Development would provide increased capacity in the road network and that would directly contribute towards economic benefits by enabling planned development sites (including the JCS strategic allocations A4 (Land at North West Cheltenham) and A7 (Land at West Cheltenham) to come forward.

- 3.12.108. The ES Chapter 13 'Population and Human Health' [[APP-072](#)] at Table 13-58 identified moderate adverse construction effects for local businesses including Gallagher Retail Park, Kingsditch Trading Estate and the café business run from the layby on the A4019. However, moderate beneficial operational effects were identified during the operational phase for businesses (including The House in the Tree Public House) as referred to under the next heading.

- 3.12.109. Table 13-58 also identified large beneficial operational effects during the operational phase for existing businesses including Gallagher Retail Park and Kingsditch Trading Estate. Furthermore, large beneficial operational effects were also identified for future possible employment land uses (land within the West Cheltenham Development Area and North West Cheltenham Development Area).

Matters Raised during Examination

- 3.12.110. The ExA posed questions in ExQ1 [\[PD-010\]](#) to explore with the Applicant their approach with respect to effects on local businesses. This included consideration of the matters raised in [\[RR-017\]](#) and [\[RR-019\]](#); the café business run from the layby on the A4019 and the Old Spot Public House. The ExA also sought more detail from the occupiers of The House in the Tree Public House to understand the implications to the business.
- 3.12.111. The Applicant provided a response to the questions in [\[REP3-043\]](#) this identified the engagement that has been undertaken and measures to mitigate the effects insofar as possible. The House in the Tree Public House identified some of the concerns regarding impacts on the business in [\[REP3-078\]](#).
- 3.12.112. The impacts of access into existing agricultural land uses was explored by the ExA during the Examination as discussed in the traffic and transport section of this Report.
- 3.12.113. A Register of Environmental Actions and Commitments (REAC), final version [\[REP10-066\]](#) formed part of the Applicant's planning submission. That set out mitigation measures or commitments to maintain appropriate access for all road users during construction. It identifies the preparation of a Traffic Management Plan at construction stage which would be produced as part of the EMP (2nd iteration), secured by DCO Schedule 2, Requirement 3(2)(e)(x).
- 3.12.114. The loss of BMV agricultural land during the construction phase was also raised by the ExA during the Examination as set out previously in this Section of the Report. However, no economic appraisal of that loss was provided by the Applicant.

ExA's Conclusions

- 3.12.115. The ExA note that there are adverse effects on local businesses associated with the construction and operation of the Proposed Development. This includes associated with impacts on access.
- 3.12.116. However, these impacts would be temporary during the c. 30 month construction period. The Applicant has also identified measures which are secured in the REAC to mitigate access associated issues for existing agricultural land uses and other affected businesses during construction. The ExA conclude that on the basis of the secured Traffic Management Plan (within the EMP as per the dDCO [\[REP11-003\]](#) Requirement 3(2)(e)), construction stage access and traffic management has been appropriately addressed.
- 3.12.117. The ExA also recognise that the operational development would result in beneficial operational effects to local businesses and development land due to improved access for a range of modes.
- 3.12.118. We also consider that the loss of BMV agricultural land would result in economic harm to some extent but accept the Applicant's position that it would not be proportionate for an Economic Appraisal to quantify that loss to be undertaken.
- 3.12.119. The ExA find that whilst any adverse effects on local businesses are unfortunate, they are unavoidable and temporary if the Proposed Development is to be delivered. When operational, the Proposed Development would also result in improved access and beneficial effects to local businesses and development land. Furthermore, the ExA also attach weight to the economic benefits that the Proposed

Development would deliver and in accordance with the requirements of the NPSNN paragraphs 2.2 and 4.3.

- 3.12.120. Taking this into account the ExA concludes that the Proposed Development would comply with NPSNN in regard to all of these matters. Therefore, the ExA concludes that the effects of the Proposed Development for socio-economic would carry moderate weight for the Order being made.

Good Design

Planning Policy

NPSNN 2015

- 3.12.121. The NPSNN sets out criteria for 'good design' for national network infrastructure in paragraphs 4.28 to 4.35 of that document. Paragraph 4.32 explains that scheme design will be a material consideration in decision-making. It states that the SoS: "needs to be satisfied that national networks infrastructure projects are sustainable and as aesthetically sensitive, durable, adaptable and resilient as they can reasonably be (having regard to regulatory and other constraints and including accounting for natural hazards such as flooding)."
- 3.12.122. Paragraph 4.34 states that: "Whilst the Applicant may only have limited choice in the physical appearance of some national networks infrastructure, there may be opportunities for the Applicant to demonstrate good design in terms of siting and design measures relative to existing landscape and historical character and function, landscape permeability, landform and vegetation."

NPSNN 2024

- 3.12.123. The NPSNN 2024 does not raise any significant different policy concerning good design matters.

The Application

- 3.12.124. The Applicant identified how the Proposed Development aligned with the good design requirements of the NPSNN including paragraphs 4.28 to 4.35 at Appendix B of the Planning Statement [[APP-135](#)], which provides an accordance table against NPSNN policy.

Matters raised during Examination

- 3.12.125. The ExA posed questions in ExQ1 [[PD-010](#)] to explore with the Applicant their approach with respect to good design, including if professional advice had been sought to ensure good design principles are embedded in the proposals, how the design process had been conducted and if there should be a process including an independent design champion be considered and secured.
- 3.12.126. The Applicant provided a response to the questions in [[REP3-043](#)]. They also submitted a Project Design Report [[REP3-047](#)] and [[REP3-048](#)] which sought to identify how the Proposed Development had given due regard for good design and the environment in which the Proposed Development is located and how the design has responded to the design principles set out in The Road to Good Design published by Highways England in 2018.

- 3.12.127. The ExA explored design matters further with the Applicant at ISH3 to understand the design vision and development process as summarised in the written submission of oral case [\[REP4-037\]](#).
- 3.12.128. The Applicant revised the dDCO [\[REP11-003\]](#) to include a Requirement (11) which states the detailed design must be in accordance with the preliminary scheme design and the design principles set out in the design principles report unless otherwise agreed in writing by the SoS.
- 3.12.129. Furthermore, the ExA recommended the inclusion of Requirements 16 and 17 to ensure materials to be used for highways and structures require approval of the SoS in order to ensure that the appearance of the materials has been fully considered and respond appropriately to the local environment and the design principles, respectively as per the dDCO consultation [\[PD-022\]](#) consultation dDCO. The Applicant incorporated these changes into their final preferred dDCO.
- 3.12.130. The JC did not raise any issues with the Applicant's approach to good design in the LIR [\[REP1-069\]](#) or SoCG [\[REP10-072\]](#).

ExA's Conclusions

- 3.12.131. It is noted that there were no unresolved issues identified by the JC or any other IPs with respect to good design by the close of the Examination.
- 3.12.132. The ExA find that Requirement 11, 16 and 17 secures the appropriate mitigation which in the view of the ExA would ensure the detailed design to be in accordance with the NPSNN paragraphs 4.28 to 4.35.
- 3.12.133. Taking this into account the ExA concludes that the Proposed Development would comply with NPSNN in regard to all of these matters. Therefore, the ExA concludes that the effects of the Proposed Development for good design would not weigh for or against the Order being made.

Overall Conclusion on Other Planning Matters

- 3.12.134. The ExA conclude that the Proposed Development would comply with NPSNN regarding Other Planning Matters. Therefore, the ExA concludes that the effects of the Proposed Development for Other Planning Matters would not weigh for or against the Order being made.

3.13. ASSESSMENT OF CUMULATIVE EFFECTS

INTRODUCTION

- 3.13.1. This Section considers the potential cumulative effects of the Proposed Development. Cumulative effects in this context covers both:
- the accumulation of, and interrelationship between, effects arising from the Proposed Development; and
 - interactions between the effects of the Proposed Development and the effects of other existing and approved projects.

Policy Considerations

- 3.13.2. The EIA Regulations, schedule 4, paragraph 5 require that an ES should include "a description of the likely significant effects on the environment resulting from, inter alia, (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”.

3.13.3. The assessment of cumulative effects as set out in NPSNN requires the Applicant to set out:

- 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. (NPSNN paragraph 4.3).

3.13.4. While the NPSNN goes on to state the SoS in deciding an application should take into consideration:

- the effects of existing sources of pollution in and around the project are not such that the cumulative effects of pollution when the proposed development is added would make that development unacceptable, particularly in relation to statutory environmental quality limits. (NPSNN paragraph 4.55)

NPSNN 2024

3.13.5. The updated NPSNN 2024 reiterates the advice already set out however, adds guidance in how to undertake a Whole Life Carbon Assessment following the Transport Analysis Guidance Unit A3 in further developing the assessment of cumulative effects from Proposed Developments.

THE APPLICATION

3.13.6. The Applicant summarises the legislation and policy that it considers to be relevant to the consideration of cumulative effects in the Cumulative Effects Assessment [\[APP-074\]](#), this was further supplemented by the Applicant's Technical Note [\[REP4-034\]](#) sent in response to ExQ1 [\[PD-010\]](#) and the final version [\[REP10-051\]](#) which had been revised following the acceptance of the Change Requests.

3.13.7. The Assessment considers the cumulative effects under two main headings

- Intra-scheme effects (the combined effects of the Proposed Development on any given receptor or group of receptors), and
- Inter-scheme effects (the interactions between the effects of the Proposed Development and the effects of other projects).

3.13.8. The Assessment takes account of the embedded mitigation measures secured as part of the Proposed Development and where relevant, any mitigation forming part of the other developments.

Intra Scheme effects

3.13.9. In respect of intra scheme effects Table 15-4 of [\[REP10-051\]](#) summarises the Applicant's assessment of impacts for receptors that feature in more than one environmental topic area for assessment.

3.13.10. This Cumulative Effects Assessment (CEA) did not consider air quality, waste and materials, or climate change as the individual topic areas did not identify any significant residual effects.

- 3.13.11. The assessment concludes that significant cumulative effects would be likely to arise at the following receptors during construction as a result of the Proposed Development:
- Residents in north and south Uckington, including Buildings at Moat House and other properties on Moat Lane.
 - Families with children and adolescents residing along roads experiencing temporary increases in through traffic.
- 3.13.12. Essential mitigation is identified within the REAC [\[REP10-066\]](#) for residents at north and south Uckington- (G4 and G10), and for families with children and adolescents residing along roads experiencing temporary increases in through traffic (G10 and PHH9)
- 3.13.13. The Applicant concludes that the residual effects would remain during the construction phase, however, the degree of effect would be subject to the capacity of the individuals to adapt to change.
- 3.13.14. During operation the significant cumulative adverse effects would be likely to arise for the residents of north Uckington, while significant beneficial effects would arise for receptors in the M5 Junction 10 Southern Quadrant.
- 3.13.15. Essential mitigation for the adverse cumulative effects during operation for residents at north Uckington is set out in the REAC items (CEA2 and CEA3).
- 3.13.16. The Applicant concludes that the residual effects during operation following mitigation would result in moderate beneficial effects at the M5 Junction 10 southern quadrant receptors.

Inter Scheme effects

- 3.13.17. In respect of intra scheme effects Table 15-6 of [\[REP10-052\]](#) summarises the Applicant's assessment of impacts for receptors that feature in more than one environmental topic area for assessment.
- 3.13.18. This CEA in respect of inter scheme effects did not consider air quality, water, waste and materials, or climate change as the individual topic areas did not identify any significant residual effects or were scoped out of assessment.
- 3.13.19. We summarise the significant effects identified by the Applicant in respect of inter scheme effects for each of the five strategic sites that the Applicant identifies as having the potential for cumulative inter scheme effects.
- 3.13.20. The Applicant identifies five strategic development sites within the RFFP shortlist as subject to a more detailed evaluation of the implications of the cumulative impacts identified, as potentially significant cumulative effects are predicted. These comprise the following:
- 16/02000/OUT (Elms Park) – relating to land allocated under Policy A4 – Northwest Cheltenham Development Area.
 - 20/00759/FUL (Swindon Farm) – relating to part of the land allocated under Policy A4 – Northwest Cheltenham Development Area)
 - Safeguarded land to the northwest of Cheltenham (Policy SD5).
 - 22/01817/OUT and 22/01107/OUT – relating to part of the land allocated under Policy A7 – West Cheltenham Development Area.

- 21/00872/REM – relating to part of the land allocated under Cheltenham Local Plan Policy HD8 – Strategic Site – land to the north of the B4634.

Elms Park, Northwest Cheltenham – Local Policy allocation A4.

The CEA concludes that:

- The residual inter-project cumulative construction effect on the availability of habitat suitable to support protected species in the construction phase would be minor to moderate adverse, with moderate effects being significant.

3.13.21. The residual inter-project cumulative construction and operation effect of urbanising and transformational change on the existing residents of Uckington would be moderate to major adverse and significant, varying depending on the capacity of individuals to cope with the transformational change associated with the residential and employment growth within the Northwest Cheltenham Development Area, partly concurrent with the Scheme.

3.13.22. With the identified essential mitigation provided through the REAC (CEA2 and CEA3) the Applicant concludes that the effects could be reduced to minor adverse and not significant.

Swindon Farm, Northwest Cheltenham – Local Policy Allocation (part) A4

3.13.23. The CEA concludes that:

3.13.24. The residual inter-project cumulative construction and operation effect of urbanising and transformational change on the existing residents of Uckington would be moderate adverse and significant.

3.13.25. With the identified essential mitigation provided through the REAC (CEA2 and CEA3) the Applicant concludes that the effects could be reduced to minor adverse and not significant.

Safeguarded Land, Northwest Cheltenham – Local Policy SD5

The CEA concludes that:

3.13.26. The residual inter-project cumulative construction effect on the availability and continuity of habitat suitable to support protected species in the construction phase would be moderate adverse and significant.

3.13.27. The residual inter-project cumulative construction and operation effect of urbanising and transformational change on the existing residents of the community of Uckington and north of the A4019 would be moderate to major adverse and significant.

3.13.28. The residual inter-project cumulative construction and operation effect of changes to the configuration, availability, amenity and wider connectivity of the WCH network on WCH users of the recreational network close to M5 Junction would be minor to moderate adverse, with moderate effects being significant.

3.13.29. With the identified essential mitigation provided through the REAC (CEA2 and CEA3) the Applicant concludes that the effects could be reduced to minor adverse and not significant.

3.13.30. The Applicant also identifies the potential for a minor to moderate beneficial effects which would be significant to the WCH network in the event there was co-ordination

of development masterplans for the RFFP developments, and this could extend the WCH network.

West Cheltenham Development Area – Local Policy Allocation A7

3.13.31. The CEA concludes that:

- The residual inter-project cumulative construction effect on the availability of habitat suitable to support protected species in the construction phase would be minor to moderate adverse, with moderate effects being significant.

3.13.32. The residual inter-project cumulative construction and operation effect on the existing residents of the B4634 and Withybridge Lane would be moderate adverse and significant, varying depending on the capacity of individuals to cope with the transformational change associated with the residential and employment growth within the West Cheltenham Development Area, partly concurrent with and enabled by the Scheme.

3.13.33. With the identified essential mitigation provided through the REAC (CEA2 and CEA3) the Applicant concludes that the effects could be reduced to minor adverse and not significant.

Land north of B4634 - Local Policy Allocation HD8

3.13.34. The CEA does not identify any further additive cumulative inter-project effects of this RFFP with the Scheme that are considered to have the potential to be significant. On this basis there are no significant cumulative inter-project cross-topic effects, consequently no essential mitigation is required.

3.13.35. In addition to the list of projects included in the RFFP the Applicant included an assessment of highway construction projects that could have an inter project scheme effect. These three highway schemes are:

- A38/A4019 Junction Improvements at Coombe Hill: The Scheme has now been granted planning permission.
- Arle Court Transport Hub, Cheltenham: The proposed improvements to Arle Court Park and Ride Three planning applications (Arle Court highways and civils works ref. 21/0074/CHR3MJ; Arle Court MSCP ref. 22/0002/CHR3MJ; and West of Cheltenham Transport Improvements Scheme Phase 1 ref. 20/0021/CHREG3) have been submitted and the proposal has since received planning permission.
- A417 Missing Link: The proposal includes improvements to the A417 carriageway between the Brockway bypass and Cowley roundabout in Gloucestershire. A DCO was granted on 16 November 2022.

3.13.36. The Applicant acknowledges there will be a need to manage these highway schemes to ensure in combination effects are appropriately controlled. When taken together the strategic highway projects have the potential to affect several strategic highway links in Cheltenham and northeast Gloucester.

3.13.37. The CEA identifies there is the potential for adverse effects during construction as without careful planning and co-ordinated traffic management, temporary closures and diversions within the network could be a source of considerable driver frustration, delay and anxiety, with multiple separate sections of roadworks operating concurrently, limiting options for avoiding temporary delays.

- 3.13.38. If this were to occur it could have adverse knock-on effects in terms of localised increases in traffic emissions, also affecting noise and air quality; and may also alter the risk profile for all transport modes. As such the CEA concludes that there could be moderate to major adverse effects on people living and habitually travelling through and between parts of the Cheltenham and north-east Gloucester strategic highway network, due to temporary disruption and traffic management activities from strategic highway projects, which would be significant.
- 3.13.39. With the identified essential mitigation provided through the REAC (CEA1) the Applicant concludes that the effects could be reduced to minor adverse and not significant.

ISSUES CONSIDERED DURING THE APPLICATION

- 3.13.40. During the Examination the Cumulative Effects Assessment was updated to take account of the Change Requests as well as updates evolving through the Examination process.
- 3.13.41. In our ExQ1 [\[PD-010\]](#) we sought clarification from the Applicant in respect of several of the conclusions reached in the CEA. The Applicant responded at D4 with [\[REP4-034\]](#) a Technical Note responding to ExQ1.1.3 and ExQ1.1.7 and [\[REP3-043\]](#) response to ExQ1.
- 3.13.42. In [\[REP3-064\]](#) The JC response to ExQ1 the JCs confirmed they continued to work with the Applicant to ensure that the final updated cumulative assessment was something that could be agreed upon and would be included in the SoCG.
- 3.13.43. In the final SoCGs received from Natural England [\[REP10-078\]](#), the Environment Agency [\[REP10-076\]](#), and Historic England [\[REP10-080\]](#) each confirmed they were in agreement with the Applicant's assessment of cumulative effects, while the Joint Councils [\[REP10-072\]](#) confirmed that:
- 3.13.44. "The Joint Councils agree that the assessment of Cumulative Effects is appropriate and covers intra-scheme topics including Lighting Biodiversity, Landscape, Highway Drainage and Visual Impact and Landscape Character and the Reasonably Foreseeable Future Projects (RFFPs) are appropriate."
- 3.13.45. The ExA is satisfied that the Applicant has undertaken a robust assessment of cumulative effects and had due regard to the status of other planned projects. We accept its conclusions on the significance of any residual effects.
- 3.13.46. The Applicant's Assessment having analysed the projects that may generate cumulative effects went on to consider the mitigation and controls that might be secured by way of the dDCO.
- 3.13.47. The ExA accepts that since the applications for the various housing and employment allocations at northwest and west Cheltenham remain undetermined at the closure of the Examination, there is some uncertainty as to when permission would be granted, and consequently, when any such permission would be implemented. In this context, we consider that the Applicant has made reasonable efforts to plan for the various scenarios that might arise in terms of the sequencing of construction works for the Proposed Development relative to proposed works that could occur for those individual projects.

- 3.13.48. The ExA are also mindful of the agreement of the JCs to the assessment of and conclusions reached in the CEA.

CONCLUSIONS

Intra-project effects

- 3.13.49. The ExA is satisfied that the potential intra-project effects arising from the accumulation of various effects of the Proposed Development have been adequately assessed, and whilst a significant accumulation of adverse construction effects cannot be avoided entirely, the proposed mitigation set out in the REAC [\[REP10-066\]](#) and secured via the EMP included as Requirement 3 of the dDCO [\[REP11-003\]](#) would be effective in minimising those effects as far as reasonably possible.

Inter project effects

- 3.13.50. The ExA is satisfied that the Applicant's inter-project assessment, included in the CEA [\[REP10-051\]](#), provides sufficient up-to-date information to understand how the effects of the Proposed Development would combine and interact with the effects of other development, as required by the EIA Regulations and NPSNN.
- 3.13.51. In all cases, where significant adverse effects have been identified, the embedded mitigation would provide reasonable steps to avoid and minimise the magnitude of those effects where opportunities to do so exist.
- 3.13.52. The ExA conclude that the Applicant's cumulative effects assessment (as amended during the Examination) fulfils the requirements of the EIA Regulations and meets the tests set out in NPSNN. The ExA considers that matters relating to cumulative effects attract moderate weight in favour of the making of the Order. The ExA do not therefore propose to make any modifications to the Applicant's final dDCO in respect of the cumulative issues raised.

4. HRA SUMMARY

4.1. INTRODUCTION

- 4.1.1. This Chapter sets out the Examining Authority's (ExA's) summary conclusions relevant to Habitats Regulations Assessment (HRA). This will assist the Secretary of State (SoS), as the Competent Authority, in performing their duties under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations'). Records of Examination procedure, evidence and reasoning to support the conclusions reported upon here are set out in Appendix C.
- 4.1.2. HRA is a legislated process of assessment of the effects of the Proposed Development (if any) on defined sites which are subject to protection pursuant to relevant international obligations to which the UK has subscribed. These sites are referred to here as 'European Sites', referring to:
- Special Areas of Conservation (SACs) and proposed SACs;
 - Special Protection Areas (SPAs) and potential SPAs;
 - Ramsar sites and proposed Ramsar sites; and
 - any sites identified as compensatory measures for adverse effects on any of the above.
- 4.1.3. The ExA has been mindful throughout the Examination of the need to ensure that the SoS has the information reasonably required to carry out their duties as the Competent Authority. It has sought evidence from the Applicant and relevant Interested Parties (IPs), including from Natural England (NE) as the Appropriate Nature Conservation Body (ANCB), through written questions and issue-specific hearings (ISHs).
- 4.1.4. In accordance with the precautionary principle embedded in the Habitats Regulations, consent for this Proposed Development may be granted only after having ascertained that it will not adversely affect the integrity of European site(s) and no reasonable scientific doubt remains².
- 4.1.5. Where it relates to a European Site, a likely significant effect is referred to as a LSE and an adverse effect on integrity is referred to as an AEoI in this chapter and in the supporting Appendix.

4.2. INFORMATION AND EVIDENCE

- 4.2.1. The Proposed Development is not directly connected with, or necessary to, the management of a European Site, and therefore the implications of the project with respect to adverse effects on potentially affected European Sites must be assessed by the SoS.
- 4.2.2. The Applicant's assessment of effects is presented in the following application document(s):

² CJEU Case C-127/02 Waddenzee 7 September 2004, Reference for a preliminary ruling from the Raad van State (Netherlands) in the proceedings: *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij*.

- Environmental Statement Appendix 7.13 - Habitats Regulation Assessment – Screening [\[APP-099\]](#), updated as [\[REP3-024\]](#) – herein referred to as the “HRA Screening”.
- Environmental Statement Appendix 7.13 - Habitats Regulation Assessment – Screening Addendum [\[AS-094\]](#).
- Environmental Statement Appendix 7.14 - Habitats Regulation Assessment – Statement to Inform Appropriate Assessment (SIAA) [\[APP-100\]](#), updated as [\[REP3-026\]](#) - herein referred to as the “HRA SIAA”.

4.2.3. Supporting information is also provided in the following applications documents:

- Environmental Statement Chapter 7 Biodiversity [\[APP-066\]](#), updated as [\[REP1-012\]](#) and [\[REP10-043\]](#)
- Environmental Statement Appendices 7.1 – 7.12 [\[APP-086\]](#) to [\[APP-098\]](#) and 7.15 - 7.19 [\[APP-101\]](#) to [\[APP-105\]](#) and [\[AS-022\]](#)

4.2.4. The ExA has had careful regard to all Relevant Representations (RRs) and Written Representations which identify matters relevant to the assessment of effects on European Sites. It has used written questions and relevant Issue Specific Hearings (ISHs) to interrogate this material. It prepared and published a Report on the Implications for European Sites (RIES) [\[PD-019\]](#) on 22 October 2024 and sought and has considered responses from the Applicant and IPs to it, to inform its consideration of and findings on effects on European Sites.

4.2.5. All deliberations on this information and evidence are set out in Appendix C.

4.3. SUMMARY OF MATTERS CONSIDERED

4.3.1. Seven European Sites and their qualifying features were considered in the Applicant’s assessment of likely significant effects (LSE):

- Wye Valley and Forest of Dean Bat SAC;
- Walmore Common Special Protection Area SPA and Ramsar site;
- Cotswold Beechwoods SAC, and
- Severn Estuary SAC, SPA and Ramsar site .

4.3.2. It was generally agreed by all relevant IPs that the correct sites had been identified and included in the Applicant’s HRA Report and supporting evidence.

4.3.3. The main HRA matters raised by the ExA, NE and other IPs and discussed during the Examination include:

- The overall conclusions of no AEoI and agreement with NE.
- The potential effects to water quality in the Severn Estuary sites.
- Details of the assessment of in combination effects to all sites.
- The recommendation to relocate Lamprey ammocoetes, and
- The requirement for, and security of, a mitigation strategy for the River Chelt.

4.3.4. These matters are discussed in the RIES [\[PD-019\]](#) and in the sections of Appendix C, as appropriate.

4.4. SUMMARY OF FINDINGS IN RELATION TO LSE

4.4.1. The Applicant’s HRA Screening [\[REP3-024\]](#) concluded no LSE from the Proposed Development alone on any of the qualifying features of:

- Wye Valley and Forest of Dean SAC (Section 3.2 and Appendices B and I) – Agreed by NE at [\[RR-027\]](#), paragraph 3.2.3],
- Walmore Common SPA (Section 4.1 and Appendices C and J) - Agreed by NE at [\[RR-027\]](#), paragraph 3.2.4],
- Walmore Common RAMSAR site (Section 4.1 and Appendices D and K)- Agreed by NE at [\[RR-027\]](#), paragraph 3.2.4],
- Severn Estuary SPA (Section 4.2 and Appendices F and L), and
- Cotswold Beechwood SAC (Section 3.2, 4.3 and Appendices H and M).

4.4.2. While LSE could not be excluded from

- Severn Estuary SAC during the construction of the Proposed Development in respect of River lamprey for the following reasons:
 - Temporary reduction of habitat area (functionally linked habitat),
 - Disturbance to key species,
 - Direct injury or mortality (reduction in species density), and
 - Habitat or species fragmentation.

And during Construction and Operation

- Changes in key indicators of conservation value (listed as changes to water quality)
- Severn Estuary Ramsar Site during the construction of the Proposed Development in respect of European eel, Atlantic salmon, Sea trout, River lamprey and fish assemblage, for the following reasons:
 - Temporary reduction of habitat area (functionally linked habitat),
 - Disturbance to key species,
 - Direct injury or mortality (reduction in species density) – lamprey only, and
 - Habitat or species fragmentation.

And during Construction and Operation

- Changes in key indicators of conservation value (water quality).

4.4.3. In light of conclusions provided by the Applicant at in [\[REP3-024\]](#) and [\[REP3-026\]](#) and taking into account the reasoning set out in Appendix C, the ExA considers that the Proposed Development is likely to have a significant effect from the impacts identified in Table B Appendix C on the qualifying features of the Severn Estuary SAC and Ramsar site when considered alone.

4.4.4. The Applicant's HRA Screening [\[REP3-024\]](#) concluded no LSE from the Proposed Development in combination with other plans or projects on any of the qualifying features of the sites listed in Table A. of Appendix C (where these impacts are not already considered to result in LSE from the Proposed Development alone, as clarified in [\[REP9-005\]](#)). The ExA concur with this conclusion.

4.5. SUMMARY OF FINDINGS IN RELATION TO AEoI

4.5.1. The European sites and qualifying features identified in Table B of Appendix C were further assessed by the Applicant to determine if they could be subject to AEoI from the Proposed Development. The assessment of AEoI was made in light of the conservation objectives for the European sites.

4.5.2. The Applicants HRA SIAA [\[REP3-026\]](#) overall considered that there would be no AEoI on any European site, provided that the required mitigation detailed within the SIAA is secured.

- 4.5.3. The required mitigation is set out below under each impact pathway assessed.
- 4.5.4. In light of conclusions provided by the Applicant at in [\[REP3-026\]](#), and taking into account the reasoning set out in Appendix C, the ExA considers that the Proposed Development is not likely to have an adverse effect on integrity from the impacts identified in Table B Appendix C on the qualifying features of the European sites identified when considered alone, or in combination with other plans or projects.

4.6. HRA CONCLUSIONS

- 4.6.1. The ExA considers that there is sufficient information before the SoST to enable them to undertake an AA in order to fulfil their duty under the requirements of the Habitats Regulations.
- 4.6.2. The ExA's findings are that, subject to the mitigation measures to be secured in the dDCO, AEol on the Severn Estuary SAC or the Severn Estuary Ramsar Site from the Proposed Development when considered alone or in-combination with other plans or projects can be excluded from the impact-effect pathways assessed.
- 4.6.3. The other five European sites identified by the Applicant had no LSE and therefore were not taken forward for further assessment. The ExA have no evidence to disagree with these conclusions and this was agreed by NE.

5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

5.1. INTRODUCTION

- 5.1.1. This Chapter sets out the Examining Authority's (ExA) overall assessment of the planning merits of the Proposed Development.

5.2. SUMMARY OF THE MAIN PLANNING ISSUES

- 5.2.1. The ExA's findings in relation to the effects of the Proposed Development and its performance against relevant policy and legislation are summarised below, drawing on the analysis of planning and Habitats Regulations Assessment matters contained in Chapter 3 and Chapter 4 of this Report.

- 5.2.2. In making our findings, we have given full consideration to the Local Impact Report (LIR) submitted by the Joint Councils (JCs) [\[REP1-069\]](#). The planning matters and potential effects raised in the LIR are considered in the relevant Sections of Chapter 3.

THE NEED FOR THE PROPOSED DEVELOPMENT

- 5.2.3. In Section 3.2 of this Report, we have found that there is a compelling need for the Proposed Development, which would provide benefits in terms of enhancing the SRN and supporting the achievement of the local policy objectives. We have therefore found that the compelling need for the Proposed Development has been demonstrated in accordance with the provisions of NPSNN.
- 5.2.4. Accordingly, we attach moderate weight to the contribution that the Proposed Development would make toward the compelling need for improvement to the SRN identified in the NPSNN.

ALTERNATIVES

- 5.2.5. In Section 3.3 of this Report, we have concluded that at a strategic level, the Applicant has adequately considered alternatives to the Proposed Development. Where matters arose during the Examination in relation to site-specific alternatives, we consider that they have been adequately assessed by the Applicant.
- 5.2.6. Overall, we consider that the legislative and policy requirements relating to the consideration of alternatives have been met.
- 5.2.7. The consideration of alternatives has been sufficient for EIA purposes to enable site avoidance or mitigation in relation to environmental, biodiversity, flood risk, heritage and geological significance, as required by the NPSNN. All relevant due processes have been carried out. In Chapter 4 of this Report, we conclude that alternatives do not need to be considered under the Habitats Directive because we recommend to the SoS that an appropriate assessment is not required.
- 5.2.8. Having regard to all of these findings, we conclude that there are no matters relating to the consideration of alternatives which would weigh for or against the Order being made.

TRAFFIC AND TRANSPORT

- 5.2.9. In Section 3.4 of this Report, we have had regard to the traffic and transport aspects of the proposal including those relating to the ability of the Proposed Development to contribute to a well-connected network with sufficient capacity as per NPSNN Section 2.1. We have also considered the adequacy of the Applicant's transport modelling, road safety implications of the scheme, accessibility and sustainable transport provision.
- 5.2.10. Section 9.2 of the Transport Assessment provided an assessment of road safety which shows that there are accidents and casualties saved by the Scheme (without the dependant development). However, the ExA note that accident savings are not predicted in the assessment scenario which include the dependant development as accident savings are offset by increased traffic flows.
- 5.2.11. The Applicant also submitted a Safety Report which shows that the scheme can address specific existing road safety issues. Therefore, the ExA conclude that the national policy tests (NPSNN Sections 4.60 to 4.66) which deal with road safety are satisfied.
- 5.2.12. Taking all matters into account, the ExA conclude that overall, the traffic and transport considerations of the NPSNN have been met. The traffic and transport issues address the impacts of the Proposed Development and bring additional benefits of improving safety and creating capacity for future growth. On this basis the overall effect of the Proposed Development on traffic and transport carries great weight in favour of the making of the Order.

GREEN BELT

- 5.2.13. In Section 3.5 the ExA finds that the Proposed Development would be inappropriate development in the Gloucester and Cheltenham Green Belt. Inappropriate development is, by definition, harmful to the Green Belt. The ExA attributes substantial weight to the harm to the Gloucester and Cheltenham Green Belt as a result of the Proposed Development. In accordance with NPSNN and the NPPF, inappropriate development should not be approved except in very special circumstances.
- 5.2.14. Inappropriate development should not be approved except in very special circumstances (NPSNN paragraph 5.178 and NPPF paragraph 153). 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.
- 5.2.15. The ExA has recorded the need for and benefits that would be likely to arise from the Proposed Development, and the harms that would also be likely to arise from the different elements of the Proposed Development within the respective Sections of Chapter 3 of this Report.
- 5.2.16. We consider that there would be significant economic, and transport benefit, moderate environmental benefit including the provision of BNG. The scheme meets an identified need for improvements to the SRN and is required to be delivered in this location.
- 5.2.17. In considering the benefits versus harms the ExA are clearly of the view that the potential harm to the Green Belt, and the other harm we have identified would be clearly outweighed by the other considerations. Consequently, we are satisfied that very special circumstances exist to justify the approval of inappropriate development

in the Green Belt. The Proposed Development would therefore accord with the Green Belt policy set out in NPSNN paragraph 5.178 and the NPPF.

AIR QUALITY

- 5.2.18. Section 3.6 of this Report sets out the air quality implications of the Proposed Development.
- 5.2.19. Taking account of the conclusions in the Section, the ExA considers that the Applicant's assessment of air quality complies with the policy aims of the NPSNN paragraph 5.6, 5.7 – 5.9.
- 5.2.20. The ExA finds that there will be no significant residual adverse effects during construction or operation as a result of the DCO scheme. Furthermore, the completed DCO scheme would lead to a betterment in (reduced) pollutant concentrations in the AQMA. Therefore, we find that the issue of air quality does carry little weight for the Order being made.

BIODIVERSITY AND ECOLOGY

- 5.2.21. As reported in Section 3.7 of this Report, we are satisfied that the effects of the Proposed Development on biodiversity, ecology and the natural environment have been adequately assessed. Taking into account the embedded mitigation, the Proposed Development would avoid significant harm to biodiversity interests and take opportunities to conserve and enhance biodiversity. All relevant legislative and policy requirements, including those contained in NPSNN have been met.
- 5.2.22. The Applicant's commitment to 10% Biodiversity Net Gain is appropriately secured through the management plans forming part of the EMP secured in Requirement 3 of the dDCO.
- 5.2.23. Taking all matters into consideration, we conclude that the overall effect of the Proposed Development on biodiversity and ecology carries moderate weight in favour of the making of the Order.

FLOOD RISK, DRAINAGE and WATER ENVIRONMENT

- 5.2.24. In Section 3.8 of this Report, we have considered construction and operational phase effects along with the adequacy of secured mitigation with respect to flood risk, drainage and the water environment.
- 5.2.25. Overall, the ExA conclude that the Applicant's assessment of flood risk, drainage and water complies with the policy aims of the NPSNN, and specifically in respect of flood risk as set out in Section 3.8 we conclude that the Applicant has demonstrated that the Proposed Development passes both the sequential and exception tests with regard to flood risk.
- 5.2.26. The ExA finds that there will be potential for slight adverse operational effects associated with surface water discharges due to the importance of the receiving watercourses. There is also potential for negligible, slight adverse operational effects of ground water receptors.
- 5.2.27. There is also the potential for significant construction phase effects in the absence of construction phase assessments although it is noted that the EA is satisfied with the Applicant's approach and how these are secured via the REAC / FRAP.

- 5.2.28. The Applicant's submissions also recognise that there are potential significant adverse effects localised to the River Chelt floodplain on the existing farmland due to increase flood depth (10mm to 230mm). However, these effects are not considered to increase flood risk.
- 5.2.29. With respect to the siting of the proposed link road in Flood Zone 3b, the ExA consider that the Proposed Development passes the requirements of sequential and exception tests.
- 5.2.30. Therefore, we find that the issue of flood risk, drainage or water environment does carry a little weight against the Order being made.

HISTORIC ENVIRONMENT

- 5.2.31. As set out in Section 3.9 of this Report we have had regard to the desirability of preserving designated heritage assets, including listing buildings and their settings, Scheduled Monuments and their settings. We consider that the information provided is sufficiently comprehensive for us to take account of the significance of heritage assets and to understand the impacts of the Proposed Development on that significance.
- 5.2.32. We have not identified any instances, during construction or operation, in which the Proposed Development is likely to result in substantial harm to or loss of any heritage asset.
- 5.2.33. However, we have found in Section 3.9 of this Report that due to effects arising during the construction phase, the Proposed Development would give rise to less than substantial harm to the significance of the underlying archaeology.
- 5.2.34. NPSNN requires that the harm we have identified should be weighed against the public benefit of the Proposed Development, recognising that the greater the harm to the significance of the heritage asset, the greater the benefits that will be needed to justify approval. We go on to consider this matter below.

The Heritage Balance

- 5.2.35. Paragraph 5.134 of NPSNN states that any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of the development, recognising that the greater the harm to the significance of the heritage asset, the greater the justification will be needed for any loss. The same is true for development affecting the setting of a designated heritage asset (NPSNN paragraph 5.135).
- 5.2.36. In coming to a view on these matters, we have had regard to the duties under Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010. On balance, we consider that the need for, and public benefits of, the Proposed Development would outweigh the harm that the ExA has identified in relation to the significance of the designated heritage assets.
- 5.2.37. Considering the public benefits, which include:
- New and improved junction to the M5,
 - Improvements to the A4019,
 - Improvements to the capacity of the M5,
 - Support for the provision of environmental enhancements,
 - Improved road safety,

- Greater opportunity for housing and economic development,

of the Proposed Development, the ExA are satisfied that there is a clear and convincing justification for the harm that would arise to designated heritage assets, both individually and collectively. Consequently, we are content that matters concerning the historic environment would accord with the relevant provisions of NPSNN.

- 5.2.38. In weighing the harmful impact on the significance of each of the historic assets against the public benefits, the ExA conclude that in all instances the very substantial public benefits of the Proposed Development would strongly outweigh the less than substantial harm to the significance of the historic asset concerned. The loss of significance to those assets would therefore be justified in this case (NPSNN paragraph 5.132).
- 5.2.39. The ExA finds that policy on the historic environment within NPSNN has been followed by the Applicant. This policy is consistent with the aims of Section 16 of the NPPF and with the aims of the relevant policies of the local authorities' development plans. The ExA ascribes little weight to the matters relating to the historic environment against the making of the Order in the overall planning balance.

LANDSCAPE AND VISUAL

- 5.2.40. In Section 3.11 of this Report, we have found that the effects of the Proposed Development in landscape and visual terms have been adequately assessed. Significant adverse landscape and visual effects would arise during the construction stage. Whilst these effects are capable of reversal and in that sense temporary, we have had regard to the estimated length of the construction phase (approximately 30 months) and the time it would take for reinstatement planting to mature sufficiently to perform its previous function.
- 5.2.41. There would be an adverse effect on landscape during the operational stage particularly in the early years prior to the mitigation through planting being established.
- 5.2.42. We have concluded that the policy tests contained in NPSNN have been met. Taking account of all relevant matters and acknowledging that there are some beneficial landscape and visual effects in the longer term as well as the temporary adverse ones, we conclude that the adverse landscape and visual effects of the Proposed Development carry a little weight against the Order being made.

NOISE AND VIBRATION

- 5.2.43. As reported in Section 3.10, the ExA finds that there is potential for moderate or major noise impacts during construction in the absence of noise insulation or temporary rehoming mitigation. However, there are no moderate or major impacts anticipated during any time periods once mitigation is in place.
- 5.2.44. The ExA finds that there is therefore potential for a conflict with the objectives of the Noise Policy Statement for England and Section 5.195 of the NPSNN. However, we note the Applicant's position (and Chapter 13 of the ES: Population and Human Health) that there are no human health significant residual effects identified for the operational phase which relate to the locations where significant adverse effects have been identified. On this basis, the ExA consider that there is no specific conflict with the objectives of the Noise Policy Statement for England and Section 5.195 of the NPSNN.

- 5.2.45. Overall, we find that the issue of noise and vibration carries moderate weight against the Order being made in the absence of secured mitigation to protect some receptors from operational significant adverse effects.
- 5.2.46. Taking account of the conclusions in this Section, the ExA considers that the Applicant's assessment of noise and vibration complies with the policy aims of the NPSNN.

OTHER PLANNING MATTERS

- 5.2.47. In Section 3.12, the ExA has assessed the Proposed Development with respect to Climate, Geology and Soils, Minerals and Waste, Population and Human Health, Socio-economic and Good Design.
- 5.2.48. The ExA note that there is a permanent loss of BMV of Subgrade 3a and 3b which is a significant and adverse effect. However, the Applicant has assessed alternative schemes and demonstrated that the loss of BMV is unavoidable.
- 5.2.49. Overall, we consider that the policy tests contained in NPSNN with respect to these matters have been met. Therefore, the ExA concludes that the effects of the Proposed Development would not weigh for or against the Order being made.

ASSESSMENT OF CUMULATIVE EFFECTS

- 5.2.50. We have found in Section 3.13 of this Report that there has been adequate consideration of how the effects of the Proposed Development would combine and interact with the effects of other development. There is also sufficient information about how the accumulation of, and interrelationship between, effects arising from the Proposed Development might affect the environment, economy or community as a whole. The Proposed Development complies with NPSNN in this respect and with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

Intra-project effects

- 5.2.51. The ExA is satisfied that the potential intra-project effects arising from the accumulation of various effects of the Proposed Development have been adequately assessed, and whilst a significant accumulation of adverse construction effects cannot be avoided entirely, the proposed mitigation set out in the REAC [\[REP10-066\]](#) and secured via the EMP included as Requirement 3 of the dDCO [\[REP11-003\]](#) would be effective in minimising those effects as far as reasonably possible.

Inter project effects

- 5.2.52. The ExA is satisfied that the Applicant's inter-project assessment, included in the CEA [\[REP10-051\]](#), provides sufficient up-to-date information to understand how the effects of the Proposed Development would combine and interact with the effects of other development, as required by the EIA Regulations and NPSNN.
- 5.2.53. In all cases, where significant adverse effects have been identified, the embedded mitigation would provide reasonable steps to avoid and minimise the magnitude of those effects where opportunities to do so exist.
- 5.2.54. Taking all matters into consideration, we ascribe matters relating to the cumulative effects of the Proposed Development moderate weight for the making of the Order. In assigning this weighting, we have had regard to the extent to which the project

alone effects in relation to the relevant matters have been considered and assigned weight under separate planning issues discussed earlier in this Chapter to avoid any double counting of effects.

HRA CONSIDERATIONS

- 5.2.55. In Chapter 4 and Appendix C of this Report, we have found that the Proposed Development is not likely to have a significant effect on the qualifying features of any European sites, when considered alone or in combination with other plans or projects. While there is relevant mitigation measures secured by the Applicant's final dDCO which would minimise impacts to European sites, none of these have been relied upon in reaching the conclusion of no likely significant effect. We consider that there is sufficient information before the SoS to enable them to conclude that an appropriate assessment is not required.

5.3. FINDINGS AND CONCLUSIONS

- 5.3.1. For all the above reasons, and in light of the ExA's findings and conclusions on important and relevant matters set out in this Report, the ExA concludes that there is a convincing case in terms of the planning issues that weigh strongly in favour of the grant of the DCO.

6. LAND RIGHTS AND RELATED MATTERS

6.1. INTRODUCTION

6.1.1. The case for compulsory acquisition (CA) and temporary possession (TP) is examined in accordance with the tests in the Planning Act 2008 (PA2008). CA, TP and other land or rights considerations were identified as a principal issue in the Rule 6 letter [\[PD-008\]](#). The Examining Authority (ExA) examined matters relating to:

- the need for the amount of land proposed to be subject to CA and TP;
- alternatives in relation to individual plots;
- whether the intended use for the plots was clear;
- whether funding would be available for CA;
- whether the Applicant's case for the Proposed Development would be in the public interest and justify interference with human rights and would accord with the Equality Act 2010;
- interference with Statutory Undertakers' (SU) land and apparatus, and
- interference with Crown Land.

6.2. LEGISLATIVE REQUIREMENTS

PA2008

6.2.1. CA powers can only be granted if the conditions set out in section s122 and s123 of PA2008 are met. The relevant guidance should also be taken into account, which is:

- Guidance related to Procedures for the Compulsory Acquisition of Land, DCLG (former Department for Communities and Local Government), September 2013 (the CA Guidance); and
- Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regulations).

6.2.2. S122(2) requires that the land must be required for the Proposed Development to which the development consent relates or is required to facilitate or is incidental to the development or under s122(2)(c) is for replacement land for the Order land under s131 or s132 (a common, open space or fuel or field garden allotment). In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate, as set out in the CA Guidance.

6.2.3. S122(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 that would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right. That does not mean that the CA proposal can be considered in isolation from the wider consideration of the merits of the project. There must be a need for the project to be carried out and there must be consistency and coherency in the decision-making process.

6.2.4. S123 requires that one of three conditions is met: namely that:

- the application for the Order includes a request for CA of the land to be authorised;
- that all persons with an interest in the land consent to the inclusion of the provision; or
- that the prescribed procedure has been followed in relation to the land.

- 6.2.5. A number of general considerations also have to be addressed in accordance with legal duties on decision-makers:
- all reasonable alternatives to CA must have been explored;
 - the Applicant must have a clear idea of how it intends to use the land and to demonstrate that funds are available to meet the compensation liabilities which might flow from the exercise of CA powers; and
 - the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.
- 6.2.6. TP powers are capable of being within the scope of a Development Consent Order (DCO) under PA2008 Part 1 of Schedule 5. PA2008 and the CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers, as by definition such powers do not seek to deprive or amend a person's interest in land permanently. However, TP is a interference with human rights of Affected Persons (AP) and so there must be adequate justification of the scope of the powers and the degree of interference for them to be justified.
- 6.2.7. PA2008 requires that if changes are sought to the application, whether material or non-material, then the ExA must consider whether to accept them into the Examination.
- 6.2.8. S115(2) PA2008 provides that, in addition to the development for which consent is required under Part 3 PA2008 (the principal development), consent may also be granted for associated development. PA2008 defines associated development as development which is associated with the principal development.
- 6.2.9. S120(5)(a) PA2008 provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the DCO and s117(4) PA2008 provides that, if the DCO includes such provisions, it must be in the form of a statutory instrument. Since in certain instances the Applicant's final draft Development Consent Order (dDCO) seeks to apply s120(5)(a), it is in the form of a statutory instrument. Additionally, no provision would contravene the provisions of s126 PA2008 which relates to the modification or exclusion of a compensation provision.

Neighbourhood Planning Act 2017

- 6.2.10. The Neighbourhood Planning Act 2017 (NPA2017) has been enacted and contains provisions which amount to a codification of new TP practice. In recognition of the greater extent to which TP is being sought by scheme promoters and of the extended durations for which TP can be sought, NPA2017 provisions in general terms provide for enhancements to the rights of persons subject to TP, with a view to ensuring that they have equivalent or proportionate rights to notice and to relevant compensation to those already available to APs subject to CA. However, at the time of submission of this Report to the Secretary of State (SoS), the relevant NPA2017 provisions had not commenced.
- 6.2.11. The ExA has taken all relevant legislation and guidance into account when considering this matter and relevant conclusions are drawn at the end of this Section of this Report.

6.3. THE REQUEST FOR CA AND TP POWERS

Powers Sought

- 6.3.1. The powers being sought by the Applicant and how they relate to the principal articles in the dDCO, and colours on the Land Plan are set out in the SoR [\[REP10-029\]](#) while explanation of the articles is set out in the EM [\[REP10-025\]](#). The powers sought are:
- Compulsory acquisition of land, Article 21,
 - Compulsory acquisition of rights, Article 24,
 - Extinguishment of private rights over land, Article 26,
 - Acquisition of subsoil or airspace only, Article 29,
 - Appropriation of rights under or over streets, Article 30,
 - Temporary use of land for carrying out the authorised development, Article 31, and
 - Temporary use of land for the maintenance of the authorised development, Article 32.
- 6.3.2. Additional Articles would confer rights and powers to the undertaker which may interfere with property rights and private interests, these being:
- Article 15: Temporary stopping up and restriction of use of streets,
 - Article 16: Permanent stopping up and restriction of use of streets and private means of access,
 - Article 18: Discharge of water,
 - Article 19: Protective works to buildings,
 - Article 20: Authority to survey and investigate the land,
 - Article 33: Statutory undertakers (SUs),
 - Article 34: Apparatus and rights of SUs in stopped up streets, and
 - Article 37: Felling or lopping of trees and removal of hedgerows.

Changes during the Examination

- 6.3.3. As mentioned in Chapter 1 two change applications were received and accepted, incorporating 8 changes to the application as explained in section 1.5 of this Report.
- 6.3.4. Change Application No.1 (Change No.8) proposed changes to:
- the Land Plans to align them with the extent of dormice hedgerow mitigation shown on the General Arrangement plan and Environmental Master plan to undertake a more efficient maintenance of hedgerow 48.
 - to upgrade the rights sought in respect of the following plots within National Highways' ownership from temporary possession (shown green in the Land Plans) to temporary possession and acquisition of rights (shown blue in the Land Plans): 3/2b, 5/2h(i), 5/2j, 5/2k, 5/2l and 5/2y.
 - to downgrade rights on National Highways plots from:
 - temporary possession and acquisition of rights to temporary possession only in respect of plot 3/2c,
 - permanent acquisition to temporary possession and acquisition of rights of plot 4/1c, 5/2z, 5/6h, and
 - permanent acquisition to temporary possession only for plot 4/1c(i).
- 6.3.5. Change Application No.2, (Changes 1-7) which included a further 7 changes which are:
- Change 1- Link road replacement of swales with filter drain,
 - Change 2 - Link road replacement of box culverts with bridges,
 - Change 3 - Link road River Chelt bridge structural form,
 - Change 4 - Link road vertical alignment,

- Change 5 - Relocation of NRTS Transmission Station,
- Change 6 - Flood storage area reconfiguration (two separate basins where one had previously been proposed), and
- Change 7 - Infill of existing northbound on-slip loop.

- 6.3.6. The ExA issued two procedural decisions [[PD-014](#) and [PD-018](#)] to accept both changes into the Examination, subject to the subsequent fulfilment of duties under Regulations 7, 8 and 9 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (CA Regulations).
- 6.3.7. The change applications confirmed that all of the land required in relation to each change would fall within the existing Order Limits and Order land [[AS-061](#)]. Change 8 in Change Application No.1 proposed changes to the nature of land rights sought and, on this basis, the ExA was satisfied that the CA Regulations were engaged.
- 6.3.8. The Applicant subsequently provided a Regulation 9a notice [[REP6-004](#)] and Regulation 9b certificate [[REP6-003](#)] to demonstrate that it fulfilled those duties, and the Examination proceeded in consideration of these changes [[PD-014](#) and [PD-018](#)].

Statutory Undertaker's Land

- 6.3.9. If a SU makes a representation about the CA of land or a right over land which would be acquired for the purpose of its undertaking, and this is not withdrawn, s127 PA2008 applies. In these circumstances, the Order can only include a provision authorising the CA of that land or right if the SoS is satisfied that the land or right can be purchased without serious detriment to the carrying on of the undertaking, or that any such detriment can be made good by use of alternative land.
- 6.3.10. S138 PA2008 applies where a SU has a relevant right or relevant apparatus in the CA land. In those circumstances, the Order can only authorise the extinguishment of the right or removal of the apparatus if the SoS is satisfied that this is necessary for the purpose of carrying out the development to which the Order relates.
- 6.3.11. The land affected by the Proposed Development includes land, rights or other interests owned by several SUs, set out in the SoR [[REP10-029](#)] and the Land Rights Tracker [[REP10-103](#)].
- 6.3.12. SU objections which were not withdrawn at the end of the Examination were from:
- Wales and West Utilities Limited;
 - National Grid Electricity Distribution (West Midlands) plc
 - Severn Trent Water.
- 6.3.13. The final SocG with NH [[REP11-010](#)] at Item 4 and the final version of the PADSS [[AS-114](#)] along with the supporting letter from National Highways [[AS-113](#)] confirms all matters were now agreed and *“National Highways have no areas of disagreement with the Applicant and formally remove the objection to the DCO application.”*
- 6.3.14. The ExA have therefore not considered the position of National Highways further as the final documentation from both parties confirms agreement and that no matters remain between them.

Crown Land

- 6.3.15. The Applicant has identified that Crown interests exist within the Order Limits and the plots identified are shown on the Crown Land Plans [\[REP3-006\]](#).
- 6.3.16. The final Book of Reference (BoR) [\[REP10-033\]](#) shows these land interests are held by:

Table 3 Crown Land Interests

Plot No.	Owner of Crown Interest
13/3r	Department for Environment Food & Rural Affairs
13/6a	The Secretary of State for the Department for Levelling Up, Housing & Communities (now Ministry of Housing Communities and Local Government)
14/5a and 14/7a	The Crown Estate Commissioners

Special Category Land

- 6.3.17. The Applicant has confirmed that none of the land to be acquired for the scheme comprises special category land as set out in s131 or s132 of PA2008, nor is there any National Trust inalienable land as set out by s132 of PA2008.

6.4. THE PURPOSES FOR WHICH LAND IS REQUIRED

- 6.4.1. The Applicant's case is that the powers sought in its final dDCO as set out in the SoR are reasonable, proportionate and necessary to deliver and thereafter maintain the Proposed Development [\[REP10-029\]](#), paragraph 5.3.5.
- 6.4.2. The CA powers sought by the Applicant are set out in Part 5 of the Applicant's final dDCO [\[REP11-003\]](#), Articles 21 to 35.
- 6.4.3. The dDCO would give additional rights to the Undertaker that could interfere with property rights and other interests Article 19 (Protective works to buildings), Article 20 (Authority to survey and investigate the land), Article 26 (Private rights over land), Article 36 (Felling or lopping of trees and removal of hedgerows).
- 6.4.4. The SoR also includes details of the purposes for which CA and TP powers are sought with tables setting out:
- Appendix A. Details of the purpose for which compulsory acquisition and temporary powers are sought, and
 - Appendix B. Schedule of all interests in the land and progress of negotiations with persons subject to compulsory acquisition and temporary possession powers.

6.5. THE APPLICANT'S GENERAL CASE

- 6.5.1. The Applicant's case for the grant of CA powers is set out in the final Examination SoR [\[REP10-029\]](#). The SoR sets out that it forms part of a suite of documents that accompany the application and should be read alongside them. These include:
- Guide to the Application [\[REP11-015\]](#),
 - Land Plans [\[REP10-003\]](#),
 - Work Plans [\[REP10-004\]](#) and [\[REP10-005\]](#),
 - Crown Land Plans [\[REP3-006\]](#),

- Draft Development Consent Order [\[REP11-003\]](#),
- Explanatory Memorandum [\[REP10-025\]](#),
- Funding Statement [\[REP10-031\]](#),
- Book of Reference [\[REP10-033\]](#),
- Combined Change log for Statement of Reasons, Book of Reference, Land Plans and Crown Land Plans [\[REP10-097\]](#) and
- Planning Statement and Schedule of Accordance with National Policy Statement [\[REP10-063\]](#).

6.5.2. The strategic case is made based upon the compelling need to improve the SRN which would be achieved through the Proposed Development, by upgrading the M5 Junction 10 and providing suitable connectivity via the widening of the A4019 and the new link road. We have reported on the need case in Section 3.2 of this Report.

6.5.3. The Applicant states that the CA of land and rights in land would be necessary to deliver the Proposed Development, that it has drawn the extent of the land and rights to be acquired with regard to avoiding any unnecessary interference with third-party land. The Applicant considers a proportionate approach has been taken to the proposed CA, mindful of the impact on APs and seeks to acquire only such land and rights which would be necessary.

6.5.4. Where it is necessary to use or occupy land for the construction of the scheme then the powers sought are limited to TP.

6.5.5. The Applicant also confirmed that any person affected by CA and TP would be entitled to compensation under Article 24 and Schedule 6 of its final dDCO. The accompanying Funding Statement demonstrates that funding would be likely to be available to build the project and to enable the CA within the statutory timescale in accordance with Regulation 5(2)(h) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (CA Regulations) [\[REP10-031\]](#).

6.5.6. The need for other consents is set out in the Consents and Agreements Position Statement [\[REP10-027\]](#) and the Applicant is satisfied that all necessary consents to enable the scheme to proceed have been identified and there is no reason why the necessary consents should not be secured.

S122(3) compelling evidence of public benefit

6.5.7. The Applicant's position is set out in the Section 5.4 of the SoR [\[REP10-029\]](#) and other submissions including the Planning Statement and Schedule of Accordance with the NPSNN [\[REP11-007\]](#). The Applicant's Closing Submissions [\[REP11-025\]](#) Section 5.7 summarises the benefits of the scheme.

6.5.8. The Applicant states the Proposed Development would deliver significant benefits through the:

- *“Provision of infrastructure to alleviate existing congestion in Cheltenham and improve connectivity on the SRN which provides access to Bristol to the south and Birmingham to the north.*
- *Facilitate and unlock development of approximately 9,000 dwellings by providing a highway network that has the capacity to accommodate traffic growth.*
- *Employment sites unlocked by the Scheme would provide employment opportunities for residents of Cheltenham, Gloucester and the surrounding settlements and will be of importance to the UK as a whole providing supportive industries to the nationally important GCHQ facility.*

- *The junction itself and the wider SRN would benefit from the increased capacity for motorised users that is required and allow the development allocations in the JCS(Joint Core Strategy) to be brought forward.*
- *Improve the connectivity between the SRN and the local transport network in west and north-west Cheltenham, and*
- *Safe access to services for the local community, including for users of sustainable transport modes within and to west and north-west Cheltenham.”*

6.5.9. The Applicant’s position is that the substantial benefits can only be achieved if the land required for the Proposed Development can be provided in a timely manner through the use of CA.

6.5.10. In respect of private loss, the Applicant has sought to acquire the required land privately where reasonably possible, and negotiations are ongoing as is evidenced by the SoR Appendix B [\[REP10-029\]](#). However, to deliver the benefits of the Proposed Development requires the use of CA powers. This would result in private loss for those persons whose land or interests in land is compulsorily acquired. Appropriate compensation would however be available under the national compensation code.

6.5.11. The SoR [\[REP10-029\]](#) makes clear the Applicant is satisfied that the condition in s122(3) PA2008 is met. While the case for the Proposed Development is set out in Section 2 of the SoR and the Planning Statement [\[REP11-007\]](#) and Closing Submissions [\[REP11-025\]](#). The case for the scheme and the way in which it accords with the NPSNN is set out in detail in the Planning Statement and Schedule of Accordance with the NPSNN.

Alternatives to CA

6.5.12. The SoR section 5.5 explains how the Applicant has considered alternative options for the Proposed Development this is further explained in ES Chapter 3 [\[REP10-037\]](#). Non-statutory consultation was undertaken in the autumn of 2020 presenting the range of options to be taken forward for consideration, after which the preferred route option was selected. This included reducing the link road from dual to single carriageway and refining the horizontal alignment to make the most efficient use of land.

6.5.13. The Applicant’s Closing Submissions [\[REP11-025\]](#) summarises its position in relation to the assessment of alternatives.

Availability of funds for compensation

6.5.14. The Proposed Development has a cost estimate of £293 million including allowances for risk and inflation. This estimate includes all costs to deliver the scheme from Options stages through to the opening for traffic. It includes an allowance for compensation payments relating to the CA of land interests in, and rights over, land and the TP and use of land. It also considers potential claims under Part 1 of the Land Compensation Act 1973, s10 of the Compulsory Purchase Act 1965 and s152(3) PA2008.

6.5.15. The Applicant is part of GCC a Tier 1 local authority that has secured funding from Homes England a Government Agency through the HIF process. Homes England have reaffirmed their support for the proposal. While the Applicant accepts that funding via CIL or developer contributions is not currently secured, it has the capacity to meet the difference between the HIF funding and the final cost of the Proposed Development through a loan from the UKIB.

6.5.16. The CA Guidance, paragraph 9, states that there must be a reasonable prospect of the requisite funds for acquisition being available. The Applicant indicates that with the HIF funding certainty of funding for all compensation claims is covered. (Funding Statement paragraphs 2.2.1 and 5.1.2). [\[REP10-031\]](#).

6.5.17. The SoR at Section 5.6 reaffirms this position, explaining how the money in combination through:

- the Housing Infrastructure Fund (HIF),
- The potential for developer contributions (linked to the strategic allocation sites from the JCS),
- potential for money via the Community Infrastructure Levy (CIL), and
- funding from Gloucestershire County Council (GCC) either through releasing money from other capital projects or a loan from the UK Infrastructure Bank (UKIB),

would be sufficient to complete the Proposed Development and ensure that there is no funding impediment to delivery of the Scheme.

Statutory Undertaker's Land

6.5.18. The Applicant explains in the SoR Section 7.4 that there a number of existing utility services are located within the Order Limits and would be affected by the Proposed Development. In this case it is proposed to either protect or divert statutory undertakers' apparatus to accommodate the Scheme. Provision for the carrying out of such diversions has been included within the Works comprising the authorised development. It is not proposed to remove any apparatus and extinguish any rights without a diversion being provided. The dDCO makes provision for the benefit of the Order to be granted to statutory undertakers to the extent relevant to works to their apparatus. This is included at Article 10(5) of the dDCO.

6.5.19. The dDCO includes provision to authorise the extinguishment of a relevant right, or the removal of relevant apparatus belonging to SUs, in connection with the delivery of the Proposed Development. The exercise of such powers will be carried out in accordance with the Protective Provisions contained in Schedule 9 of the dDCO [\[REP11-003\]](#).

6.5.20. The Applicant's Closing Submission includes the latest position on negotiations with SUs and, in those instances where agreement has not been reached, an indication as to why it considers that the conditions in s127 and s138 PA2008 would be satisfied [\[REP11-025\]](#). This is supported by the statement prepared by the Applicant and submitted at Deadline 8 [\[AS-110\]](#).

6.5.21. The Applicant considers that the SUs would not suffer serious detriment to the carrying out of their undertaking because of the CA of the land or as a result of the acquisition of rights over land.

Crown Land

6.5.22. The Applicant has identified that Crown interests exist within the Order Limits. These are shown in the Book of Reference [\[REP10-033\]](#) and the Crown Land Plans [\[REP3-006\]](#).

6.5.23. The Applicant is proposing to acquire this by agreement. Four plots are held by the Department for Environment, Food and Rural Affairs (DEFRA), Department for Levelling Up, Housing and Communities/Ministry Housing Communities and Local Government (DLUHC/ now MHCLG) and The Crown Estate Commissioners.

- 6.5.24. The Applicant confirmed (page 13/14) of [\[REP10-106\]](#) that despite their desire and continuous efforts to engage, no such confirmation of voluntary agreement had been reached by the end of the Examination and that consent had not been granted by any of the three parties.
- 6.5.25. The Applicant sent letters to DEFRA requesting consent on 19 March 2024 and chased on 9 May 2024, 3 September 2024 and 12 November 2024, but has not received a response.
- 6.5.26. The Applicant confirms that they are at an advanced stage of engagement with MHCLG, and the Government Legal department are seeking further instructions from the contact at MHCLG.
- 6.5.27. In respect of the Crown Estate Commissioners, the Applicant advises in their Closing Submissions [\[REP11-025\]](#) that The Crown Estate Commissioners have in the last week requested a structural change to the voluntary acquisition of land and this has delayed the signing of any heads of terms. The Crown Estate Commissioners agent continues to advise that s135 consent will be withheld until signed heads of terms are agreed.
- 6.5.28. The Applicant, however, indicate with the inclusion of Article 43 Crown Rights in the dDCO [\[REP11-003\]](#) that this would prevent the undertaker from exercising any rights over Crown land without the consent in writing of the appropriate Crown authority.
- 6.5.29. The Applicant provides as part of their Closing Submissions [\[REP11-025\]](#) an explanation of their s135 case in respect of Crown land interests.

Other Consents and Agreements

- 6.5.30. The Consents and Agreements Position Statement (Rev 2) [\[REP10-027\]](#) sets out the additional consents outside of the DCO and the current position as to the status of securing those consents.
- 6.5.31. The Applicant is not aware of any impediments to the delivery of the Proposed Development except for the outstanding matter regarding Crown land. Whilst there are a number of other consents being sought, there are no obvious impediments to securing those consents. The Applicant is satisfied that all necessary consents to enable the Proposed Development to proceed have been identified and that there is no reason why such consents should not be secured or granted.

Acquisition by Negotiation

- 6.5.32. The Applicant is aware of the requirement of paragraph 25 of the CA Guidance to seek to acquire land by negotiation wherever practicable. The power to acquire land compulsorily should only be sought if attempts to acquire by agreement fail.
- 6.5.33. The Applicant notes that the CA Guidance also recognises that where proposals would entail the CA of many separate plots of land, it may not always be practicable to acquire each plot of land by negotiation.
- 6.5.34. The Applicant has engaged with all affected landowners, leaseholders, and occupiers with a view to acquiring their land interest by agreement by writing to them to inform them of the Applicant's willingness to negotiate to acquire the Land by agreement, and to invite dialogue at that point. The Applicant has been in the process of engaging with various land interests as regards the acquisition of land

and interests by agreement, and negotiations have been ongoing throughout the DCO process. The status of such negotiations at the close of the Examination is set out in Appendix B of the SoR [\[REP10-029\]](#).

6.5.35. The Applicant has said that it is under a duty to acquire land at best value (page 36) of [\[REP2-008\]](#) and that it is required to deliver the Proposed Development within a specified timescale. It has concluded that it may not be possible to acquire by agreement all land interests necessary to deliver the Proposed Development within this timescale.

6.5.36. The scheme requires powers over 34 residential properties with 32 residential properties subject to CA and two subject to TP and Permanent Rights. All the properties have been acquired by agreement except three where negotiations were ongoing at the close of the Examination. The outstanding cases relate to properties owned by Mr Benedict Williams, Mr Andrew Smith and Mr Steven Wakefield.

6.5.37. The SoR (Rev 5) [\[REP10-029\]](#) the Applicant submits that it is unlikely that the Proposed Development would be capable of being delivered without the CA powers being sought in the dDCO.

Human Rights

6.5.38. In assessing whether there is a compelling case in the public interest for the land to be acquired compulsorily, it is necessary to consider the interference with human rights which would occur, if CA or TP powers were granted.

6.5.39. The ECHR was incorporated into domestic law by the Human Rights Act 1998. The relevant articles for the CA powers sought are:

- Article 1 of the First Protocol (the peaceful enjoyment of possessions and not to be deprived of possessions except in the public interest and subject to the conditions provided for by law and by the principles of international law);
- Article 6 (fair and public hearing within a reasonable time by an independent and impartial tribunal); and
- Article 8 (right to respect for private and family life, home and correspondence).

6.5.40. No public authority can interfere with these rights, except if it is in accordance with the law and is necessary and proportionate in achieving a legitimate aim. In assessing whether the interference with the rights of individuals would be for a legitimate purpose, such a finding is predicated on the SoS reaching the conclusion that development consent should be granted.

6.5.41. Within the SoR [\[REP10-029\]](#) the Applicant states that they comply with Articles 1 and 8 as there is a compelling case in the public interest which is explained in detail in the Planning Statement and Schedule of Accordance table [\[REP11-007\]](#) and Chapter 5 of the ES [\[AS-012\]](#). As such the Applicant concludes that the land over which the compulsory acquisition powers are sought, is the minimum necessary to ensure the delivery of the Scheme. The Scheme has been designed as far as reasonably practical to minimise harm whilst achieving its publicly stated objectives. In this respect the interference with human rights is both proportionate and justified.

6.5.42. In respect of Article 6 the appropriate procedures have been followed for consultation and in deciding the extent of powers sought for CA and ongoing engagement with landowners has continued all the way through the process. This has resulted in changes to the design of the scheme as set out in the Consultation Report [\[APP-038\]](#) and in light of landowner responses.

The Equality Act 2010

- 6.5.43. The Applicant asserts [[REP11-025 \(Section 6.39\)](#)] that it has complied with its duties under s149 of the Equality Act 2010 and has had due regard to the need to: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by, or required under, the Equality Act 2010; (ii) advance equality of opportunity between persons who share a protected characteristic and persons who do not share it; and (iii) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 6.5.44. The Applicant set out its approach to the PSED in Section 2 of the Equality Impact Assessment, concluding that there were no unjustified negative effects and to undertake the scheme would comply with the PSED.
- 6.5.45. The Applicant undertook an Equality Impact Assessment [[REP10-068](#)] which recognises the scheme has the potential to disproportionately affect the age, sex, disability, race, religion and pregnancy and maternity equality groups due to the:
- *Physical accessibility*, with the potential temporary diversion or closure of routes during construction,
 - *Accessibility of information*, there will be a need for clear, uncomplicated information on the Scheme, particularly during construction and when diversions are present, which includes consideration of those with learning disabilities, colour blindness, visual impairments, or those who do not speak English as a first language,
 - *Safety for drivers*, Impact on safety and security of travellers, particularly those who are more vulnerable and overrepresented in accidents, such as children, young males, and older people,
 - Environmental effects, Noise or air quality impacts could have a disproportionate impact on children, older people and those with disabilities, and
 - *Creation of employment*, this may benefit local residents, particularly those who are unemployed or who are from minority backgrounds if a suitable employment strategy is adopted.
- 6.5.46. In Section 8 the Applicant set out the actions that were necessary to ensure that the findings of the Equalities Impact Assessment could continue to be relied upon as the proposed Development progressed through detailed design and construction.
- 6.5.47. As such a series of actions to continue to ensure public communications took place with the local community, local employers and any party with a protected characteristic. This to be delivered by members of the Applicant's Team. The Community Engagement Plan [[AS-052](#)] secured by the EMP sets out the approach, roles and responsibilities to meet with the Applicant's obligations.
- 6.5.48. In the final submission the Applicant [[REP11-017](#)] set out the list of matters agreed and not agreed where a Statement of Common Ground could not be finalised providing the position of the respective parties which includes the position in respect of funding for the Proposed Development.

The Agreed Matters:

Funding methodology

- 6.5.49. The Applicant acknowledges that the funding methodology for developer contributions is yet to be agreed.

Funding compliance with three tests in Regulation 122(2) of the Community Infrastructure Levy [CIL] Regulations 2010

- 6.5.50. The Applicant agrees that the three tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 are solely for the Local Planning Authority to determine.

Availability of CIL Funding and Developer Contributions from s106

- 6.5.51. The Applicant agrees that the quantum of s106 or CIL contributions towards the Scheme is unable to be determined at this time and would be subject to the individual planning application processes and determination by the relevant LPAs and/or CIL Charging Authorities.

The Matters Not Agreed

Reliance upon or inclusion of the Safeguarded land or Allocated Sites within the Assessment for funding.

- 6.5.52. While the Applicant acknowledges that the ultimate determination of the reliance of the Safeguarded Land development on the Scheme rests with the LPAs through the planning application or local processes, the Applicant maintains that the Need case remains as set out in the Technical Note [\[REP4-042\]](#).

Timing of the availability of the funding

- 6.5.53. Bloor and Persimmon Homes maintain that the Applicant has failed to satisfy the requirements of the CA Guidance. The Applicant has not demonstrated that scheme is fully funded or how and when the funding would be achieved.
- 6.5.54. Bloor go on to say: “*The uncertainty of the funding for the Scheme (including that no reliance can be placed on the Applicant receiving a developer contribution from Northwest Cheltenham (A4) and the Safeguarded Land) will need to be taken into account by the Examining Authority in determining whether there is a compelling case in the public interest for the compulsory acquisition of land to enable the scheme to proceed.*”

The Applicant's Conclusions

- 6.5.55. The Applicant has consulted all persons affected by the CA and TP powers and persons who might have a claim for compensation arising from the Proposed Development. The Applicant has consulted such persons during preparation of the DCO application and in the design of the Proposed Development to address their concerns and to ensure that any impacts are reduced or removed. The Applicant has further sought to acquire any interests in the land by agreement wherever practicable.
- 6.5.56. The Applicant has considered the human rights of the individuals affected by the CA and TP powers. The Applicant is satisfied there is a compelling public interest case for CA and the significant public benefits arising from the Proposed Development would outweigh the harm to those individuals. Without the grant of CA and TP powers the Applicant considers it would not be possible to construct the scheme or realise the public benefits that would arise from it.
- 6.5.57. The Applicant states that they have met the legislative tests to undertake the CA and TP to carry out the proposed Development. They also maintain that they have complied with the CA Guidance and have met the tests within the Guidance.

6.5.58. In respect of s127 of PA2008 the Applicant concludes that the SoS can be satisfied that the prescribed tests of s127 have been met and the SUs interests can be included in the DCO.

6.5.59. With regard to s138 of PA2008 the powers to extinguish rights or remove and reposition apparatus belonging to SUs is necessary for the purpose of the carrying out the Proposed Development, and for each of the SUs protection through the protective Provisions set out in Schedule 9 of the dDCO and the alternative land to divert and replace the SUs apparatus, the tests in s138 are met.

6.6. EXAMINATION OF THE CA AND TP CASE

Introduction

6.6.1. Examination of CA and TP issues were undertaken through procedural decisions (PD), including written questions, the ExA's dDCO Consultation Draft DCO [PD-022] and at an Open Floor Hearing (OFH) two Compulsory Acquisition Hearings (CAH) and observations of land on accompanied and unaccompanied site inspections (ASI and USI) as follows:

- The ExA's USIs on the 31 January - 1 February [EV1-001] and 2 May 2024 [EV1-002],
- An OFH [EV4-001] held on 4 June 2024 which heard representations from some APs, and their representatives,
- the ExA's first written questions (ExQ1) included questions to the Applicant, the Councils and a number of APs issued on 9 July 2024 [PD-010], Part 5, to which responses were received at Deadline 3,
- an ASI on 16 August 2024 [EV7-001],
- ISH3 [EV8-001] held on 13-14 August 2024,
- CAH1, held in person on 15 August 2024 [EV9-001],
- the ExA's second written questions (ExQ2) included questions to the Applicant, SUs, The Crown Estate Commissioners, DEFRA, DLUHC, the Councils, HE and a number of APs, [PD-012] issued on 10 September 2024,
- The ExA's third written questions (ExQ3) included questions to the Applicant, SUs, The Crown Estate Commissioners, DEFRA, DLUHC, and NH [PD-021] issued on 7 November 2024,
- CAH2, held virtually on 20 November 2024 [EV11-001], and
- the ExA's consultation dDCO [PD-022] published on 22 October 2024.

6.6.2. The Applicant complied with requests for updates of standalone documents relating to CA and TP at certain deadlines as set out in the Examination Timetable and submitted PA2008 s127 and s138 cases [AS-110] where objections by SUs had not been withdrawn by D8. The opportunity for SUs to comment on the respective s127 and s138 cases was provided at D9 and D10.

INDIVIDUAL OBJECTIONS

6.6.3. The details of the initial objections raised are set out in the Relevant Representations and Written Representations for those persons listed in the Land Rights Tracker [REP10-103]. Many of the issues raised by Objectors have also been considered by the ExA in relation to the planning issues that they raise. The objections are considered here in the context of the application for the grant of CA and TP powers.

Persons with an Interest in Land/ Affected Persons

- 6.6.4. This section reports on all the APs who have lodged objections which were not withdrawn by the end of the Examination. We summarise those objections for those APs who have raised substantive objections to the grant of CA powers that have not been fully withdrawn, followed by the Applicant's response before setting out our considerations of the outstanding objections.

Objectors falling within Parts 1, 2 and 3 of the BoR

- 6.6.5. Within the SoR [\[REP10-029\]](#) Appendix B lists the landowners, their category of interest and the individual plots held by them. It identifies the progress made in respect of negotiations undertaken by the Applicant. As previously indicated, we requested the Applicant provide a Land Rights Tracker, which kept us abreast of the ongoing negotiations as they progressed through the Examination. The final iteration was provided at D10 [\[REP10-103\]](#).
- 6.6.6. We do not believe however this has been kept fully up to date or correlates with the final SoR in respect of negotiations. We have therefore included below all individual parties who had raised an objection where we have not been presented with a clear withdrawal of that objection, or evidence of the completion of negotiations in respect of acquisition.
- 6.6.7. The details of the initial objections raised are set out in the Relevant Representations (RR), and WR for those persons listed in Appendix B and in their further oral and written responses made during the Examination. The relevant plots are identified in the SoR and the Land Rights Tracker.
- 6.6.8. An individual objection to CA has been received from The Crown Estate Commissioners [\[RR-038\]](#). We set out the objection, the Applicant's response and the ExA's consideration, followed by the individual specific issues raised during the course of the Examination by those APs with CA objections that have not been formally withdrawn are as follows:
- Mr Neil Hadley [\[RR-028\]](#)
 - Mr Steven Wakefield [\[RR-035\]](#)
 - Mr Andrew David Smith [\[RR-002\]](#)
 - Mr Benedict Williams [\[RR-004\]](#)
 - Dana Louise Wotton [\[RR-011\]](#)
 - Cheltenham Borough Council [\[RR-008\]](#),
 - JW Bruton & Sons [\[RR-018\]](#),
 - Mrs Mary Bruton and Ms Elizabeth Counsell [\[REP10-115\]](#),
 - Ei Group Limited [\[RR-012\]](#)
 - Thanks for Popping in Traditional Pubs (House in the Tree Public House) [\[RR-017\]](#),
 - Bloor Homes [\[RR-005\]](#), and
 - Mr Peter Badham [\[RR-030\]](#) and subsequently [\[RR-046\]](#).
- 6.6.9. Following the publicity and consultation in respect of Change request Application No.1 for Change 8 four additional RRs [\[RR-045-RR-048\]](#) were received, although only Mr Badham's [\[RR-046\]](#) comments relate to land rights matters and [\[RR-047\]](#) Eversheds on behalf of Severn Trent Water Limited, object to the proposed protective provisions.
- 6.6.10. In dealing with the individual objections below we refer to the Applicant's response to RRs [\[REP1-043\]](#) and subsequent submissions are set out in Responses to WR [\[REP2-008\]](#). Response to D3 submissions [\[REP4-036\]](#), response to D5 submissions

[[REP7-009](#)], response to D9a and D10 [[REP11-002](#)] as well as post CAH submissions [[REP4-038](#)] and [[REP9A-006](#)].

The Crown Estate Commissioners

- 6.6.11. The RR of the Crown Estate Commissioners [[RR-038](#)] state they are the freehold owners of plots 13/3r, 13/6a and 14/5a.
- 6.6.12. The Commissioners say they consider it is possible to deliver the requirements for the Crown Land without permanently acquiring the land. For example, the Council could occupy the Plot 14/5a on a temporary basis to install such environmental compensation and mitigation works and acquire a permanent right to keep and maintain such works whilst leaving ownership of the Land with The Crown Estate.
- 6.6.13. In [[REP3-050](#)] The Crown Estate Commissioners Solicitors advised that the plot registered under title number GR155449 was not considered to be held by the Crown Estate. In the BoR this title number is linked to plot 14/4a, and this is recorded as Category 1 owned by Pointview Limited (Co. Reg. No: 2759962 - dissolved), it is not recorded elsewhere as a Crown interest, and we have no reason to dispute what the Solicitors acting for the Crown Estate say in respect of this individual plot.

The Applicant's response

- 6.6.14. In [[REP4-038](#)] (Item 7) the Applicant advised there were three plots of Crown land and that engagement was continuing to be attempted, or ongoing with all parties. The Applicant has had a response from DLUHC (now MHCLG) and continues to engage with them.
- 6.6.15. The negotiations in relation to the Crown Estate Commissioners have progressed since the last version of the Land Rights Tracker was submitted and the Applicant has made an offer to acquire the freehold of the site, there is an ongoing negotiation around the status of the land, other occupiers and whether vacant possession can be provided.
- 6.6.16. No response had been received from DEFRA despite correspondence being sent on 18 October 2023, 18 March 2024 and 19 May 2024 [[REP11-025](#)].
- 6.6.17. Section 135(1), article 43(1)(b) explicitly states that nothing in the dDCO authorises the undertaker to exercise any right under the Order compulsorily to acquire an interest in any land which is Crown Land (as defined in the PA2008) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the PA2008). This ensures that notwithstanding the BoR and relevant schedules of the Order the Applicant would be barred from including any Crown land which is otherwise held by or on behalf of the Crown without the Crown's consent.
- 6.6.18. In response to section 135(2), article 43(1)(a) explicitly states that nothing in the dDCO authorises the undertaker to take, use, enter upon or in any way interfere with any land or rights of any description
- (i) belonging to His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners,

(ii) belonging to His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land,

(iii) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department. In this way, the undertaker would be barred from utilising the rights of the dDCO expressed in relation to the Crown land plots absent written consent of the appropriate Crown authority.

- 6.6.19. Therefore, the Applicant argues that the ExA, in their reporting to the SoS, can confirm that the Order does not grant powers of compulsory acquisition, nor does it authorise the undertaker to take use, enter upon or in any manner interfere with any land or rights of any description belonging to the above list, without written consent from the appropriate Crown authority.
- 6.6.20. In relation to MHCLG the Applicant is currently awaiting a final form letter of consent, in relation to the Crown Estate Commissioners, it is currently in engagement regarding separate Heads of Terms (HoTs) and is requesting s135 consent as part of that engagement, and regarding DEFRA the Applicant has not been able to elicit a response and continues not to be able to get engagement from this body.
- 6.6.21. Specifically in relation to The Crown Estate Commissioners, the Applicant understands that currently they are withholding consent of the s135 letter until agreement on HoTs of an option agreement, which the Applicant understands will be signed off shortly. The Applicant is therefore expecting the s135 letter to be available shortly.
- 6.6.22. In relation to DEFRA, it should be noted that DEFRA's interest relates to a Land Charge within a Redemption of Tithe Rent charge by an Order dated 16 June 1922 registered under title GR8654. The land currently sits within the adopted highway.
- 6.6.23. Therefore, the Applicant considers it highly unlikely that consent from DEFRA would be reasonably withheld given the nature of rights held, the nature of the current use of land being public adopted highway, and the proposed use being temporary possession to modify the existing highway.
- 6.6.24. The Applicant is aware that it is not unheard of for Crown consent not to be confirmed during examination. In cases such as this, during the determination period for the SoS, the Applicant would be able to provide an update on the status of these consents in order to inform the SoS's final decision.
- 6.6.25. In the Applicant's Closing Submissions [[REP11-025](#)] they reaffirmed that they had actively engaged in seeking to resolve matters by agreement however that they had not received s35 consent from any party at the close of the Examination.

The ExA's considerations

- 6.6.26. The ExA included ExQ 5.0.15 in ExQ2 [[PD-012](#)] in our second written questions as we remained concerned as to the level of progress with the respective Government Departments and the Crown Commissioners in respect of negotiating with the Applicant. We received no reply from either Government Department or the Crown Estate Commissioners.

- 6.6.27. In response to ExQ2 the Applicant explained in detail the specific reasons why each individual plot was being sought [\[REP5-027\]](#) and this supplements the information provided in the BoR and SoR.

Plot 13/3r

- 6.6.28. The Applicant explains that this plot is required for the realignment and dualling of the A4019 (Tewkesbury Road) (Work No 4), the construction of a service road running east and west of The Green (Work No 4n), the construction of environmental barriers west and east of The Green (Work No 4o), the diversion of Severn Trent Water Limited water pipeline (Work No 15), the diversion of telecommunication cable and associated apparatus and equipment (Work No 27).
- 6.6.29. The rights sought is for TP and the ExA recognise that this plot is under existing public highway and the A4019 carriageway runs through the middle of this plot.
- 6.6.30. The ExA agree that without plot 13/3r the Applicant would be unable to widen the existing A4019 to dual carriageway standard without the need to acquire significantly more land south or north of this plot to realign the whole A4019, which could cause significantly more land and property impacts. There is no lesser right capable of acquisition than temporary possession.
- 6.6.31. The powers of TP are included to confirm that the Applicant has powers of possession capable of overriding, on a temporary basis, the other various interests held in this plot, including statutory undertaker rights.

Plot 13/6a

- 6.6.32. This plot is required for the construction of a service road running east and west of The Green and its associated footway (Work No. 4n), diversion of a gas main (Work No 17) and diversion of an electricity cable (Work No 22).
- 6.6.33. The Applicant seeks to acquire permanent rights with temporary possession and use over the public highway verge and footway over this plot. Without this plot the Applicant would not be able to connect the existing footway on the eastern side of The Green to the proposed footway along the A4019. It would also mean that the necessary rights for the gas main diversion and electricity cable diversion (Work Nos 17 and 22) would not be granted to the utility provider.
- 6.6.34. The ExA agree that the TP and permanent rights are necessary to achieve the appropriate diversions of SU apparatus and the construction of the footway first, and we do not consider that these could be achieved with lesser rights than those sought.

Plot 14/5a

- 6.6.35. This plot is required for the realignment and dualling of the A4019 (Tewkesbury Road) (Work No 4), the alteration of the signalised junction serving Gallagher Retail Park and the B4634 to the south of the A4019 (Tewkesbury Road) (Work No 4x) and the diversion of telecommunication cable (Work No 27).
- 6.6.36. The Applicant is seeking permanent acquisition over this plot for this plot to be used for the A4019 mainline. The plot therefore is noted as permanent acquisition not to acquire the Crown Commissioner's interest but rather on the basis that the Applicant is able to acquire the Crown Commissioner's interest by voluntary

agreement, the permanent acquisition would then be used in respect of remaining subsisting interests in the freehold.

- 6.6.37. The ExA consider that without plot 14/5a the Applicant would be unable to realign the A4019 and we consider the CA of the Crown Commissioners interest in this plot is justified and do not consider that a lesser interest would achieve the modifications to the A4019 as the scheme requires.

Plot 14/7a

- 6.6.38. This plot is required for the realignment and dualling of the A4019 (Tewkesbury Road) (Work No 4) and the diversion of telecommunication cable (Work No 27).
- 6.6.39. The Applicant is seeking permanent acquisition over this plot. The freehold of this plot is unknown, but the Crown Estate Commissioners are deemed to be owners of the subsoil rights up to the centre of the public footway.
- 6.6.40. The ExA consider that without plots 14/5a and 14/7a the Applicant would be unable to widen the A4019 and improve the Gallagher junction without further realignment work and significantly more land and property impacts. We also consider that the permanent acquisition is justified in this instance as a lesser right would not achieve the modifications to the A4019 as the scheme requires.

ExA Conclusions

- 6.6.41. The ExA are satisfied that the rights sought for the CA of Crown rights and interests are for a legitimate purpose, that they are necessary and proportionate and that there is a compelling case in the public interest for the powers to be granted.

Mr Neil Hadley [RR-028]

- 6.6.42. Mr and Mrs Hadley are identified in the BoR as Category 1 owners of five plots. These Plot Nos, and the rights sought are listed below:
- 16/1c – Land to be acquired permanently. All rights and interests in approximately 14047 square metres of public adopted highway and verge and hedgerows
 - 16/1d - Land to be acquired permanently. All rights and interests in approximately 245 square metres of public adopted highway,
 - 16/4k - Land to be acquired permanently. All rights and interests in approximately 631 square metres of ditch,
 - 16/9a - Land to be acquired permanently. All rights and interests in approximately 1924 square metres of agricultural land and hedgerow, and
 - 16/9b – Land to be used temporarily. Temporary possession and use of approximately 875 square metres of agricultural land and hedgerow.
- 6.6.43. Mr Hadley submitted a series of written submissions during the Examination [[RR-028](#), [REP1-072](#), [REP3-080](#), [REP4-050](#), [AS-083](#), [AS-111](#), and [AS-112](#)].
- 6.6.44. In [[PDA-002](#)] and [[RR-028](#)] Mr Hadley expresses concern that the access arrangements as proposed would sterilise the access to his land for future development, noting that his land is included in the West Cheltenham Strategic Allocation. He also expresses concern that he would be disadvantaged as the scheme facilitates access to the strategic allocation while excluding his site.
- 6.6.45. He also considers that excessive amounts of land edged red on the DCO plan are required for the ditch and grass embankment bordering his field and that the

Applicant has not demonstrated that there is a compelling case in the public interest for the acquisition of his land.

6.6.46. In [\[AS-083\]](#) Mr Hadley expressed concern that his and his wife's human rights were being breached as the Applicant was acting in a way that was incompatible with those rights. Article 1 first rule (peaceful enjoyment of property), second rule (deprivation of property) third rule (controlling use of property) in respect of access arrangements.

6.6.47. Teresa Margaret Hadley is listed in the BoR as a joint owner of the same plots as Mr Neil Hadley.

The Applicant's Response

6.6.48. The Applicant considers that the proposed access will be an improvement on the existing access, but notwithstanding this the Applicant is aware there appears to be another well used access from Hayden Lane which will be unaffected by the Scheme.

6.6.49. The Applicant sets out in [\[REP4-036\]](#) that the Scheme provides a point of access into the Strategic Allocation A7, in accordance with the Golden Valley SPD. The Applicant considers that this is an appropriate level of access and provision to unlock the Golden Valley site and to facilitate its development. The minimum amount of land has been included to provide the realignment and widening of the B4634 to the south. This will allow for the provision of a shared use path along the northern verge and gradual widening to provide a right turn lane at the proposed signalised junction.

6.6.50. Plot 16/9a is required for part of the realigned of the B4634 carriageway, verge and supporting earthwork embankment (all part of Work No 6). It also includes unlined ditches (also part of Work No 6) at the toe of embankments to intercept embankment runoff and land drainage. The ditches have a base width of 1m, depth of 1m, with 1 in 3 side slopes, an earthwork offset of 2m and maintenance access.

6.6.51. Space is also required for the proposed ditches to connect to the proposed replacement culverts (Work No 6a and 6b) which will be under the B4634. A replacement private means of access for the AP's land is provided as Work No. 6c.

6.6.52. Within the proposed B4634 verge, utility diversions are proposed through Plot 16/9a; diversion of telecommunications cables (Works No 8, 12 and 34) and diversion of an electricity cable (Work No 26).

6.6.53. Plot 16/9b is required for construction working space for Work Nos 6, 6a, 6b and 6c.

6.6.54. In respect of human rights, the Applicant in [\[REP7-009\]](#) (page 33) states it has had regard to the European Convention on Human Rights and the Human Rights Act 1998. The Applicant recognises that the Scheme has an impact on individuals and in its SoR [\[REP10-029\]](#) acknowledges that the Order if granted may infringe the human rights of persons with an interest in land. The articles which the Applicant considers relevant are Article 1 of the First Protocol, Article 6, and Article 8.

6.6.55. The Applicant considers that the significant public benefits that will arise from the Scheme as set out in its SoR outweigh any harm to those individuals. The Applicant considers the Order strikes a fair balance between public interest in seeing the Scheme proceed (which is unlikely to happen in the absence of the compulsory

acquisition powers) and the private rights which will be affected by the compulsory acquisition.

- 6.6.56. In relation to Article 1 and 8, the Applicant considers the compelling case in the public interest for the compulsory acquisition powers included within the dDCO has been demonstrated in the Planning Statement and Schedule of Accordance with the NPSNN [\[REP10-063\]](#).
- 6.6.57. The Applicant reaffirms that the land over which the compulsory acquisition powers are sought, as set out in the dDCO [\[REP11-003\]](#), is the minimum necessary to ensure the delivery of the Scheme. The Scheme has been designed as far as reasonably practical to minimise harm whilst achieving its publicly stated objectives. In this respect the interference with human rights is both proportionate and justified.

The ExA's Considerations

- 6.6.58. While Mr Hadley argued that the approach the Applicant had taken to negotiation and communication was neither appropriate or acceptable, no evidence was presented that directly sought to challenge the Applicant's position with regard to the need for the individual plots, or the extent of powers sought.
- 6.6.59. Mr Hadley presented evidence that the access arrangements proposed for the allocated land could be done by way of a roundabout as opposed to the junction arrangements suggested, which would have materially altered the land take, and the plots affected. We have dealt with the access concerns in the Traffic and Transport Section 3.4. of this Report.
- 6.6.60. While Mr Hadley suggested that a roundabout was an alternate access, and we accept this would have required a different land take we have not been presented with evidence that disputes the Applicant's position in respect of the need for the individual plots, or the extent of the powers sought, and we are also mindful that the other Category 1 owners of these plots required for the changes to access have raised no objection to the CA and TP of this land.
- 6.6.61. We are also of the view that a roundabout provision would in all likelihood have increased the need for land beyond that which the Applicant, was seeking, although we recognise that no detailed alternative was presented to us in this respect.
- 6.6.62. In respect of the human rights referred to by Mr Hadley we are content that the approach the Applicant has taken is consistent with the duties of the Human Rights Act 1998 and the European Convention on Human Rights (ECHR).
- 6.6.63. The obligations of the Applicant are set out in detail in Section 5.4 of the SoR [\[REP10-029\]](#) and this was addressed during the CAH.
- 6.6.64. We consider that Article 1 of the First Protocol has been satisfied by following due process of Examination under the PA2008 and the APs having a right to claim compensation.
- 6.6.65. In respect of Article 6 the Examination process has provided the opportunity to comment and make representations and if necessary, in due course to challenge any decision by way of judicial review.
- 6.6.66. Article 8 protects private and family life, home and correspondence. No public authority can interfere with these interests except if it is in accordance with the law and is necessary in the interests of national security, public safety or the economic

well-being of the country. While there would be a loss of agricultural land and hedgerow there would not be a loss of a person's home and in this respect, we do not consider this Article would be engaged.

- 6.6.67. In view of all of the above, the ExA cannot see any reason to warrant a change to its position on CA and TP as a result of the AP's representations.

Mr Steven Wakefield [RR-035]

- 6.6.68. In his WR [REP1-065] Mr Wakefield objected to the CA of his land stating that the Applicant had not engaged appropriately in negotiations, that the progress reported on negotiations was misleading, and that the consultation process was lacking. He also indicated that at no time there been a proper consideration of the annex at his property and the Applicant had therefore failed to meet his human rights or the legal requirements of compulsory acquisition.
- 6.6.69. No further specific arguments were made by Mr Wakefield in respect of the CA case; however, the objection had not been withdrawn by the end of the Examination.

The Applicant's Response

- 6.6.70. The Applicant stated in [REP2-008] that Carter Jonas is a RICS Regulated Firm and adheres to the Rules of Conduct for Firms and Individuals throughout its service provision. The application of best practice and government guidance for a scheme seeking to deliver under statutory powers has been followed. Negotiations have been conducted in line with best practice and on a fair and reasonable basis to secure voluntary agreements to allow the Applicant to deliver the scheme.
- 6.6.71. The Applicant provided a detailed schedule of the engagement that had been carried out with Mr Wakefield (pages 79-82) of [REP4-038].
- 6.6.72. In the final Land Right Tracker [REP10-103] submitted by the Applicant it was confirmed that an offer to purchase had been made and draft HoTs were under discussion.

The ExA's Considerations

- 6.6.73. Mr Wakefield is identified as a Category 1 owner of plot Nos 5/6e, 5/20, and 5/21.
- 6.6.74. The SoR identifies each plot as needing to be the subject of CA of all rights and interests including the whole of the residential property.
- 6.6.75. In respect of the human rights referred to by Mr Wakefield we are content that the approach the Applicant has taken is consistent with the duties of the Human Rights Act 1998 and the European Convention on Human Rights (ECHR).
- 6.6.76. While Article 8 protects private and family life, home and correspondence and there is a clear interference with these rights as the CA sought would result in the loss of the residential home, these rights are limited.
- 6.6.77. The Land Rights Tracker indicates that heads of terms are being negotiated between the Applicant and Mr Wakefield and the parties are progressing towards an agreed valuation figure.

6.6.78. Should voluntary negotiations not be completed, the ExA are satisfied that the rights sought for the CA of land, and CA of rights in respect of all plots in which Mr Wakefield has an interest are for a legitimate purpose, that they are necessary and proportionate and that there is a compelling case in the public interest for the powers to be granted, which would outweigh private loss.

6.6.79. In view of all of the above, the ExA cannot see any reason to warrant a change to its position on CA and TP as a result of the AP's representations.

Mr Andrew David Smith [RR-002]

6.6.80. The RR for Mr Smith advises that the Proposed Development would result in the loss of his home.

6.6.81. No further specific arguments were made by Mr Smith in respect of the CA case; however, the objection had not been withdrawn by the end of the Examination.

The Applicant's Response

6.6.82. The Applicant recognises that as a general approach compulsory acquisition should only be sought if attempts to acquire by agreement fail. In the final Land Right Tracker [REP10-103] submitted by the Applicant it was confirmed that an offer to purchase had been made and draft HoTs have been issued.

The ExA's Consideration

6.6.83. Mr Smith is identified as a Category 1 Owner of land plots 13/13a, and 13/3x(i).

6.6.84. The SoR identifies each plot as needing to be the subject of CA of all rights and interests including the whole of the residential property.

6.6.85. The Land Rights Tracker indicates that heads of terms are being negotiated between the Applicant and Mr Smith and the parties are progressing towards an agreed valuation figure.

6.6.86. Should voluntary negotiations not be completed, the ExA are satisfied that the rights sought for the CA of land, and CA of rights in respect of all plots in which Mr Smith has an interest are for a legitimate purpose, that they are necessary and proportionate and that there is a compelling case in the public interest for the powers to be granted, which would outweigh private loss.

6.6.87. In view of all of the above, the ExA cannot see any reason to warrant a change to its position on CA and TP as a result of the AP's representations.

Mr Benedict Williams [RR-004]

6.6.88. Mr Williams RR opposed compulsory acquisition on the basis of the need for the Applicant to fully engage in the process to ensure that his personal circumstances were recognised, and a voluntary agreement could be reached.

6.6.89. No further specific arguments were made by Mr Smith in respect of the CA case; however, the objection had not been withdrawn by the end of the Examination.

The Applicant's Response

6.6.90. The Applicant acknowledged that discussions on terms for the acquisition of the property have been ongoing for several years. The Applicant is committed to

assembling the land required for the Scheme in full compliance with the Government guidance on use and promotion of compulsory purchase powers and the Applicant's strong preference remains to secure land and rights required by agreement, wherever this is possible.

- 6.6.91. The Applicant advises in the final Land Rights Tracker [\[REP10-103\]](#) that Heads of terms for the outright purchase of the whole property have been agreed and the matter is with Mr Williams's and the Applicant's solicitors.

The ExA's Considerations

- 6.6.92. Mr Williams is identified as a Category 1 Owner of Plot Nos 5/5c, 5/5c(i), 5/5c(ii), 5/5c(iii), 5/5d, 5/5d(i), 5/5e, 5/5f, 5/5h, 5/5i, 5/6a, 5/5a(i), 5/5a(ii), 5/5b(i), 5/5a, 5/5b, 5/5g.

- 6.6.93. The Applicant seeks to acquire:

- Permanent acquisition of rights and temporary possession of plots 5/5a, 5/5b, 5/5g,
- Temporary Possession and use of plots 5/5(i), 5/5a(ii), 5/5b(i)
- CA of all rights and interests in plots 5/5c, 5/5c(i), 5/5c(ii), 5/5c(iii), 5/5d, 5/5d(i), 5/5e, 5/5f, 5/5h, 5/5i, 5/6a.

- 6.6.94. According to the Final Land Rights Tracker HoTs for the outright purchase of the whole property have been agreed and the matter is with Mr Williams's and the Applicant's solicitors

- 6.6.95. Should voluntary negotiations not be completed, the ExA are satisfied that the rights sought for the CA of land, and CA of rights in respect of all plots in which Mr Williams has an interest are for a legitimate purpose, that they are necessary and proportionate and that there is a compelling case in the public interest for the powers to be granted, which would outweigh private loss.

- 6.6.96. In view of all of the above, the ExA cannot see any reason to warrant a change to its position on CA and TP as a result of the AP's representations.

Dana Wotton [\[RR-011\]](#)

- 6.6.97. In the final submission of the Land Rights Tracker provided by the Applicant Dana Louise Wotton is listed as an outstanding objection in respect of plots 5/5d, 5/5d(i), 5/5h, 5/5a. During the Examination we also received correspondence from Dana Louise Wotton [\[AS-076\]](#) withdrawing the comments made in the Relevant Representation.

- 6.6.98. The plots to which Dana Wotton has an interest are listed in the Book of Refence with Mr Benedict Williams as the freehold owner and Dana Louise Wotton as the occupier.

- 6.6.99. No further correspondence was received from Dana Louise Wotton except the original RR and the subsequent withdrawal of those comments, nor did she attend nor was she represented at represented at any hearing.

The Applicant's Response

- 6.6.100. The Applicant advised in the final land right tracker that upon further communication with the affected party they had come to agreement on terms and the AP had

provided confirmation that they would be moving out of the property in September/October 2024.

The ExA's Consideration

- 6.6.101. In light of our conclusions in respect of Mr Williams land above and the evidence from the Applicant that agreement has been reached, while, the final BoR still had Dana Wotton as an occupier of the property located on plots 5/5d, 5/5d(i), 5/5h, 5/5a, the ExA are of the view that irrespective of whether the occupation of the property has now ceased the ExA are satisfied that the rights sought for the CA of land, TP of land and CA of rights in respect of all plots in which Dana Wotton has an interest.
- 6.6.102. In view of all of the above, the ExA cannot see any reason to warrant a change to its position on CA and TP as a result of the AP's representations.

Cheltenham Borough Council [[RR-008](#)]

- 6.6.103. Cheltenham Borough Council (CBC) is identified as a Category 1 Owner of Plots 4/3a, 4/3b, 4/3c, 4/3d, 4/3d(i), 4/3e, 4/3f, 4/3g, 4/3g(i), 4/3h, 4/3i, 4/3j, 4/3k, 4/3l, 4/3m, 5/1a, 5/1a(i), 5/1a(ii), 5/1b, 5/1c, 5/1d, 5/1e, 5/1f, 5/1g, 5/1g(i), 14/1g, 14/2a, 14/2b,
- 6.6.104. CBC are also identified as a Category 2 Owner of plots 5/8a, 7/3a(i), 7/3b(i), 7/3d(i), 15/10c(i), 15/10e(i), 15/10f(i), 16/3d(i), 16/3e(i), 16/3e(iii), 16/3f(i), 16/3n(i), 16/11a(i), 16/11b(i),
- 6.6.105. The Applicant seeks to acquire:
- Permanent acquisition of rights and temporary possession of 4/3a, 4/3b, 4/3d, 4/3e, 4/3h, 5/1a(i)
 - Temporary Possession and use of 5/1a(ii), 4/3g, 4/3g(i), 4/3i, 4/3k, 4/3l, 4/3m, 5/1a, 5/1c, 14/2a, 14/2b
 - CA of all rights and interests in plots 4/3c, 4/3d(i), 4/3f, 4/3j 5/1b, 5/1d, 5/1e, 5/1f, 5/1g, 5/1g(i), 14/1g
- 6.6.106. The RR states that they write on behalf of the owners of Barn Farm and would wish to see a new junction on the A4019 to serve the Barn Farm site, with the J10 highway improvements and to meet national guidance, is feasible. However, the attenuation basin 1 proposed as shown would limit the ability to provide a junction to an appropriate standard and would not provide sufficient spacing to the improved junction 10.
- 6.6.107. CBC would like to agree that this attenuation pond location could be reconsidered and potentially relocated to the southeast on land within the same ownership. The maintenance track would also need to be relocated
- 6.6.108. In the WR [[REP1-053](#), and [REP1-054](#)] on behalf of CBC the concerns in respect of the location of the attenuation basin were reiterated, however they also stated they were supportive of the scheme.
- 6.6.109. No further specific arguments were made by CBC in respect of the CA case; however, the objection had not been withdrawn by the end of the Examination.

The Applicant's response

- 6.6.110. The Cumulative Effects Assessment of the Environmental Statement [APP-074] sets out at paragraph 15.3.14 the criteria that must be satisfied for other developments to be considered as Reasonably Foreseeable Future Projects (RFFPs) for the purposes of conducting the inter-project cumulative effects assessment.
- 6.6.111. At the time of drafting, no qualifying planning applications were identified by the Applicant in relation to the Barn Farm site, the Applicant is fully aware of the need for access to Barn Farm to continue from the A4019 and associated service road and this will be delivered by the Scheme.
- 6.6.112. In [\[REP2-008\]](#) in response to WRs the Applicant reiterates the position already stated as with other land with development potential the Applicant has taken a deliberate stance against predetermining the planning processes associated with bringing those sites forward. On the basis that the Barn Farm site does not have a formal planning status the Scheme does not consider its potential access requirements as part of the DCO application.
- 6.6.113. In the Final Land Rights Tracker, the Applicant confirms that an Email exchange and call with the agent acting for the landowner had taken place to progress negotiations of the option agreement and to discuss the survey access which is being agreed with their tenant (Mr J Bruton).

The ExA's Considerations

- 6.6.114. According to the final Lands Rights Tracker negotiations regarding the proposed HoTs to progress the purchase of land and rights- had been followed up by an Email exchange and call with the agent acting for the landowner to progress negotiations of the option agreement.
- 6.6.115. Should voluntary negotiations not be completed, the ExA are satisfied that the rights sought for the CA of land, and CA of rights in respect of all plots in which CBC has an interest are for a legitimate purpose, that they are necessary and proportionate and that there is a compelling case in the public interest for the powers to be granted, which would outweigh private loss.
- 6.6.116. In view of all of the above, the ExA cannot see any reason to warrant a change to its position on CA and TP as a result of the AP's representations.

JW Bruton & Sons [\[RR-018\]](#)

- 6.6.117. JW Bruton and Sons is identified as a Category 1 Owner of Plot Numbers: 5/11d, 12/1f, 12/1g, 5/11a, 12/1a, 12/1d, 5/11b, 12/1b, 12/1b(i), 12/1b(ii), 12/1b(iii), 12/1c, 12/1c(i), 12/1c(ii), 12/1e.
- 6.6.118. The Applicant seeks to acquire:
- Permanent acquisition of rights and temporary possession of 5/11b, 12/1b, 12/1b(i), 12/1b(ii), 12/1b(iii), 12/1e,
 - Temporary Possession and use of plots 5/11a, 12/1a, 12/1d, and
 - CA of all rights and interests in plots 5/11d, 12/1c, 12/1c(i), 12/1c(ii), 12/1f, 12/1g.
- 6.6.119. In the RR sent by J Bruton and Sons they confirmed they were an occupier of land affected by the Proposed Development and the proposed acquisition would stop up a primary access to the remaining land, outside of the limits of the Order.

The Applicant's response

- 6.6.120. The Applicant understands that the land in question is currently accessed both from the north and the south. The Scheme does not propose any changes to the northern access which will continue to be accessible both during construction and at operation. The Applicant is committed to continuing engagement on the southern access route in order to minimise disruption, as far as possible.
- 6.6.121. According to the Final land Rights Tracker further engagement with the land agent in relation to voluntary acquisition has been undertaken. Updated Heads of Terms have been issued to the landowner's agent with further details regarding compensation and the proposed acquisition offer.
- 6.6.122. In addition, further engagement with the land agent in relation to a voluntary access agreement to undertake surveys including delaying surveys to accommodate landowner's cattle movements

The ExA's Considerations

- 6.6.123. In light of the objections being in relation to access arrangements for ongoing farming operations, the issues raised here are covered in the Transport Section of this Report. No specific objection was received in relation to CA per se. This brief section is included here for completeness as the objection had not been withdrawn by the end of the Examination.
- 6.6.124. Should voluntary negotiations not be completed, the ExA are satisfied that the rights sought for the CA of land, and CA of rights in respect of all plots in which JW Bruton and Sons has an interest are for a legitimate purpose, that they are necessary and proportionate and that there is a compelling case in the public interest for the powers to be granted, which would outweigh private loss.

Ei Group Limited [\[RR-012\]](#)

- 6.6.125. The Ei Group Limited are identified as a Category 1 Owner of Plot No.s 16/1b, 16/1c, 16/1f, 16/1f(i), 16/4h, 16/5b, 16/5d, 16/5e, 16/5e(i).
- 6.6.126. The Applicant seeks to acquire:
- Permanent acquisition of rights and temporary possession of plot 16/5d,
 - Temporary Possession and use of plots 16/5b, 16/5e, and
 - CA of all rights and interests in plots 16/1b, 16/1c, 16/1f, 16/1f(i), 16/4h, 16/5e(i).
- 6.6.127. In the RR Ei Group Limited objected to the CA and TP powers contained in the dDCO. The AP does not consider the tests for CA have been met in respect of:
- a compelling case in the public interest for the CA,
 - that there is evidence there are no material impediments, and
 - compulsory purchase must be the method of last resort.
- 6.6.128. The AP states that the pieces of land owned by Ei Group are included in the SoR as needed to enable the improvements to the B4364 to provide a shared use path for future continuation of cycling and pedestrian routes in the West Cheltenham Golden Valley Development.
- 6.6.129. The Golden Valley Development is yet to secure planning permission and there could be "*a multitude of other impediments*" before the site is deliverable.

- 6.6.130. The Applicant and their representatives have failed to enter into meaningful negotiations, to seek to secure land and rights by agreement.
- 6.6.131. This objection was reiterated in the WR [\[REP1-055\]](#). The Ei Group were particularly frustrated with the Applicant's pace of negotiation, and what they considered to be a lack of professional engagement which was affecting the business, and the ability to progress matters towards an appropriate negotiation.
- 6.6.132. The AP reminded of the view that the Applicant had not exhausted negotiation and could not demonstrate that such an approach had been exhausted.
- 6.6.133. Following CAH1 and further to the ExA's request to the Applicant at the CAH Ei Group confirmed on 8 October [\[AS-079\]](#) that the downgrading of plot 16/5b for temporary possession only resolved the matter for this plot.
- 6.6.134. The Ei Group maintained the Applicant continued not to engage appropriately and the SoS should not grant CA powers where negotiations have not been exhausted.
- 6.6.135. Discussions are ongoing to agree the proposed tri-party option agreement.

The Applicant's Response

- 6.6.136. The land sought from Ei Group is for more than creating connectivity for the future development of the Golden Valley site, it is needed to realign the B4364 connecting to the link road and connection with a shared use path, private access, signage and ducting and for the diversion of Severn Trent Water Limited water pipeline.
- 6.6.137. As part of this realignment the Applicant is proposing to provide a shared use path on the northern side of the B4634 which will connect into the segregated footway/cycleway running North/South on the link road and Withybridge Lane.
- 6.6.138. The Applicant confirmed the Scheme has as one of its objectives to "provide safe access to services for the local community, including for users of sustainable transport modes within and to west and northwest Cheltenham.
- 6.6.139. In [\[REP4-038\]](#) following the CAH the Applicant explained that negotiations are ongoing, and the Applicant has every intention of continuing with those on a committed basis.
- 6.6.140. The Applicant advised that the proposals had been amended to reduce the powers sought and were now seeking TP over Plot 16/5b
- 6.6.141. In the Final Land Rights Tracker, the Applicant confirmed agreement to progress a tripartite agreement between Ei Group and the occupier of the House in the Tree PH.

The ExA's Considerations

- 6.6.142. The ExA is mindful of the change that took place during Examination downgrading the powers sought for plot 16/5b resolving one of the objections raised.
- 6.6.143. The ExA recognise that the AP is frustrated with the degree of progress that has been achieved in undertaking negotiations, and that they consider this is down to the Applicant, nevertheless there is clear evidence that progress has been made and the Applicant has engaged over a protracted period to try to come to a negotiated agreement and this process is continuing. This was supported by the

evidence provided by the Applicant in [\[REP4-038\]](#) (pages 83-88) setting out the times contact had been made between the Applicant and the AP.

- 6.6.144. It is evident from what we heard that a fully detailed negotiation had not progressed to a degree that might have been expected, prior to the application being submitted, and the fact that no offer had been made prior to the Examination commencing was unhelpful. Nevertheless, the ExA are of the view that the individual plots sought are appropriately required for the improvements to the B4634, and that these improvements are directly related to the alterations to the highway and the provision of the link road.
- 6.6.145. That the footway provision and realignment are necessary for the safe and convenient movement of pedestrians as well as other highway users, and this would be a direct public benefit from this part of the scheme.
- 6.6.146. The ExA is of the view that while the Proposed Development does facilitate the access to the Golden Valley development site, there is no evidence before us that the plots are directly related to the provision of the access for the allocated site. The SoR in setting out the purposes for which the plots are required do not refer to this, and the ExA are satisfied that this is the case.
- 6.6.147. The ExA are also of the view that CA powers do need to be included within the DCO, were they not to be, there is the potential for an obstacle to remain to the carrying out of the Proposed Development.
- 6.6.148. Should voluntary negotiations not be completed, the ExA are satisfied that the rights sought for the CA of land, and CA of rights in respect of all plots in which the Ei Group Limited has an interest are for a legitimate purpose, that they are necessary and proportionate and that there is a compelling case in the public interest for the powers to be granted, which would outweigh private loss.
- 6.6.149. In view of all of the above, the ExA cannot see any reason to warrant a change to its position on CA and TP as a result of the AP's representations.

Thanks for Popping in Traditional Pubs Limited (House in the Tree Public House) [\[RR-017\]](#)

- 6.6.150. Thanks for Popping in Traditional Pubs Limited is the Category 1 Owner of plots 16/1f(i), 16/4h, 16/5e(i), 16/5e, 16/5b, 16/5d. (The AP is the tenant of Ei Group Limited, the freehold owner of the Public House, The House in the Tree).
- 6.6.151. The Applicant seeks to acquire:
- Permanent acquisition of rights and temporary possession of plot 16/5d,
 - Temporary Possession and use of plots, 16/5b, 16/5e and
 - CA of all rights and interests in plots 16/1f(i), 16/4h, 16/5e(i).
- 6.6.152. The RR from the AP states that the Applicant has not engaged directly in any detail or made any offers or negotiations to agree voluntary arrangements that would avoid the need to use compulsory purchase order powers.

The Applicant's Response

- 6.6.153. The Applicant acknowledged that HoTs had not been agreed in [\[REP1-043\]](#) but there has been direct engagement with the occupiers of the House in the Tree PH.

The Applicant considers that meaningful engagement, and negotiation has taken place, and the Applicant is committed to continuing to reach a voluntary agreement.

- 6.6.154. In the Final Land Rights Tracker, the Applicant confirms that a meeting was held with the agent to discuss progressing an option agreement and resolving outstanding matters.

The ExA's consideration

- 6.6.155. According to the Final land Rights Tracker further agreement to progress a tripartite agreement (The parties being the Applicant, Ei Group Limited and Thanks for Popping in Traditional Pubs Limited) is progressing.
- 6.6.156. The ExA is mindful of the change that took place during Examination downgrading the powers sought for plot 16/5b resolving one of the objections raised.
- 6.6.157. The ExA recognise that the AP is frustrated with the degree of progress that has been achieved in undertaking negotiations, and that they consider this is down to the Applicant, nevertheless there is clear evidence that progress has been made and the Applicant has engaged over a protracted period to try to come to a negotiated agreement and this process is continuing.
- 6.6.158. Should voluntary negotiations not be completed, the ExA are satisfied that the rights sought for the CA of land, and CA of rights in respect of all plots in which Thanks for Popping in Traditional Pubs Limited has an interest are for a legitimate purpose, that they are necessary and proportionate and that there is a compelling case in the public interest for the powers to be granted, which would outweigh private loss.
- 6.6.159. In view of all of the above, the ExA cannot see any reason to warrant a change to its position on CA and TP as a result of the AP's representations.

Mr Peter Badham [\[RR-030\]](#) and subsequent [\[RR-046\]](#) in response to Change Request No.1 – Change 8

- 6.6.160. Mr Badham is identified as a Category 1 Owner of plots 13/3v, 13/11a, 13/11b.
- 6.6.161. The Applicant seeks to acquire:
- Permanent acquisition of rights and temporary possession of 13/11a and 13/11b and
 - CA of all rights and interests in plot 13/3v
- 6.6.162. Mr Badham in [\[RR-046\]](#) response to the Change Request Application No.1 objected to the Applicant seeking permanent subsoil rights for plot 13/3v. By way of explanation, he considered the works to be carried out in respect of Plots 13/3g and 13/3s are greater than those for Plot 13/3v, yet lesser rights were being sought for those plots.
- 6.6.163. In respect of plot 13/11a Mr Badham objected to the permanent acquisition of rights as the construction identified could be carried out utilising temporary possession only.
- 6.6.164. Regarding Plots 13/11b and 13/12a, 13/3w Mr Badham had no objection in principle to this proposal relating to the welfare of dormice. However, he sought clarification if this right, would impose an obligation on the Applicant to carry out the construction

and maintenance and whether this right (with the obligation) would pass to successors in title of the Applicant.

- 6.6.165. Mr Badham confirmed that the Applicant and agent have engaged at various consultation events, met on site and discussed works to hedges. However, there has never been any discussion as to "proposed land take" as he has been repeatedly assured that was not an issue and that there would only be need for temporary access to carry out ancillary works.

The Applicant's response

- 6.6.166. In [\[REP9-009\]](#) the Applicant explained that plot 13/3v was unregistered land but taking a precautionary approach a presumed interest has been recorded against plot 13/3v for the owners of the adjacent properties.
- 6.6.167. The Applicant confirmed it has taken a consistent approach across the Scheme, to acquire unregistered land that would form part of the permanent local road network delivered by the Scheme, to ensure that any unknown interest in the land is addressed by means of the Order and that any rights required for utilities through the land can be freely granted by the Applicant.
- 6.6.168. GCC are the registered freeholders for both plots 13/3g and 13/3s thus the land acquisition approach is different.
- 6.6.169. The Applicant reiterates that the permanent rights for plot 13/11a are for the undertaker of the Order being required to acquire permanent access rights is to ensure continuity of access to the hedgerow which forms part of the dormouse mitigation in plot 13/11b. The Applicant noted that the SoR and dDCO were not explicit in the rights being acquired to facilitate access for this purpose and therefore updated the dDCO.
- 6.6.170. For plot 13/11b the Applicant would be required to deliver the dormouse mitigation. The improvements to the hedgerow need to be maintained for a 10 year period following the Applicant undertaking the improvements, the Applicant requires rights to allow it to access the relevant plots to maintain the hedgerow to meet Natural England advice for maintenance.

The ExA's Consideration

- 6.6.171. As can be seen from the Land Plans [\[REP10-003\]](#) Sheet 13 Plot 13/3v covers the highway outside of the property owned by Mr Badham.
- 6.6.172. The Applicant has confirmed that the negotiations have progressed with the AP and the ExA are satisfied that the explanation provided in [\[REP9-009\]](#) fully explains the need for the specific land plots in this case.
- 6.6.173. The Applicant has confirmed a letter has been issued to the landowner in connection with subsoil rights and agreement to the consideration offer made.
- 6.6.174. Should voluntary negotiations not be completed, the ExA are satisfied that the rights sought for the CA of land, and CA of rights in respect of all plots in which Mr Badham has an interest are for a legitimate purpose, that they are necessary and proportionate and that there is a compelling case in the public interest for the powers to be granted, which would outweigh private loss.

6.6.175. In view of all of the above, the ExA cannot see any reason to warrant a change to its position on CA and TP as a result of the AP's representations.

Bloor Homes [RR-005]

6.6.176. Bloor Homes Limited is identified as a Category 2 Owner of plots 5/11a, 5/11b, 5/11d, 12/1a, 12/1b, 12/1b(i), 12/1b(ii), 12/1b(iii), 12/1c, 12/1c(i), 12/1c(ii), 12/1d, 12/1e, 12/1f, 12/1g, 12/7a, 12/7b, 12/7b(i), 12/7b(ii), 12/7c, 12/7d, 12/7e, 12/7e(i), 12/7f, 12/7g, 12/7h, 12/8a, 12/8b, 13/1a, 13/1b, 13/1c, 13/1d, 13/1e, 13/2a, 13/2b, 13/2c, 13/2d,

6.6.177. The Applicant seeks to acquire:

- Permanent acquisition of rights and temporary possession of plots 5/11b, 12/1b, 12/1b(i), 12/1b(ii), 12/1b(iii), 12/1e, 12/7a, 12/7b, 12/7b(i), 12/7b(ii), 12/7g, 12/8b, 13/1a, 13/1e, 13/2b, 13/2d ,
- Temporary Possession and use of plots, 5/11a, 12/1a, 12/1d, 12/7c, 12/7e, 12/7e(i), 12/7f, 12/7h, 12/8a, 13/1b, 13/1c, 13/2a, 13/2c and
- CA of all rights and interests in plots 5/11d, 12/1c, 12/1c(i), 12/1c(ii), 12/1f, 12/1g, 12/7d, 13/1d.

6.6.178. Bloor Homes and Persimmon Homes are the joint developers of the land which forms the majority of the A4 North West Cheltenham land allocation, which is also known as Elms Park.

6.6.179. The AP states that the CA process should not be used to create a commercial advantage for an undertaker.

6.6.180. In their [RR-005], Bloor Homes suggested that the shared access that the DCO scheme would provide into the safeguarded land is a consolidated agricultural access that in design terms would not be suitable for future development of the land. Further, the safeguarded land currently has a long frontage which provides scope for a development access to be constructed in the future.

6.6.181. Additionally, post scheme, the new shared access junction would terminate on land owned by the Applicant and that could create an impediment to the delivery of a development access.

6.6.182. Bloor Homes remained concerned about the possible creation of a ransom strip due to the termination of the shared access road and also in respect of the ability to provide a sufficiently wide road as per their answers to ExQ2 [REP5-033].

6.6.183. In response to this, Bloor provided an alternative possible access arrangement to the Applicant as highway authority for pre application consultation (to the east of the shared access) which they considered would facilitate future access into the safeguarded land (subject to adopted highway boundaries etc).

6.6.184. Bloor Homes also cited issues regarding the position of the future adopted highway boundary along the northern edge of Tewkesbury Road (A4019) as they were not confident the scheme facilitated a contiguous boundary for the safeguarded land and thus could create a ransom strip.

6.6.185. In addition to the above, Bloor also questioned the Applicant's ability to fund the delivery of the scheme, with the Funding Statement [REP10-031] relying upon money from the development of the JCS allocated sites. This Bloor state was neither policy compliant, nor would it meet with the legislation set out in the CIL

Regulations. We go on to consider the funding arrangements in Section 6.8.20 of this Section of the Report.

The Applicant's response

- 6.6.186. The Applicant responded at [\[REP5-027\]](#) confirming that the proposed highway boundary shown by the yellow line in the plans submitted in Appendix C of [\[REP4-037\]](#) shows the indicative highway boundary proposed. This is not however, secured in the dDCO as this would ultimately be determined by GCC as highway authority on conclusion of the final detailed design. The Applicant confirmed it was aware that the location of the highway boundary may have a material impact on the compensation that would be available in respect of frontages.
- 6.6.187. At [\[REP11-025\]](#) the Applicant in their closing submissions maintained that they did not consider there was evidence that a ransom situation would occur. The Applicant's comment in [\[REP9-008\]](#) responds to a plan provided by Bloor Homes which sought to demonstrate that in a no-scheme world, a secondary access which does not utilise the GCC land can be achieved which as a result of the Scheme can no longer be achieved. The Applicant's position is that this alternative design does not demonstrate that a secondary access is achievable without going through GCC land in a no-scheme world, and therefore does not facilitate an argument that the Scheme has created a ransom.

The ExA's Consideration

- 6.6.188. The consideration of the access arrangements for current and future uses is dealt with in Section 5.4 of this Report.
- 6.6.189. While the future highway boundary is not currently secured through the dDCO, this is not an unusual scenario at this point in the process for a DCO. The ExA are confident that the resulting land take once final detailed design has been completed would not facilitate land being in the ownership of the Applicant that was not necessary for the scheme.
- 6.6.190. The dDCO limits the land take to that which is necessary to achieve the scheme and to do otherwise in the ExA's view would not comply with either the CA Regulations, or the safeguards built into the dDCO.
- 6.6.191. In this way the potential for a possible ransom strip would be limited to that over which the Applicant already has control. In the event that a ransom strip was to be created the Applicant has acknowledged that they are aware this would be subject to compensation.
- 6.6.192. The ExA is also mindful that the current policy position for the safeguarded land over which Bloor Homes has its option secured does not allocate it for any purpose. Until such time as the Local Plan process has progressed to a stage where the status of the land changes the question of a commercial ransom would not materialise in any event.
- 6.6.193. It is clearly not for the ExA to advise or the SoS in determining this DCO to decide on such matters, as this is something for the LPA to consider in their deliberations over future land allocations.
- 6.6.194. In the unlikely event that a future ransom was to arise then it would be for the appropriate body to determine the position at that time.

- 6.6.195. Should voluntary negotiations not be completed, the ExA are satisfied that the rights sought for the CA of land, and CA of rights in respect of all plots in which Bloor Homes Limited has an interest are for a legitimate purpose, that they are necessary and proportionate and that there is a compelling case in the public interest for the powers to be granted, which would outweigh private loss.
- 6.6.196. In view of all of the above, the ExA cannot see any reason to warrant a change to its position on CA and TP as a result of the AP's representations.

6.7. STATUTORY UNDERTAKERS AND PROTECTIVE PROVISIONS

Statutory Undertakers

- 6.7.1. The ExA sought updates from the Applicant upon the progress of discussions with SUs, and whether s127 or s138 of the PA2008 was likely to be engaged and the status of the discussions and whether any impediments were envisaged.
- 6.7.2. Agreement was reached with both BT Openreach Limited, and National Highways. BT Openreach Limited did not object to any aspect of the Proposed Development, and confirmation of agreement was received by the Applicant on 7 November 2024, copy of the letter was included in Appendix C to [\[REP9A-006\]](#). NH formally confirmed withdrawal of all objections to the DCO in [\[AS-113\]](#). In these circumstances s127 would not be engaged in respect of either of these SUs.
- 6.7.3. In respect of both of these SUs PPs the ExA are content with the wording included in the dDCO and has made no changes to the rDCO.
- 6.7.4. There were three SUs where Protective Provisions (PPs) had not been agreed by close of the Examination.

National Grid Electricity Distribution (NGED) (West Midlands) [RR-025]

- 6.7.5. NGED set out their position in respect of the Proposed Development in their initial RR, WR [\[REP1-056\]](#) and then subsequent submissions at D7 [\[AS-109\]](#) and finally in response to the ExA's ExQ3 at [\[REP9-018\]](#).
- 6.7.6. In the final submission NGED did not object in principle to the acquisition of land rights provided that the PPs had been agreed and an asset protection agreement had been entered into between the parties. NGED included a list of other DCOs where its preferred PPs had been accepted in Schedule 2 and the full text of its preferred PPs in Schedule 3 to [\[REP9-018\]](#).
- 6.7.7. NGED considered the PPs in the D7 dDCO submission by the Applicant [\[REP7-002\]](#) to be inadequate to protect its assets and interests, that the PPs suggested by the Applicant are not reflective of best practice and NGED included a list of other DCOs where its preferred PPs had been included, these can be found on page 8 of [\[REP9-018\]](#).
- 6.7.8. The areas of disagreement relate to two aspects of the PPs:
- the definition of 'specified works', and
 - the subsequent approvals process for specified works.
- 6.7.9. NGED confirmed the Applicant had agreed to its standard asset protection agreement which NGED confirmed was satisfactory. [\[REP9-018\]](#).

Definition of specified works distances

- 6.7.10. The Applicant has proposed a distance of 6 metres for NGED's pylons, towers and Extra High Voltage assets only, and a distance of 1 metre for any other High Voltage or Low Voltage assets.
- 6.7.11. These distances are taken from HSE Guidance³ NGED states in [\[REP9-018\]](#) the distances provided in the Guidance are expressed as "exclusion zones" which are distinct from the "specified works" distances in the protective provisions. "Exclusion zones" are the distances which the Applicant must not infringe upon under any circumstances. Whereas the "specified works" distances are the areas within which the Applicant must have NGED approval of their works plans.
- 6.7.12. NGED consider the "exclusion zones" are expressed in the Guidance as minimum distances and so it is not unreasonable for a distribution network operator to require additional safeguard distances in respect of its network where it considers it is necessary.
- 6.7.13. Finally, NGED argue that the Guidance relates to overhead line works only and NGED has a number of underground electricity cable assets situated within the Order land. Therefore, the definition as taken from the Guidance is not suitable for use in the protective provisions here and NGED's position is that this definition is not sufficient to adequately protect all of NGED's assets within the land impacted by the Order.
- 6.7.14. NGED's required "specified" works distance for all of its assets (regardless of voltage) in the protective provisions is 6 metres.

Approvals process for specified works

- 6.7.15. The timescale in NGED's preferred drafting NGED considers provides sufficient certainty to the Applicant as to the timescales for the approval of any "specified works". NGED would have 60 days from the date of a submission of plan of works to raise comments or approve it.
- 6.7.16. Paragraph 7(3) of NGEDs PPs confirms that, if NGED does not provide any comments on the submitted plan or confirmation of the same, then it would be deemed to be approved, and the Applicant may commence its works. Additionally, Paragraph 7(8) clarifies that in the case of an emergency the Applicant does not need to comply with the 60 day timeframe, but instead can commence works and then deal with the approval of the plan after the fact.
- 6.7.17. NGED states that the 60 day timescale and the comfort provided by the other paragraphs has been accepted as market standard by the wider development industry.

The Applicant's Response

- 6.7.18. The Applicant's preferred approach in relation to the bespoke protective provisions in favour of NGED is included in Schedule 9 Part 5 (page 180) of the dDCO [\[REP11-003\]](#).

The definition of 'specified works'

³ HSE Guidance , Note 6 on "Avoiding danger from overhead power lines" (the "Guidance")

- 6.7.19. The Applicant considers the definition of “specified works” responds to the need to address what was identified as a future risk due to the disproportionate and unreasonable administrative burden causing unnecessary delays that could result from the requirement to follow NGED’s standard approach to define what “specified works” are.
- 6.7.20. NGED’s standard approach would have the implication that any works within a 6-metre radius of NGED’s asset would trigger the approval mechanism set out in the protective provisions. This would capture multiple assets of variable voltage within the uniform 6-metre radius. In particular, the Applicant’s main concern relates to unidentified assets that they may encounter in the implementation of the Scheme, as well as the examples mentioned in the course of the CAH2.
- 6.7.21. The Applicant goes on to say that in order to ensure a fair balance between securing NGED’s assets, ensuring their approval of works carried out in relation to their assets whilst being able to deliver the Scheme in line with the proposed programme, the Applicant’s proposal is to follow a similar approach to that included in the Health and Safety Executive Guidance Note GS6 “Avoiding danger from overhead power lines” (the “HSE Guidance”).
- 6.7.22. The HSE Guidance is well referenced and understood by all on project works. For example, in the context of approaching any DCO technical or plant protection team to discuss safeguarding assets and safe working practices, the HSE Guidance would be the point of reference.
- 6.7.23. The HSE Guidance refers to the Energy Networks Association (ENA) publication Look Out Look Up! A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines. This advises establishing exclusion zones around the line and any other equipment that may be fitted to the pole or pylon. The minimum extent of these zones varies according to the voltage and is in line with the current definition of “specified works” included in NGED’s bespoke protective provisions in Part 5 of Schedule 9 of the dDCO.
- 6.7.24. In support of its case the Applicant has provided a copy of the HSE Guidance at Appendix A [\[REP9A-006\]](#).

The subsequent approvals process for specified works

- 6.7.25. The timeframes proposed by NGED for the approval of specified works the Applicant suggests could cause severe delays in the implementation of the Scheme. Under NGED’s preferred draft, where the Applicant submits revised plans, the 60-day notice period set out above resets. The Applicant proposed to reduce the ‘reset’ period to 40 days. The Applicant also sought to reduce the ‘reset’ period from 60 to 40 days where the Applicant submits a revised works plan in response to a reasonable requirement of NGED.
- 6.7.26. The Applicant maintains that the timescales set out in the protective provisions included in the dDCO [\[REP7-002\]](#) provide appropriate protection to NGED whilst also minimising approval periods so that unnecessary delays would not obstruct the implementation of the Scheme.

The ExA’s consideration

- 6.7.27. In terms of the definition of specified works the ExA find the distinction drawn by NGED compelling, there is a clear need in our view to ensure that appropriate safety distances are maintained to protect the NGED assets. While the Applicant

has argued that the extent of protection sought is excessive and presented their case referencing the HSE Guidance, this does not address the distinction between overhead and underground assets. In these circumstances we are minded to side with the SUs argument in favour of changing the definition of specified works to align with that in NGEDs preferred PPs.

- 6.7.28. We are also mindful that the PPs requested by NGED have been accepted in recent SoS decisions covering road, rail and a recent solar scheme.

ExA's conclusions on s127 and s138 for NGED

- 6.7.29. Having concluded that the PPs sought by NGED would be appropriate and should be included in the rDCO, should the SoS agree that these PPs should be included we see no conflict with s127 or s138 of PA2008.
- 6.7.30. The ExA are satisfied that the powers sought by the Applicant are necessary for the Proposed Development and consistent with s138, and that the powers sought are necessary for the purpose of the carrying out the development to which the DCO relates and could be exercised without serious detriment to the carrying out of NGED's undertaking and in this respect are consistent with s127 on the basis of the PPs that are reported above and included in rDCO Schedule 9, Part 5.
- 6.7.31. In concluding this, the ExA is mindful that the change recommended was not a matter that the ExA had included within the dDCO consultation [\[PD-022\]](#) the Applicant would therefore not be aware that the ExA favour the arguments presented by NGED.
- 6.7.32. Nevertheless, the Applicant took the opportunity to address the concerns expressed by NGED during CAH2 [\[EV11-001\]](#) and the ExA take the view that there is no risk to fairness or in process should the SoS accept this part of our report.
- 6.7.33. The ExA therefore recommends changes to the dDCO in respect of the definition of specified works and in dealing with the time period for approvals in respect of retained apparatus. These changes are set out in Section 7.3 of this Report.

Wales and West Utilities (WWU) [RR-044]

- 6.7.34. WWU set out their position in respect of the Proposed Development in their initial RR, no further submission was made to the Examination, although the Applicant set out in the Final Land Rights Tracker that agreement to PPs had not been finalised.
- 6.7.35. From the information provided by the Applicant in response to ExQ3 Q5.0.1 and at CAH the area of disagreement relates to 2 matters:
- the definition of 'specified works'
 - the acquisition of land, and WWU to maintain control over the exercise of CA.

The definition of specified works

- 6.7.36. WWU's position is that "specified works" should be defined as any part of the authorised development that is carried out within a 15-metre radius of their apparatus and that a single distance should be applied regardless of the type of apparatus.

The Acquisition of land

- 6.7.37. WWU seek to maintain approval over the Applicant's exercise of any compulsory acquisition powers needed for the implementation of the order.

The Applicant's response

Definition of specified works

- 6.7.38. The current definition of "specified works" included in the bespoke protective provisions for the benefit of Wales and West Utilities is set out in Part 6 of Schedule 9 of the draft DCO. This defines "specified works" by way of referring to WWU Guidance WW/SP/SSW/22 (the "WWU Guidance") (included in [\[REP9A-006\]](#) at Appendix B) and was initially proposed by Wales and West Utilities and agreed by the Applicant with minor amendments from the original wording.

- 6.7.39. The Applicant proposes to include the definition of "specified works" as submitted in the dDCO [\[REP7-002\]](#) to incorporate a non-distance-specific definition of "specified works" and instead incorporate reference to the WWU Guidance which contains graded definitions.

Acquisition of land:

- 6.7.40. The Applicant contends WWU's approach is against Government Guidance and the Applicant could face a significant delay in the implementation of the order if approval prior to using CA powers was required from any third party.

- 6.7.41. The Applicant is not seeking to CA land owned by WWU, only rights over land are sought, and given that the Applicant seeks rights to divert WWU's apparatus, the ExA are satisfied that that the rights are necessary for the purpose of carrying out the development to which the DCO relates. The Applicant seeks to acquire rights which are either being transferred to WWU for their benefit or can co-exist alongside those of WWU with minimum interference.

- 6.7.42. The Applicant states that throughout the negotiation of protective provisions, WWU were unable to provide any evidence to substantiate the need for such restriction. Any works required for the interface with WWU's assets could be carried out by WWU by virtue of Article 10 of the DCO (which transfers the benefit of the order to WWU to the extent required to carry out the diversion works).

The ExA's Consideration

- 6.7.43. In the absence of any detailed arguments presented by WWU to the Examination, we are content that the case presented by the Applicant is robust and the Applicant's preferred dDCO provides safeguards through the PPs proposed. We do not propose any changes to the dDCO with regard to the PPs for WWU in the ExA's rDCO.

ExA's conclusions on s138 for WWU

- 6.7.44. The ExA is satisfied that the powers sought by the Applicant are necessary for the Proposed Development and consistent with s138, on the basis of the PPs included in the dDCO and the ExA's rDCO Schedule 9, Part 6.
- 6.7.45. In concluding these matters for WWU, the ExA is also satisfied that although agreement has not been concluded prior to the end of the Examination, the CA of the relevant interests in WWU's land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so. We consider the Applicant's approach in relation to the CA powers sought in respect

of this land to be acceptable should the SoS decide to grant the Order for the Proposed Development.

Severn Trent Water Limited

- 6.7.46. Severn Trent Water Limited set out in their [\[RR-047\]](#) that there was apparatus that that was anticipated would require to be diverted within the Order Limits. In order to ensure that its interests were protected Severn Trent were negotiating with the Applicant bespoke protective provisions. Severn Trent do not object to the Proposed Development in principle but need to ensure its interests are adequately protected. No further submissions were made from Severn Trent Water during the Examination.

The Applicant's Response

- 6.7.47. The Applicant advised negotiations were ongoing, but that these had not been finalised by the end of the Examination.

The ExA's consideration

- 6.7.48. In the absence of any detailed submissions from Severn Trent Water we consider that despite the PPs not having been formally agreed prior to the end of the Examination there is nothing before us that would indicate that the PPs proposed by the Applicant in the dDCO are not appropriate.
- 6.7.49. The ExA therefore does not propose to make any changes to the PPs for Severn Trent Water as proposed in the dDCO.
- 6.7.50. The ExA therefore concludes that the Applicant's wording in its final dDCO is adequate, and that Severn Trent's interests would be appropriately protected.

ExA's conclusions on s127 and s138 for Severn Trent Water

- 6.7.51. The ExA is satisfied that the powers sought by the Applicant are necessary for the purposes of carrying out the development to which the DCO relates and consistent with s138, and that the powers sought could be exercised without serious detriment to the carrying out of Severn Trent's undertaking, and are consistent with s127, on the basis of the PPs included in the dDCO and the ExAs rDCO Schedule 9, Part 4.
- 6.7.52. In concluding these matters for Severn Trent Water, the ExA is also satisfied that although agreement has not been concluded prior to the end of the Examination, the CA of the relevant interests in Severn Trent's land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so. We consider the Applicant's approach in relation to the CA powers sought in respect of this land to be acceptable should the SoS decide to grant the Order for the Proposed Development.

ExA's Overall Conclusion on Statutory Undertakers

- 6.7.53. In overall conclusion, with regards to those SUs whose rights and apparatus would be interfered with by delivery of the Proposed Development Schedule 9 of the Applicant's dDCO includes provision for the protection of SUs assets. Where representations have not been made the provisions of s127 are not engaged.
- 6.7.54. In respect of the matters discussed above for NGED, WWU and Severn Trent Water the ExA has provided its reasoning and concluded its recommendations under their relevant headings above.

- 6.7.55. Based on the evidence before the ExA, we are satisfied that the relevant PPs contained within Schedule 9 of the rDCO would ensure that an appropriate degree of protection would be given to the affected SUs. That the powers sought comply with s127 and s138 of PA2008 in that the powers sought in each case are necessary for the purpose of carrying out the development to which the DCO relates and that there would be no serious detriment to the carrying out of the SU's undertakings. The ExA is satisfied that the interference with apparatus and extinguishment of rights would be necessary and proportionate for the purposes of carrying out the Proposed Development.

6.8. THE EXA'S CONSIDERATION OF THE CASE FOR COMPULSORY ACQUISITION AND TEMPORARY POSSESSION

- 6.8.1. The ExA's approach to the question of whether and what CA powers it should recommend to the SoS to grant has been to apply:

- the relevant sections of PA2008, notably s122 and s123,
- the CA Guidance,
- the Human Rights Act 1998 and
- the Equality Act 2010.

and, in light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.

- 6.8.2. There are representations from SUs that have not been withdrawn, as set out previously in this section of the report, and therefore s127 of the PA2008 is engaged in the consideration of the application. There are also relevant SU rights and apparatus on land that is the subject of CA of new rights under the rDCO. Section 138 of the PA2008 is therefore also engaged, and the ExA has considered the application and representations accordingly.

- 6.8.3. The dDCO deals with the Proposed Development itself and CA powers. The case for CA powers cannot properly be considered unless and until the ExA has formed a view on the case for the Proposed Development overall, and the consideration of the CA issues must be consistent with that view.

- 6.8.4. The ExA has shown in the conclusions set out in Section 5 of this Report that, on the planning merits, it has reached the view that development consent should be granted. The question that the ExA addresses here, therefore is the extent to which, in the light of the factors set out above, the case is made for the CA and TP powers sought to enable the Proposed Development to proceed.

- 6.8.5. A number of general considerations also have been addressed in the light of the CA Guidance, namely:

- whether all reasonable alternatives to CA have been explored,
- whether the Applicant has a clear idea how it intends to use the land and has demonstrated funds would be available,
- whether the proposed interference with the rights of those with an interest in land would be for a legitimate purpose and that it is necessary and proportionate,
- whether the public benefit clearly outweighs the private loss, and

- whether there would be any impediment to obtaining any operational or other consents.

6.8.6. The ExA has already considered:

- the cases for objectors and has found that none of them would give any reason to override a general conclusion on the Applicant's case for CA and TP powers.
- SUS' land and found that, where representations have not been withdrawn, there would be no serious detriment to the carrying on of the undertaking.

6.8.7. Although the ExA has specifically referred to objections raised by APs, it appreciates that this represents only a proportion of the many or so parcels of land that would be affected. Even though a specific objection may not have been raised in relation to a particular plot of land, the ExA has nevertheless applied the relevant tests to the whole of the land that would be subject to CA or TP powers in reaching its overall conclusions.

Whether all reasonable alternatives to Compulsory Acquisition have been explored

6.8.8. The ExA has had regard to all the objections raised by APs. Notwithstanding the objections, the ExA concludes that the public benefits associated with the Proposed Development would strongly outweigh the private loss which would be suffered by those whose land would be affected by the CA powers sought.

6.8.9. The ExA has also taken into account the particular points made by objectors in relation to alternatives. The ExA is, however, satisfied that the Applicant has explored all reasonable alternatives to CA, including modifications to the Proposed Development. The objections raised do not dissuade the ExA from the conclusion that there are no alternatives to the CA powers sought which would be preferred.

6.8.10. The Applicant is progressing with acquisition by negotiation as an alternative to CA; it has sought to reach voluntary agreements with all APs. It is the Applicant's stated preference that all land and rights (CA and TP) should be acquired through negotiation and agreement, therefore CA powers would only be exercised when it appeared that negotiations would be unlikely to be completed or completed in time.

6.8.11. By the end of the Examination the Final Land Rights Tracker [\[REP10-103\]](#) identified only 13 APs where agreement had not been reached, this had been reduced to 12 on the final day of the Examination where confirmation that NH had reached agreement with the Applicant [\[AS-103\]](#).

6.8.12. The ExA is satisfied that the Applicant has been progressing acquisition of rights by negotiation during the Examination, and from statements given that it would continue to do so.

6.8.13. The ExA are satisfied that the Applicant has explored all reasonable alternatives to CA, including those which have formed the basis of CA objections in accordance with paragraph 8 of the CA Guidance.

Whether the Applicant has a clear idea how it intends to use the land and has demonstrated funds would be available.

Land for Compulsory Acquisition

6.8.14. The ExA is satisfied that the CA powers sought in all the plots of land included in the final BoR and shown on the final Land Plans would be required and are

proportionate for, to facilitate, or to be incidental to the Proposed Development. Both the principal development and the Associated Development would be needed for that purpose. The final BoR includes Additional Land, the CA powers over which are required for certain Change Requests submitted during the Examination. The ExA therefore concludes that the requirements of s122(2)(a) and (b) of the PA2008 are met. The ExA is also satisfied that the Applicant has met the relevant parts of the CA Regulations and the CA Guidance.

The availability and adequacy of funding

- 6.8.15. Through the Examination, the position of the Applicant changed during the process, recognising that the funding by way of developer contributions was not certain, and it could not be relied upon to deliver the Proposed Development, nor would it be available for payment towards compensation in respect of Compulsory Acquisition. Although, the Applicant maintained there was a direct need argument correlating between the Proposed Development and the development of the allocated sites.
- 6.8.16. In the Funding Technical Note [\[REP4-043\]](#) the Applicant maintained that they were confident that the funding for CA compensation was available as the HIF money was secured. The Applicant is confident that it could demonstrate that there is a reasonable prospect of the requisite funds for acquisition being available within 5 years from authorisation.
- 6.8.17. The Funding Statement estimates that the total cost relating to land will be £24,579,173, however a significant amount of land has already been acquired by voluntary agreement and therefore the remaining cost of acquisition will be much lower than this.

ExA's Conclusions on Funding

- 6.8.18. In the ExA's view while the HIF funding is available, which at the end of Examination the Applicant had indicated Homes England had agreed could be extended to March 2028 there is ample funding for the payment of compensation for CA. This funding though is time limited.
- 6.8.19. The ExA agree with the final position reached summarised above under paragraphs 6.6.8 – 6.6.10. The Applicant is not in a position at the current time to say with any degree of certainty what funding might arise from future development, nor is it the determining authority responsible for making such a decision.
- 6.8.20. It is not for the ExA to assess the likely specific case of funding for the respective planning applications, that lies with the respective LPAs to determine in due course.
- 6.8.21. The ExA do agree however, that while the HIF funding is available the Applicant has the necessary funds to be able to meet the obligations that arise to pay compensation to those whose land rights are affected by the Proposed Development.
- 6.8.22. The ExA has confidence that the overall funding position is sufficiently secure that this meet the tests in the CA Regulations and that there is a mechanism in place for the delivery of the scheme.
- 6.8.23. The identified sources of funding do not provide the ExA with any cause for concern or reason to doubt that the Proposed Development could be implemented if granted consent. The ExA is satisfied that, at the close of the Examination, there is a reasonable prospect of funding being available for CA, that any potential

impediments to funding have been properly managed and that there is no potential impediment to the implementation of the Proposed Development arising from any other regulatory requirement.

- 6.8.24. We agree with the Applicant's conclusions that the SoS can be satisfied that adequate and secure funding would be available to enable the CA within the statutory period if the Order is made.

Whether the proposed interference with the rights of those with an interest in land would be for a legitimate purpose and that it is necessary and proportionate

- 6.8.25. The ExA has considered the individual rights interfered with and is satisfied that should the SoST be minded to grant development consent, then for Article 1 of the First Protocol and Article 8, the proposed interference with those rights would be for legitimate purposes that would justify such interference in the public interest. The extent of that interference would be proportionate. In reaching this conclusion, the ExA has had regard to the compensation to which those individuals would be entitled.

Whether the public benefit clearly outweighs the private loss

Public benefit

- 6.8.26. The ExA considers that the Applicant has adequately set out the need case for the Proposed Development. The need case has been justified prior to this application being submitted, and the ExA considers that this strengthens the case for the Proposed Development. In addition, there has been limited objection to the principle of the Proposed Development during the Examination. The ExA agrees with the Applicant that the Proposed Development aligns with NPSNN and the 'compelling need' to improve the national road networks.
- 6.8.27. The ExA has already concluded, earlier in this Report, that there is a compelling need for the Proposed Development and has also concluded that the benefits, including this need, outweigh any harm to such an extent, in terms of the planning merits, that development consent should be granted. In terms of the CA powers sought, the ExA relies on this conclusion and precondition that development consent should be granted.
- 6.8.28. From what the ExA has concluded in relation to the Proposed Development, it also considers that there is sufficient certainty regarding the identified need and justification for the extent of the CA powers sought. The ExA also agrees with the Applicant's overall approach to CA and is satisfied that the measures put in place in rDCO Article 21 would minimise impact from CA. Article 21, which authorises the CA of Order land, grants the power to acquire only such land as is required for the Proposed Development.
- 6.8.29. All of these matters lead the ExA to the view that there is considerable public benefit to be weighed in the balance concerning the compelling case for the CA powers sought. That align with the. PA2008 - Guidance on associated development applications for major infrastructure projects and NPSNN, paragraph 2.2

Private Loss

- 6.8.30. It is agreed that there is private loss across the Proposed Development and in particular for the 32 residential properties to be demolished. The Applicant has

however taken steps to limit the exercise of CA powers in respect of each plot and each individual AP. These include:

- Keeping the areas of land affected by the CA powers to a minimum, commensurate with the implementation of the Proposed Development, including changes to the application during the Examination;
- Seeking wherever possible to rely on TP as an alternative to CA;
- Engaging with persons with an interest in affected land with a view to reaching an agreement by negotiation, and
- Only seeking that part of the land that is required if less of the Order land proves to be required following detailed design.

6.8.31. The extent of the CA powers sought has been justified to the ExA's satisfaction over the Order limits in terms of need in relation to works and mitigation. Furthermore, the Applicant's use of TP powers wherever possible would serve to mitigate the extent of any private loss through the use of CA powers only after the detailed design has been completed. This would inherently reduce the extent of the private loss experienced by those affected by CA.

6.8.32. All of the above matters lead the ExA to the view that, whilst the CA powers sought would be likely to result in wide ranging private loss, this has been reasonably mitigated by the Applicant and remaining loss would be subject to fair and reasonable compensation.

The need to obtain operational and other consents

6.8.33. The ExA is also satisfied that there is nothing to suggest that any consents, permits and licences that may be necessary for the Proposed Development and which are not included in the Recommended DCO, would not be forthcoming, excepting those in respect of the Crown Land referenced earlier in this Section of the Report.

6.8.34. Subject to the SoS being satisfied this is not an impediment to the DCO being granted the ExA concludes that the necessary legal tests have been met.

Associated development s115(2)

6.8.35. Section 115(2) PA2008 provides that, in addition to the development for which consent is required under Part 3 PA2008 (the principal development), consent may also be granted for associated development. PA2008 defines associated development as development which is associated with the principal development.

6.8.36. The Applicant did not differentiate between the NSIP as defined under s14 and s16 PA2008, and associated development. The Applicant noted that there is no requirement for an Order to distinguish between these two categories. It explained in the EM that it has adopted this approach such that all elements of the authorised development either constitute part of the NSIP or are associated development.

6.8.37. The ExA is satisfied that the associated development in Schedule 1 of the rDCO, comprises development for which development consent would be sought. The land required for this associated development can therefore, in principle, be compulsorily acquired pursuant to s122(2) PA2008.

Sections 120(5)(a) and 126 – the Incorporation of Other Statutory Powers

6.8.38. In several instances, the Recommended DCO seeks to apply s120(5)(a) of the PA2008 and apply, modify or exclude a statutory provision. Since the rDCO is in the form of a Statutory Instrument, the ExA concludes that it would comply with s117(4)

of the PA2008. Furthermore, no provision would contravene the provisions of s126 of the PA2008 which relates to the modification or exclusion of a compensation provision.

ExA's overall reasoning: Section 122(2)

- 6.8.39. The ExA is satisfied that the CA rights sought in all the plots of land included in the revised BoR and shown on the amended Land Plan would be required for, or to facilitate or incidental to, the Proposed Development to which the development consent relates. Both the principal development, and the associated development, identified by the application would be needed for that purpose. The ExA therefore confirms that in its opinion, the requirements of s122(2)(a) and (b) PA2008 are met.

Section 122(3) PA2008. Whether there is a Compelling Case in the Public Interest

- 6.8.40. The ExA has had regard to the objections raised by all APs, reported above. Nevertheless, we conclude that the public benefits associated with the Proposed Development would strongly outweigh the private loss which would be suffered by those whose land would be affected by CA powers to enable the construction, operation and maintenance of the Proposed Development.
- 6.8.41. We have taken into account the particular points made by objectors in relation to alternatives, including alternative sites, alternative accesses and modifications to junctions. However, we are satisfied that the Applicant has explored all reasonable alternatives to CA, including modifications to the scheme. The objections raised do not dissuade us from the conclusion that there are no alternatives to the CA powers sought which ought to be preferred.
- 6.8.42. The Applicant has demonstrated a clear idea of how it intends to use the land rights which it proposes to acquire. It has shown that there is a reasonable prospect of the requisite funds, both for acquiring the land and implementing the project becoming available.
- 6.8.43. Taking these various factors together, the ExA concludes that there is a compelling case in the public interest for the CA powers sought in respect of the CA land shown on the final Land Plans. The proposal would thus comply with s122(3) of the PA2008 and the CA Guidance.

Human Rights Act 1998 and Equality Act 2010 Considerations

- 6.8.44. The European Convention on Human Rights was applied within UK domestic law by the Human Rights Act 1998. The CA Guidance, paragraph 10 states that the SoS must be persuaded that the purposes for which an order authorises the CA of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected. Therefore, in assessing whether there is a compelling case in the public interest for the land to be acquired compulsorily, it is also necessary to consider the interference with human rights which would occur, if CA and TP powers were granted.
- 6.8.45. The Applicant acknowledged that the dDCO would engage a number of Articles of the Human Rights Act:
- Article 1 of the First Protocol (the right to those whose property would be compulsorily acquired to the peaceful enjoyment of their possessions);

- Article 6 of the First Protocol (which entitles those affected by the powers sought to a fair and public hearing); and
- Article 8 of the First Protocol (which seeks to protect private and family life, home and correspondence).

6.8.46. The Applicant stated that it carefully considered the human rights relevant to the Proposed Development prior to making the Application and concluded that proposed interference with those rights would be in accordance with law, proportionate and justified in the public interest.

6.8.47. Therefore, the Applicant reasoned that the inclusion of powers of CA in the Order would not constitute any unlawful interference with Convention Rights and further that it would be appropriate and proportionate to make the Order for the Proposed Development including the grant of powers of CA.

ExA's reasoning: Human Rights

6.8.48. In this case, we have attributed substantial weight to the need described in NPSNN for the improvement to the strategic road network and how the Proposed Development would assist in meeting this need.

6.8.49. Having regard to the relevant provision of the Human Rights Act 1998, the ExA has considered the individual rights that would be interfered with, and the submissions made by APs in this regard:

6.8.50. The ExA are satisfied that the powers sought are no more than is required to secure the interests of the wider community and are not likely to place an excessive burden on those whose human rights could be affected. We therefore consider that there would be no violation of Articles 1 and 8.

6.8.51. In relation to Article 6 the ExA is satisfied that all objections which were submitted to the Examination have either been resolved with the AP, and/ or the AP has had the opportunity to present their case to the ExA in writing and/ or at the CAHs. The application and its Examination procedurally accord with PA2008 and related guidance. There is therefore nothing to suggest that parties have not had a reasonable chance to put their case or been put at a substantial disadvantage in relation to other parties.

6.8.52. Finally, in terms of the overarching aims of the Human Rights Act 1998, CA Guidance and the required balancing exercise, we are satisfied that the public benefit from the Proposed Development would clearly outweigh any interference with the human rights of those with an interest in the land affected.

6.8.53. We therefore consider that any interference with human rights would be for legitimate purposes, proportionate and justified in the public interest.

6.8.54. We have found that there is a compelling case in the public interest for all of the land identified to be acquired compulsorily. We therefore consider that the proposed interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest. We conclude, therefore that the CA and TP powers sought are compatible with the Human Rights Act 1998.

6.8.55. **Equality Act 2010**

6.8.56. The Equality Act 2010 establishes a duty to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a

protected characteristic and persons who do not. We have had regard to this duty throughout the Examination and in our consideration of the issues raised in this Report.

- 6.8.57. The Applicant undertook an Equality Impact Assessment (EqIA) [\[REP10-068\]](#) to consider how the proposed Scheme could directly impact and contribute to equality effects for equality groups.
- 6.8.58. The EqIA has been updated during the Examination and will continue to be developed through the design and construction stages of the Scheme, the ExA consider that it should ensure that due regard is made towards the needs of people with protected characteristics under the Equality Act 2010. It also creates the prospect to further identify opportunities for enhancing equality of opportunity and fostering good relations between those who have protected characteristics and those who do not.
- 6.8.59. In respect of land acquisition, the Applicant identified APs with protected characteristics and designed the Scheme considering the issues that could be experienced by equality groups. At paragraph 3.13.10 of the Equality Impact Assessment [\[REP10-068\]](#) it notes that a small proportion of the local population are landowners whose land may be impacted by the Scheme who could also fall into a Protected Group Characteristic.
- 6.8.60. The EqIA identifies the Travellers Site as housing persons with protected characteristics and has included Travellers as part of the assessment.
- 6.8.61. The assessment also shows that if the site is still operational at the time of construction mitigation is included in the design to ensure that access is retained to the site through construction period and also when the Scheme is complete.
- 6.8.62. The ExA considers that the Applicant recognised and has complied with the requirements of the PSED to make reasonable adjustments to processes that would otherwise unfairly disadvantage those with protected characteristics, if such circumstances had the potential to arise. The mitigation offered through the dDCO in respect of a noise barrier and ensuring access remains to the informal traveller site are in direct response to the recognition of the Equalities Duty.
- 6.8.63. The ExA is satisfied that the Applicant has had due regard to the duties under s149 of the Equality Act 2010. In exercising our functions as the ExA, we have had due regard to the PSED contained in s149 Equality Act 2010. We conclude that there is no evidence that implementation of the Proposed Development would disproportionately affect persons who enjoy a protected characteristic, nor would there be any adverse effect on the relationship between such persons and persons who do not share a protected characteristic.
- 6.8.64. We find, overall, that 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. We have, consequently, found no breach of the Public Sector Equality Duty.

6.9. CONCLUSIONS

Sections 120(5)(a) and 126 – the Incorporation of Other Statutory Powers

- 6.9.1. In a number of instances, the rDCO seeks to apply s120(5)(a) of the PA2008 and apply, modify or exclude a statutory provision. Since the Recommended DCO is in the form of a Statutory Instrument, the ExA concludes that it would comply with s117(4) of the PA2008. Furthermore, no provision would contravene the provisions of s126 of the PA2008 which relates to the modification or exclusion of a compensation provision.

Section 122(2) – the Purpose for Which CA is Sought

- 6.9.2. The ExA is satisfied that the CA sought in all the plots of land included in the updated BoR and shown on the updated Land Plan would be required and are proportionate for, to facilitate or be incidental to, the Proposed Development to which the development consent relates. Both the principal development, and the associated development, identified in the application (as amended by Changes 1, and 2) would be needed for that purpose. The requirements of s122(2)(a) and (b) PA2008 are, therefore, met.

Section 122(3) – Whether there is a Compelling Case in the Public Interest

- 6.9.3. Turning to s122(3), we have had regard to all objections raised. We are content that the Applicant has endeavoured to minimise the impact that CA would have on those APs affected by the Proposed Development and hence the extent of their private loss.
- 6.9.4. The private loss to those affected would be mitigated by limiting the use of CA powers to land necessary to deliver the Proposed Development and by the use of TP powers wherever possible to minimise both land take and the extent of rights and interests to be acquired.
- 6.9.5. The ExA are satisfied that the Applicant has explored all reasonable alternatives to CA, including modifications to the Proposed Development and acquisition by negotiation and agreement. The ExA concludes that there are no alternatives to the CA powers sought which ought to be preferred. The ExA is also satisfied that the Applicant has demonstrated a clear idea of how it intends to use the land rights which it proposes to acquire. It has shown that there would be a reasonable prospect of the requisite funds both for acquiring the land and implementing the Proposed Development becoming available within the statutory timescale.
- 6.9.6. The ExA therefore concludes that the public benefits associated with the Proposed Development would strongly outweigh the private loss which would be suffered by those whose land would be affected by CA powers to enable the construction, operation, and maintenance of the Proposed Development. Taking these various factors together, there is a compelling case in the public interest for the CA powers sought in respect of the CA land shown on the Land Plan. The ExA concludes that the Proposed Development would thus comply with s122(3) PA2008.

Temporary Possession

- 6.9.7. The ExA finds that the TP powers sought would be necessary both to facilitate implementation of the Proposed Development and to maintain it and that adequate compensation provisions are in place in the rDCO.

Section 123 - Land to which authorisation of compulsory acquisition can relate

- 6.9.8. Turning to s123 of PA2008 the ExA confirms that we are content that the application for the Order includes a request for CA of the land to be authorised. Also, we confirm that the SoS can be satisfied that at least one of the prescribed conditions have been met with regards diligent enquiry and the right for an AP to be heard regarding CA matters.

Section 127- and 138

- 6.9.9. Section 127 PA2008 objections have been made and not withdrawn. These objections have been considered as reported earlier and where differences remain between the Applicant and one of the SUs, the ExA has recommended wording (which has been before parties during the Examination) for the SoS to include in the rDCO Schedule 9 Protective Provisions.
- 6.9.10. In the case of the one s127 representation, the ExA concludes that the SoS can be satisfied that there would be no serious detriment caused to the carrying on of the undertaking of the SU in question should the CA powers sought be granted. In the case of s138, the ExA is satisfied that the extinguishment of the relevant rights, or the removal of the relevant apparatus, would be necessary for the purpose of carrying out the development to which the Order relates. The ExA's conclusion for both s127 and s138 matters is based on the wording of the PPs which we have included in the rDCO at Appendix D of this Report.

Section 135 – Crown Land

- 6.9.11. The ExA is not satisfied that the Secretary of State for Transport has the necessary s135 consent from the three Crown Land Interests in respect of making an Order authorising the CA of the interests in Crown land as set out in the BoR.

Human Rights Act 1998 and the Equality Act 2010

- 6.9.12. The ExA is satisfied that, in relation to the inclusion of CA and TP powers in the rDCO, any interference with human rights would be for legitimate purposes, would be proportionate and would be justified in the public interest. We are also satisfied that there is no evidence that the Proposed Development would not accord with s149 of the Equality Act 2010. In this regard we are content that the SoS can be satisfied that they would comply with the principles of the PSED in decision-making.

7. DRAFT [DEVELOPMENT CONSENT] ORDER AND RELATED MATTERS

7.1. INTRODUCTION

- 7.1.1. The application for development consent included a draft Development Consent Order (dDCO) [\[APP-031\]](#) and an Explanatory Memorandum (EM) [\[APP-032\]](#). Both documents were updated throughout the Examination. The final version of the Applicant's preferred dDCO was submitted at Deadline 11 [\[REP11-003\]](#), as was the final version of the EM [\[REP10-025\]](#).
- 7.1.2. The EM explains the purpose and effect of each Article and Schedule of the dDCO. It also identifies and explains departures from the now-repealed Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the model provisions). The EM describes how the drafting of the dDCO has drawn on drafting used in other made Orders for highway development under the Planning Act 2008 (PA2008). The submission version of the dDCO [\[APP-032\]](#) and subsequent iterations are in the form of a statutory instrument as required by section (s)117(4) of PA2008.
- 7.1.3. This Chapter provides an overview of the Examination of the dDCO, including the changes made between the submission version dDCO [\[APP-032\]](#) and the final dDCO [\[REP11-003\]](#). It discusses the main DCO issues arising during the Examination and goes on to consider changes made to the final dDCO in order to arrive at the recommended DCO (rDCO) which can be found at Appendix D of this Report. Unless otherwise stated, all references to the dDCO in this Chapter are to the Applicant's final dDCO [\[REP11-003\]](#).

7.2. THE ORDER AS APPLIED FOR

- 7.2.1. The Applicant's final dDCO (Rev 8) [\[REP11-003\]](#) is structured as follows:
- Part 1 (Preliminary):
 - Article 1 sets out how the Order may be cited and when it comes into force;
 - Article 2 defines the meaning of various terms used in the Order;
 - Article 3 deals with the disapplication of legislative provisions; and
 - Article 4 sets out the maintenance of drainage works.
 - Part 2 (Principal Powers):
 - Articles 5 and 6 provide for the grant of development consent for the Proposed Development and allow it to be constructed, and maintained;
 - Article 7 permits certain development authorised by a planning permission within the Order Limits without breaching the Order;
 - Article 8 sets out the lateral and vertical limits of deviation that apply in respect of the Proposed Development; and
 - Articles 9 and 10 set out who has the benefit of the powers of the Order and how those powers can be transferred.
 - Part 3 (Streets):
 - Articles 11 to 17 provide powers for the undertaker to carry out works to and within streets. These include matters relating to the application of the New Roads and Street Works Act 1991; powers for the construction and maintenance of new, altered or diverted streets; the Classification of roads;

the temporary stopping up and restriction of use of streets; the permanent stopping up and restriction of use of streets and private means of access; and access to works.

- Part 4 (Supplemental Powers):
 - Article 18 provides supplemental powers in relation to the discharge of water;
 - Article 19 sets out powers to carry out protective works to buildings; and
 - Article 20 provides authority to the undertaker to survey and investigate the land.
- Part 5 (Powers of Acquisition):
 - Articles 21 to 35 provide powers in relation to the compulsory acquisition (CA) and temporary possession (TP) of land. This includes the extinguishment and suspension of private rights; power to override easements; modification of the Compulsory Purchase Act 1965; and temporary use of land for the carrying out of works and their maintenance. It also provides for powers in relation to the extinguishments of public rights of way. It also provides for powers in relation to the land and apparatus of Statutory Undertakers (SUs).
- Part 6 (Operations):
 - Article 36 provides powers to fell or remove trees and hedgerows;
 - Article 37 provides powers to remove trees subject to Tree Preservation Order; and
 - Article 38 allows for the removal of human remains.
- Part 7 (Miscellaneous and General):
 - Articles 39 to 46 provide various general provisions including the application of landlord and tenant law, defining the operational land, defence to proceedings in respect of statutory nuisance, protection of interests through protective provisions (PPs), certification of plans, service of notices, and arbitration;
 - Article 43 provides for protection for Crown Rights; and
 - Article 47 seeks to resolve any discrepancy with any planning permission granted within the Order Limits.

7.2.2. There are 10 Schedules to the Order:

- Schedule 1, providing for the description of the authorised development pursuant to Articles 5 and 6.
- Schedule 2, Part 1 setting out the 18 Requirements (R) that control the powers contained in the various Articles and Part 2 setting out the procedure for the discharge of Requirements.
- Schedule 3 specifying the classification of roads:
 - Part 1 Special roads;
 - Part 2 Classified roads;
 - Part 3 Unclassified roads;
 - Part 4 Speed limits;
 - Part 5 Traffic regulation measures;
 - Part 6 Revocations and variations of existing traffic regulation orders; and
 - Part 7 Public rights of way.

- Schedule 4 deals with the permanent stopping up of highways and private means of access and provision of new highways and private means of access pursuant to Articles 16 and 25:
 - Part 1 Highways to be stopped up for which no substitute is to be provided;
 - Part 2 Highways to be stopped up for which a substitute is to be provided and new highways which are otherwise to be provided;
 - Part 3 Private means of access to be stopped up for which no substitute is to be provided; and
 - Part 4 Private means of access to be stopped up for which a substitute is to be provided and new private means of access which are otherwise to be provided.
- Schedule 5 sets out the schedule of land in which only new rights may be acquired pursuant to Article 24.
- Schedule 6 setting out the modifications to the statutory provisions applicable to compensation and compulsory purchase enactments for creation of new rights and the imposition of covenants under the Order, pursuant to Article 24.
- Schedule 7 defining the plots of land of which temporary possession may be taken subject to Article 31.
- Schedule 8 listing the trees subject to tree preservation order which may be felled under Article 37.
- Schedule 9, providing in 7 Parts PPs for SUs whose apparatus may be affected by the authorised development further to Article 42.
- Schedule 10 sets out the documents to be certified.

7.2.3. The Examining Authority (ExA) finds that the structure of the Applicant's dDCO [\[REP11-003\]](#) is fit for purpose, and we do not recommend any changes to it.

7.3. CHANGES DURING EXAMINATION

Evolution of the dDCO

7.3.1. The Applicant updated the dDCO several times during the Examination, responding to matters raised in advice under s51 of PA2008, written questions, written representations of Interested Parties (IPs) and as a consequence of the hearing process. At each revision, the Applicant supplied a clean copy of the updated dDCO, a copy showing changes from the previous version as tracked changes and a schedule of changes made to the dDCO, the final iteration being [\[REP11-014\]](#).

7.3.2. The versions of the dDCO submitted by the Applicant are summarised in Table 5, below. In addition, the Applicant provided an updated Guide to the Application at each deadline, the final iteration being Rev12 [\[REP11-015\]](#).

Table 44 Submissions of the dDCO during Examination

dDCO Revision	Deadline	EL Reference
-	Submission	dDCO [APP-031] EM [APP-032]
0	Pre-examination – response to s51 advice 22 March 2024	dDCO (clean) [AS-003] dDCO (tracked) [AS-004] dDCO Change Log [AS-050]

1	D1 18 June 2024	dDCO (Clean) [REP1-004] dDCO (tracked D1 v s51 advice submission) [REP1-005] dDCO (tracked D1 v original submission) [REP1-006] dDCO Change Log [REP1-039]
2	D3 30 July 2024	dDCO (clean) [REP3-011] dDCO (tracked D3 vD1) [REP3-012] dDCO (tracked D3 v original submission) [REP3-013] dDCO Change Log [REP3-039]
3	D4 3 September 2024	dDCO (clean) [REP4-012] dDCO (tracked D4 vD3) [REP4-013] dDCO (tracked D4 v original submission) [REP4-011] dDCO Change Log [REP4-026]
4	D5 1 October 2024	dDCO (clean) [REP5-003] dDCO (tracked D5 vD4) [REP5-004] dDCO (tracked D5 v original submission) [REP5-005] dDCO Change Log [REP5-023]
5	D7 30 October 2024	dDCO (clean) [REP7-002] dDCO (tracked D7 vD5) [REP7-003]

		dDCO (tracked D7 v original submission) [REP7-004] dDCO Change Log [REP7-006]
6	D10 28 November 2024	dDCO (clean) [REP10-022] dDCO (tracked D10 v D7) [REP10-023] dDCO (tracked D10 v original submission) [REP10-024] dDCO Change Log [REP10-096]
7	D11 3 December 2024	dDCO (clean) [REP11-003] dDCO (tracked D11 v D10) [REP11-004] dDCO (tracked D11 v original submission) [REP11-005] dDCO Change Log [REP11-014]

- 7.3.3. The Applicant's final dDCO Change Log [\[REP11-014\]](#) sets out all the changes made to the dDCO between the submission and final versions, together with the rationale for each change.

ExA's Examination of the dDCO

Issue Specific Hearing 2 (ISH2)

- 7.3.4. The ExA held an early ISH on the dDCO on 6 June 2024 [\[EV2-002\]](#). We walked through the main provisions of the Revision 0 version of the dDCO [\[AS-003\]](#) and asked questions about the Articles and Schedules. The Joint Councils (GCC, TBC, CBC) were represented at this hearing as were NH and a number of other IPs also participated in ISH2 [\[EV6-002 – EV6-004\]](#).

ExA's First Written Questions (ExQ1)

- 7.3.5. On 9 July 2024 the ExA issued ExQ1 [\[PD-010\]](#). Section 6 covered questions to a range of parties in respect of the Revision B version of the dDCO [\[AS-003\]](#) and EM [\[APP-032\]](#). Questions relating to PPs with SUs were set out in Section 4.5.

Compulsory Acquisition Hearings (CAH)

- 7.3.6. We held a CAH [\[EV9-001\]](#) on 15 August 2024 and a subsequent CAH on 20 November 2024, where we sought views of parties on the drafting of the dDCO

[[REP1-004](#)], the powers being sought in respect of both CA and TP, and whether the dDCO as drafted was fit for purpose and met the necessary legal tests which apply to CA.

ExA's Further Written Questions (ExQ2)

- 7.3.7. ExQ2 were issued on 10 September 2024 [[PD-012](#)]. Again, we sought clarification regarding protective provisions, requirements and on a number of Articles within the dDCO (Section 6 of ExQ2).

Issue Specific Hearing 4 (ISH4)

- 7.3.8. On 15 and 16 October 2024 the ExA held a further ISH on the dDCO [[EV10-001](#)]. We sought additional clarification on dDCO matters asking further questions on the revisions that had arisen in the earlier parts of the Examination in particular seeking views of parties with regard to the Requirements and progress between parties on Protective Provisions. [[EV10-002](#) – [EV10-012](#)].

ExA's Consultation draft DCO

- 7.3.9. On 7 November 2024 the ExA issued its commentary and questions on Revision 6 of the dDCO [[REP7-002](#)]. The questions focused on the outstanding matters in contention between the Applicant and Interested Parties, including SUs in relation to PPs [[PD-022](#)].

Notable Changes to the dDCO During Examination

- 7.3.10. The Applicant's final Schedule of Changes to the dDCO [[REP11-014](#)] summarises the changes made within each revision of the dDCO. A version of the final dDCO showing all of the amendments made to the dDCO since the point of submission as tracked changes was provided at the final Deadline [[REP11-005](#)].
- 7.3.11. The ExA does not report on every change made to the dDCO during the Examination, as some were minor changes resulting from typographical or grammatical errors or made to improve clarity or consistency. In the interests of conciseness, we focus on the notable changes made to the dDCO in Table 5 below.

Table 5 Notable Changes to the dDCO during Examination

dDCO version and date received	Notable Changes Made
dDCO Rev 1 [APP-031] - 22 March 2024	Article 47 added would allow the development authorised by the DCO to take precedence over the conditions of any planning permissions granted which are inconsistent with the authorised development. The provision would apply from the date on which the authorised development was commenced in order that the Scheme has certainty over the ability to proceed whilst not unnecessarily constraining other consents granted under the Town and Country Planning Act 1990. (This Article was later removed entirely see next entry)

dDCO Rev 2 [AS-003] – 18 June 2024	Amendment to Article 2 to refine the description of the 'Authorised Development'. Addition to Article 7 This article serves to provide reassurance that any further permission under the 1990 Act which is not itself an NSIP and not required to complete or enable the use or operation of any part of the development authorised by this Order can do so without breaching the terms of this Order. The article is clarificatory and serves to provide additional reassurance for any future development within the Order Limits. (The Applicant provided a detailed justification for this Article following ISH 2 in Appendix A (page 47) to [REP1-047]. Amendment of Schedule 2 paragraph 3(2) to prevent working on Sundays for clarification, and if the specified working hours are to be departed from notification is required in advance. Schedule 2 paragraph 9(6) removed as in respect of a potential conflict with progressing the DCO scheme and having agreed resources in place for the financing and storage of archaeological finds. The Environmental Management Plan (EMP) which requires to be approved includes for the agreement of an Archaeological Management Plan (AMP). Schedule 2 paragraph 11, 15, 17(3) changed to read in accordance with and refers to different environmental effects as opposed to worse adverse to reflect common practice. Article 47 deleted to align with amended Article 7.
dDCO Rev 3 [REP3-011] – 30 July 2024	Amendment to Article 3 to ensure there is compatibility with the Hedgerow Regulations 1997 and that the Undertaker would benefit from the change as proposed. Remove the word 'approximately' from a range of schedules to ensure greater precision. Change Schedule 2 paragraph 3(4) to align the wording to ensure consultation for EMP (3rd iteration) is on the same basis as EMP (2nd iteration). Amendment to Schedule 2 paragraph 9 at the request of Historic England to align the wording for the dDCO with the title of the AMP. Schedule 5 plots 15/3d and 16/5b – the addition of a new right to construct use, protect, inspect and maintain a flood compensation area to align with changes to the work plans.
dDCO Rev 4 [REP4-012] – 3 September 2024	Schedule 2 amended moving the definition of the county planning authority to Article 2. Schedule 2 paragraph 4 – addition of the design principles report.

	Schedule 2 paragraph 11 – the Requirement now requires that the authorised development be designed in detail and carried out so that it is in accordance with the design principles set out in the design principles report.
dDCO Rev 5 [REP5-003] - 1 October 2024	Amendment to Article 13 with the addition of the strategic highway authority to extend protection to National Highways. Schedule 2 Part 1 Requirement 12 amended to be in accordance with rather than reflecting to be consistent with other requirements.
dDCO Rev 6 [REP7-002] 30 October 2024	Articles 7(2) and 7(3) deleted. Schedule 2 Part 1 Requirement 8 amended to require the completion of remedial measures a validation report to be provided at the request of the Environment Agency.
dDCO Rev 7 [REP10-022] – 28 November 2024	Amendments to description of documents and plans in Article 2 to ensure alignment with the dDCO and those plans. Amendments to Article 27(2) and Article 28(6) relating to the modification of The Compulsory Purchase Act 1965 to reflect changes to the wording of section 4A(1)(a) and 5B(a) of the 1965 Act made by the Levelling-up and Regeneration Act 2023. Series of changes to Schedule 1 to reflect the changes covered by Change Application No. 2. Insertion of a new Work No. 36 to incorporate changes for Change Application 2, which was required as part of Change 5 of the Change Application 2, being additional works for the relocation of the NRTS transmission station. Schedule 2 Part 1 Requirement 3 amended to insert a 'river realignment and channel diversion plan'. Schedule 2 Part 1 Requirement 9 amended to be in accord with as identified in ExA consultation draft. Schedule 2 Part 1 Requirement 16 and 17 inserted to reflect ExA suggestion of the need to submit building and construction materials for highways and structures. Series of changes to Schedules 3, 4, and 5 to reflect the Change Application No.1 and No.2. Amendments to Schedule 7 to reflect Change Application No.1. Schedule 9 Part 3 paragraph 21 amended to include definition of a 'bond sum' following discussions with National Highways, and subsequent paragraph 39 adjusted to provide security linking to bond. Schedule 9 Part 4. paragraph 25(7) c 2 months replaced with 42 days following consideration of ExA consultation draft and

	subsequent paragraph 40 adjusted to ensure clarity of measurements relatives to underground pipes also identified in ExA DCO consultation. Schedule 9 Part 4 paragraph 42 adjusted to provide clarity over 'reasonable time' period for notice to be given.
dDCO Rev 8 [REP11-003] - 3 December 2024	Adjustments to Schedule 5 to ensure plot numbers align with the Statement of Reasons. Amendments to Schedule 7 to align with the Statement of Reasons. Schedule 9 Part 3 Protective Provisions with National Highways replaced in their entirety in line with discussions with National Highways.

- 7.3.12. In addition to the above changes, the ExA identified a series of changes in the consultation dDCO which we considered had the potential to improve the DCO. These were identified in our consultation dDCO [\[PD-022\]](#) and were subject to further discussion and examination at ISH4 [\[EV10-001\]](#). Of these changes, three related to typographical errors, a further three suggested two additional requirements and the consequent renumbering that arose. Each of these changes were accepted by the Applicant and have been included in the Applicant's preferred dDCO [\[REP11-003\]](#).
- 7.3.13. We also suggested in the ExA's dDCO consultation, amendments to the following Articles:
- Article 11 Street Works,
 - Article 15 (6) Temporary stopping up and restriction of use of streets,
 - Article 18 (7) Discharge of Water, and
 - Article 20 (6) Authority to survey and investigate the land.
- 7.3.14. The ExA proposed the addition to Article 11 to seek to ensure the appropriate approval was in place from the street authority, for undertaking works in a street, and there was a time limit (42 days) for the street authority to make a decision.
- 7.3.15. The Applicant acknowledged the balance sought to be drawn between deemed consent and the requisite notice period and confirmed that provided that a side agreement is entered into between the Applicant and National Highways (who, in practice, this Article applies to) which further governs this process, the Applicant accepts this change to 42 days. No response was made to the additional Articles which required consent to be applied for.
- 7.3.16. This 42 day period was also proposed by the ExA in Articles 15, 18, and 20 for consistency, but also in seeking to balance the need to ensure the ongoing safe operation of the SRN, with the ability to progress the design and completion of the Proposed Development.
- 7.3.17. The Applicant accepted the argument presented for the changes to the 42 day period and the other elements of Article 11 [\[REP9-010\]](#) although they identified that a 28-day period had been accepted as an appropriate time for determination in previous DCO applications, citing a series of examples where National Highways

had been the Applicant as well as others where local highway authorities had been the applicant.

- 7.3.18. Despite this apparent acceptance in writing in [\[REP9-010\]](#) following the ISH, the Applicant did not make the changes to Revision 7 of their preferred dDCO [\[REP10-023\]](#) or in their final preferred dDCO [\[REP11-003\]](#).
- 7.3.19. The ExA consider that the addition of paragraphs (4), (5) and (6) to Article 11 would ensure that the appropriate consent from the street authority is required in advance of work taking place. This would ensure consistency within the DCO in seeking consent for such works. However, having reflected on the 42 day period we suggested, and the subsequent agreement being reached with NH, we no longer consider it necessary to seek a 42 day period for approval, and accept that a 28 day period would be appropriate.
- 7.3.20. The deemed consent process now proposed in the rDCO would align with previous DCOs cited by the Applicant and give the certainty that the street authority has the necessary controls while allowing the Applicant to progress the Proposed Development.
- 7.3.21. The further changes made at D11 by the Applicant to their preferred dDCO [\[REP11-003\]](#) followed the completion of a side agreement with National Highways. [\[AS-113\]](#). and included the full suite of PPs requested by NH, leading to NH withdrawing all objections to the scheme on 4 December 2024 [\[AS-113\]](#).

Protective Provisions for Statutory Undertakers

- 7.3.22. At the time of preparing the Consultation DCO [\[PD-022\]](#) the EA did not know the final position of the Applicant and SUs in respect of the PPs set out in Schedule 9 of the dDCO.
- 7.3.23. As set out in Section 6.7 of this Report the ExA has considered the land rights issues that arise for SUs in light of the DCO proposals. Three SUs had not confirmed that PPs were agreed by the close of the Examination.
- 7.3.24. NGED however, were the only SU to present evidence as to why the Applicant's preferred PPs were not deemed to be appropriate. We have therefore accepted the Applicant's position in respect of their preferred PPs as proposed for both WWU and Severn Trent Water.
- 7.3.25. Schedule 9 Part 5 of the dDCO sets out the proposed PPs for NGED. In light of the specific detailed arguments presented by NGED in respect of the PPs they prefer, and the fact these PPs have been included in other recent DCOs we have concluded to accept these arguments over those presented by the Applicant.

Matters not Agreed by Close of Examination

- 7.3.26. By the close of Examination there remained a single Article where there was not agreement between parties this relates to Article 23 – Time Limit for exercise of authority to acquire land compulsorily, and the ExA's changes proposed as a result of our conclusions on PPs and Article 11 referenced above.

Applicant's Case on time limit for Compulsory Acquisition

- 7.3.27. The wording in the final version of the Applicant's preferred dDCO can be found on page 18 of [\[REP11-003\]](#).

- 7.3.28. Throughout the Examination the question of funding for the project formed an area of disagreement between the Applicant and the main IPs (JCs [\[REP4-048c\]](#), NH [\[REP1-059\]](#), Bloor Homes [\[REP1-050\]](#)) amongst others. Indeed, the Applicant identified it as the one additional matter which was asked to be examined during consideration of the IAPI at the PM, [\[PDA-001\]](#). A difference of view in respect of how the scheme could be funded remained by the close of the Examination and is perhaps best summarised in the Applicant's final submission document [\[REP11-016\]](#).
- 7.3.29. We have dealt with the issue of funding in Section 6.8.20 of this Report and the more detailed examination of this element of the DCO is covered there.
- 7.3.30. In our consultation dDCO [\[PD-022\]](#) we indicated a reduction in the period of time that the CA powers under Article 23 could be exercised to 2 years 6 months as opposed to the 5 years being sought by the Applicant.
- 7.3.31. At that time the ExA was of the view that the certainty of the funding for compulsory acquisition relied upon the HIF funding being in place which is of itself time limited to the end of 2027. In the event the SoS makes a positive decision to grant the DCO in June 2025, the date currently anticipated for a decision, there would only remain a 2 year 6 month window for the scheme to have the HIF funding available. It was our view at that time that to be confident the CA powers sought could be that the Applicant would need to do so within a reduced period as there was not an alternative source of funding available that the Applicant relied upon.
- 7.3.32. The Applicant responded in (page 9) of [\[REP9-010\]](#) and further expanded on this at ISH5 and in subsequent post hearing submissions (page 18) of [\[REP10-104\]](#).
- 7.3.33. The Applicant considers that the period of 2 years and 6 months is unduly restrictive as it does not allow for an extension to the HIF funding, which the Applicant indicates has recently been secured with Homes England. (Point 3 of Actions arising from ISH5) [\[REP10-104\]](#).
- 7.3.34. The Applicant maintains [\[REP9-010\]](#) that there is a strong precedent for a five year time period for CA having reviewed all DCOs the only consent the Applicant is aware of which reduced the time period was at Manston Airport which had very particular set of circumstances which are not common with the current application.
- 7.3.35. The Applicant also refers to other DCOs where the CA period has been extended, in the case of example The East Anglia TWO Offshore Wind Farm Order 2022 and The East Anglia ONE North Offshore Wind Farm Order 2022 to seven years and Thames Tideway Tunnel Order 2014 was also granted an implementation period of 10 years.
- 7.3.36. The Applicant maintains [\[REP11-025\]](#) a strong preference for the 5 year period to remain, however recognises that a three year implementation period balances the impact to affected persons (ie limiting the period within which a property is blighted) against the public benefit of the Scheme (giving sufficient time for land to be acquired and the scheme proceeding).
- 7.3.37. The Applicant also identifies that key to this consideration is that the Applicant would not be required to acquire all land interests at the outset of the Scheme and may wish to stage its acquisition to ensure land is acquired only when needed at that stage in the Scheme. This has clear benefits in reducing the amount of time

land is left fallow or abandoned awaiting use for the Scheme and equally enables affected persons to remain on and use their land for a longer period.

- 7.3.38. Having a set period of 3 years which would likely run from June 2025 – June 2028 would coincide with the likely build timetable of the Scheme, taking into account the possibility of a limited period of delay.
- 7.3.39. The Applicant also recognises that the implementation period for CPO (CA in this case) was set at three years from the Compulsory Purchase Act 1965 and in such circumstances, it has clearly been an established principle that 3 years adequately balances the impact on affected persons with the need for flexibility within the Order.
- 7.3.40. The Applicant notes that whilst the Planning Act 2008 did specifically remove the applicability of section 4, Compulsory Purchase Act 1965 on any DCOs containing compulsory acquisition powers, the public law considerations that have been in place since at least 1965 are still relevant and would support a three year implementation period.
- 7.3.41. Notwithstanding that, the Applicant remains of the position that 5 years is an appropriate period, the Applicant considers that replacement with 3 years would not place undue pressure on affected persons beyond that of a usual Order and, provided this is the minimum period, would provide an appropriate period for implementation.
- 7.3.42. The Applicant is also mindful that any delay to a grant of the Order would likely result in the Applicant having to seek an extension of the funding availability period outside of Homes England delegated authority, where permission would be needed potentially from both MHCLG and HM Treasury.

ExA's Conclusion and Recommendation

- 7.3.43. The ExA having reflected upon the submissions made by the Applicant and the evidence presented during the Examination considers that a 2 year 6 month period would be too restrictive, however we believe that adjusting it to three years would align with both the Applicant's stated build programme and the availability of the HIF Funding.
- 7.3.44. It is the certainty of the HIF funding and the period for which it is available that gives the certainty that funding is available for compensation payments where due in respect of CA. This period would also provide for a suitable balance to be struck between the public benefits of the scheme with the impact to affected persons.
- 7.3.45. Should the SoS agree with this conclusion, there would need to be amendments two further Articles, 27 and Article 28 to reflect this change.
- 7.3.46. We also consider that the additions to Article 11 make clear that consent from the street authority would be required, in advance of such works, and this gives the certainty for both the undertaker and the street authority that there is a clear approval process to follow. The Applicant had appeared to accept this change in their response to the consultation on the ExA dDCO changes but have subsequently entered into a side agreement with NH.
- 7.3.47. This side agreement has not been before the Examination, and the ExA are therefore not in a position to conclude whether this has established an alternative

approval process, it is our view that without the certainty of this the amended Article we recommend is needed in these circumstances.

7.3.48. With regard to SUs as we set out earlier and explain in Section 6.7 of this Report the ExA recommend the amendment of PPs for NGED as such these are included in our rDCO.

7.3.49. The suggested wording that the ExA recommends is set out in the Table below and the rDCO which is at Appendix D of this Report.

Table 6 DCO Provisions Recommended to be Changed

Provision	Applicant's final dDCO	ExA Recommended Change
Article 11 – Street Works	Street works 11.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets 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; and (e) execute any works required for, or incidental to, any works referred to in sub-paragraphs (a), (b), (c) and (d). (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) Subject to article 12 (application of the 1991 Act), the provisions of sections 54 to 106 of the	Add (4) The powers conferred by paragraph (1) are not to be exercised without the consent of the street authority; but such consent must not be unreasonably withheld. (5) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent. (6) Paragraphs (4) and (5) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Provision	Applicant's final dDCO	ExA Recommended Change
	1991 Act apply to any street works carried out under paragraph (1).	
Article 23 – Time Limit for exercise of authority to acquire land compulsorily	Time limit for exercise of authority to acquire land compulsorily 23.—(1) After the end of the period of 5 years beginning on the day on which this Order is made— (a) no notice to treat is to be served under Part 1 of the 1965 Act as modified by article 27 (modification of Part 1 of the 1965 Act); and The article continues from here but is unamended, so not repeated.	Time limit for exercise of authority to acquire land compulsorily 23.—(1) After the end of the period of 3 years beginning on the day on which this Order is made— (a) no notice to treat is to be served under Part 1 of the 1965 Act as modified by article 27 (modification of Part 1 of the 1965 Act); and
Article 27	Modification of Part 1 of the 1965 Act 27.—(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. (2) In section 4A(1)(a) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the applicable period for the purposes of section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 23 (time limit for exercise of	Modification of Part 1 of the 1965 Act 27.—(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. (2) In section 4A(1)(a) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the applicable period for the purposes of section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the three year period mentioned in article 23 (time limit for exercise of authority to acquire land

Provision	Applicant's final dDCO	ExA Recommended Change
	authority to acquire land compulsorily) of the M5 Junction 10 Development Consent Order 202[•]”. The article continues from here but is unamended, so not repeated.	compulsorily) of the M5 Junction 10 Development Consent Order 202[•]”.
Article 28	Application of the 1981 Act 28.—(1) The 1981 Act applies as if this Order were a compulsory purchase order. (2) The 1981 Act, 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 other body or person authorised to acquire land by means of a compulsory purchase order.” (4) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end. (5) Omit section 5A(a) (time limit for general vesting declaration). (6) In section 5B(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the applicable period	Application of the 1981 Act 28.—(1) The 1981 Act applies as if this Order were a compulsory purchase order. (2) The 1981 Act, 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 other body or person authorised to acquire land by means of a compulsory purchase order.” (4) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end. (5) Omit section 5A(a) (time limit for general vesting declaration). (6) In section 5B(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the applicable period for the purposes of section 5A” substitute “section 118(c) (legal challenges relating to

Provision	Applicant's final dDCO	ExA Recommended Change
	for the purposes of section 5A" substitute "section 118(c) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 23 (time limit for exercise of authority to acquire land compulsorily) of the M5 Junction 10 Development Consent Order 202[•]". The article continues from here but is unamended, so not repeated.	applications for orders granting development consent) of the Planning Act 2008, the three year period mentioned in article 23 (time limit for exercise of authority to acquire land compulsorily) of the M5 Junction 10 Development Consent Order 202[•]".
Schedule 9 Part 5 Protective Provisions for the Protection of National Grid Electricity Distribution (West Midlands) Plc.	Interpretation "specified work" means so much of any of the authorised development that is carried out within: (a) 6 metres of any apparatus comprising pylons, towers and Extra High Voltage (EHV) assets; and (b) 1 meter of apparatus comprising high voltage (HV) and low voltage (LV) assets. "undertaker" means Gloucestershire County Council or such other person as has the benefit of the Order; and other terms have the meaning given in article 2 (interpretation).	Interpretation "specified work" means so much of any of the authorised development that is carried out within: (a) 6 metres of any apparatus. Delete the following text: <i>comprising pylons, towers and Extra High Voltage (EHV) assets; and</i> <i>(b) 1 meter of apparatus comprising high voltage (HV) and low voltage (LV) assets.</i> <i>"undertaker" means Gloucestershire County Council or such other person as has the benefit of the Order; and</i> <i>other terms have the meaning given in article 2 (interpretation).</i>
Schedule 9 Part 5 Protective Provisions for the Protection of National Grid	Retained Apparatus (7) Nothing in this paragraph 7 (Retained apparatus) precludes the	Retained Apparatus (7) Nothing in this paragraph 7 (Retained apparatus) precludes the undertaker

Provision	Applicant's final dDCO	ExA Recommended Change
Electricity Distribution (West Midlands) Plc	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 specified works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph 7 (Retained apparatus) apply to and in respect of the new plan. (8) Where the undertaker submits a revised plan of specified works pursuant to a reasonable requirement of NGED under this paragraph 62 (Retained apparatus), then subject to sub-paragraphs (9) and (10) the revised plan must be submitted no less than 60 days before commencing the execution of the specified works. (9) The undertaker shall not commence any specified works to which sub-paragraph (8) applies until NGED has identified any reasonable requirements it has for the alteration or protection of the apparatus, or for securing access to it. (10) If by the expiry of 40 days beginning with the date on which a revised plan under subparagraph (8) is submitted NGED has not advised the undertaker in writing of any reasonable requirements for the alteration or protection of the apparatus, or for securing access to it, it shall be deemed not to have any such requirements and the undertaker shall be at liberty to proceed with the	from submitting at any time or from time to time, but in no case less than 60 days before commencing the execution of any specified works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph 7 (Retained apparatus) apply to and in respect of the new plan. Delete the following text: <i>(8) Where the undertaker submits a revised plan of specified works pursuant to a reasonable requirement of NGED under this paragraph 62 (Retained apparatus), then subject to sub-paragraphs (9) and (10) the revised plan must be submitted no less than 60 days before commencing the execution of the specified works.</i> <i>(9) The undertaker shall not commence any specified works to which sub-paragraph (8) applies until NGED has identified any reasonable requirements it has for the alteration or protection of the apparatus, or for securing access to it.</i> <i>(10) If by the expiry of 40 days beginning with the date on which a revised plan under subparagraph (8) is submitted NGED has not advised the undertaker in writing of any reasonable requirements for the alteration or protection of the apparatus, or for securing access to it, it shall be deemed not to have any such requirements and the undertaker shall be at liberty</i>

Provision	Applicant's final dDCO	ExA Recommended Change
	specified works. The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to NGED notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with any reasonable requirements stipulated by NGED under sub-paragraph (2) and with sub-paragraphs (4) and (5) in so far as is reasonably practicable in the circumstances. Nothing in this sub-paragraph prevents NGED from exercising its rights under sub-paragraph (6).	<i>to proceed with the specified works.</i> (8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to NGED notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with any reasonable requirements stipulated by NGED under sub-paragraph (2) and with sub-paragraphs (4) and (5) in so far as is reasonably practicable in the circumstances. Nothing in this sub-paragraph prevents NGED from exercising its rights under sub-paragraph (6).

7.4. CONCLUSIONS

- 7.4.1. The ExA has examined the notable changes to the dDCO, from the submission version [\[APP-031\]](#) to the final version [\[REP11-003\]](#), as set out in Table 1 above. We have considered the degree to which the Applicant's final dDCO has addressed matters arising during the Examination.
- 7.4.2. The ExA is satisfied that, subject to the amendments recommended in Table 2 above, the Requirements set out in the Applicant's final dDCO provide mitigation for potential adverse effects identified in the ES. In this regard, we consider that the Requirements are necessary, reasonable, enforceable and sufficiently precise, as well as being relevant to planning and to the Proposed Development.
- 7.4.3. Only three matters relating to the provisions of the dDCO are the subject of recommendation changes in this Chapter (as set out in Table 8 above) and are included in the rDCO in Appendix D of this Report.
- 7.4.4. Taking all matters raised in this Chapter and all matters relevant to the DCO raised in the remainder of this Report fully into account, should the SoS decide to make the DCO, it is recommended to be made in the form set out in Appendix D of this Report.

8. SUMMARY OF FINDINGS AND CONCLUSIONS

8.1. INTRODUCTION

- 8.1.1. This Chapter summarises the Examining Authority's (ExA) conclusions and sets out our recommendation to the Secretary of State (SoS) for Transport.

8.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

- 8.2.1. In respect of s104 of the Planning Act 2008 (PA2008), the ExA concludes that making the recommended Development Consent Order (rDCO) would be in accordance with the NPSNN 2015.
- 8.2.2. This Report also considers relevant elements of the NPSNN 2024 which was before the parties during the Examination. Whilst the 2015 version remains the designated NPSNN under transition provisions, the NPSNN 2024 is capable of being important and relevant. We have identified no conflict with the NPSNN 2024 which in some respects lend support to the need case for the Proposed Development.
- 8.2.3. Furthermore, making the rDCO would not substantially conflict with relevant the NPPF, development plan policy or other relevant policy, all of which have been taken into account in this Report. In reaching our conclusions, we have also had regard to the Local Impact Report from the Joint Councils.
- 8.2.4. We have found that the Proposed Development is not likely to have a significant effect on the qualifying features of any European sites, when considered alone or in combination with other plans or projects. We consider that there is sufficient information before the SoS to enable them to conclude that an appropriate assessment is not required.
- 8.2.5. As required by Regulation 3(1) of the Infrastructure Planning (Decisions) Regulations 2010, we have had regard to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they possess. We have also had regard to the desirability of preserving a Scheduled Monument or its setting.
- 8.2.6. We have found that there is a compelling need for the Proposed Development in line with the NPSNN and that the consideration of alternatives by the Applicant has met the legal and policy requirements in terms of:
- The EIA Directive,
 - The Habitats and Water Framework Directives,
 - Flood risk sequential and exception tests.
- 8.2.7. We have identified that there would be benefits arising from the scheme in respect of:
- Significant transport benefits including road safety, and capacity,
 - Air quality benefits to the Cheltenham Air Quality Management Area (AQMQ),
 - Ecological benefits and the provision of BNG,
 - Socio economic benefit through improved accessibility.
- 8.2.8. Where we have found that there would be harm to the significance of designated heritage assets (as set out in Section 3.9 of this Report), we have found that this

would be less than substantial in each instance. In Chapter 5 of this Report, we conclude that taking into account the public benefits of the Proposed Development, there is a clear and convincing justification for the harm that would arise to designated heritage assets, both individually and collectively.

- 8.2.9. We have considered whether the determination of this application in accordance with the relevant NPS would lead the UK to be in breach of any of its international obligations where relevant. We are satisfied, in all respects, that this would not be the case. Neither would it lead to the SoS being in breach of any duty imposed upon them by or under any enactment or be otherwise unlawful by virtue of any enactment.
- 8.2.10. Taking account of the mitigation secured through the rDCO in Appendix D of this Report, there are no adverse impacts arising from the Proposed Development that would outweigh its benefits. For these reasons, we find that the Proposed Development would meet the tests in s104 of PA2008. Moreover, there is nothing to indicate that the application should be decided other than in accordance with the NPSNN.
- 8.2.11. We have considered the case for Compulsory Acquisition (CA) and Temporary Possession (TP) of land and rights in order to implement the Proposed Development. We are satisfied that the legal interests in all plots of land included in the final Book of Reference [\[REP10-033\]](#) and indicated on the final Land Plans [\[REP10-003\]](#) are justified in order to implement the development and comply with the PA2008. They should therefore be granted in the event that the development consent order is made. Our recommendations in respect of the grant of CA powers, and the s127 and s138 representations are set out in Chapter 6.
- 8.2.12. For the reasons set out in Chapter 6, we find that the CA and TP powers sought by the Applicant are justified in order to implement the development and comply with the PA2008. They should therefore be granted in the event that the development consent order is made. Our recommendations in respect of the grant of CA powers, and the s122, s123, s127 and s138 test are set out in Chapter 6.
- 8.2.13. In respect of Crown Land consent, this has not been received from the three relevant bodies, (MHCLG, Crown Estate Commissioners, or DEFRA) and this remains a necessity to allow the rDCO to be made.
- 8.2.14. We have had regard to the provisions of the Human Rights Act 1998, in particular Article 6 (Acts of public authorities), Article 8 (Judicial remedies) and Article 1 of the First Protocol (Protection of property). We were particularly mindful of the fact that the Application proposes the interference with 34 and demolition of 32 residential properties.
- 8.2.15. We consider that the Examination has ensured a fair and public hearing, that any interference with human rights arising from implementation of the Proposed Development is proportionate and strikes a fair balance between the rights of the individual and the public interest. We are satisfied that compensation would be available in respect of any quantifiable loss. There is no disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.
- 8.2.16. Throughout the Examination and in producing this Report, we have also had due regard to the Public Sector Equality Duty (PSED). The PSED is principally considered in Chapter 6 of this Report. The Proposed Development would 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 would be no breach of the PSED.

- 8.2.17. In respect of all other matters and representations received, the ExA is satisfied that there are no important or relevant matters that would individually or collectively lead to a different recommendation from that set out below. We are satisfied that the Proposed Development meets the tests in s104 of PA2008.

Matters for the attention of the Secretary of State

- 8.2.18. The ExA has been able to make recommendations on all matters relevant to the application except for issue regarding Crown land consent and the updated NPPF published in December 2024.

Compulsory Acquisition of Crown Land

- 8.2.19. As reported in Chapter 6 of this Report, there remains an absence of consent from the Secretary of State for the Department for Levelling Up, Housing & Communities, (now MHCLG) in respect of plot 13/6a and the Department for Environment Food & Rural Affairs for plot 13/3r and the Crown Estate Commissioners in respect of plots 14/5a and 14/7a.

Revised NPPF (December 2024)

- 8.2.20. On 12 December 2024, the revised NPPF was published. As this occurred during the recommendation period for this scheme, the parties have not had an opportunity to comment on the content of the revised NPPF. The SoS may wish to consider whether there are any material matters that the SoS may consider important and relevant in this respect prior to the making of the decision.

8.3. RECOMMENDATION

- 8.3.1. The ExA recommends that the SoS makes the M5 Junction Improvements Scheme DCO in the form recommended at Appendix D of this Report, subject to the SoS being satisfied regarding the outstanding matters on Crown Land and the NPPF 2024.

APPENDICES

APPENDICES I

APPENDIX A: REFERENCE TABLES II

APPENDIX B: LIST OF ABBREVIATIONS I

APPENDIX C: HABITATS REGULATION ASSESSMENT I

APPENDIX D RECOMMENDED DCO XXIV

APPENDIX A: REFERENCE TABLES

Contents

- A1 Statements of Common Ground
- A2 Principal Areas of Disagreement Summary Statement
- A3 Summary of Legislation Relevant to the Proposed Development
- A4 Summary of Other National Policies Relevant to the Proposed Development
- A5 Made Orders
- A6 Relevant Local Plan and Supplementary Planning Documents Policies
- A7 Local Plan Policy Relevant to Specific Planning Matters Considered in this Recommendation

APPENDIX A1 Statements of Common Ground

The table below is an alphabetical list of final Statements of Common Ground between the Applicant and Interested Parties at the end of the Examination with Examination Library references.

Interested Party	Examination Library Reference	
	Original Submission	Final Submission
Joint Councils	APP-146	REP10-072
National Highways	APP-147	REP11-010
The Environment Agency	APP-148	REP10-076
Natural England	APP-149	REP10-078
Historic England	APP-150	REP10-080
Bloor Homes and Persimmon Homes – North West Cheltenham (Elms Park)	APP-151	REP10-082
Bloor Homes - Safeguarded land adjacent to Junction 10 of the M5	APP-152	REP10-084
Cheltenham Borough Council and Midland Land Portfolio Limited – West Cheltenham (Golden Valley)	APP-153	REP10-086

APPENDIX A2 Principal Areas of Disagreement Summary Statement

Interested Party	Examination Library Reference	
	Original Submission	Final Submission
National Highways	AS-114	REP11-007

APPENDIX A3 Summary of Legislation Relevant to the Proposed Development

The Climate Change Act 2008

The Climate Change Act 2008 (2050 Target Amendment) Order 2019

The Conservation of Habitats and Species Regulations 2017

The Countryside and Rights of Way Act 2000

The Environment Act 1995

The Environment Act 2021

The Environmental Protection Act 1990 (as amended)

The Equality Act 2010

The EU Floods Directive (2007/60/EC)

The Flood and Water Management Act 2010

The Flood Risk Regulations 2009

The Hedgerow Regulations 1997

The Highways Act 1980

The Human Rights Act 1998

The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended) (EIA Regulations)

The Land Drainage Act 1991

The Land Drainage Act 1994

The Natural Environmental and Rural Communities Act 2006 (NERC) (as amended)

New Roads and Street Works Act 1991

The Planning (Listed Buildings and Conservation Areas) Act 1990

The Planning Act 2008

The Protection of Badgers Act 1992

The Reservoirs Act 1975

The Traffic Management Act 2004

The Water Act 2003

The Water Act 2014

The Water Environment (Water Framework Directive) (England and Wales) (Amendment) Regulations 2015

The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017

The Water Resources Act 1991

The Wildlife and Countryside Act 1981 (as amended)

Water Framework Directive (2000/60/EC)

APPENDIX A4 Summary of Other National Policies Relevant to the Proposed Development

Net Zero: The UK's Contribution to Stopping Global Warming, May 2019

The Committee on Climate Change produced Net Zero: The UK's contribution to Stopping Global Warming. This recommended a new emissions target for the UK of net-zero greenhouse gases by the year 2050.

Road Investment Strategy 2020-2025 (RIS2)

The Government published their second Roads Investment Strategy (RIS2) in March 2020 to cover the period to 2025. Following the initial RIS, the government has committed to spending £27.4 billion during the period to build new road capacity, improve the quality and reduce the negative impacts of the existing SRN.

The Strategic Vision for RIS2 recognises the need to create a network which supports the economy, creates a greener network, creates a safe and more reliable network, delivers a more integrated network and creates a smarter network.

Part 1c sets out the strategic vision for the network to 2050, Part 1d sets out how the vision will be delivered, and Part 3 outlines the investment plan. Section A acknowledges that infrastructure is vital if the economy is to grow, and new housing is to be built.

National Infrastructure Strategy (2020)

The National Infrastructure Strategy was published by HM Treasury in 2020 and sets out plans to transform UK infrastructure in order to level up the country, strengthen the Union and achieve net zero emissions.

The executive summary recognises that 'infrastructure underpins the economy. Transport, digital, energy and utility networks are vital for jobs, businesses, and economic growth.'

Department for Transport (DfT) Outcome Delivery Plan: 2021 to 2022 (2021)

The Outcome Delivery Plan sets out how DfT will continue to deliver priority outcomes, measure success and improve. The three Priority Outcomes are:

- *'Improve connectivity across the UK and grow the economy by enhancing the transport network, on time and on budget.'*

- *Build confidence in the transport network as the country recovers from COVID-19 and improve transport users' experience, ensuring that the network is safe, reliable and inclusive.*
- *Tackle climate change and improve air quality by decarbonising transport'.*

APPENDIX A5 Made Orders

The following made Development Consent Orders and a Compulsory Purchase Order confirmed by the SoS have been referred to by the Applicant in relation to the development within the Green Belt all set out in a Technical Note Appendix A to [REP1-046]:

- M1 Junction 10a Grade Separation – Luton DCO 30 October 2013;
- Morpeth Northern Bypass DCO 12 January 2015;
- A19/A184 Testos Junction Improvement DCO 12 September 2018;
- A19 Downhill Lane Junction Improvement DCO 16 July 2020;
- A38 Derby Junctions DCO 17 August 2023;
- Woodside Link Houghton Regis Bedfordshire DCO 30 September 2024;
- South Bristol Link Road CPO - The North Somerset Council (South Bristol Link Classified Road) Side Roads Order 2013 and The North Somerset Council (South Bristol Link) Compulsory Purchase Orders 2013 & 2014 were confirmed by the Secretary of State on 21 October 2014.

Other Made Orders referred to by the Applicant are:

- Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order 2015;
- M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016;
- A14 Cambridge to Huntingdon Order.2016;
- M20 Junction 10a Order 2017;
- A30 Chiverton to Carland Cross Order 2020;
- Great Yarmouth Third River Crossing Development Consent Order 2020;
- Lake Lothing (Lowestoft) Third Crossing Order 2020;
- A303 Sparkford to Ilchester Dualling Order 2021;
- A428 Black Cat to Caxton Gibbet Order 2022;
- A47 Blofield to North Burlingham Order 2022;
- M25 Junction 28 Order 2022;
- M25 Junction 10/A3 Wisley Interchange Order 2022;
- A417 Missing Link Order 2022;
- A303 Amesbury to Berwick Down Order 2023;
- M3 Junction 9 Order 2024;
- Hynet Carbon Dioxide Pipeline Order 2024; and
- A12 Chelmsford to A120 Widening Scheme 2024.

APPENDIX A6 Relevant Local Plan and Supplementary Planning Documents Policies

Adopted Local Plan Policies

The Local Impact Report identifies the following adopted Local Plan policies as being of relevance to the decision in respect of the Proposed Development:

Plan Title	Relevant Policies
Gloucester, Cheltenham, and Tewkesbury Joint Core Strategy (adopted December 2017)	SD3: Sustainable Design and Construction SD4: Design Requirements SD5: Green Belt SD6: Landscape SD8: Historic Environment SD9: Biodiversity and Geodiversity SD14: Health and Environmental Quality INF1: Transport Network INF2: Flood Risk Management INF3: Green Infrastructure
Cheltenham Plan 2011-2031 (adopted July 2020)	SL1: Safe and Sustainable Living L1: Landscape and Setting HE2: National and Local Archaeological Remains of Importance
The Cheltenham Climate Change SPD (adopted June 2022)	provides guidance on how transport infrastructure should respond to climate change in the Borough
Tewkesbury Borough Plan 2011 – 2031 (adopted June 2022)	HEA1: Healthy & Active Communities HER2: Listed Buildings HER4: Archaeological Sites and Scheduled Monuments HER5: Locally Important Heritage Assets HM3: Loss of Residential Accommodation LAN2: Landscape Character NAT1: Biodiversity, Geodiversity and Important Natural Features NAT2: The Water Environment NAT3: Green Infrastructure ENV2: Flood Risk and Water Management TRAC1: Pedestrian Accessibility TRAC2: Cycle Network & Infrastructure
Minerals Local Plan for Gloucestershire 2018-2032 adopted March 2020)	SR01: Maximising the use of secondary and recycled aggregates

Gloucestershire Waste Core Strategy 2012 – 2027 (adopted November 2012)	WCS2: Waste Reduction
Gloucestershire's Local Transport Plan (LTP) 2020 – 2041 (adopted in March 2021)	PD0.1 Reducing Transport Carbon Emissions and Adapting to Climate Change PD0.2: Local Environmental Protection PD0.5: Community Health and Wellbeing PD2.3: Active Travel: Safety, Awareness and Confidence PD4.3: Highway Maintenance PD4.4: Road Safety PD6.1: Gloucestershire's Pedestrian Network PD6.2: Rights of Way PD6.4: Pedestrian Safety s

APPENDIX A7 Local Plan Policy Relevant to Specific Planning Matters Considered in this Recommendation

Planning Issue	Local Planning Policy for Cheltenham Borough	Local Planning Policy for Tewkesbury Borough	Joint Core Strategy for Gloucestershire, Cheltenham and Tewkesbury	Gloucestershire Local Transport Plan, Minerals Local Plan and Waste Core Strategy
Air Quality	SL1: Safe and Sustainable Living	HEA1: Healthy and Active Communities	SD3: Sustainable Design and Construction, SD14: Health and Environmental Quality, INF1: Transport Network	PD0.1: Reducing Transport Carbon Emissions and Adapting to Climate Change, PD0.2 Local Environmental Protection
Noise and Vibration	SL1: Safe and Sustainable Living	HEA1: Healthy and Active Communities	SD14: Health and Environmental Quality, INF1: Transport Network	PD0.2 Local Environmental Protection

Biodiversity	Provides Commitment to protect all species and habitats listed in the UK Biodiversity Framework and Gloucestershire Nature Map in accord with legislation and JCS Policy SD9	NAT1: Biodiversity, Geodiversity and Important Natural Features	SD9: Biodiversity and Geodiversity	PD0.2: Local Environmental Protection, PD4.3: Highway Maintenance
Road Drainage and Water Environment		NAT2: The Water Environment, ENV2: Flood Risk and Water Management	SD14: Health and Environmental Quality, INF2: Flood Risk Management	PD0.2: Local Environmental Protection
Landscape and Visual Impact	L1: Landscape and Setting	LAN2: Landscape Character, NAT3: Green Infrastructure	SD4: Design Requirements, SD6: Landscape, INF3: Green Infrastructure	PD0.2: Local Environmental Protection
Geology and Soils	n/a	NAT1: Biodiversity, Geodiversity	SD9: Biodiversity and Geodiversity, SD14: Health and Environmental Quality	PD0.2: Local Environmental Protection
Cultural Heritage	HE2: National and Local Archaeological Remains of Importance	HER2: Listed Buildings, HER4: Archaeological Sites and Scheduled Monuments, HER5: Locally Important Heritage Assets	SD8: Historic Environment	PD0.2: Local Environmental Protection
Materials and Waste	n/a	n/a	SD3: Sustainable Design and Construction	PD0.2: Local Environmental Protection, WCS2: Waste Reduction of the Gloucestershire WCS, Part b of Policy SR01: Maximising the use of secondary and

APPENDIX A: REFERENCE TABLES

REPORT TO THE SECRETARY OF STATE FOR TRANSPORT: M5 Junction 10 Improvements
Scheme TR010063

(A:VIII)

				recycled aggregates of the Minerals Local Plan
Population and Human Health	HM3: Loss of Residential Accommodation, SL1: Safe and Sustainable Living,	HEA1: Healthy & Active Communities, TRAC1: Pedestrian Accessibility, TRAC2: Cycle Network & Infrastructure	SD14: Health and Environmental Quality, INF1: Transport Network	PD0.5: Community Health and Wellbeing, PD2.3: Active Travel, PD6.1: Gloucestershire's Pedestrian Network, PD6.2: Rights of Way, PD6.4: Pedestrian Safety
Climate Change	Cheltenham Climate Change SPD provides guidance on how transport infrastructure should respond to climate change	n/a	SD3: Sustainable Design and Construction,	PD0.1: Reducing Transport Carbon Emissions and Adapting to Climate Change, PD0.2: Local Environmental Protection
Green Belt	n/a	n/a	SD5: The policy protects the Green Belt from harmful development	n/a

APPENDIX B: LIST OF ABBREVIATIONS

Abbreviation	Definition
AADT	Annual Average Daily Traffic
AONB	Area of Outstanding Natural Beauty
AD	Associated Development
AP	Affected Person
AQMA	Air Quality Management Area
AQS	Air Quality Strategy
ARN	Affected Road Network
BoR	Book of Reference
BMV	Best and Most Versatile
BNG	Biodiversity Net Gain
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CA Regs	The Infrastructure Planning (Compulsory Acquisition) Regulations 2010
CBC	Cheltenham Borough Council
CIEMM	Chartered Institute of Ecology and Environmental Management
CMP	Carbon Management Plan
D	Deadline
DCO	Development Consent Order
DD	Dependant Development
dDCO	Draft Development Consent Order
DfT	Department for Transport
DfS	Departures from Standards
DMRB	Design Manual for Roads and Bridges
EA	The Environment Agency
EIA	Environmental Impact Assessment
EIA Regulations	Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017/572)
EL	Examination Library
EM	Explanatory Memorandum

Abbreviation	Definition
EMP	Environmental Management Plan
ES	Environmental Statement
ExA	Examining Authority
ExQ1	First Written Questions [PD-010]
ExQ2	Second Written Questions [PD-012]
ExQ3	Third Written Questions [PD-21]
FRA	Flood Risk Assessment
GCC	Gloucestershire County Council
GVD	General Vesting Declaration
GWT	Gloucestershire Wildlife Trust
ha	Hectare
HDV	Heavy Duty Vehicle
HE	Historic England
Habitats Regulations	Conservation of Habitats and Species Regulations 2017
HGV	Heavy Goods Vehicle
HIF	Housing Infrastructure Fund
HLC	Historic Landscape Characterisation
HoTs	Heads of Terms
HRA	Habitats Regulations Assessment
HSE	Health and Safety Executive
IAP1	Initial Assessment of Principal Issues
IP	Interested Party
ISH	Issue Specific Hearing
JC	Joint Councils (Cheltenham Borough Council, Tewkesbury Borough Council, Gloucestershire County Council)
JCS	The Joint Core Strategy for Gloucester, Cheltenham, and Tewkesbury (2017)
km	Kilometre
LEMP	Landscape and Ecology Management Plan
link road	West Cheltenham Link Road
LIR	Local Impact Report

Abbreviation	Definition
LLFA	Lead Local Flood Authority
LoD	Limits of Deviation
LPA	Local Planning Authority
LRN	Local Road Network
LSE	Likely Significant Effects
LTP	Local Transport Plan
LVIA	Landscape and Visual Impact Assessment
m	Metre
NE	Natural England
NH	National Highways
NIA	Noise Important Area
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance
NPS	National Policy Statement
NPSNN	National Policy Statement for National Networks 2015
NPSNN2024	National Policy Statement for National Networks 2024
NPSE	Noise Policy Statement for England
NSIP	Nationally Significant Infrastructure Project
OBC	Outline Business Case
OFH	Open Floor Hearing
PADSS	Principal Areas of Disagreement Summary Statement
PA2008	Planning Act 2008
PD	Procedural Decision
PM	Preliminary Meeting
PP	Protective Provision
PPG	Planning Policy Guidance
PRoW	Public Right of Way
PSED	Public Sector Equality Duty
R	Requirement
rDCO	Recommended Development Consent Order

Abbreviation	Definition
REAC	Register of Environmental Actions and Commitments
RIES	Report on the Implications for European Sites
RIS	Road Investment Strategy
RR	Relevant Representation
Rule 17	Request for further information under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010
s	Section
SAC	Special Area of Conservation
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoSLUHC	Secretary of State for Levelling Up, Housing and Communities
SoST	Secretary of State for Transport
SPA	Special Protection Area
SPD	Supplementary Planning Document
SRN	Strategic Road Network
SSSI	Site of Special Scientific Interest
SM&MLPL	St. Modwen and Midlands Land Portfolio Ltd
SU	Statutory Undertaker
TA	Transport Assessment
TAG	Transport Analysis Guidance
TBC	Tewkesbury Borough Council
TFR	Traffic Forecasting Report
TMP	Traffic Management Plan
TP	Temporary Possession
UK	United Kingdom
USI	Unaccompanied Site Inspection
WCHAR	Walking, Cycling, Horse Riding Assessment
WFD	Water Framework Directive
WR	Written Representation

APPENDIX C: HABITATS REGULATION ASSESSMENT

C.1 INTRODUCTION

- C.1.1 This Chapter sets out the Examining Authority's (ExA's) analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State for Transport (SoST), as the Competent Authority, in performing their duties under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').
- C.1.2 This Chapter is structured as follows:
- Section C2: Findings in relation to Likely Significant Effects (LSE) on the UK National Site Network and other European sites;
 - Section C3: Conservation Objectives for sites and features;
 - Section C4: Findings in relation to Adverse Effects on Integrity (AEol);
 - Section C5: HRA conclusions.
- C.1.3 In accordance with the precautionary principle embedded in the Habitats Regulations, consent for the Proposed Development may be granted only after having ascertained that it will not adversely affect the integrity of European site(s) and no reasonable scientific doubt remains (CJEU Case C-127/02 Waddenzee 7 September 2004).
- C.1.4 For the purpose of this report, in line with the Habitats Regulations and relevant Government policy, the term 'European sites' includes Special Areas of Conservation (SAC), candidate SACs, proposed SACs, Special Protection Areas (SPA), potential SPAs, listed and proposed Ramsar sites and sites identified or required as compensatory measures for adverse effects on any of these sites.
- C.1.5 Policy considerations and the legal obligations under the Habitats Regulations are described in Chapter 4 of this Report.
- C.1.6 The ExA has been mindful throughout the Examination of the need to ensure that the SoST has such information as may reasonably be required to carry out their duties as the Competent Authority. We have sought evidence from the Applicant and the relevant Interested Parties (IPs), including Natural England (NE) as the Appropriate Nature Conservation Body (ANCB), through written questions and Issue Specific Hearings (ISHs).

Applicants HRA documentation

- C.1.7 The Applicant's assessment of effects is presented in the following application document(s):
- Environmental Statement Appendix 7.13 - Habitats Regulation Assessment – Screening [\[APP-099\]](#), updated as [\[REP3-024\]](#) – herein referred to as the "HRA Screening".
 - Environmental Statement Appendix 7.13 - Habitats Regulation Assessment – Screening Addendum [\[AS-094\]](#).
 - Environmental Statement Appendix 7.14 - Habitats Regulation Assessment – Statement to Inform Appropriate Assessment (SIAA) [\[APP-100\]](#), updated as [\[REP3-026\]](#) - herein referred to as the "HRA SIAA".
- C.1.8 Supporting information is also provided in the following applications documents:

- Environmental Statement Chapter 7 Biodiversity [\[APP-066\]](#), updated as [\[REP1-012\]](#) and [\[REP10-043\]](#)
- Environmental Statement Appendices 7.1 – 7.12 [\[APP-086\]](#) to [\[APP-098\]](#) and 7.15 - 7.19 [\[APP-101\]](#) to [\[APP-105\]](#) and [\[AS-022\]](#)

Applicants HRA documentation

- C.1.9 The application documentation details consultation in relation to HRA matters as follows.
- C.1.10 The HRA Screening Appendix N [\[REP3-024\]](#) and SIAA [\[REP3-026\]](#) Appendix G detail consultation undertaken with NE, between April 2021 and November 2022, prior to the submission of the DCO application.
- C.1.11 During the pre-examination period, NE submitted a relevant representation [\[RR-027\]](#) to confirm the consultation with the Applicant and to detail its overall position.
- C.1.12 Further consultation details are also noted in the relevant accompanying ES Chapter [\[REP10-043\]](#) and consultation report [\[APP-038\]](#) – [\[APP-058\]](#) and [\[AS-008\]](#).
- C.1.13 The ExA produced a RIES [\[PD-019\]](#) which compiled, documented, and signposted HRA-relevant information provided in the DCO application and Examination representations up to Deadline 5 (01 October 2024). The RIES was issued to set out the ExA's understanding on HRA-relevant information and the position of the IPs in relation to the effects of the Proposed Development on European sites at that point in time. Consultation on the RIES took place between 22 October 2024 and 19 November 2024. Comments were received from Interested Parties at Deadline 9 (19 November 2024). These comments have been taken into account in the drafting of this Appendix.
- C.1.14 The ExA's recommendation is that the RIES, and consultation on it, may be relied upon as an appropriate body of information to enable the Secretary of State to fulfil their duties of consultation under Regulation 63(3) of the Habitats Regulations, should the SoS wish to do so.

Proposed Development Description and HRA Implications

- C.1.15 The Proposed Development is described in Chapter 1 of this Report.

Relationship between the Proposed Development and European Sites

- C.1.16 The spatial relationship between the Order Limits of the Proposed Development and European sites is shown in Figures 7-13a of the HRA Screening [\[REP3-024\]](#).
- C.1.17 The Proposed Development is not directly connected with, or necessary to, the management of a European site. Therefore, the SoST must make an 'appropriate assessment' of the implications of the Proposed Development on potentially affected European sites in light of their Conservation Objectives.
- C.1.18 Section 2.2 of the HRA Screening Report [\[REP3-024\]](#) details that the identification of European sites was undertaken on the following criteria, based on the Design Manual for Roads and Bridges (DMRB) LA115. The criteria consider whether the Proposed Development:
- is within 2 km of a European Site or Functionally Linked Land (FLL)
 - is within 30 km of a SAC where bats are a qualifying feature

- crosses or lies adjacent to, upstream of, or downstream of, a watercourse which is designated as a European Site
- has a potential hydrological or hydrogeological linkage to a European Site containing a Groundwater Dependent Terrestrial Ecosystem (GWDTE)
- has an Affected Road Network (ARN) which triggers the need for assessment of air quality impacts. The ARN refers to the parts of the road network that would be affected by a change in traffic levels as the result of the Proposed Development. Sites within 200 m of the ARN should be included in the air quality assessment and
- additional European sites should be subject to screening where other forms of ecological connectivity exist between them and the Proposed Development

C.1.19 The Applicant's HRA Screening Report [[REP3-024](#)] identified seven No. European site(s) within the UK National Site Network for inclusion within the assessment. These are listed in Section 3 of the HRA Screening Report [[REP3-024](#)].

C.1.20 A copy of figure 7-13a from [[REP3-024](#)] is reproduced below in this report for ease of reference.

Change requests

C.1.21 During the Examination, the Applicant submitted two change requests as described in Chapter 1 of this Report. These changes were accepted by the ExA as described.

C.1.22 In relation to change request one, no relevant HRA matters arose from this change request, as it was relating to compulsory acquisition of land only.

C.1.23 In relation to change request two, the Applicant provided a Habitats Regulation Assessment Addendum [[AS-094](#)]. The HRA Addendum presented an assessment of whether any new or different potential impacts are likely to result from the seven changes to the Proposed Development included in Change Request 2, and if there are any new or different LSE on European designated sites to those reported in the DCO application.

C.1.24 The HRA Addendum notes that NE were consulted on the seven changes on 12 July 2024 and no comments were raised.

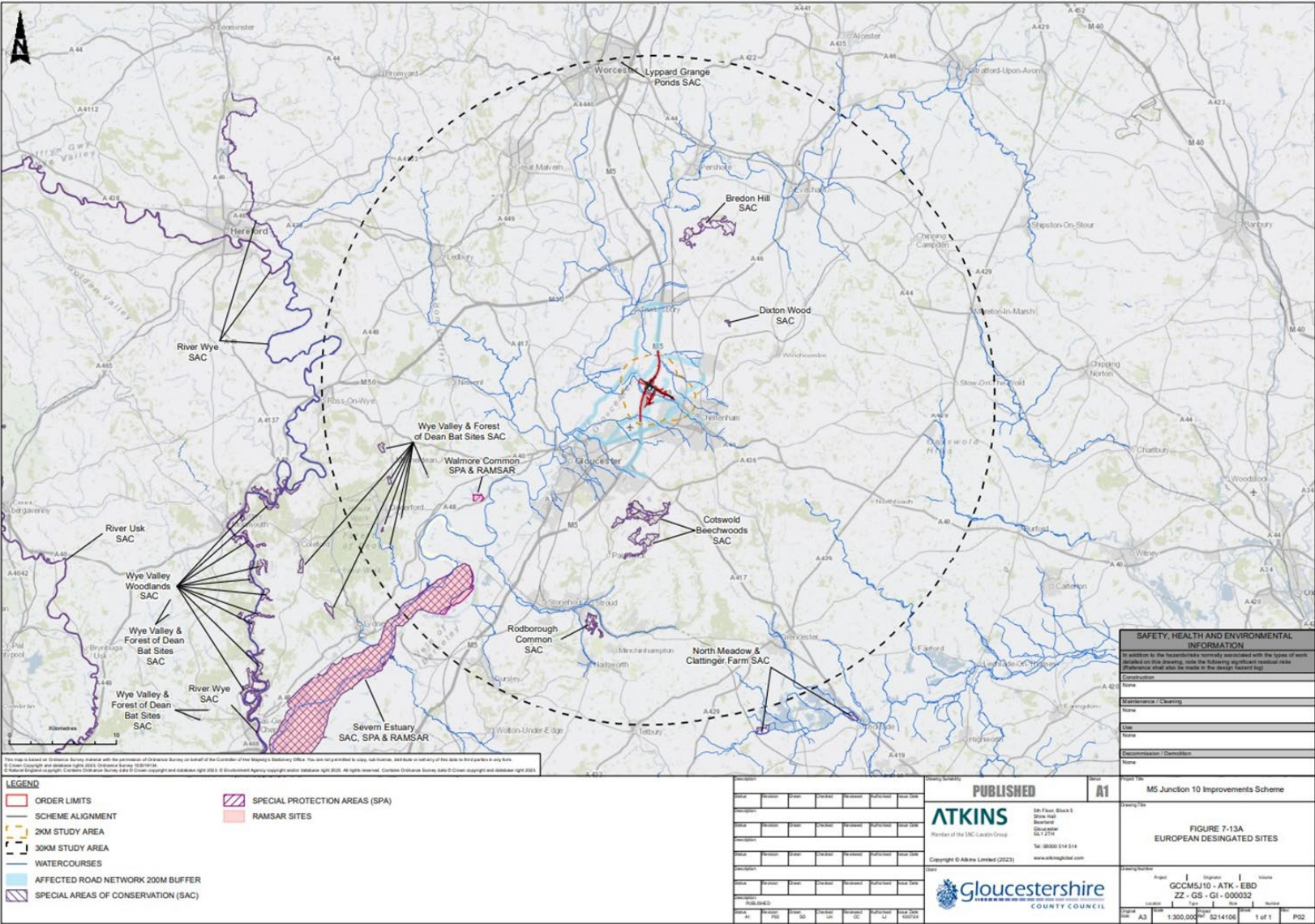
C.1.25 In relation to the HRA Screening [[REP3-024](#)], the Applicant did not consider that there were any changes to the European Sites screened into the assessment, and no new or amended LSE on the relevant qualifying features.

C.1.26 In relation to the HRA SIAA [[REP3-026](#)], the HRA addendum focused on potential changes to impacts associated with the River Chelt, in particular from change number three. The HRA addendum identifies additional considerations relevant to the HRA SIAA, including:

- The River Chelt bridge abutment set back distances.
- The effects of realignment and reprofiling works to the River Chelt.
- Use of scour and erosion protection measures.
- A temporary reduction in the extent of functionally linked habitat during a temporary diversion of the river channel.
- The effects of an extended area of dewatering works.

C.1.27 The HRA Addendum concludes that with the mitigation measures as included in the updates to the Register of Environmental Actions and Commitments (REAC) [[AS-096](#)] (as commitments WE1, WE3 and B23), there would be no change to the

Figure 7-13a from [REP3-024]



outcomes of the assessment conclusions of no AEoI, as reported in the HRA SIAA [\[REP3-026\]](#).

- C.1.28 As detailed in RIESQ1 [\[PD-019\]](#), all relevant interested parties were invited to provide a response to the HRA addendum [\[AS-094\]](#) and an updated position in relation to the Applicants HRA screening and SIAA conclusions.
- C.1.29 At the close of the examination, no further comments or responses on this matter had been received, and therefore the ExA considers that no relevant HRA matters arose from this change request.

Transboundary

- C.1.30 The Applicant did not identify LSE on non-UK European sites in European Economic Area (EEA) States in its HRA Screening [\[REP3-024\]](#) or within its HRA SIAA [\[REP3-026\]](#). Only UK European sites are addressed in this Report. No such impacts were raised for discussion by any IPs during the Examination, including following publication of the Inspectorate's transboundary screening [\[OD-003a\]](#).

Summary of HRA Matters Considered During the Examination

- C.1.31 HRA matters were raised during the examination at first written questions [\[PD-010\]](#).
- C.1.32 The HRA matters raised by the ExA, host local authorities and interested parties and discussed during the examination in relation to screening for LSE include:
- The effects of improved accessibility to the Coombe Hill Site of Special Scientific Interest (SSSI) as FLL to the Severn Estuary SPA.
 - The potential effects to water quality in the Severn Estuary sites, including in-combination effects.
 - The effects of the permanent acquisition and works to land proposed as Suitable Alternative Natural Greenspace (SANG) for planning applications in the surrounding area.
- C.1.33 The HRA matters raised by the ExA, host local authorities and interested parties and discussed during the examination in relation to AEoI include:
- The overall conclusions of no AEoI and agreement with NE.
 - The potential effects to water quality in the Severn Estuary sites.
 - Details of the assessment of in-combination effects to all sites.
 - The recommendation to relocate Lamprey ammocoetes.
 - The requirement for, and security of, a mitigation strategy for the River Chelt.
- C.1.34 Overall, NE agreed that the European sites included within the HRA are considered appropriate [\[RR-027\]](#), paragraph 2.2] and did not raise any matters on which it disagreed with the Applicant in relation to HRA. This was confirmed by the submission of a Statement of Common Ground [\[REP1-037\]](#) at entries 4.1, 5.1-5.7, 7.2-7.9, 7.20 and 7.23, updated as [\[REP10-078\]](#).
- C.1.35 Matters of agreement with other interested parties included the requirement to assess impact to migratory fish, as detailed within the Statements of Common Ground with Gloucestershire County Council, Tewkesbury Borough Council and Cheltenham Borough Council (the 'Joint Councils'), [\[REP1-034\]](#) and Environment Agency (EA) [\[REP1-036\]](#).

C.2 FINDINGS IN RELATION TO LSE

- C.2.1 Under Regulation 63 of the Habitats Regulations, the Competent Authority must consider whether a development will have LSE on a European site, either alone or in combination with other plans or projects. The purpose of the LSE test is to identify the need for an ‘appropriate assessment’ (AA) and the activities, sites or plans and projects to be included for further consideration in the AA.
- C.2.2 The European sites and qualifying features that were considered in the Applicant’s assessment of LSE are presented in Section 3 and Appendices B to H of the HRA Screening [\[REP3-024\]](#).
- C.2.3 The Applicant’s HRA Screening [\[REP3-024\]](#), section 2] sets out the methodology applied to determining what would constitute a ‘significant effect’.
- C.2.4 Table A below summarises the European Sites and Qualifying features considered in the Applicant’s assessment.

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Table A European sites screened by the Applicant

European site(s)	Distance from the Proposed Development	Qualifying Feature(s)
Wye Valley and Forest of Dean Bat Sites Special Area of Conservation (SAC)	21km (west)	• Lesser horseshoe bat • Greater horseshoe bat
Walmore Common Special Protection Area (SPA)	17.5km (southwest)	• Bewick's swan
Walmore Common Ramsar site	17.5km (southwest)	• Internationally important populations of wintering birds (Ramsar Criterion 6) including Bewick's swan
Severn Estuary SAC	47.5km (southwest)	• Estuaries • Mudflats and sandflats not covered by seawater at low tide • Atlantic salt meadows • Sandbanks which are slightly covered by seawater all the time • Reefs • Sea lamprey • River lamprey • Twaite shad
Severn Estuary SPA	47.5km (southwest)	• Bewick's swan • Gadwall • European white-fronted goose • Dunlin • Shelduck. • Redshank • Ringed plover

European site(s)	Distance from the Proposed Development	Qualifying Feature(s)
Severn Estuary Ramsar site	47.5km (southwest)	• Internationally important assemblage of birds • Estuarine habitats (Ramsar Criteria 1 and 3) • Migratory fish (Ramsar Criteria 4 and 8) including: ○ Atlantic salmon ○ Sea trout ○ Sea lamprey ○ River lamprey ○ Allis shad ○ Twaite shad ○ European eel ○ The fish of the whole estuarine and river system is one of the most diverse in Britain • Wintering waterfowl assemblage of international importance (Ramsar Criterion 5) • Internationally important populations of wintering birds (Ramsar Criterion 6) including: ○ Tundra swan ○ White fronted-geese ○ Shelduck ○ Gadwall ○ Dunlin ○ Common redshank • Breeding lesser black-backed gull was identified subsequent to designation for possible future consideration under Ramsar Criterion 6 and was included within the Applicants assessment. However, it is not currently a qualifying feature of this site

LSE from the Proposed Development Alone

- C.2.5 Under Regulation 63 of the Habitats Regulations, the Competent Authority must consider whether a development will have LSE on a European site, either alone or in combination with other plans or projects. The purpose of the LSE test is to identify the need for an 'appropriate assessment' (AA) and the activities, sites or plans and projects to be included for further consideration in the AA.
- C.2.6 The Applicant identified potential impacts of the Proposed Development alone that were considered to have the potential to result in LSE in sections 3.2 and 4 of the HRA Screening [\[REP3-024\]](#).
- C.2.7 The impacts considered by the Applicant to have the potential to result in LSE are detailed in table B below, and also within Tables A1.1 – A1.7 within the RIES [\[PD-019\]](#).
- C.2.8 The Applicant's HRA Screening [\[REP3-024\]](#) concluded no LSE from the Proposed Development alone on any of the qualifying features of:
- Wye Valley and Forest of Dean SAC (Section 3.2 and Appendices B and I) – Agreed by NE at [\[RR-027, paragraph 3.2.3\]](#),
 - Walmore Common SPA (Section 4.1 and Appendices C and J) - Agreed by NE at [\[RR-027, paragraph 3.2.4\]](#),
 - Walmore Common RAMSAR site (Section 4.1 and Appendices D and K)- Agreed by NE at [\[RR-027, paragraph 3.2.4\]](#),
 - Severn Estuary SPA (Section 4.2 and Appendices F and L),
 - Cotswold Beechwood SAC (Section 3.2, 4.3 and Appendices H and M).

LSE from the Proposed Development in Combination

- C.2.9 The Applicant addressed potential in-combination effects arising from the Proposed Development within section 2.2 [\[REP3-024\]](#) which sets out the methodology applied. A specific list of projects included in the in-combination assessment was not included in the HRA Screening Report [\[APP-099\]](#) or SIAA [\[APP-100\]](#) but was confirmed in response to FWQ3.1.9 [\[PD-010\]](#).
- C.2.10 The Applicant's HRA Screening [\[REP3-024\]](#) concluded no LSE from the Proposed Development in combination (where these impacts are not already considered to result in LSE from the Proposed Development alone, as clarified in [\[REP9-005\]](#)) on any of the qualifying features of the sites listed in Table A.

LSE Assessment Outcomes

- C.2.11 Commentary on the sites and features for which LSE was a matter for discussion during the Examination is set out below.

All sites

Methodology matters relevant to all sites

- C.2.12 Clarity was requested on the following three methodological matters by the ExA.
- C.2.13 The ExA noted [\[PD-010, Q3.1.2\]](#), that the HRA Screening Report [\[APP-099\]](#) refers throughout to survey data which has informed the assessment, including bird surveys (Walmore Common SPA / Ramsar site and Severn Estuary SPA / Ramsar site) and fish surveys (Severn Estuary SAC / Ramsar site). However, the results were not provided as part of the HRA. The Applicant responded [\[REP3-](#)

[043](#)] to signpost to these surveys and provided further detail in the updated HRA Screening [\[REP3-024\]](#) and SIAA [\[REP3-026\]](#).

- C.2.14 The ExA queried [\[PD-010, Q3.1.3\]](#), a number of matters associated with the HRA screening matrices provided as Appendices B to H [\[APP-099\]](#). These included discrepancies between the number of headings / impact pathways assessed, potential duplication of pathways, and the wording of the assessed impact pathways. The Applicant responded [\[REP3-043\]](#) to explain the methodology used and updated the HRA screening [\[REP3-024\]](#) and SIAA [\[REP3-026\]](#) to provide a specific list of pathways, including clarity on how disturbance, injury and mortality to qualifying features has been assessed.

Changes in key indicators of conservation value - Air quality

- C.2.15 NE confirmed [\[RR-027, paragraph 3.2.1\]](#) that it agreed with the Applicant's conclusions and that there would be no LSE from impacts associated with changes to air quality, based on the results of the Applicant's assessment (paragraph 3.2.1).
- C.2.16 On the basis of the above information, the ExA is satisfied that this pathway will not result in LSE to the European site from the proposed development alone.

In-combination assessment

- C.2.17 The ExA considered [\[PD-010, FWQ3.1.6\]](#) that the definition of the impact pathways considered relevant to the in-combination assessment within the HRA Screening [\[APP-099\]](#) was ambiguous, which meant that it was difficult to conclude that all relevant pathways had been considered.
- C.2.18 The Applicant provided an explanation of the rationale behind the presentation of the impact pathways [\[REP3-043\]](#), and an updated HRA Screening [\[REP3-024\]](#) which provided further information (paragraphs 4.2.27 to 4.2.38) to clarify the methodology and specific impact pathways considered.
- C.2.19 NE also provided a response to Q3.1.6 [\[REP3-076\]](#), stating its understanding of and agreement with the methodology.
- C.2.20 The EXA further noted [\[PD-010, FWQ3.1.9 and 3.1.10 point five\]](#) that the HRA Screening [\[APP-099\]](#) or subsequently the HRA SIAA [\[APP-100\]](#) did not include a specific list of projects and plans scoped into the assessment.
- C.2.21 The Applicant provided a list of the plans and projects scoped in [\[REP3-043\]](#) along with a minor point of clarification relating to the cumulative methodology in response to both Q3.1.9 and Q3.1.10, and an updated HRA SIAA [\[REP3-026\]](#) (Appendix G) to demonstrate agreement with NE in relation to the approach taken at the screening or assessment of AEoI stages.
- C.2.22 NE also reconfirmed its agreement with this approach [\[REP3-076\]](#) in response to both Q3.1.9 and Q3.1.10.
- C.2.23 The Applicant provided final clarifications on the HRA methodology in [\[REP9-005\]](#) in response to the RIES, to confirm that where LSE are noted from the Proposed Development alone, the Applicant considered that there was no need to assess these impacts in combination at screening, as they are taken through to the SIAA where they are considered further alone.

C.2.24 No other IPs raised queries on this matter.

Severn Estuary SAC / Ramsar site

Changes in key indicators of conservation value - recreational disturbance during operation

- C.2.25 Within its relevant representation [\[RR-014\]](#), Gloucestershire Wildlife Trust (GWT) raised a concern that the Proposed Development would increase accessibility for recreational users to the Coombe Hill SSSI, which is known to be functionally linked to the Severn Estuary SPA and Ramsar site. GWT considered that this increased accessibility had not been adequately considered in the HRA.
- C.2.26 In response, the Applicant [\[REP1-043\]](#) reiterated that the Proposed Development itself will not result in increased recreational pressure, as any increase will come from the increase in housing, which the Proposed Development will facilitate, but will not permit. Therefore, measures considered within the relevant local planning policies were sufficient, and the HRA process for the Proposed Development did not require a consideration of this matter.
- C.2.27 The ExA sought further information and justification of this approach [\[PD-010\]](#), FWQ3.1.4], and invited GWT and NE to comment.
- C.2.28 The Applicant [\[REP3-043\]](#) and [\[REP4-035\]](#) provided further information in relation to the methodology used for the screening out of this matter, and NE confirmed [\[REP3-076\]](#) that it was in agreement with the Applicant's approach and conclusions. GWT did not provide any further comments.
- C.2.29 The matter was also raised at ISH3, with post hearing submissions provided by the Applicant [\[REP4-037\]](#) to reiterate its previous comments and justification for the approach taken. The Joint Councils [\[REP4-048\]](#) [\[REP4-048c\]](#) agreed with the Applicant's position.
- C.2.30 Following the issue of the RIES [\[PD-019\]](#), GWT provided a reiteration of its relevant representation, with some further commentary on the use of SANG [\[REP9-012\]](#).
- C.2.31 The Applicant provided a final response [\[REP10-109\]](#) to reiterate its position that the Proposed Development does not provide direct access to the SSSI, in particular considering that visitor survey information provided by Gloucestershire County Council suggests that Coombe Hill SSSI is a 'local' destination as the majority of interviewees were on a day trip from home or short visit.
- C.2.32 The Applicant also confirmed that the DCO application also makes reference to mitigation provided by the surrounding proposed housing developments, where this information was available, in order to complete the cumulative effects assessment of the Environmental Statement, and that such mitigation is not relied upon by the Proposed Development.
- C.2.33 It is noted that the NE relevant representation [\[RR-027\]](#) specifically agrees with the Applicant's position that there would be no LSE associated with recreational pressure to the Severn Estuary SAC / SPA / Ramsar site due to the consideration that these sites are already subject to policies and strategic schemes in place to prevent harm from increased recreational pressure on these sites. Furthermore,

the housing developments that the Proposed Development is unlocking will be subject to their own impact assessments (paragraph 3.2.2).

- C.2.34 No other IPs raised queries on this matter, and no further matters were raised by NE in response to GWT's comments.
- C.2.35 On the basis of the above information, the ExA is satisfied that this pathway will not result in LSE to the European site from the proposed development alone.

Effects on migratory fish qualifying features

EA Position

- C.2.36 The ExA noted that with its relevant representation [\[RR-013\]](#) and SoCG [\[REP1-036\]](#), the EA raised a number of points in relation to the aquatic environment, including the River Chelt. However, with the exception of relevant representation entry 5.8, it was the EA considered that these points were relevant to the conclusion of the HRA Screening [\[APP-099\]](#).
- C.2.37 The ExA asked questions on this matter [\[PD-010\]](#), Q3.1.7 and Q3.1.8], and as no reply was given by the EA, followed up again in the second written questions [\[PD-012\]](#), Q3.1.1].
- C.2.38 The Applicant provided an initial response to FWQ3.1.7 [\[REP3-043\]](#), which gave a further justification of why waterbodies other than the River Chelt had not been considered in detail, noting that they comprise heavily modified small tributary systems and managed drainage ditches with limited habitat complexity.
- C.2.39 The EA [\[REP5-032\]](#) confirmed its position (in response to [\[PD-012\]](#) Q3.1.1), stating that following review of the HRA Screening, it considered the European sites of most relevance to the EA's remit to be the Severn Estuary SAC, SPA and Ramsar site. It agreed with the Applicant's conclusion of LSE to migratory fish of the SAC and Ramsar site.
- C.2.40 The Applicant [\[REP5-027\]](#) stated that the latest SoCG with the EA [\[REP4-024\]](#) showed that the matters raised in [\[REP1-036\]](#) were agreed. It stated that these matters had been considered in the HRA, as embedded measures for the Proposed Development.
- C.2.41 These matters were all confirmed as agreed in the final iteration of the SOCG [\[REP10-076\]](#).
- C.2.42 No other IPs raised queries on this matter.

Changes in key indicators of conservation value - water quality during construction and operation

- C.2.43 The Applicant [\[APP-099\]](#) screened out LSE to the Severn Estuary SPA but screened in LSE to migratory fish qualifying features of the Severn Estuary SAC and Ramsar site arising from water quality impacts to FLL (the River Chelt).
- C.2.44 The ExA noted that the Joint Councils [\[RR-039\]](#) and [\[REP1-069\]](#) raised a query in relation to the scope of the assessment of water quality issues to the Severn Estuary, however it was not clear if this related to the ES only, or also affected their agreement with the HRA conclusions.

- C.2.45 The Applicant responded to the relevant representation at DL1 [\[REP1-043\]](#) and Local Impact Report at DL2 [\[REP2-009\]](#) to provide further details on the justification for the approach taken, in particular in relation to pollution prevention during construction.
- C.2.46 The ExA sought clarification on the Joint Councils' position [\[PD-010\]](#), FWQ3.1.5].
- C.2.47 The Joint Councils [\[REP3-064\]](#) [\[REP3-066\]](#) confirmed that water quality concerns around the Severn Estuary were now resolved and therefore have no implications for the conclusions of the HRA.
- C.2.48 NE [\[REP3-076\]](#) also stated it was of the opinion that the assessment of water quality impacts on the Severn Estuary had been conducted appropriately.
- C.2.49 No other IPs raised queries on this matter, and this pathway was taken forwards to the assessment of AEol.

Cotswold Beechwood SAC

Changes in key indicators of conservation value - recreational disturbance during operation

- C.2.50 In its written summary of oral submission to ISH1, St. Modwen and Midlands Land Portfolio (SMMLP) [\[REP1-064\]](#) raised the matter of the permanent land acquisition required for the Proposed Development would include an area that is currently proposed to be utilised as SANG for the West Cheltenham (Golden Valley) Development, which would result in that development being unable to provide the mitigation necessary to avoid AEol on the SAC.
- C.2.51 No further information was submitted by either SMMLP or the Applicant until D5, where the SOCG [\[REP5-020\]](#) noted this matter was still outstanding. The Applicant provided an updated position within the SOCG to confirm its understanding of the area of potential SANG to be permanently acquired and utilised for other purposes by the Proposed Development (0.49ha).
- C.2.52 The matter was discussed at ISH4 with a resultant action point (27), which the Applicant responded to at [\[REP7-010\]](#) to note its position that the "loss" is not a real loss of actual SANG land but a "loss" of an area which St Modwen are proposing for SANG as part of their planning application, and in some instances such overlap has been unavoidable due to locality being subject to such a number of planning permissions.
- C.2.53 The Applicant considers that the Proposed Development will be a material planning consideration in any future grant of the development site, and therefore the Applicant would expect that the local planning authority would ensure that there is no overlap in the planning permissions upon its grant.
- C.2.54 The final SOCG with West Cheltenham Golden Valley [\[REP10-086\]](#) confirmed that this matter had been agreed (entry 2.2) as any loss of SANG has been compensated for elsewhere on land within the ownership of SMMLP.
- C.2.55 No other IPs raised queries on this matter.
- C.2.56 It is noted that the NE relevant representation [\[RR-027\]](#) specifically agrees with the Applicant's position that there would be no LSE associated with recreational pressure to the Cotswold Beechwoods SAC due to the consideration that these

sites are already subject to policies and strategic schemes in place to prevent harm from increased recreational pressure on these sites. Furthermore, the housing developments that the Proposed Development is unlocking will be subject to their own impact assessments (paragraph 3.2.2).

- C.2.57 On the basis of the above information, the ExA is satisfied that this pathway will not result in LSE to the European site from the proposed development alone.

LSE Assessment Outcomes – Conclusions

- C.2.58 Table B below lists the site sites and features which were assessed by the Applicant to determine if they could be subject to AEol, as a result of the Proposed Development alone or in combination with other plans and projects, in view of their conservation objectives.
- C.2.59 NE confirmed [[RR-027](#), paragraph 3.2.5] that there would be LSE on the Severn Estuary SAC / Ramsar Site.
- C.2.60 The ExA is satisfied, on the basis of the information provided, that the correct impact-effect pathways on each site have been assessed and is satisfied with the approach to the assessment of alone and in-combination LSE.
- C.2.61 Taking into account the reasoning set out above, the ExA considers that the Proposed Development is likely to have a significant effect from the impacts identified in Table B on the qualifying features of the Severn Estuary SAC and Ramsar site when considered alone, or in combination with other plans or projects. This was not disputed by IPs/NE during the Examination.
- C.2.62 Taking into account the reasoning set out above, the ExA considers that the Proposed Development is not likely to have a significant effect when considered alone or in combination from the impacts identified above on the qualifying features of the Wye Valley and Forest of Dean SAC, Walmore Common SPA and Ramsar site, Severn Estuary SPA and Cotswold Beechwood SAC.

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Table B. European sites and features for which LSE could not be excluded

European site(s)	Qualifying Feature(s)	LSE Alone from:	LSE in-combination from:
Severn Estuary SAC	River lamprey	Construction: - Temporary reduction of habitat area (functionally linked habitat) - Disturbance to key species - Direct injury or mortality (reduction in species density) - Habitat or species fragmentation Construction and operation: - Changes in key indicators of conservation value (listed as changes to water quality)	Where LSE are noted from the Proposed Development alone, they are taken through to the HRA SIAA.
Severn Estuary Ramsar site	Criterion 4: - European eel. - Atlantic salmon. - Sea trout. - River lamprey. Criterion 8: - Fish Assemblage.	Construction: - Temporary reduction of habitat area (functionally linked habitat) - Disturbance to key species - Direct injury or mortality (reduction in species density) – lamprey only - Habitat or species fragmentation Construction and operation: - Changes in key indicators of conservation value (water quality)	Where LSE are noted from the Proposed Development alone, they are taken through to the HRA SIAA.

C.3 CONSERVATION OBJECTIVES

- C.3.1 The conservation objectives for the sites and features taken forwards to the SIAA are identified in Section 4.3 of the Applicant's HRA RIAA [\[REP3-026\]](#).
- C.3.2 No matters relating to the conservation objectives were raised by any IPs during the examination.

C.4 FINDINGS IN RELATION AEOI

- C.4.1 The European sites and qualifying features identified in Section 1.2 / Table B above were further assessed by the Applicant to determine if they could be subject to AEoI from the Proposed Development alone or in combination. The assessment of AEoI was made in light of the conservation objectives for the European sites.
- C.4.2 A description of each European site and its qualifying features, and the potential effects resulting from the Proposed Development, are provided in the Applicant's HRA Screening [\[REP3-024\]](#) section 3 and SIAA [\[REP3-026\]](#) section 4. The Applicant's HRA SIAA [\[REP3-024\]](#) section 5] sets out the methodology applied to determining the potential for AEoI.

- C.4.3 For all sites, section 6.7 details the duration of impacts. Construction impacts are identified over a 14-month period, with piling confined to a five-day period, so construction related effects are therefore temporary. Operational pollution effects could be permanent, although a one-off pollution event would be temporary.
- C.4.4 For all sites, Section 6.8 provides an assessment of the potential effects on integrity using tables C.1 and C.2 of Appendix C of DMRB LA 115.
- C.4.5 The general approach to the requirement for mitigation during construction and operation is given in the HRA SIAA sections 7 and 9 [\[REP3-026\]](#).
- C.4.6 The Applicants HRA SIAA [\[REP3-026\]](#) overall considered that there would be no AEol on any European site, provided that the required mitigation detailed within the SIAA is secured. The required mitigation is set out below under each impact pathway assessed.
- C.4.7 Commentary on the sites and features for which AEol was a matter for discussion during the Examination is set out belowT

Severn Estuary SAC and Ramsar site

Effects on migratory fish qualifying features

EA Position

- C.4.8 The ExA noted that with its relevant representation [\[RR-013\]](#) and SoCG [\[REP1-036\]](#), the EA raised a number of points in relation to the aquatic environment, including the River Chelt. However, with the exception of relevant representation entry 5.8, it was the EA considered that these points were relevant to the conclusion of the HRA SIAA [\[APP-100\]](#).
- C.4.9 The ExA asked questions on this matter [\[PD-010\]](#), Q3.1.7 and Q3.1.8], and as no reply was given by the EA, followed up again in the second written questions [\[PD-012\]](#), Q3.1.1].
- C.4.10 The EA [\[REP5-032\]](#) confirmed its position (in response to [\[PD-012\]](#) Q3.1.1), stating that following review of the HRA SIAA, it agreed with the Applicant's conclusion that the mitigation proposed (including silt control and SuDS) as secured through the REAC [\[REP4-018\]](#) was proportionate and would avoid AEol.
- C.4.11 The Applicant [\[REP5-027\]](#) stated that the latest SoCG with the EA [\[REP4-024\]](#) showed that the matters raised in [\[REP1-036\]](#) were agreed. It stated that these matters had been considered in the HRA, as embedded measures for the Proposed Development.
- C.4.12 These matters were all confirmed as agreed in the final iteration of the SOCG [\[REP10-076\]](#).
- C.4.13 No other IPs raised queries on this matter.

Value of watercourses other than the River Chelt

- C.4.14 The EA [\[RR-013\]](#), entry 5.8] [\[REP1-067\]](#), entry 5.5] considered that the value of watercourses other than the River Chelt may have been underestimated in relation to impacts to eels, a qualifying feature of the Severn Estuary Ramsar site.

- C.4.15 The Applicant responded [\[REP1-043\]](#) [\[REP2-008\]](#) that whilst the HRA Screening and SIAA (and other application assessments) did not initially consider waterbodies such as the Leigh Brook (which is hydrologically linked to the Severn Estuary sites) provided suitable habitat, precautionary mitigation was added following consultation with the EA.
- C.4.16 This mitigation was provided within the biodiversity chapter updated at Deadline 1 [\[REP1-012\]](#) table 7-15 and paragraphs 7.8.197 – 7.8.198 and the Water Framework Directive assessment [\[REP1-026\]](#) paragraph 5.4.9. The measures were secured within the REAC as commitment B28 (final version provided as [\[REP10-066\]](#)).
- C.4.17 These matters were all confirmed as agreed in the final iteration of the SOCG with the EA [\[REP10-076\]](#).
- C.4.18 No other IPs raised queries on this matter.
- C.4.19 On the basis of the above information, the ExA is satisfied that that this matter has been considered within the HRA SIAA [\[REP3-026\]](#).

Mitigation measures for the aquatic environment

- C.4.20 NE confirmed that mitigation would be required for the River Chelt [\[RR-027\]](#), paragraph 5.1]. The ExA [\[PD-010\]](#), FWQ3.1.12], noted that NE [\[RR-027\]](#) referred to the 'River Chelt Mitigation Strategy' as being required to be secured, however this term did not appear in any document that related to management plan requirements. Both the Applicant [\[REP3-043\]](#) and NE [\[REP3-076\]](#) responded to state that the strategy was not a specific document, but referred to the general mitigation approach, including the fish rescue plan secured in B23 of the REAC [\[REP3-031\]](#).
- C.4.21 The Applicant also confirmed how the general approach to mitigation of impacts to the River Chelt have been considered and secured [\[REP4-035\]](#), with reference to the Environmental Masterplans [\[REP3-009\]](#) [\[REP3-010\]](#) and commitment B23 of REAC [\[REP3-031\]](#), which was updated throughout the examination, with the final version summarising all amendments provided as [\[REP10-066\]](#).
- C.4.22 A requirement of commitment B23 was the provision of a River Realignment and Channel Diversion Management Plan, which the Applicant provided as [\[REP9-006\]](#). This document was discussed during the examination, with submission received from the joint councils [\[REP10-111\]](#) and the Applicant [\[REP11-002\]](#) which discussed the requirement for temporary crossings, and requirement for future updates following detailed design and the requirements of any flood risk activity permit.
- C.4.23 No IPs raised queries on this matter.
- C.4.24 On the basis of the above information, the ExA is satisfied that that the required mitigation measures are secured within the dDCO and accompanying management plans or commitments.

Consultation agreement with NE

- C.4.25 Whilst the ExA noted the overall level of agreement, it was noted that [\[APP-100\]](#) contained Appendix G which detailed consultation with NE, which detailed that at the last recorded consultation, a number of methodology related issues associated with the conclusions of no AEoI were outstanding. As such, the ExA sought clarity on this matter [\[PD-010\]](#), Q3.1.10]

C.4.26 The Applicant [\[REP3-043\]](#) provided an updated HRA SIAA appendix G [\[REP3-026\]](#) which sets out the Applicant's response to NE's letter dated 30 November 2022 which detailed the previous areas requiring further information. The Applicant also considered that NE confirmed via email that it is satisfied that all previous comments on the HRA documents have been addressed.

C.4.27 No other IPs raised queries on this matter.

**Temporary reduction in habitat (functionally linked habitat) during construction –
Proposed Development alone and Direct injury or mortality (reduction in species density) during construction –
Proposed Development alone**

C.4.28 The Stage 1 screening exercise concluded that the impact pathway of a temporary reduction in habitat (functionally linked habitat) during construction would on result in potential LSE on the qualifying features of:

- Severn Estuary SAC – river lamprey.
- Severn Estuary Ramsar site – European eel, Atlantic salmon, sea trout, river lamprey, fish assemblage.

C.4.29 The Stage 1 screening exercise concluded that the impact pathway of direct injury or mortality would on result in potential LSE on the qualifying features of:

- Severn Estuary SAC – river lamprey.
- Severn Estuary Ramsar site – river lamprey.

Potential for AEOI

C.4.30 The assessment of potential AEOI is provided in the HRA SIAA [\[REP3-026\]](#), sections 6.1, 6.3 and 6.6.

C.4.31 The main source of these potential impact pathways is considered to be the design of the Proposed Development. This requires partial dewatering of the river channel in order to install hard bank protection along both banks underneath the River Chelt bridge in order to ensure that access under the bridge is maintained.

C.4.32 This dewatering could result in injury or mortality to river lamprey ammocoetes present in burrows in the sediment and would be an irreversible impact to individual fish.

C.4.33 The HRA SIAA [\[REP3-026\]](#) considers that as an area of approximately 20 m length of channel may be impacted, only a small area of functionally linked habitat for river lamprey would be affected, and consequently only low numbers of individual fish would be impacted, in particular when taking into account the extensive catchment area and availability of alternative watercourses within this catchment area.

C.4.34 The HRA SIAA [\[REP3-026\]](#) identifies the key conservation objective for the SAC, relevant to this impact pathway as the need to maintain the size of the populations of species in the Severn Estuary and the rivers in which lamprey are in decline. While there are no conservation objectives in place for Ramsar sites it has been assumed that the conservation objectives for the SAC can be 'read across' to the assessment of effects on the Ramsar site.

Mitigation measures

- C.4.35 The mitigation measures relied upon to conclude no AEoI are detailed in paragraph 7.2.3, all of which are proposed to be secured within the REAC [\[REP10-066\]](#), followed by the Principal Contractor and overseen by a suitably qualified and experienced Ecological Clerk of Works (ECOW).
- C.4.36 The mitigation measures (in summary) include requirements or commitments to locate haul roads at least 10m from the edge of watercourses, use of a “soft start” procedure or any works likely to create noise or vibration, use of rotary piles instead of percussive piling where possible, temporary displacement of fish prior to in channel works or dewatering, ensuring continuity of flow and fish passage during dewatering, screening of pumping equipment (2mm screens), potential use of temporary stop nets upstream, undertaking works outside of ecologically sensitive time periods (spawning) where possible, and avoiding night works during any construction works which do take place during sensitive periods.
- C.4.37 The ExA [\[PD-010\]](#), FWQ3.1.11] considered that it was unclear within the HRA SIAA [\[APP-100\]](#) if the Applicant was intending to implement the mitigation measure of relocation of lamprey ammocoetes, which NE considered would be required (as detailed in Appendix G of [\[APP-100\]](#)).
- C.4.38 Both the Applicant [\[REP3-043\]](#) and NE [\[REP3-076\]](#) responded to state that the Applicant would be undertaking this where required. The requirement for this during dewatering would be avoided predominately by design of the works to ensure that only part of the width of the channel will be dewatered. Therefore, continuity of flow and fish passage would be maintained at all times during construction. In the event of relocation being required, a fish rescue plan would be available, the requirement for which is secured in B23 of the REAC [\[REP4-018\]](#).
- C.4.39 In response to the RIES [\[REP9-005\]](#), the Applicant provided some additional information on the requirements for lamprey ammocoetes to be relocated prior to any dewatering in order to reduce the potential for injury / mortality, which is to be set out in the fish rescue plan as required by B23.
- C.4.40 No other IPs raised any other queries on this matter or in relation to the conclusion of no AEoI.
- C.4.41 On the basis of the above information and the mitigation proposed, the ExA is satisfied that these LSE pathways will not result in AEoI to the European site from the Proposed Development alone.

Disturbance to key species during construction – Proposed Development alone

- C.4.42 The Stage 1 screening exercise concluded that this impact pathway would on result in potential LSE on the qualifying features:
- Severn Estuary SAC – river lamprey.
 - Severn Estuary Ramsar site – European eel, Atlantic salmon, sea trout, river lamprey, fish assemblage.

Potential for AEoI

- C.4.43 The assessment of potential AEoI is provided in the HRA SIAA [\[REP3-026\]](#), sections 6.3, 6.4 and 6.6.

- C.4.44 Disturbance as a result of noise and vibration during construction may cause fish species to avoid or move away from the affected area, in particular during the following key periods:
- European eel – during upstream migration between February and July, or downstream between October and November.
 - river lamprey - during upstream migration to spawning grounds during winter and spring, where mating takes place in March and April, and downstream between July and September.
 - For trout and salmon - November to February, with peaks in October and November.
- C.4.45 Disturbance may temporarily and locally displace fish from feeding and shelter resources near to the source of the disturbance but is unlikely to cause any reduced fitness or individual mortality that could result in a long term or population level effect, and the short-term nature of the works means that this impact is considered to be temporary in nature.
- C.4.46 The HRA SIAA [\[REP3-026\]](#) identifies the main source of potential disturbance as noise and vibration impacts during construction, in particular the requirement for piling.
- C.4.47 Considering a worst-case scenario of percussive piling, estimations of near-source (10 m) pile driving identified a mean peak of 198dB and a mean sound exposure level of 171dB, which is below the injury thresholds and temporary threshold shift for the identified qualifying features.
- C.4.48 In relation to vibration, taking percussive piling as a worst-case scenario, assessments showed that the area potentially affected by vibration of greater than 13 mm/s is within 10 m of the activity.
- C.4.49 Piling would be set back from the river by at least 4 m, therefore the underwater acoustic signals generated as a result are likely to be lower as the noise will attenuate further before entering the water column.
- C.4.50 It is anticipated that rotary piling will be used for the Proposed Development and therefore it is likely that the worst-case scenario distances or levels of noise and vibration would be considerably less in reality.
- C.4.51 Taking into account the extensive catchment area and availability of alternative watercourses within this catchment area, the Applicant considers that only a small area of functionally linked habitat for European eel, Atlantic salmon, sea trout and river lamprey would be affected, and consequently only low numbers of individual fish would be impacted.
- C.4.52 The HRA SIAA [\[REP3-026\]](#) considers that the key conservation objectives (for the SAC, as no conservation objectives are noted for the Ramsar site) relevant to this impact pathway are identified as the need to maintain migratory passage of both adult and juveniles through the Severn Estuary between the Bristol Channel and any of their spawning rivers, and ensure passage is not obstructed or impeded.

Mitigation measures

- C.4.53 The mitigation measures considered relevant to conclude no AEoI from this impact pathway are the same as those listed above in relation to paragraphs 7.2.3 and 7.2.4 of [\[REP3-026\]](#).

C.4.54 No IPs raised any other queries on this matter or in relation to the conclusion of no AEOL.

C.4.55 On the basis of the above information and the mitigation proposed, the ExA is satisfied that this LSE pathway will not result in AEOL to the European site from the Proposed Development alone.

**Habitat or species fragmentation during construction –
Proposed Development alone**

C.4.56 The Stage 1 screening exercise concluded that this impact pathway would result in potential LSE on the qualifying features:

- Severn Estuary SAC – river lamprey.
- Severn Estuary Ramsar site – European eel, Atlantic Salmon, sea trout, river lamprey, fish assemblage.

Potential for AEOL

C.4.57 The assessment of potential AEOL is provided in the HRA SIAA [\[REP3-026\]](#) section 6.5.

C.4.58 The HRA SIAA [\[REP3-026\]](#) considers that the disturbance effects described above could also result in habitat fragmentation/barrier effects, with European eel, Atlantic salmon, sea trout and river lamprey unable to disperse or move along the River Chelt as a result of such disturbance. Similarly, pollution events (detailed below) could also result in fragmentation.

C.4.59 The HRA SIAA [\[REP3-026\]](#) identifies that in the event that dewatering is required during the installation of bank protection, only part of the width of the channel would be dewatered. Furthermore, there will be no new permanent in-river structures. Therefore, fish passage would be physically maintained at all times during construction and operation. Taking into account the extensive catchment area and availability of alternative watercourses within this catchment area, it is likely that only low numbers of individual fish would be impacted.

C.4.60 The key conservation objectives (for the SAC, with these also being relied on for the Ramsar site) relevant to this impact pathway are identified as the need to maintain migratory passage of both adult and juveniles through the Severn Estuary between the Bristol Channel and any of their spawning rivers, and ensure passage is not obstructed or impeded.

Mitigation measures

C.4.61 The mitigation measures considered relevant to conclude no AEOL from this impact pathway are the same as those listed above in relation to paragraphs 7.2.3 and 7.2.4 of [\[REP3-026\]](#).

C.4.62 No IPs raised any other queries on this matter or in relation to the conclusion of no AEOL.

C.4.63 On the basis of the above information and the mitigation proposed, the ExA is satisfied that this LSE pathway will not result in AEOL to the European site from the Proposed Development alone.

Changes in key indicators of conservation value (water quality) during construction and operation – Proposed Development alone

The Stage 1 screening exercise concluded that this impact pathway would on result in potential LSE on the qualifying features:

- Severn Estuary SAC – river lamprey.
- Severn Estuary Ramsar site – European eel, Atlantic salmon, sea trout, river lamprey, fish assemblage.

Potential for AEOL

- C.4.64 The assessment of potential AEOL is provided in the HRA SIAA [\[REP3-026\]](#), sections 6.1, 6.3 and 6.6.
- C.4.65 Pollution impacts could result in injury or mortality to European eel, Atlantic salmon, sea trout and river lamprey, or their prey species, or damage functionally linked habitat within the River Chelt during construction and operation which could in turn negatively impact these species. Such impacts have the potential to be irreversible (permanent) to individual fish.
- C.4.66 Hydrological impacts to functionally linked habitat within the River Chelt as a result of a pollution event during construction and operation could in theory be reversed with an appropriate clean-up operation/remedial action followed by habitat management.
- C.4.67 The HRA SIAA [\[REP3-026\]](#) identifies that construction phase water quality impacts could arise as a result of mobilization of suspended sediments leading to silt laden runoff entering watercourses, and the potential for accidental contamination associated with the spillage or leakage of fuels, lubricants and other chemicals required for construction. Operational phase water quality impacts could arise as a result of contaminated road runoff entering the River Chelt.
- C.4.68 The HRA SIAA [\[REP3-026\]](#) however identifies that soluble pollutants are considered to be sufficiently diluted beyond 1 km. The Severn Estuary catchment area covers an area of over 21,000 km² and over 600 rivers drain into the estuary. In the unlikely event that a pollution incident occurs and affects a 1 km stretch of the River Chelt, only a small area of functionally linked habitat for European eel, Atlantic salmon, sea trout and river lamprey would be affected, and consequently only low numbers of individual fish would be impacted.
- C.4.69 The key conservation objectives (for the SAC, with these also being relied on for the assessment of the Ramsar site) identified are
- The need to maintain migratory passage of both adult and juveniles through the Severn Estuary between the Bristol Channel and any of their spawning rivers and ensure passage is not obstructed or impeded by poor water quality.
 - Maintain the size of the populations of species in the Severn Estuary and the rivers which drain into it and ensure toxic contaminants in the water column and sediment are below levels which would pose a risk to fish passage, population size and abundance of prey species.

Mitigation measures

- C.4.70 The mitigation measures relied upon to conclude no AEOL are detailed in paragraphs 7.2.1 – 7.2.2 (Construction) and 7.3 (Operation).
- C.4.71 The construction related mitigation measures relied upon to conclude no AEOL are detailed in paragraph 7.2.3, all of which are proposed to be secured within the REAC [\[REP10-066\]](#) and followed by the Principal Contractor.
- C.4.72 In summary, these include requirements / commitments to contain and remove all debris arising from the construction and works, no pollutants to be permitted to enter drainage or run-off to a watercourse, to implement a Pollution Response Plan which is required to be in place before works start, to contain any pollution incident, which is to be and cleaned up immediately and reported, installation of silt control measures, and no storage of oils or chemicals will be allowed to be stored within 10 m of a watercourse.
- C.4.73 The operational mitigation is predominately in the form of the use of SuDS. The drainage design uses swales and ditches where possible, rather than pipework. Where there are additional areas of impermeable surfacing, the highway drainage will be routed to attenuation basins before discharge into surface watercourses. The swales, ditches and attenuation basins will allow suspended solids to settle out and remove soluble pollutants to varying degrees before discharge to the River Chelt and Leigh Brook.
- C.4.74 The HRA SIAA provides details on the proposed drainage catchments, and how the potential for pollution has been assessed using the Highways England Water Risk Assessment Tool (HEWRAT). The results of the routine runoff assessment show that all drainage catchments (which discharge to the Leigh Brook or River Chelt) pass the acute impacts from soluble pollutants assessment, chronic impacts from sediment bound pollutants assessment and are compliant with the freshwater EQS for dissolved copper and zinc with the Proposed Development in place.
- C.4.75 The results of a spillage assessment show the annual probability of a pollution incident occurring as a result of a spillage is less than 0.01 (1%) with the Proposed Development in place.
- C.4.76 No IPs raised any other queries on this matter or in relation to the conclusion of no AEOL.
- C.4.77 On the basis of the above information and the mitigation proposed, the ExA is satisfied that this LSE pathway will not result in AEOL to the European site from the Proposed Development alone.

In-combination effects – All pathways

- C.4.78 Following the Applicant's assessment of AEOL for the Proposed Development alone, the HRA SIAA [\[REP3-026\]](#) concludes that when taking into account the mitigation measures, the potential adverse effects identified will all be avoided. No residual effects remain, and therefore the Proposed Development would not have the potential to add to any effects associated with other plans or projects. No in-combination assessment was therefore required.
- C.4.79 No IPs raised any other queries on this matter or in relation to the conclusion of no AEOL.

- C.4.80 On the basis of the above information and the mitigation proposed, the ExA is satisfied that this LSE pathway will not result in AEol to the European site from the Proposed Development in combination.

AEol Assessment Outcomes – Summary

- C.4.81 The Applicant's HRA SIAA concluded that AEol can be excluded on the European site(s) listed in Table B from the Proposed Development alone, or in combination with other plans and projects. These conclusions were agreed with NE [\[RR-027\]](#).
- C.4.82 As noted above, some of the conclusions in the Applicant's assessment were initially disputed by IPs. However, these issues were resolved in the course of the examination.
- C.4.83 Based on the findings of the Examination, the ExA is satisfied that AEol on all qualifying features of European site(s) can be excluded from the Proposed Development in combination with other plans or projects.

C.5 HRA CONCLUSIONS

- C.5.1 The Proposed Development is not directly connected with, or necessary to, the management of a European site, and therefore the implications of the Proposed Development with respect to adverse effects on potentially affected sites must be assessed by the SoS.
- C.5.2 Seven European Sites and their qualifying features were considered in the Applicant's assessment of LSE:
- Wye Valley and Forest of Dean Bat Sites SAC,
 - Walmore Common Special Protection Area SPA and Ramsar site,
 - Severn Estuary SAC, SPA and Ramsar site,
 - Cotswold Beechwoods SAC.
- C.5.3 LSE were identified for two of these sites (Severn Estuary SAC and Ramsar site) from the Proposed Development.
- C.5.4 The methodology and outcomes of the Applicant's screening for LSE on European sites was subject to some discussion and scrutiny, however, the sites and features for which LSE were identified were not disputed by any IP. The ExA is satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.
- C.5.5 The ExA's findings are that, subject to the mitigation measures to be secured in the dDCO, AEol on all European sites from the Proposed Development when considered alone or in combination with other plans or projects can be excluded from the impact-effect pathways assessed.

APPENDIX D RECOMMENDED DCO

202[] No.

INFRASTRUCTURE PLANNING

The M5 Junction 10 Development Consent Order 202[]

Made - - - -

Laid before Parliament

Coming into force

CONTENTS

PART 1

PRELIMINARY

1. Citation and commencement
2. Interpretation
3. Disapplication of legislative provisions
4. Maintenance of drainage works

PART 2

PRINCIPAL POWERS

5. Development consent etc. granted by the Order
6. Maintenance of authorised development
7. Planning permission
8. Limits of deviation
9. Benefit of Order
10. Consent to transfer benefit of Order

PART 3

STREETS

11. Street works
12. Application of the 1991 Act
13. Construction and maintenance of new, altered or diverted streets and other structures
14. Classification of roads, etc.
15. Temporary stopping up and restriction of use of streets
16. Permanent stopping up and restriction of use of streets and private means of access
17. Access to works

PART 4
SUPPLEMENTAL POWERS

- 18. Discharge of water
- 19. Protective works to buildings
- 20. Authority to survey and investigate the land

PART 5
POWERS OF ACQUISITION

- 21. Compulsory acquisition of land
- 22. Compulsory acquisition of land – incorporation of the mineral code
- 23. Time limit for exercise of authority to acquire land compulsorily
- 24. Compulsory acquisition of rights and imposition of restrictive covenants
- 25. Public rights of way
- 26. Private rights over land
- 27. Modification of Part 1 of the 1965 Act
- 28. Application of the 1981 Act
- 29. Acquisition of subsoil or airspace only
- 30. Rights under or over streets
- 31. Temporary use of land for carrying out the authorised development
- 32. Temporary use of land for maintaining the authorised development
- 33. Statutory undertakers
- 34. Apparatus and rights of statutory undertakers in stopped up streets
- 35. Recovery of costs of new connections

PART 6
OPERATIONS

- 36. Felling or lopping of trees and removal of hedgerows
- 37. Trees subject to tree preservation orders
- 38. Removal of human remains

PART 7
MISCELLANEOUS AND GENERAL

- 39. Application of landlord and tenant law
- 40. Operational land for purposes of the 1990 Act
- 41. Defence to proceedings in respect of statutory nuisance
- 42. Protective provisions
- 43. Crown Rights
- 44. Certification of plans etc.
- 45. Service of notices
- 46. Arbitration

SCHEDULE 1 — AUTHORISED DEVELOPMENT
SCHEDULE 2 — REQUIREMENTS

PART 1	—	REQUIREMENTS
PART 2	—	PROCEDURE FOR DISCHARGE OF REQUIREMENTS
SCHEDULE 3	—	CLASSIFICATION OF ROADS, ETC.
PART 1	—	SPECIAL ROADS
PART 2	—	CLASSIFIED ROADS
PART 3	—	UNCLASSIFIED ROADS
PART 4	—	SPEED LIMITS
PART 5	—	TRAFFIC REGULATION MEASURES
PART 6	—	REVOCATIONS & VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS
PART 7	—	PUBLIC RIGHTS OF WAY
SCHEDULE 4	—	PERMANENT STOPPING UP OF HIGHWAYS AND PRIVATE MEANS OF ACCESS & PROVISION OF NEW HIGHWAYS AND PRIVATE MEANS OF ACCESS
PART 1	—	HIGHWAYS TO BE STOPPED UP FOR WHICH NO SUBSTITUTES IS TO BE PROVIDED
PART 2	—	HIGHWAYS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW HIGHWAYS WHICH ARE OTHERWISE TO BE PROVIDED
PART 3	—	PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS PROVIDED
PART 4	—	PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW PRIVATE MEANS OF ACCESS WHICH ARE OTHERWISE TO BE PROVIDED
SCHEDULE 5	—	LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED
SCHEDULE 6	—	MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS
SCHEDULE 7	—	LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN
SCHEDULE 8	—	TREES SUBJECT TO TREE PRESERVATION ORDERS
SCHEDULE 9	—	PROTECTIVE PROVISIONS
PART 1	—	FOR THE PROTECTION OF ELECTRICITY, GAS, WATER, AND SEWERAGE UNDERTAKERS
PART 2	—	FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS
PART 3	—	FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED
PART 4	—	FOR THE PROTECTION OF SEVERN TRENT WATER LIMITED
PART 5	—	FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY DISTRIBUTION (WEST MIDLANDS) PLC
PART 6	—	FOR THE PROTECTION OF WALES AND WEST UTILITIES
PART 7	—	FOR THE PROTECTION OF BT OPENREACH LIMITED
SCHEDULE 10	—	DOCUMENTS TO BE CERTIFIED

An application has been made to the Secretary of State under section 37 of the Planning Act 2008 (a) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an Order granting development consent.

The application was examined by a panel of two members (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The panel, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 74(2) of the 2008 Act, has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the panel, 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 changes to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114(d), 115(e), 117(f), 120(g), 122(h) and 123(i) of, and paragraphs 1 to 4, 10 to 17, 19 to 23, 26, 33, 36 and 37 of 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 M5 Junction 10 Development Consent Order 202[•] and comes into force on [•].

Interpretation

2.—(1) In this Order except where provided otherwise—

“the 1961 Act” means the Land Compensation Act 1961(j);

“the 1965 Act” means the Compulsory Purchase Act 1965(k);

“the 1980 Act” means the Highways Act 1980(l);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(m);

“the 1984 Act” means the Road Traffic Regulation Act 1984(n);

“the 1990 Act” means the Town and Country Planning Act 1990(o);

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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).
(b) S.I. 2009/2264, amended by S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2015/377, S.I. 2017/572; modified by S.I. 2012/1659.
(c) S.I. 2010/103, amended by S.I. 2012/635
(d) Section 114 was amended by paragraph 55 of Schedule 13 to the Localism Act 2011 (c. 20).
(e) Section 115 was amended by paragraph 1 of Schedule 25 to the Localism Act 2011, section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
(f) Section 117 was amended by paragraph 58 of Schedule 13, and paragraph 1 of Schedule 25, to the Localism Act 2011.
(g) Section 120 was amended by section 140 of, and paragraph 60 of Schedule 13 to, the Localism Act 2011.
(h) Section 122 was amended by paragraph 62 of Schedule 13 to the Localism Act 2011.
(i) Section 123 was amended by paragraph 62 of Schedule 13 to the Localism Act 2011.
(j) 1961 c. 33.
(k) 1965 c. 56.
(l) 1980 c. 66.
(m) 1981 c. 66.
(n) 1984 c. 27.
(o) 1990 c. 8.

“the 1991 Act” means the New Roads and Street Works Act 1991(a);

“the 2008 Act” means the Planning Act 2008(b);

“address” includes any number or address for the purposes of electronic transmission;

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“authorised development” means the development and associated development described in Schedule 1 (authorised development) or any part of it;

“the book of reference” means the book of reference listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the book of reference for the purposes of this Order;

“bridleway” has the same meaning as in section 329(1) (further provision as to interpretation) of the 1980 Act;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in section 329(1) (further provision as to interpretation) of the 1980 Act;

“the classification of roads plans” means the plans listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the classification of roads plans (part 1) and the classification of roads plans (part 2) for the purposes of this Order;

“commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, ecological surveys and pre-construction ecological mitigation works, erection of any temporary means of enclosure, set up works associated with construction compounds such as soil-stripping, stockpiling, and the provision of access points to construction compounds, provision or diversion of service apparatus and the temporary display of site notices or advertisements, and “commencement” is to be construed accordingly;

“county planning authority” means Gloucestershire County Council acting in any capacity, including but not limited to its capacity as county planning authority and mineral planning authority under sections 1(1)(a) and 1(4) (local planning authorities: general) of the 1990 Act, local highway authority within the meaning of the 1980 Act, and lead local flood authority within the meaning of section 6(7) of the Flood and Water Management Act 2010 for the county of Gloucestershire;

“the Crown land plans” means the plans listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the Crown land plans for the purposes of this Order;

“cycle track” has the same meaning as in section 329(1) (further provision as to interpretation) of the 1980 Act(c);

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

“the engineering drawings and sections” means the documents listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the engineering drawings and sections (part 1), the engineering drawings and sections (part 2), and the engineering drawings and sections (part 3) for the purposes of this Order;

“the environmental masterplan” means the plans listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the environmental masterplan (part 1) and the environmental masterplan (part 2) for the purposes of this Order;

(a) 1991 c. 22.

(b) 2008 c. 29.

(c) 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).

“the environmental statement” means the documents listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the environmental statement for the purposes of this Order;

“the flood compensation areas” means the flood compensation areas shown on the works plans;

“the flood storage area” means the flood storage area shown on the works plans;

“footpath” and “footway” have the same meaning as in section 329(1) (further provision as to interpretation) of the 1980 Act;

“the general arrangement plans” means the plans listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the general arrangement plans (part 1) and the general arrangement plans (part 2) for the purposes of this Order;

“highway” has the same meaning as in section 328 (meaning of “highway”) of the 1980 Act;

“highway authority” has the same meaning as in section 1 (highway authorities: general provision) of the 1980 Act;

“the land plans” means the plans listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the land plans for the purposes of this Order;

“the limits of deviation” means the limits of deviation referred to in article 8 (limits of deviation);

“the local highway authority” means Gloucestershire County Council;

“maintain” includes inspect, repair, adjust, alter, remove, replace or reconstruct in relation to the authorised development and any derivative of “maintain” is to be construed accordingly;

“the 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;

“the Order limits” means the limits of the land to be acquired or used permanently or temporarily shown on the land plans and works plans within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(a);

“the relevant planning authority” means the local planning authority for the land in question;

“the Secretary of State” means the Secretary of State for Transport;

“special road” means a highway which is a special road in accordance with section 16 (general provision as to special roads) of the 1980 Act or by virtue of an order granting development consent;

“the speed limits and traffic regulations plans” means the plans listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the speed limits and traffic regulations plans (part 1) and the speed limits and traffic regulations plans (part 2) for the purposes of this Order;

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8) (statutory undertakers’ land) of the 2008 Act;

“strategic highway authority” means National Highways Limited of Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ;

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority” has the same meaning as in section 49 (the street authority and other relevant authorities) of the 1991 Act;

“the streets, rights of way and access plans” means the plans listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the streets, rights of way and access

(a) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

plans (part 1) and the streets, rights of way and access plans (part 2) for the purposes of this Order;

“tree preservation order” has the meaning given in section 198 (power to make tree preservation orders) of the 1990 Act^(a)

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“trunk road” means a highway which is a trunk road by virtue of—

- (a) section 10^(b) (general provision as to trunk roads) or section 19(1)^(c) (certain special roads and other highways to become trunk roads) of the 1980 Act;
- (b) an order made or direction given under section 10 of that Act;
- (c) an order granting development consent; or
- (d) any other enactment;

“the undertaker” means Gloucestershire County Council;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” means the plans listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the works plans (part 1) and works plans (part 2) 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 airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) All distances, directions, areas and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the relevant plans.

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development).

Disapplication of legislative provisions

3. 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 and, within any maintenance period defined in article 32(12) (temporary use of land for maintaining the authorised development), any maintenance of any part of the authorised development—

- (a) section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991^(d);
- (b) section 80 (notice to local authority of intended demolition) of the Building Act 1984^(e); and
- (c) in so far as they relate to the temporary possession of land, the provisions of the Neighbourhood Planning Act 2017^(f).

^(a) As amended by paragraph 1 of Schedule 13, and paragraph 8 of Schedule 8, to the 2008 Act.

^(b) As amended by section 22(2) of the 1991 Act and paragraph 22 of Schedule 2 to the 2008 Act, and by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7).

^(c) As amended by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7).

^(d) 1991 c.59

^(e) 1984 c. 55.

^(f) 2017 c.20.

- (d) Regulation 6 of the Hedgerow Regulations 1997^(a) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

“or

- (k) for carrying out development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.”

Maintenance of drainage works

4.—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article “drainage” has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

5.—(1) Subject to the provisions of this Order, including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

Maintenance of authorised development

6. 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.

Planning permission

7.—(1) If planning permission is granted under the powers conferred by the 1990 Act for development, any part of which is within the Order limits, following the coming into force of this Order that is—

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or
- (b) required to complete or enable the use or operation of any part of the development authorised by this Order,

then the carrying out, use or operation of such development under the terms of the planning permission does not constitute a breach of the terms of this Order.

Limits of deviation

8. 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; and
- (b) with the exception of work number 3(e), 4(b), 5(d), 5(n), and 6(d) deviate vertically from the levels of the authorised development shown on the engineering drawings and sections—

(a) S.I.1997/1160.

- (i) to a maximum of 0.5 metres upwards or 1 metre downwards; or
- (ii) in respect of the excavation of the flood storage area to a maximum of 2 metres downwards but to any distance upwards to ground level,

except that these maximum limits of deviation do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation with the relevant planning authority, county planning authority and the strategic highway authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

Benefit of Order

9.—(1) Subject to article 10 (consent to transfer benefit of Order) and paragraph (2), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

(2) 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 and other persons affected by the authorised development.

Consent to transfer benefit of Order

10.—(1) The undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order, including those relating to compulsory acquisition, and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order, including those relating to compulsory acquisition, and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) If the benefit of the provisions of this Order relating to compulsory acquisition is transferred or granted to a transferee or lessee pursuant to this article and the transferee or lessee exercises those powers then the undertaker is liable to the transferee or lessee for any compensation that is payable to another party as a consequence of the exercise of those powers by the transferee or lessee.

(5) The consent of the Secretary of State is required for a transfer or grant under this article, except where the transfer or grant is made to—

- (a) National Highways Limited (company number 09346363, whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ);
- (b) Gigaclear Limited (company number 07476617, whose registered office is at Building One, Wyndyke Furlong, Abingdon, Oxfordshire, United Kingdom, OX14 1UQ) for the purposes of undertaking Work Nos. 8, 9, 10 and 11;
- (c) Openreach Limited (company number 10690039, whose registered office is at Kelvin House, 123 Judd Street, London, United Kingdom, WC1H 9NP) for the purposes of undertaking Work Nos. 27 to 34;
- (d) Severn Trent Water Limited (company number 02366686, whose registered office is at Severn Trent Centre, 2 St John's Street, Coventry, CV1 2LZ) for the purposes of undertaking Work Nos. 14 and 15;
- (e) Wales & West Utilities Limited (company number 05046791, whose registered office is at Wales & West House, Spooner Close Coedkernew, Newport, South Wales, NP10 8FZ) for the purposes of undertaking Work Nos. 16, 17, 18 and 35;

- (f) National Grid Electricity Distribution (West Midlands) PLC (company number 03600574, whose registered office is at Avonbank, Feeder Road, Bristol, Avon, BS2 0TB) for the purposes of undertaking Work Nos. 19 to 26; or
- (g) Zayo Group UK Limited (company number 03726666, whose registered office is at 100 New Bridge Street, London, England, EC4V 6JA) for the purposes of undertaking Work Nos. 12 and 13.

PART 3

STREETS

Street works

11.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets 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; and
- (e) execute any works required for, or incidental to, any works referred to in sub-paragraphs (a), (b), (c) and (d).

(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) Subject to article 12 (application of the 1991 Act), the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(4) The powers conferred by paragraph (1) are not to be exercised without the consent of the street authority; but such consent must not be unreasonably withheld.

(5) If a street authority which receives an application for consent under paragraph (4) 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.

(6) Paragraphs (4) and (5) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Application of the 1991 Act

12.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3)(a) of that Act; or
- (b) they are works which might have been carried out in exercise of the powers conferred by section 64(b)(dual carriageways and roundabouts) of the 1980 Act or section 184(c)(vehicle crossings over footways and verges) of that Act.

(2) In Part 3 of the 1991 Act references to the highway authority concerned are, in relation to works which are major highway works by virtue of paragraph (1), to be construed as references to the undertaker.

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- (a) Section 86(3) defines what highway works are major highway works.
 - (b) As amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).
 - (c) As amended by section 4 of, and paragraph 45 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11); and section 18 of and Schedule 8 to, the New Roads and Street Works Act 1991 (c. 22).

(3) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

- (a) section 56(a) (power to give directions as to timing of street works);
- (b) section 56A(b) (power to give directions as to placing of apparatus);
- (c) section 58(c) (restriction on works following substantial road works);
- (d) section 58A(d) (restriction on works following substantial street works); and
- (e) schedule 3A(e) (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved, under those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 15 (temporary stopping up and restriction of use of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(f)referred to in paragraph (4) are—

- (a) section 54 (advance notice of certain works), subject to paragraph (6);
- (b) section 55 (notice of starting date of works), subject to paragraph (6);
- (c) section 57 (notice of emergency works);
- (d) section 59 (general duty of street authority to co-ordinate works);
- (e) section 60 (general duty of undertakers to co-operate);
- (f) section 68 (facilities to be afforded to street authority);
- (g) section 69 (works likely to affect other apparatus in the street);
- (h) section 75 (inspection fees);
- (i) section 76 (liability for cost of temporary traffic regulation); and
- (j) section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 13 (construction and maintenance of new, altered or diverted streets and other structures)—

- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act;
- (b) means that the undertaker is by reason of any duty under that article to maintain a street to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (c) has effect in relation to street works to which the provisions of Part 3 of the 1991 Act apply.

Construction and maintenance of new, altered or diverted streets and other structures

13.—(1) Subject to paragraphs (2) to (6) the streets authorised to be constructed, altered or diverted under this Order are to be public highways and are to be maintained by and at the expense of the highway authority.

(2) Any special road or trunk road to be constructed under this Order must be completed to the reasonable satisfaction of the strategic highway authority and, unless otherwise agreed in writing

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- (a) As amended by sections 40 and 43 of the Traffic Management Act 2004 (c. 18).
 - (b) Inserted by section 44 of the Traffic Management Act 2004.
 - (c) As amended by section 51 of the Traffic Management Act 2004.
 - (d) Inserted by section 52 of the Traffic Management Act 2004.
 - (e) Inserted by section 52 of, and Schedule 4 to, the Traffic Management Act 2004.
 - (f) All as amended by the Traffic Management Act 2004.

with the strategic highway authority, the highway including any culverts or other structures laid under it must be maintained by and at the expense of the strategic highway authority from its completion.

(3) Where a special road or a trunk road is altered or diverted under this Order, the altered or diverted part of the highway must be completed to the reasonable satisfaction of the strategic highway authority and, unless otherwise agreed in writing with the strategic highway authority, that part of the highway including any culverts or other structures laid under it must be maintained by and at the expense of the strategic highway authority from its completion.

(4) Where a street which is not and is not intended to be a public highway is constructed, altered or diverted under this Order, the street (or part of the street as the case may be) must, when completed to the reasonable satisfaction of the street authority and unless otherwise agreed in writing with the street authority, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(5) In the case of a bridge constructed under this Order to carry a highway (other than a special road or a trunk road) over or under a special road or trunk road, the highway surface (being those elements over the waterproofing membrane and indicator layer) must from its completion be maintained by and at the expense of the undertaker and the remaining structure of the bridge must be maintained by and at the expense of the strategic highway authority unless otherwise agreed in writing with the strategic highway authority.

(6) In the case of a bridge constructed under this Order to carry a highway (other than a special road or a trunk road) over or under another highway which is not a special road or trunk road, both the highway surface and the structure of the bridge must be maintained by and at the expense of the undertaker from their completion.

(7) In any action against the undertaker or the strategic highway authority in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker or the strategic highway authority had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(8) For the purposes of a defence under paragraph (7), the court must in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker or the strategic highway authority knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker or the strategic highway authority could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker or the strategic highway authority had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker or the strategic highway authority had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

Classification of roads, etc.

14.—(1) The roads described in Part 1 (special roads) of Schedule 3 (classification of roads, etc.) are to be—

- (a) classified as special roads for the purpose of any enactment or instrument which refers to highways classified as special roads; and
 - (b) provided for the use of traffic of Classes I and II of the classes of traffic set out in Schedule 4 to the 1980 Act.
- (2) From the date on which the undertaker notifies the Secretary of State that the roads described in Part 1 (special roads) of Schedule 3 have been completed and are open for traffic—
- (a) the strategic highway authority is the highway authority for those roads; and
 - (b) they are classified as trunk roads for the purpose of any enactment or instrument which refers to highways classified as trunk roads but does not make provision for highways classified as special roads.
- (3) From the date on which the roads described in Part 2 (classified roads) of Schedule 3 are completed and open for traffic, they are to become classified roads for the purpose of any enactment or instrument which refers to highways classified as classified roads as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.
- (4) From the date on which the roads described in Part 3 (unclassified roads) of Schedule 3 are completed and open for traffic, they are to become unclassified roads for the purpose of any enactment or instrument which refers to unclassified roads.
- (5) From the date on which the roads described in Part 4 (speed limits) of Schedule 3 are open for traffic, no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of that Part along the lengths of road identified in the corresponding row of column (2) of that Part.
- (6) On such day as the undertaker may determine, the restrictions specified in column (3) of Part 5 (traffic regulation measures) of Schedule 3 are to apply to the lengths of road identified in the corresponding row of column (2) of that Part.
- (7) Unless otherwise agreed with the strategic highway authority, the public rights of way set out in Part 7 (public rights of way) of Schedule 3 and identified on the streets, rights of way and access plans are to be constructed by the undertaker in the specified locations and open for use from the date on which the authorised development is open for traffic and are to have the status described in column (2) of that Part.
- (8) On such day as the undertaker may determine, the orders specified in column (3) of Part 6 (revocations & variations of existing traffic regulation orders) of Schedule 3 are to be varied or revoked as specified in the corresponding row of column (4) of that Part in respect of the lengths of roads specified in the corresponding row of column (2) of that Part.
- (9) The application of paragraphs (1) to (8) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters, including by an instrument made under the 1984 Act where the matter in question could have been included in an order made under that Act.

Temporary stopping up and restriction of use of streets

15.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter, divert or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily stopped up or restricted under the powers conferred by this article, and which is within the Order limits, as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration, diversion or restriction of a street under this article if there would otherwise be no such access.

(4) The undertaker must not temporarily stop up, alter, divert or restrict the use of any street for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(5) 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.

(6) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

Permanent stopping up and restriction of use of streets and private means of access

16.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets and private means of access specified in columns (1) and (2) of Parts 1, 2, 3 and 4 of Schedule 4 (permanent stopping up of highways and private means of access & provision of new highways and private means of access) to the extent specified and described in column (3) of those Parts of that Schedule.

(2) No street or private means of access specified in columns (1) and (2) of Parts 2 and 4 of Schedule 4 (being a street or private means of access to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

- (a) the new street or private means of access to be constructed and substituted for it, which is specified in column (4) of those Parts of that Schedule, has been completed to the reasonable satisfaction of the 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 or private means of access to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street or private means of access until the completion and opening of the new street or private means of access in accordance with sub-paragraph (a).

(3) No street or private means of access specified in columns (1) and (2) of Parts 1 and 3 of Schedule 4 (being a street or private means of access to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street or private means of access to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) the undertaker is in possession of the land;
- (b) there is no right of access to the land from the street or private means of access concerned;
- (c) there is reasonably convenient access to the land otherwise than from the street or private means of access concerned; or
- (d) the owners and occupiers of the land have agreed to the stopping up.

(5) Where a street or private means of access has been stopped up under this article—

- (a) all rights of way over or along the street or private means of access so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street or private means of access as is bounded on both sides by land owned by the undertaker.

(6) 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.

(7) This article is subject to article 34 (apparatus and rights of statutory undertakers in stopped up streets).

Access to works

17. The undertaker may, for the purposes of the authorised development, form and lay out means of access, 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.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

18.—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, maintenance or use 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) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991.

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs or the person or body otherwise having authority to give such consent; 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) 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.

(5) 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.

(6) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(a) have the same meaning as in that Act.

(7) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application, that person is deemed to have granted consent or given approval, as the case may be.

Protective works to buildings

19.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or

(a) 1991 c. 57.

- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may (subject to paragraph (5)) enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works to a building under this article the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter and survey any building and any land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and any land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 46 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152(a)(compensation in case where no right to claim in nuisance) of the 2008 Act.

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

(a) As amended by S.I. 2009/1307.

Authority to survey and investigate the land

20.—(1) The undertaker may for the purposes of this Order enter on any land within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land (including any watercourses, ground water, static water bodies or vegetation on the land);
- (b) without limitation on the scope of sub-paragraph (a), make any excavations, trial holes or boreholes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer, subsoil and groundwater and remove soil and water samples and discharge water samples onto the land;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; 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 or boreholes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes or boreholes.

(4) No trial holes or boreholes are to be made under this article—

- (a) in land located within the highway boundary for which the local highway authority is the highway authority, without the consent of the local highway authority;
- (b) in land located within the highway boundary for which the strategic highway authority is the highway authority, without the consent of the strategic highway authority; or
- (c) in a private street without the consent of the 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 powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either the local highway authority or a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision within 28 days of receiving the application for consent, that authority is deemed to have granted consent.

(7) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto 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.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

21.—(1) The undertaker may acquire compulsorily so much of the Order land as is required to carry out or to facilitate, or is incidental to, the authorised development.

(2) This article is subject to paragraph (2) of article 24 (compulsory acquisition of rights and imposition of restrictive covenants) and paragraph (8) of article 31 (temporary use of land for carrying out the authorised development).

Compulsory acquisition of land – incorporation of the mineral code

22. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981^(a) are incorporated into this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated;
- (b) for “the acquiring authority” substitute “the undertaker”; and
- (c) for “undertaking” substitute “authorised development”.

Time limit for exercise of authority to acquire land compulsorily

23.—(1) After the end of the period of 3 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as modified by article 27 (modification of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 28 (application of the 1981 Act).

(2) The authority conferred by article 31 (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 from remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights and imposition of restrictive covenants

24.—(1) The undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the Order land as may be required for any purpose for which that land may be acquired under article 21 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights etc. may be acquired) the undertaker’s powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive covenants as may be required for the purpose specified in relation to that land in column (2) of that Schedule and relating to that part of the authorised development specified in column (3) of that Schedule.

(3) The power to impose restrictive covenants under paragraph (1) is exercisable only in respect of plots specified in column (1) of Schedule 5.

(4) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants)), where the undertaker acquires a right over land or the benefit of a restrictive covenant, the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 6 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 of a right over land by the creation of a new right or the imposition of a restrictive covenant.

Public rights of way

25.—(1) The public rights of way identified in columns (1) to (3) of Parts 1 and 2 of Schedule 4 (permanent stopping up of highways and private means of access & provision of new highways and

(a) 1981 c. 67.

private means of access) and shown on the streets, rights of way and access plans are to be extinguished on the date of the expiry of the notice given under paragraph (2).

(2) Prior to the extinguishment of each of the public rights of way identified in columns (1) to (3) of Parts 1 and 2 of Schedule 4 and shown on the streets, rights of way and access plans, the undertaker must erect a site notice at each end of the rights of way to be extinguished no less than 28 days prior to the extinguishment of that right of way.

(3) The notice to be erected under paragraph (2) must include—

- (a) details of the public rights of way to be extinguished;
- (b) the date on which the extinguishment will take effect;
- (c) details of any public rights of way being provided in substitution; and
- (d) details of the places where a copy of this Order and the documents listed in Schedule 10 (documents to be certified) may be inspected.

Private rights over land

26.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

- (a) 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) (powers of entry) of the 1965 Act,

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or burden of the restrictive covenant—

- (a) from the date of the acquisition of the right or the benefit of the restrictive covenant 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) (powers of entry) of the 1965 Act,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker within the Order limits which are required to be interfered with or breached for the purposes of this Order are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(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 (compensation in case where no right to claim in nuisance) of the 2008 Act 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 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 33 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker's appropriation of it;

- (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; and
- (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 such agreement as is 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 any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Modification of Part 1 of the 1965 Act

27.—(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.

(2) In section 4A(1)(a) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the applicable period for the purposes of section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the three year period mentioned in article 23 (time limit for exercise of authority to acquire land compulsorily) of the M5 Junction 10 Development Consent Order 202[•]”.

(3) In section 11A(b)(powers of entry: further notice of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”;
- (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 23 of the M5 Junction 10 Development Consent Order 202[•]”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 29(3) (acquisition of subsoil or airspace only) of the M5 Junction 10 Development Consent Order 202[•], which excludes the acquisition of subsoil or airspace only from this Schedule”; and

(b) after paragraph 29, 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 19 (protective works to buildings), 31 (temporary use of land for carrying out the authorised development) or 32 (temporary use of land for maintaining the authorised development) of the M5 Junction 10 Development Consent Order 202[•].”

(a) As inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).
 (b) As inserted by section 186(3) of the Housing and Planning Act 2016.

Application of the 1981 Act

- 28.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, 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 other body or person authorised to acquire land by means of a compulsory purchase order.”
- (4) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.
- (5) Omit section 5A(a) (time limit for general vesting declaration).
- (6) In section 5B(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the applicable period for the purposes of section 5A” substitute “section 118(c) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the three year period mentioned in article 23 (time limit for exercise of authority to acquire land compulsorily) of the M5 Junction 10 Development Consent Order 202[•]”.
- (7) In section 6(d) (notices after execution of declaration), in subsection (1)(b), for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134(e) (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.
- (8) In Schedule A1(f) (counter-notice requiring purchase of land not in general vesting declaration) for paragraph 1(2) substitute—
- “(2) But see article 29(3) (acquisition of subsoil or airspace only) of the M5 Junction 10 Development Consent Order 202[•], which excludes the acquisition of subsoil or airspace only from this Schedule.”
- (9) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 27 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace only

- 29.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in paragraph (1) of article 21 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.
- (2) Where the undertaker acquires any part of, or rights in, the subsoil of or the airspace over the land referred to in paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.
- (3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—
- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
 - (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
 - (c) Section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(a) Inserted by section 182(2) of the Housing and Planning Act 2016.

(b) As inserted by section 202(2) of Schedule 3 to the Housing and Planning Act 2016 (c. 22).

(c) As amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25, to the Localism Act 2011 (c. 20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c. 2).

(d) As amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(e) As amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 (c. 20) and S.I. 2012/16.

(f) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

Rights under or over streets

30.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace 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 is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who 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 a statutory undertaker to whom section 85 (sharing of 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.

Temporary use of land for carrying out the authorised development

31.—(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 23(2) (time limit for exercise of authority to acquire land compulsorily)—

(a) enter on and take temporary possession of—

- (i) the land specified in column (1) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and
- (ii) any other Order land in respect of which no notice of entry has been served under section 11(a)(powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act (other than in connection with the acquisition of rights only);

(b) remove any buildings and vegetation from that land;

(c) construct temporary works (including the provision of means of access) and buildings on that land; and

(d) construct any permanent works specified in relation to that land in column (2) of Schedule 7, or any other mitigation works in connection with the authorised development.

(2) 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 and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(ii).

(3) The undertaker must not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) Section 11 was amended by section 14 of, paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No.1) and S.I. 2009/1307.

- (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 (3) of Schedule 7; or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by 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 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works (including ground strengthening works) have been constructed under paragraph (1)(d); or
- (c) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(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 powers conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to 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) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from acquiring any part of the subsoil of or airspace over (or rights in the subsoil of or airspace over) that land under article 29 (acquisition of subsoil or airspace only).

(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(a)(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.

(11) Paragraph (1)(a)(ii) does not authorise the undertaker to take temporary possession of any land which the undertaker is not authorised to acquire under article 21 (compulsory acquisition of land) or article 24 (compulsory acquisition of rights and imposition of restrictive covenants).

Temporary use of land for maintaining the authorised development

32.—(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 upon 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 that purpose.

(a) Section 13 was amended by sections 62(3) and 139 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).

(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 upon 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 explaining the purpose for which entry is to be taken.

(4) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of—

- (a) the authorised development or any of its parts;
- (b) the public; or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practicable in the circumstances.

(5) The undertaker may only remain in possession of land under this article 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.

(6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(7) 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.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(9) 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 execution of any works, other than loss or damage for which compensation is payable under paragraph (7).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(11) 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.

(12) In this article “the 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 opened for use.

Statutory undertakers

33.—(1) Subject to the provisions of article 24(3) (compulsory acquisition of rights and imposition of restrictive covenants), Schedule 9 (protective provisions) and paragraph (2), the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, any Order land belonging to statutory undertakers; and
- (b) extinguish the rights of, or remove or reposition the apparatus belonging to, statutory undertakers over or within the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—

- (a) Part 3 (street works in England and Wales) of the 1991 Act; and

- (b) article 34 (apparatus and rights of statutory undertakers in stopped up streets).

Apparatus and rights of statutory undertakers in stopped up streets

34.—(1) Where a street is stopped up under article 16 (permanent stopping up and restriction of use of streets and private means of access), 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 16 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 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 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 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 to be necessary, then, if it involves cost in the execution of the relocation works 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 paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(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)) must, 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 utility 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.

(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 are to 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 are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(a).

Recovery of costs of new connections

35.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 33 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 33, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or

- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 34 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003; and

“public utility undertaker” means a gas, water, electricity or sewerage undertaker.

PART 6

OPERATIONS

Felling or lopping of trees and removal of hedgerows

36.—(1) The undertaker may fell or lop any tree or shrub, or cut back its roots, within or overhanging land within the Order limits if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (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—

- (a) do no unnecessary damage to any tree or shrub;

- (b) pay compensation to any person for any loss or damage arising from such activity; and

(a) 2003 c.21.

- (c) take steps to avoid a breach of the provisions of the Wildlife and Countryside Act 1981^(a) and the Conservation of Habitats and Species Regulations 2017^(b) or any successor acts and regulations.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed.

(5) In this article "hedgerow" has the same meaning as in the Hedgerows Regulations 1997^(c) and includes important hedgerows.

Trees subject to tree preservation orders

37.—(1) The undertaker may fell or lop any tree described in Schedule 8 (trees subject to tree preservation orders), cut back its roots or undertake such other works described in column (2) of that Schedule relating to the relevant part of the authorised development described in column (3) of that Schedule, if the undertaker reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (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)—

- (a) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity;
- (b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act is not to apply although where possible the undertaker is to seek to replace any trees which are removed; and
- (c) the undertaker must consult the relevant planning authority prior to that activity taking place.

(3) The authority given in paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Removal of human remains

38.—(1) In this article "the specified land" means any land within the Order limits.

(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Subject to paragraph (12), before any such remains are removed the undertaker must give notice of the intended removal describing the specified land and stating the general effect of the following provisions of this article by—

- (a) publishing a notice for two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near to the specified land for a minimum of 28 days.

(a) 1981 c. 69.
(b) S.I. 2017/1012.
(c) S.I. 1997/1160.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the relevant planning authority.

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

then subject to paragraph (10) the undertaker must remove the remains and cause them to be reinterred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be reinterred in individual containers which are to be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation is to be sent to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the undertaker to the relevant planning authority.

(12) No notice is required under paragraph (3) before the removal of any human remains where the undertaker is satisfied—

- (a) that the remains were interred more than 100 years ago; and
- (b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

(13) In the case of remains in relation to which paragraph (12) applies, the undertaker—

- (a) may remove the remains;
- (b) must apply for direction from the Secretary of State under paragraph (14) as to their subsequent treatment; and
- (c) must deal with the remains in such manner, and subject to such conditions, as the Secretary of State directs.

(14) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(15) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(16) Section 25 (offence of removal of body from burial ground) of the Burial Act 1857^(a) does not apply to a removal carried out in accordance with this article.

(17) Section 239 (use and development of burial grounds) of the 1990 Act applies—

- (a) in relation to land, other than a right over land, acquired for the purposes of the authorised development (whether or not by agreement), so as to permit use by the undertaker in accordance with the provisions of this Order; and
- (b) in relation to a right over land so acquired (whether or not by agreement), or the temporary use of land pursuant to article 31 (temporary use of land for carrying out the authorised development) or 32 (temporary use of land for maintaining the authorised development), so as to permit the exercise of that right or the temporary use by the undertaker in accordance with the provisions of this Order,

and in section 240(1) (provisions supplemental to sections 238 and 239) of the 1990 Act reference to “regulations made for the purposes of sections 238(3) and (4) and 239(2)” means, so far as applicable to land or a right over land acquired under this Order, paragraphs (2) to (15) of this article and in section 240(3) of the 1990 Act reference to a “statutory undertaker” includes the undertaker and reference to “any other enactment” includes this Order.

(18) The Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950^(b) do not apply to the authorised development.

PART 7

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

39.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

^(a) 1857 c. 81.
^(b) S.I 1950/792

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

40. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) (cases in which land is to be treated as not being operational land) of the 1990 Act.

Defence to proceedings in respect of statutory nuisance

41.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within paragraph (d), (fb), (g) or (ga) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(b); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
 - (iii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protective provisions

42. Schedule 9 (protective provisions) has effect.

Crown Rights

43.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee—

- (a) to take, use, enter upon or in any manner interfere with any land or rights of any description—
 - (i) belonging to His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;

(a) 1990 c.43.
 (b) 1974 c. 40.

- (ii) belonging to His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land;
- (iii) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown Land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

Certification of plans etc.

44.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of each of the plans and documents set out in Schedule 10 (documents to be certified) for certification that they are true copies of the plans and 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

45.—(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 (5) 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^(a) 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.

(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 the 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.

(a) 1978. C. 30.

(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 to be 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) the notice or document is 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 must 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 “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

46. 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 the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State for Transport

Name

Address

Date

Department for Transport

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

In the administrative areas of Gloucestershire County Council, Cheltenham Borough Council and Tewkesbury Borough Council

The authorised development is a nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act^(a) and associated development within the meaning of section 115(2) of the 2008 Act, comprising—

(a) Section 22 was substituted by article 3 of S.I. 2013/1883.

Work No. 1 – the construction of a new Junction 10 on the M5 Motorway made up of four new slip roads, at the location shown on sheets 1 to 10, 12 and 15 of the works plans, to include—

- (a) the construction of motorway signage and associated cabling and ducting works;
- (b) the construction of a new northbound exit slip from the M5 to the A4019;
- (c) the construction of a new southbound exit slip from the M5 to the A4019;
- (d) the construction of a new southbound entry slip from the A4019 to the M5;
- (e) the construction of a new northbound entry slip from the A4019 to the M5;
- (f) the demolition of the existing M5 northbound entry slip;
- (g) the demolition of the existing M5 southbound exit slip;
- (h) the construction of drainage attenuation basin (3) with associated drainage facilities, access and landscaping southwest of Junction 10 at the location shown on sheet 6 of the works plans;
- (i) construction compound no. 1 of 37,300 square metres southwest of Junction 10 at the location shown on sheets 5 and 6 of the works plans;
- (j) construction compound no. 2 of 47,500 square metres northwest of Junction 10 at the location shown on sheets 4 and 5 of the works plans;
- (k) construction compound no. 3 of 53,800 square metres northeast of Junction 10 at the location shown on sheets 5 and 12 of the works plans;
- (l) the construction of drainage attenuation basin (2) with associated drainage facilities, access and landscaping northwest of Junction 10 at the location shown on sheets 4 and 5 of the works plans;
- (m) the extension of the Leigh Brook culvert (also known as the Barn Farm culvert);
- (n) the construction of an environmental barrier adjacent to Barn Farm north of Junction 10 and west of the M5 at the location shown on sheet 4 of the works plans;
- (o) the construction of an environmental barrier adjacent to land housing a traveller site north of Junction 10 and east of the M5 at the location shown on sheets 4 and 5 of the works plans;
- (p) construction compound no. 9 of 48,300 square metres south of Junction 10 at the location shown on sheets 6 and 15 of the works plans.

Work No. 2 – the construction of a new grade separated roundabout junction and maintenance bays at the location shown on sheets 4 and 5 of the works plans, to include—

- (a) the construction of a new roundabout over the M5 comprising a circulatory carriageway and the Piffs Elm interchange bridges (north and south);
- (b) landscaping northwest of Junction 10;
- (c) the extension of the Piffs Elm culvert;
- (d) the demolition of the existing A4019 bridge over the M5;
- (e) the demolition of 14 properties at Withybridge Gardens southeast of Junction 10;
- (f) the demolition of Sheldon Nurseries northwest of Junction 10;
- (g) the demolition of Barn Farm Cottage north of Junction 10;
- (h) the demolition of Wayside northwest of Junction 10;
- (i) the demolition of Bridge House northwest of Junction 10.

Work No. 3 – the realignment and widening of the A4019 (Tewkesbury Road) northwest of Junction 10 for 550 metres with associated footway; cycle track; shared use path; private access points; and signage and ducting at the location shown on sheets 5, 6 and 11 of the works plans, to include—

- (a) the realignment of the unclassified road known as Stanboro Lane / Piffs Elm Lane;
- (b) the construction of drainage attenuation basin (1) with associated drainage facilities, access and landscaping north of the A4019 (Tewkesbury Road);

- (c) the diversion of a public right of way (FP ABO14) to the south side of the A4019 (Tewkesbury Road);
- (d) the construction of new or altered private means of access;
- (e) the provision of a flood compensation area at the location shown on sheets 5 and 11 of the works plans.

Work No. 4 – the realignment and dualling of the A4019 (Tewkesbury Road) with associated footway; cycle track; shared use paths; private means of access; and signage and ducting southeast of Junction 10 for 2.7 kilometres to a point east of the Gallagher Junction at the location shown on sheets 5, 6, 12, 13 and 14 of the works plans, to include—

- (a) the demolition of Withy Bridge and Laburnum properties north of the A4019 (Tewkesbury Road);
- (b) the construction of an underpass beneath the A4019 (Tewkesbury Road) east of Junction 10 270 metres northwest of Withybridge Lane;
- (c) the diversion and construction of bridleway BR AUC1 under the A4019 (Tewkesbury Road);
- (d) the construction of drainage attenuation basin (4) with associated drainage facilities, access and landscaping southeast of Junction 10;
- (e) the demolition of three properties (Nos 1 - 3 The Row) in Uckington south of the A4019 (Tewkesbury Road);
- (f) the construction of a signalised junction including access to land north of the A4019 (Tewkesbury Road); pedestrian and cycle crossing points; maintenance bay; and southern access to the new West Cheltenham Link Road;
- (g) the construction of new or altered private means of access;
- (h) the removal of an existing layby south of the A4019 (Tewkesbury Road);
- (i) construction compound no. 4 of 50,100 square metres north of the A4019 (Tewkesbury Road) at the location shown on sheet 12 of the works plans;
- (j) mitigation planting for dormice;
- (k) the construction of an environmental barrier 160 metres in length south of the A4019 (Tewkesbury Road) adjacent to Cooks Lane;
- (l) the demolition of buildings at Manor Farm west and southwest of Uckington Junction;
- (m) the construction of a signalised junction serving Moat Lane and The Green with pedestrian and cycle crossing points and maintenance bay;
- (n) the construction of service roads running east and west of The Green;
- (o) the construction of environmental barriers west and east of The Green, north of the A4019 (Tewkesbury Road);
- (p) the construction of bat mitigation to the north of the A4019 (Tewkesbury Road), east of Uckington;
- (q) the construction of drainage attenuation basin (6) with associated drainage facilities, access and landscaping south of the A4019 (Tewkesbury Road);
- (r) the construction of a left turn exit for eastbound traffic into the development site known as Elms Park;
- (s) the construction of a signalised junction to access development (site access A) to the north of the A4019 (Tewkesbury Road) with pedestrian and cycle crossing points;
- (t) the construction of an environmental barrier south of the A4019 (Tewkesbury Road) between West Cheltenham Community Fire Station and just west of the entrance to the Cotswold Area Civil Service Sports Association;
- (u) the construction of a signalised junction to access development (site access B) to the north of the A4019 (Tewkesbury Road) with pedestrian and cycle crossing points;

- (v) the construction of a service road to the south of the A4019 (Tewkesbury Road) serving properties including the Cotswold Area Civil Service Sports Association; Homecroft Drive and the West Cheltenham Community Fire Station;
- (w) the demolition of ten properties to the north of the A4019 (Tewkesbury Road) between Uckington and the Gallagher Junction;
- (x) the alteration of the signalised junction serving Gallagher Retail Park and the B4634 to the south of the A4019 (Tewkesbury Road) with maintenance bay;
- (y) demolition of buildings forming part of Baileys Nursery west of Gallagher Retail Park access;
- (z) the construction of a public right of way (footpath) to link to diverted bridleway BR AUC1;
- (aa) the construction of a lane on the eastbound carriageway including sections of bus lane, bus gates and left turn lane at the locations shown on sheets 13 and 14 of the works plans;
- (bb) the realignment of Withybridge Lane for 150 metres connecting to the realigned and dualled A4019 (Tewkesbury Road) at the location shown on sheet 12 of the works plans.

Work No. 5 – the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) for 1.4 kilometres to join with the B4634 with footway and cycle track to the west and private access, signage and ducting at the location shown on sheets 6, 12, 15 and 16 of the works plans, to include—

- (a) the construction of a service road linking properties south of the A4019 (Tewkesbury Road) and Cooks Lane;
- (b) construction compound no. 5 of 36,400 square metres east of Withybridge Lane and west of the new West Cheltenham Link Road at the location shown on sheet 12 of the works plans;
- (c) construction compound no. 6 of 12,100 square metres east of the new West Cheltenham Link Road and south of the A4019 (Tewkesbury Road) at the location shown on sheet 12 of the works plans;
- (d) the construction of a new bridge over the River Chelt;
- (e) the diversion of public right of way FP AUC11 to the north of the River Chelt under the new River Chelt Bridge;
- (f) the diversion of public right of way FP ABO24 to the south of the River Chelt under the new River Chelt Bridge;
- (g) construction compound no. 7 of 28,100 square metres east of the new West Cheltenham Link Road at the location shown on sheet 15 of the works plans;
- (h) construction compound no. 8 of 9,600 square metres west of the new West Cheltenham Link Road at the location shown on sheet 16 of the works plans;
- (i) the construction of drainage attenuation basin (5) with associated drainage facilities, access and landscaping north of the B4634;
- (j) the construction of a signalised junction serving the new West Cheltenham Link Road, the B4634 and the West Cheltenham Golden Valley Development land, with pedestrian and cycle crossing points and maintenance layby;
- (k) the construction of new or altered private means of access;
- (l) the construction of the West Cheltenham Link bridge at the location shown on sheet 12 of the works plans;
- (m) the construction of the West Cheltenham Link bridge at the location shown on sheet 15 of the works plans;
- (n) the provision of a flood compensation area at the location shown on sheets 6, 12 and 15 of the works plans;
- (o) the provision of a flood compensation area at the location shown on sheets 12 and 15 of the works plans.

Work No. 6 – the realignment of the B4634 for 490 metres connecting to the new West Cheltenham Link Road with shared use path, private access, signage and ducting at the location shown on sheets 7, 15 and 16 of the works plans, to include—

- (a) flood culverts group 1 under the B4634;
- (b) flood culverts group 2 under the B4634;
- (c) the construction of new or altered private means of access;
- (d) the provision of a flood compensation area at the location shown on sheets 7, 15 and 16 of the works plans.

Work No. 7 – the construction of a flood storage area of 102,421 square metres and associated works to the east of the M5 and south of the A4019 at the location shown on sheets 5, 6 and 12 of the works plans.

Work No. 8 – the diversion of 500 metres of telecommunication cable and associated apparatus and equipment at the location shown on sheet 16 of the works plans.

Work No. 9 – the diversion of 98 metres of telecommunication cable and associated apparatus and equipment at the location shown on sheet 16 of the works plans.

Work No. 10 – the diversion of 1585 metres of telecommunication cable and associated apparatus and equipment at the location shown on sheets 5, 11 and 12 of the works plans.

Work No. 11 – the diversion of 290 metres of telecommunication cable and associated apparatus and equipment at the location shown on sheet 13 of the works plans.

Work No. 12 – the diversion of 611 metres of telecommunication cable and associated apparatus and equipment at the location shown on sheet 16 of the works plans.

Work No. 13 – the diversion of 55 metres of telecommunication cable and associated apparatus and equipment at the location shown on sheet 13 of the works plans.

Work No. 14 – the diversion of 459 metres of water pipeline at the location shown on sheet 16 of the works plans.

Work No. 15 – the diversion of 7090 metres of water pipeline at the location shown on sheets 5, 12, 13 and 14 of the works plans.

Work No. 16 – the diversion of 1622 metres of gas main at the location shown on sheets 5, 12 and 13 of the works plans.

Work No. 17 – the diversion of 55 metres of gas main at the location shown on sheet 13 of the works plans.

Work No. 18 – the diversion of 1108 metres of gas main at the location shown on sheets 13 and 14 of the works plans.

Work No. 19 – the diversion of 202 metres of electric cable and associated apparatus and equipment at the location shown on sheet 5 of the works plans.

Work No. 20 – the diversion of 444 metres of electric cable and associated apparatus and equipment at the location shown on sheets 4 and 5 of the works plans.

Work No. 21 – the diversion of 129 metres of electric cable and associated apparatus and equipment at the location shown on sheet 12 of the works plans.

Work No. 22 – the diversion of 68 metres of electric cable and associated apparatus and equipment at the location shown on sheet 13 of the works plans.

Work No. 23 – the diversion of 76 metres of electric cable and associated apparatus and equipment at the location shown on sheet 13 of the works plans.

Work No. 24 – the diversion of 760 metres of electric cable and associated apparatus and equipment at the location shown on sheets 13 and 14 of the works plans.

Work No. 25 – the diversion of 68 metres of electric cable and associated apparatus and equipment at the location shown on sheet 16 of the works plans.

Work No. 26 – the diversion of 70 metres of electric cable and associated apparatus and equipment at the location shown on sheet 16 of the works plans.

Work No. 27 – the diversion of 3815 metres of telecommunication cable and associated apparatus and equipment at the location shown on sheets 5, 12, 13 and 14 of the works plans.

Work No. 28 – the diversion of 96 metres of telecommunication cable and associated apparatus and equipment at the location shown on sheet 11 of the works plans.

Work No. 29 – the diversion of 416 metres of telecommunication cable and associated apparatus and equipment at the location shown on sheet 12 of the works plans.

Work No. 30 – the diversion of 122 metres of telecommunication cable and associated apparatus and equipment at the location shown on sheet 12 of the works plans.

Work No. 31 – the diversion of 211 metres of telecommunication cable and associated apparatus and equipment at the location shown on sheet 13 of the works plans.

Work No. 32 – the diversion of 234 metres of telecommunication cable and associated apparatus and equipment at the location shown on sheets 13 and 14 of the works plans.

Work No. 33 – the diversion of 258 metres of telecommunication cable and associated apparatus and equipment at the location shown on sheet 14 of the works plans.

Work No. 34 – the diversion of 485 metres of telecommunication cable and associated apparatus and equipment at the location shown on sheet 16 of the works plans.

Work No. 35 – the diversion of 170 metres of gas main at the location shown on sheet 15 of the works plans.

Work No 36 – the relocation of an existing national roads telecommunications service transmission station and associated infrastructure, to include—

- (a) demolition of the existing national roads telecommunication service transmission station and associated infrastructure; and
- (b) construction of a new national roads telecommunication service transmission station and associated infrastructure.

In connection with the construction of any of those works, further development within the Order limits consisting of—

- (a) works required for the strengthening, improvement, maintenance or reconstruction of any street;
- (b) the strengthening, alteration or demolition of any structure;
- (c) ramps, means of access including private means of access, public rights of way and crossing facilities;
- (d) embankments, abutments, shafts, foundations, retaining walls, barriers, parapets, drainage, outfalls, ditches, wing walls, highway lighting, fencing and culverts;
- (e) works to place, alter, remove or maintain street furniture or apparatus in a street, or apparatus in other land, including mains, sewers, drains, pipes, cables and ducts;
- (f) works to alter the course of or otherwise interfere with a watercourse, including private water supplies;
- (g) landscaping, noise bunds and barriers, works associated with the provision of ecological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;

- (h) works for the benefit or protection of land affected by the authorised development;
- (i) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures), earthworks (including soil stripping and storage, site levelling), remediation of contamination;
- (j) the felling of trees;
- (k) working sites, storage areas, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction-related buildings, temporary worker accommodation facilities, welfare facilities, construction lighting, haulage roads and other buildings, machinery, apparatus, works and conveniences; and
- (l) the provision of other works including pavement works, kerbing and paved areas works, signing, signals, gantries, road markings works, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development.

SCHEDULE 2 REQUIREMENTS

Article 5

PART 1 REQUIREMENTS

Interpretation

1. In this Schedule—

“County Archaeologist” means the individual nominated or appointed as such by the relevant planning authority;

“design principles report” means the document listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the design principles report for the purposes of this Order

“Ecological Clerk of Works” means the individual appointed as such by the undertaker;

“EMP (2nd iteration)” means the construction stage environmental management plan to be submitted and approved under paragraph 3 of this Schedule;

“EMP (3rd iteration)” means the end of construction stage environmental management plan to be developed towards the end of the construction of the authorised development which is to contain—

- (a) the environmental information needed for the future maintenance and operation of the authorised development;
- (b) the long-term commitments to aftercare, monitoring and maintenance activities relating to the environmental features and mitigation measures that will be required to ensure the continued long-term effectiveness of the environmental mitigation measures and the prevention of unexpected environmental impacts during the operation of the authorised development; and
- (c) a record of the consents, commitments and permissions resulting from liaison with statutory bodies;

“Manual of Contract Documents for Highway Works” means the document of that name published electronically by or on behalf of the strategic highway authority for England, or any equivalent replacement published for that document;

“protected species” means species which are subject to protection under the laws of England or which are European protected species;

“the register of environmental actions and commitments” means the document listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the register of environmental actions and commitments for the purposes of this Order.

Time limits

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

Environmental Management Plan

3.—(1) No part of the authorised development is to commence until a EMP (2nd iteration) for that part has been prepared in consultation with the relevant planning authority, county planning authority and the strategic highway authority and submitted to and approved in writing by the Secretary of State.

(2) The EMP (2nd iteration) must—

- (a) be substantially in accordance with the environmental management plan (1st iteration) certified under article 44 (certification of plans etc.);
- (b) contain a record of all the sensitive environmental features that have the potential to be affected by the construction of the proposed development;
- (c) incorporate the register of environmental actions and commitments;
- (d) require adherence to working hours of 07:00 to 19:00 on Mondays to Saturdays with no working on Sundays, except for—
 - (i) night-time closures for bridge demolition and installation or other works requiring the full or partial closure of, or otherwise adversely affecting the operation of, existing carriageways;
 - (ii) oversized deliveries or deliveries where daytime working would be excessively disruptive to normal traffic operation;
 - (iii) the provision of services at compounds, including security and vehicle recovery;
 - (iv) works associated with the diversion or removal of existing utilities;
 - (v) works associated with tie-ins to existing carriageways;
 - (vi) works associated with traffic management and signal changes;
 - (vii) any emergency works;
 - (viii) any works for which different working hours have been notified at least seven days in advance to those parties who the undertaker reasonably considers will or may be affected by those works and recorded in the approved EMP (2nd iteration), in which case the EMP (2nd iteration) must require adherence to those working hours; and
 - (ix) as otherwise agreed by the relevant planning authority in advance;
- (e) include the following management plans—
 - (i) materials management plan;
 - (ii) soil handling management plan;
 - (iii) noise and vibration management plan;
 - (iv) air quality management plan;
 - (v) landscape and ecology management plan;
 - (vi) emergency preparedness and response plan including flood management plan and severe weather plan;
 - (vii) pollution prevention and control management plan;
 - (viii) archaeological management plan;
 - (ix) invasive non native species management plan;

- (x) operational unexploded ordnance emergency response plan;
- (xi) traffic management plan
- (xii) site waste management plan;
- (xiii) public rights of way management plan;
- (xiv) emergency vehicle movement management plan;
- (xv) community engagement plan;
- (xvi) carbon management plan;
- (xvii) river realignment and channel diversion management plan
- (xviii) statement of statutory nuisance

(3) The authorised development must be constructed in accordance with the approved EMP (2nd iteration).

(4) Upon completion of construction of the authorised development the EMP (2nd iteration) must be converted into the EMP (3rd iteration). The EMP (3rd iteration) must be prepared in consultation with the relevant planning authority, county planning authority and the strategic highway authority and submitted to the Secretary of State for approval within 28 days of the opening of the authorised development for public use.

(5) The authorised development must be operated and maintained in accordance with the EMP (3rd iteration) approved under paragraph (4).

Details of consultation

4.—(1) With respect to any requirement which requires details to be submitted to the Secretary of State for approval under this Schedule following consultation with another party, the details submitted must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted, the responses received to the consultation and the undertaker's response to those responses.

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

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

(4) Where the consultation responses are not reflected in the details submitted to the Secretary of State for approval, the undertaker must state in the summary report referred to in sub-paragraph (1) the reasons why the consultation responses have not been reflected in the submitted details.

Landscaping

5.—(1) No part of the authorised development is to commence until a written landscaping scheme for that part has been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority, county planning authority and the strategic highway authority.

(2) No part of the authorised development, including vegetation clearance, is to commence until an arboricultural walkover survey and tree survey for that part, taking due regard to the guidance in British Standard 5837:2012, have been undertaken to identify any significant constraints posed by trees.

(3) The landscaping scheme prepared under sub-paragraph (1) must be in accordance with the environmental masterplan and the results of the surveys undertaken under sub-paragraph (2).

(4) The landscaping scheme prepared under sub-paragraph (1) must include details of hard and soft landscaping works, including—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) details of existing trees to be retained, with measures for their protection during the construction period; and
- (f) implementation timetables for all landscaping works.

Implementation and maintenance of landscaping

6.—(1) All landscaping works must be carried out in accordance with the landscaping scheme approved under paragraph 5 of this Schedule.

(2) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice and in accordance with the landscape and ecology management plan approved as part of the EMP (2nd iteration) and EMP (3rd iteration) under paragraph 3 of this Schedule.

(3) Any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes, in the opinion of the relevant 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.

Fencing

7. Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with the Manual of Contract Documents for Highway Works except where any departures from that manual are agreed in writing by the Secretary of State following consultation with the relevant planning authority, county planning authority and strategic highway authority on matters related to their functions in connection with the authorised development.

Land and groundwater contamination

8.—(1) No part of the authorised development is to commence until a contamination risk assessment in respect of controlled waters has been produced for that part which is to include details of—

- (a) any existing sources of contamination within the Order limits that may be affected by the carrying out of the authorised development;
- (b) any reasonably required protective measures to ensure that the carrying out of the authorised development does not make worse any adverse conditions or risks associated with such existing sources of contamination; and
- (c) appropriate remediation strategies and mitigation measures to address any historic contamination which is shown to be having significant, unacceptable effects on the environment within the context of the proposed works,

and the assessment has been submitted to and approved by the Secretary of State following consultation with the Environment Agency.

(2) The steps and measures that are identified as necessary for the purposes of carrying out the authorised development in the assessment referred to in sub-paragraph (1) must be implemented as part of the authorised development.

(3) In the event that contaminated material, including impacted groundwater, is found at any time when carrying out the authorised development, which was not previously identified in the environmental statement, the undertaker must cease construction of the authorised development in the vicinity of that contamination and must report it immediately in writing to the Secretary of State, the Environment Agency and the relevant planning authority, and in agreement with the

Environment Agency and the relevant planning authority undertake a risk assessment of the contamination, and sub-paragraphs (4) and (5) will apply.

(4) Where the risk assessment determines that remediation is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be prepared submitted to and approved in writing by the Secretary of State following consultation with the Environment Agency, county planning authority and the relevant planning authority.

(5) Remedial measures must be carried out in accordance with the scheme approved under sub-paragraph (4) and following completion of the remedial measures a validation report confirming the completion and effectiveness of those measures must be submitted to the Environment Agency.

Archaeology

9.—(1) In order to be included in the EMP (2nd iteration) pursuant to paragraph 3(2)(e)(viii) of this Schedule, the archaeological management plan, must accord with the investigation and mitigation measures included in chapter 11 (cultural heritage) of the environmental statement, the EMP (1st iteration), and must include provision for site-specific archaeological project designs for each area and each phase where necessary, and have been prepared in consultation with the relevant planning authority, county planning authority, the strategic highway authority, the County Archaeologist and Historic England and have been submitted to and approved in writing by the Secretary of State.

(2) The authorised development must be carried out in accordance with the archaeological management plan and where relevant the site specific archaeological project designs referred to in sub-paragraph (1) unless otherwise agreed in writing by the Secretary of State.

(3) A programme of archaeological reporting, post excavation and publication required as part of the archaeological management plan and where relevant the site specific archaeological project designs referred to in sub-paragraph (1) must be prepared in consultation with the County Archaeologist and implemented within a reasonable timescale and deposited with the Historic Environment Record of the relevant planning authority within two years of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority.

(4) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be

- (a) retained in situ and reported to the County Archaeologist as soon as reasonably practicable; and
- (b) subject to appropriate mitigation as set out in the archaeological management plan referred to in sub-paragraph (1).

(5) No construction operations are to take place within 10 metres of the remains referred to in sub-paragraph (4) for a period of 14 days from the date the remains are reported to the County Archaeologist under sub-paragraph (4) unless otherwise agreed in writing by the Secretary of State.

Protected species

10.—(1) In the event that any protected species which were not previously identified in the environmental statement or nesting birds are found at any time when carrying out the authorised development the undertaker must cease construction works near their location and report it immediately to the Ecological Clerk of Works.

(2) The undertaker must prepare a written scheme for the protection and mitigation measures for any protected species that were not previously identified in the environmental statement or nesting birds found when carrying out the authorised development. Where nesting birds are identified works should cease within 10 metres of the nest until birds have fledged and the nest is no longer in use.

(3) The undertaker must implement the written scheme prepared under sub-paragraph (2) immediately and construction in the area specified in the written scheme must not recommence until any necessary licences are obtained to enable mitigation measures to be implemented.

Detailed design

11.—(1) The authorised development must be designed in detail and carried out so that it is in accordance with—

- (a) the preliminary scheme design shown on the works plans, the general arrangement plans, the environmental masterplan and the engineering drawings and sections; and
- (b) the design principles set out in the design principles report,

unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority, county planning authority and strategic highway authority on matters related to their functions and provided that the Secretary of State is satisfied that any amendments to the works plans, the general arrangement plans, the environmental masterplan and the engineering drawings and sections showing departures from the preliminary design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding works plans, general arrangement plans, environmental masterplan or engineering drawings and sections and the undertaker must make those amended details available in electronic form for inspection by members of the public.

Surface water drainage

12.—(1) No part of the authorised development is to commence until written details of the surface water drainage system for that part, in accordance with the mitigation measures in chapter 8 (road drainage and the water environment) of the environmental statement and including means of pollution control, have been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority, county planning authority, the strategic highway authority and the Environment Agency.

(2) The drainage system must be constructed in accordance with the approved details referred to in sub-paragraph (1) unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority, county planning authority, the strategic highway authority and the Environment Agency.

Flood compensation and flood storage

13.—(1) No part of the authorised development within the existing floodplain is to commence until a detailed scheme for the flood compensation areas or flood storage area relevant to that part of the authorised development within the existing floodplain has been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority, county planning authority, the strategic highway authority and the Environment Agency on matters related to their functions.

(2) The scheme prepared under sub-paragraph (1) must provide suitable flood storage for any flood waters that would be displaced by the authorised development in the 1 in 100 year plus 53% climate change allowance event.

(3) The scheme must be fully implemented as approved and subsequently maintained.

Noise Mitigation

14.—(1) No part of the authorised development is to commence until written details of proposed noise mitigation in respect of the use and operation of that part of the authorised development, including noise barriers and any very low noise surfacing, have been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority, county planning authority and the strategic highway authority on matters related to their functions.

(2) The written details referred to in sub-paragraph (1) must either—

- (a) reflect the mitigation measures included in chapter 6 (noise and vibration) of the environmental statement and the noise and vibration management plan approved as part of the EMP (2nd iteration) pursuant to paragraph 3 of this Schedule; or
 - (b) where the mitigation proposed materially differs from the mitigation identified in the environmental statement and the noise and vibration management plan, the undertaker must provide evidence with the written details submitted that the mitigation proposed would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement taking into account the mitigation identified in it.
- (3) The noise mitigation must be constructed in accordance with the approved details referred to in sub-paragraph (1) and must be retained thereafter.

Highway lighting

15.—(1) No part of the authorised development is to commence until a written scheme of the proposed highway lighting to be provided for that part of the authorised development has been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority, county planning authority and the strategic highway authority on matters related to their functions.

(2) The standard of the highway lighting to be provided by the scheme referred to in sub-paragraph (1) must either be in accordance with the standard of the highway lighting included in chapter 9 (landscape and visual) of the environmental statement or, where the standard of the highway lighting proposed materially differs from the standard of the highway lighting identified in the environmental statement, the undertaker must provide evidence with the written scheme submitted for approval that the standard of the highway lighting proposed would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement taking into account the lighting identified in it. The standard of the highway lighting must encompass the specification, level of provision, light spillage, intensity and brightness of the highway lighting.

(3) The authorised development must be carried out in accordance with the scheme approved under sub-paragraph (1).

(4) Nothing in this requirement restricts the lighting of the authorised development during its construction or where temporarily required for maintenance.

Building and construction materials – highways

16.—(1) No part of the authorised development is to commence until written details of the materials to be used for the surfacing of the new highway and the adjacent cycleway and footway have been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority and county planning authority.

(2) The details submitted under sub-paragraph (1) must include provision for the use of low noise road surfacing materials on the highway.

(3) The authorised development must be carried out using the materials approved under sub-paragraph (1).

Building and construction materials – structures

17.—(1) No part of the authorised development is to commence until written details of the building materials to be used for the external facings of all structures, including bridges, retaining walls and culvert sides and headwalls, have been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority and county planning authority.

(2) The authorised development must be carried out using the materials approved under sub-paragraph (1).

Approvals and amendments to approved details

18. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved under this Schedule, the approved details are taken to include any amendments that may subsequently be approved or agreed in writing by the Secretary of State.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

19.—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement (including agreement or approval in respect of part of a requirement) included in this Order, the Secretary of State must give notice to the undertaker of the decision on the application within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the Secretary of State;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 20; or
- (c) such longer period as may be agreed between the parties.

(2) Subject to sub-paragraph (3), in the event that the Secretary of State does not determine an application within the period set out in sub-paragraph (1), the Secretary of State is taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where—

- (a) an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement included in this Order;
- (b) the Secretary of State does not determine such application within the period set out in sub-paragraph (1); and
- (c) the application is accompanied by a report referred to in paragraph 4 stating that, in the view of a body required to be consulted by the undertaker under the requirement in question, the subject matter of the application is likely to give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement,

the application is taken to have been refused by the Secretary of State at the end of that period.

Further information

20.—(1) In relation to any part of an application made under this Schedule, the Secretary of State has the right to request such further information from the undertaker as is necessary to enable the Secretary of State to consider the application.

(2) In the event that the Secretary of State considers such further information to be necessary, the Secretary of State must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the Secretary of State does not give such notification within this 21 day period the Secretary of State is 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.

(3) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 19 and in this paragraph.

(4) In this paragraph, “business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(a).

Register of requirements

21.—(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in an electronic form suitable for inspection by members of the public a register of those requirements contained in Part 1 of this Schedule that provide for further approvals to be given by the Secretary of State.

(2) The register must set out in relation to each such requirement the status of the requirement, in terms of whether any approval to be given by the Secretary of State has been applied for or given, providing an electronic link to any document containing any approved details.

(3) The register must be maintained by the undertaker for a period of 3 years following completion of the authorised development.

Anticipatory steps towards compliance with any requirement

22. If before this Order came into force the undertaker or any other person took any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

SCHEDULE 3

Article 14

CLASSIFICATION OF ROADS, ETC.

PART 1

SPECIAL ROADS

(1) <i>Area</i>	(2) <i>Length of road</i>
Boddington Civil Parish, Tewkesbury	869 metres of new M5 northbound diverge slip road between point 7/1 on sheet 7 and point 5/1 on sheet 5 of the classification of roads plans
Elmstone Hardwicke Civil Parish, Tewkesbury	815 metres of new M5 northbound merge slip road between point 5/2 on sheet 5 and point 4/1 on sheet 4 of the classification of roads plans
Elmstone Hardwicke Civil Parish, Tewkesbury	814 metres of new M5 southbound diverge slip road between point 4/2 on sheet 4 and point 5/3 on sheet 5 of the classification of roads plans
Boddington Civil Parish, Tewkesbury	741 metres of new M5 southbound merge slip road between point 5/4 on sheet 5 and point 6/1 on sheet 6 of the classification of roads plans

PART 2

CLASSIFIED ROADS

(1) <i>Area</i>	(2) <i>Length of road</i>

(a) 1971 C. 80.

Boddington and Elmstone Hardwicke Civil Parishes, Tewkesbury	For the entire extent of the new M5 Junction 10 circulatory carriageway (A4019), as shown between points 5/5 and 5/6 on sheet 5 of the classification of roads plans, comprising 620 metres
Boddington Civil Parish, Tewkesbury	New length of classified road (A4019) between the new M5 northbound diverge slip road and the new M5 Junction 10 circulatory carriageway (A4019), as shown between points 5/1 and 5/7 on sheet 5 of the classification of roads plans, comprising 32 metres
Elmstone Hardwicke Civil Parish, Tewkesbury	New length of classified road (A4019) between the new M5 Junction 10 circulatory carriageway (A4019) and the new M5 northbound merge slip road, as shown between points 5/8 and 5/2 on sheet 5 of the classification of roads plans, comprising 38 metres
Elmstone Hardwicke Civil Parish, Tewkesbury	New length of classified road (A4019) between the new M5 southbound diverge slip road and the new M5 Junction 10 circulatory carriageway (A4019), as shown between points 5/3 and 5/9 on sheet 5 of the classification of roads plans, comprising 57 metres
Boddington Civil Parish, Tewkesbury	New length of classified road (A4019) between the new M5 Junction 10 circulatory carriageway (A4019) and the new M5 southbound merge slip road, as shown between points 5/10 and 5/4 on sheet 5 of the classification of roads plans, comprising 29 metres
Elmstone Hardwicke and Uckington Civil Parishes, Tewkesbury and Swindon Civil Parish, Cheltenham	For the entire extent of the new and improved A4019 eastbound carriageway to the east of M5 Junction 10, from its tie in with the new M5 Junction 10 circulatory carriageway to its tie in with the existing A4019 eastbound carriageway, as shown between point 5/11 on sheet 5 and point 14/1 on sheet 14 of the classification of roads plans, comprising 2637 metres
Boddington, Elmstone Hardwicke and Uckington Civil Parishes, Tewkesbury and Swindon Civil Parish, Cheltenham	For the entire extent of the new and improved A4019 westbound carriageway to the east of M5 Junction 10, from its tie in to the existing A4019 westbound carriageway to its tie in with the new M5 Junction 10 circulatory carriageway, as shown between point 14/2 on sheet 14 and point 5/12 on sheet 5 of the classification of roads plans, comprising 2617 metres
Boddington Civil Parish, Tewkesbury	New and improved A4019 westbound carriageway to the west of M5 Junction 10, from its tie in with the new M5 Junction 10 circulatory carriageway to the end of the proposed splitter island, as shown between points 5/13 and 5/14 on sheet 5 of the classification of roads plans, comprising 207 metres
Boddington Civil Parish, Tewkesbury	New and improved A4019 eastbound carriageway to the west of M5 Junction 10, from the start of the proposed splitter island to its tie in with the new M5 Junction 10 circulatory carriageway, as shown between points 5/14 and 5/15 on sheet 5 of the classification of roads plans, comprising 182 metres
Boddington Civil Parish, Tewkesbury	The re-aligned A4019 to the west of the proposed splitter island west of M5 Junction 10, as shown between point 5/14 on sheet 5 and point 11/1 on sheet 11 of the classification of roads plans, comprising 362 metres
Boddington and Uckington Civil Parishes, Tewkesbury	For the entire extent of the new West Cheltenham Link Road, from its junction with the A4019 to its junction with the B4634, as shown between point 12/1 on sheet 12 and point 16/1 on sheet 16 of the classification of roads plans, comprising 1419 metres
Uckington Civil Parish, Tewkesbury	The re-aligned B4634 carriageway as shown between points 14/3 and 14/4 on sheet 14 of the classification of roads plans, comprising 115 metres
Boddington Civil Parish, Tewkesbury	The re-aligned B4634 carriageway as shown between points 16/2 and 16/3 on sheet 16 of the classification of roads plans, comprising 488 metres

PART 3

UNCLASSIFIED ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
Elmstone Hardwicke Civil Parish, Tewkesbury	Altered unclassified road Stanboro Lane / Piffs Elm Lane, as shown between points 5/16, 5/17 and 5/18 on sheet 5 and point 11/2 on sheet 11 of the classification of roads plans, comprising 427 metres
Boddington and Uckington Civil Parishes, Tewkesbury	Altered unclassified road Withybridge Lane, as shown between points 12/2 and 12/3 on sheet 12 of the classification of roads plans, comprising 157 metres
Boddington and Uckington Civil Parishes, Tewkesbury	New unclassified road off the new West Cheltenham Link Road to the altered unclassified road known as Cooks Lane, as shown between points 12/4 and 12/5 on sheet 12 of the classification of roads plans, comprising 492 metres
Uckington Civil Parish, Tewkesbury	Altered unclassified road Cooks Lane, as shown between points 12/6 and 12/7 on sheet 12 of the classification of roads plans, comprising 40 metres
Uckington Civil Parish, Tewkesbury	New unclassified road on the northern arm of the A4019 junction with the new West Cheltenham Link Road, as shown between points 12/8, 12/9 and 12/10 on sheet 12 of the classification of roads plans, comprising 128 metres
Uckington Civil Parish, Tewkesbury	Altered unclassified road Moat Lane, as shown between points 13/1 and 13/2 on sheet 13 of the classification of roads plans, comprising 70 metres
Uckington Civil Parish, Tewkesbury	Altered unclassified road The Green, as shown between points 13/3 and 13/4 on sheet 13 of the classification of roads plans, comprising 48 metres
Uckington Civil Parish, Tewkesbury	New unclassified road to the west of The Green, as shown between points 13/5 and 13/6 on sheet 13 of the classification of roads plans, comprising 67 metres
Uckington Civil Parish, Tewkesbury	New unclassified road to the east of The Green, as shown between points 13/7 and 13/8 on sheet 13 of the classification of roads plans, comprising 236 metres
Uckington Civil Parish, Tewkesbury	New unclassified road on the northern arm of the new Site Access A signalised junction, as shown between points 13/9 and 13/10 on sheet 13 of the classification of roads plans, comprising 35 metres
Uckington Civil Parish, Tewkesbury	Altered unclassified road Homecroft Drive, as shown between points 13/12 and 13/13 on sheet 13 of the classification of roads plans, comprising 41 metres
Uckington Civil Parish, Tewkesbury	New unclassified road on the southern arm of the A4019 Site Access B junction serving Homecroft Drive and the Cheltenham West Community Fire Station, as shown between points 14/7 and 14/8 on sheet 14 and point 13/11 on sheet 13 of the classification of roads plans, comprising 445 metres
Uckington Civil Parish, Tewkesbury	New unclassified road on the northern arm of the new Site Access B signalised junction, as shown between points 14/5 and 14/6 on sheet 14 of the classification of roads plans, comprising 33 metres
Uckington Civil Parish, Tewkesbury	Altered unclassified road on the northern arm of the Gallagher Junction serving Gallagher Retail Park, as shown between points 14/9 and 14/10 on sheet 14 of the classification of roads plans, comprising 78 metres
Boddington Civil Parish, Tewkesbury	New unclassified road to the proposed West Cheltenham Golden Valley Development at the new signalised junction between the West Cheltenham Link Road and the B4634, as shown between points 16/4

	and 16/5 on sheet 16 of the classification of roads plans, comprising 30 metres

PART 4

SPEED LIMITS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Speed limit</i>
Elmstone Hardwicke Civil Parish, Tewkesbury	M5 Junction 10 Southbound Diverge Slip Road From point 4/2 on sheet 4 to point 5/3 on sheet 5 of the speed limits and traffic regulations plans, for a total distance of 814 metres	National speed limit for motorways
Boddington Civil Parish, Tewkesbury	The new classified road from M5 Junction 10 Northbound Diverge Slip Road to the M5 Junction 10 Roundabout (A4019) From point 5/1 to point 5/7 on sheet 5 of the speed limits and traffic regulations plans, for a total distance of 32 metres	50mph
Elmstone Hardwicke Civil Parish, Tewkesbury	M5 Junction 10 Northbound Merge Slip Road From point 5/2 on sheet 5 to point 4/1 on sheet 4 of the speed limits and traffic regulations plans, for a total distance of 815 metres	National speed limit for motorways
Elmstone Hardwicke Civil Parish, Tewkesbury	The new classified road from the M5 Junction 10 Southbound Diverge Slip Road to the M5 Junction 10 Roundabout (A4019) From point 5/3 to point 5/9 on sheet 5 of the speed limits and traffic regulations plans, for a total distance of 57 metres	50mph
Boddington Civil Parish, Tewkesbury	M5 Junction 10 Southbound Merge Slip Road From point 5/4 on sheet 5 to point 6/1 on sheet 6 of the speed limits and traffic regulations plans, for a total distance of 741 metres	National speed limit for motorways
Boddington and Elmstone Hardwicke Civil Parishes, Tewkesbury	The new M5 Junction 10 roundabout (A4019) From point 5/5 to point 5/6 on sheet 5 of the speed limits and traffic regulations plans, for a total distance of 620 metres	50mph

Elmstone Hardwicke Civil Parish, Tewkesbury	The new classified road from the M5 Junction 10 Roundabout (A4019) to the M5 Junction 10 Northbound Merge Slip Road From point 5/8 to point 5/2 on sheet 5 of the speed limits and traffic regulations plans, for a total distance of 38 metres	50mph
Boddington Civil Parish, Tewkesbury	The new classified road from the M5 Junction 10 Roundabout (A4019) to the M5 Junction 10 Southbound Merge Slip Road From point 5/10 to point 5/4 on sheet 5 of the speed limits and traffic regulations plans, for a total distance of 29 metres	50mph
Boddington Civil Parish, Tewkesbury	Unclassified road Stanboro Lane / Piffs Elm Lane From point 5/11 to point 5/12 on sheet 5 of the speed limits and traffic regulations plans, for a total distance of 14 metres	50mph
Boddington, Elmstone Hardwicke Civil Parishes, Tewkesbury	Unclassified road Stanboro Lane / Piffs Elm Lane From point 5/12 to points 5/13 and 5/14 on sheet 5 of the speed limits and traffic regulations plans, and to point 11/2 on sheet 11 of the speed limits and traffic regulations plans, for a total distance of 440 metres	30mph
Boddington, Elmstone Hardwicke and Uckington Civil Parishes, Tewkesbury	A4019 (east of M5 Junction 10) From point 5/16 on sheet 5 to point 12/2 on sheet 12 of the speed limits and traffic regulations plans, for a total distance of 567 metres	50mph
Boddington Civil Parish, Tewkesbury	M5 Junction 10 Northbound Diverge Slip Road From point 7/1 on sheet 7 to point 5/1 on sheet 5 of the speed limits and traffic regulations plans, for a total distance of 869 metres	National speed limit for motorways
Boddington and Uckington Civil Parishes, Tewkesbury	The new classified road West Cheltenham Link Road From point 12/1 on sheet 12 to point 16/4 on sheet 16 of the speed limits and traffic	50mph

	regulations plans, for a total distance of 1336 metres	
Boddington Civil Parish, Tewkesbury	A4019 (west of M5 Junction 10) From point 11/1 on sheet 11 to point 5/15 on sheet 5 of the speed limits and traffic regulations plans, for a total distance of 567 metres	50mph
Uckington Civil Parish, Tewkesbury	The new access road to the north of the A4019 West Cheltenham Link Road junction From point 12/3 to point 12/4 on sheet 12 of the speed limits and traffic regulations plans, for a total distance of 19 metres	50mph
Uckington Civil Parish, Tewkesbury	The new access road to the north of the A4019 West Cheltenham Link Road junction From point 12/4 to point 12/5 and point 12/6 on sheet 12 of the speed limits and traffic regulations plans, for a total distance of 110 metres	30mph
Uckington Civil Parish, Tewkesbury	Unclassified road off the new West Cheltenham Link Road to the altered unclassified road known as Cooks Lane From point 12/7 to point 12/8 on sheet 12 of the speed limits and traffic regulations plans, for a total distance of 12 metres	50mph
Uckington Civil Parish, Tewkesbury	Unclassified road off the new West Cheltenham Link Road to the altered unclassified road known as Cooks Lane From point 12/8 to point 12/9 on sheet 12 of the speed limits and traffic regulations plans, for a total distance of 480 metres	30mph
Uckington Civil Parish, Tewkesbury and Swindon Civil Parish, Cheltenham	A4019 From point 12/2 on sheet 12 to point 14/1 on sheet 14 of the speed limits and traffic regulations plans, for a total distance of 1705 metres	40mph
Uckington Civil Parish, Tewkesbury	Unclassified road 3/84 known as The Green From point 13/1 to point 13/2 on sheet 13 of the speed limits and traffic regulations plans,	40mph

	for a total distance of 24 metres	
Uckington Civil Parish, Tewkesbury	Unclassified service road to the west of The Green From point 13/3 to point 13/4 on sheet 13 of the speed limits and traffic regulations plans, for a total distance of 67 metres	40mph
Uckington Civil Parish, Tewkesbury	Unclassified service road to the east of The Green From point 13/5 to point 13/6 on sheet 13 of the speed limits and traffic regulations plans, for a total distance of 236 metres	40mph
Uckington Civil Parish, Tewkesbury	Unclassified road known as Moat Lane From point 13/7 to point 13/8 on sheet 13 of the speed limits and traffic regulations plans, for a total distance of 34 metres	40mph
Uckington Civil Parish, Tewkesbury	New unclassified road on the northern arm of the new Site Access A signalised junction From point 13/9 to point 13/10 on sheet 13 of the speed limits and traffic regulations plans, for a total distance of 35 metres	40mph
Uckington Civil Parish, Tewkesbury	New unclassified road on the northern arm of the new Site Access B signalised junction From point 14/2 to point 14/3 on sheet 14 of the speed limits and traffic regulations plans, for a total distance of 33 metres	40mph
Uckington Civil Parish, Tewkesbury	Unclassified service road to the south of the A4019 serving Homecroft Drive and the Cheltenham West Community Fire Station From point 14/4 to points 14/5 and 14/6 on sheet 14 of the speed limits and traffic regulations plans, for a total distance of 58 metres	40mph
Uckington Civil Parish, Tewkesbury	Unclassified service road to the south of the A4019 serving Homecroft Drive and the Cheltenham West Community Fire Station From point 14/6 on sheet 14 to point 13/11 on sheet 13 of the	30mph

	speed limits and traffic regulations plans, for a total distance of 389 metres	
Uckington Civil Parish, Tewkesbury	Unclassified road on the northern arm of the Gallagher Junction serving Gallagher Retail Park From point 14/7 to point 14/8 on sheet 14 of the speed limits and traffic regulations plans, for a total distance of 46 metres	40mph
Uckington Civil Parish, Tewkesbury	B4634 Hayden Road From point 14/9 to point 14/10 on sheet 14 of the speed limits and traffic regulations plans, for a total distance of 125 metres	40mph
Boddington Civil Parish, Tewkesbury	B4634 Old Gloucester Road From point 16/1 to point 16/2 on sheet 16 of the speed limits and traffic regulations plans, for a total distance of 977 metres	40mph
Boddington Civil Parish, Tewkesbury	The new classified road West Cheltenham Link Road From point 16/3 to point 16/4 on sheet 16 of the speed limits and traffic regulations plans, for a total distance of 80 metres	40mph
Boddington Civil Parish, Tewkesbury	The new access road to the proposed West Cheltenham Golden Valley Development at the new signalised junction between the West Cheltenham Link Road and the B4634 From point 16/5 to point 16/6 on sheet 16 of the speed limits and traffic regulations plans, for a total distance of 30 metres	40mph

PART 5

TRAFFIC REGULATION MEASURES

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Measures</i>
Uckington and Boddington Civil Parishes, Tewkesbury and Swindon Civil Parish, Cheltenham	A4019 eastbound carriageway From a point 217 metres west of the centre point of the A4019 junction with the new West Cheltenham Link Road (point a on sheet 12 of the speed limits and traffic	Prohibition of U-turns

	regulations plans) to a point 224 metres east of the centre point of the A4019 junction with the B4634 Hayden Road (point c on sheet 14 of the speed limits and traffic regulations plans). For a total distance of 2272 metres	
Uckington Civil Parish, Tewkesbury and Swindon Civil Parish, Cheltenham	A4019 westbound carriageway From a point 224 metres east of the centre point of the A4019 junction with the B4634 Hayden Road (point d on sheet 14 of the speed limits and traffic regulations plans) to a point 197 metres west of the centre point of the A4019 junction with the new West Cheltenham Link Road (point b on sheet 12 of the speed limits and traffic regulations plans). For a total distance of 2246 metres	Prohibition of U-turns
Uckington Civil Parish, Cheltenham	A4019 eastbound carriageway From a point 33 metres west of the centre point of the new A4019 junction with Site Access A to a point 11 metres west of the centre point of the new A4019 junction with Site Access A, as shown between point e and point f on sheet 13 of the speed limits and traffic regulations plans, comprising 22 metres. From a point 16 metres east of the centre point of the new A4019 junction with Site Access A to a point 121 metres west of the centre point of the new A4019 junction with Site Access B, as shown between point g on sheet 13 and point h on sheet 14 of the speed limits and traffic regulations plans, comprising 187 metres. From a point 28 metres west of the centre point of the new A4019 junction with Site Access B to a point 10 metres west of the centre point of the new A4019 junction with Site Access B, as shown between point i and point j on sheet 14 of the speed limits and traffic	Bus Lane (with specified exemptions for authorised vehicles)

	regulations plans, comprising 18 metres. From a point 19 metres east of the centre point of the new A4019 junction with Site Access B to a point 83 metres east of the centre point of the new A4019 junction with Site Access B, as shown between point k and point l on sheet 14 of the speed limits and traffic regulations plans, comprising 64 metres. From a point 34 metres west of the centre point of the A4019 Gallagher junction to a point 13 metres west of the centre point of the A4019 Gallagher junction, as shown between point m and point n on sheet 14 of the speed limits and traffic regulations plans, comprising 21 metres.	
Uckington Civil Parish, Cheltenham	A4019 westbound carriageway From a point 96 metres east of the centre point of the new A4019 junction with Site Access B to a point 10 metres east of the centre point of the new A4019 junction with Site Access B, as shown between point o and point p on sheet 14 of the speed limits and traffic regulations plans, comprising 86 metres.	Bus Lane (with specified exemptions for authorised vehicles)

PART 6

REVOCATIONS & VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Title of Order</i>	<i>(4)</i> <i>Revocations or variations</i>
Uckington Civil Parish, Tewkesbury and Swindon Civil Parish, Cheltenham	A4019 Tewkesbury Road	The Gloucestershire County Council (Various Speed Limits) (Various Parishes within the Tewkesbury Borough) Order 2006	Order to be varied to amend the length of A4019 Tewkesbury Road subject to a 50mph speed limit. Start point to be varied from the existing point 584 metres west of its junction with the centreline of Manor

			Road (3/85), point A on sheet 14 of the speed limits and traffic regulations plans, to a point 389 metres west of its junction with the centreline of The Green, point B on sheet 12 of the speed limits and traffic regulations plans, for a total distance of 1275 metres
Uckington Civil Parish, Tewkesbury and Swindon Civil Parish, Cheltenham	A4019 Tewkesbury Road	The Gloucestershire County Council (A4019 Tewkesbury Road, Cheltenham) (40mph Speed Limit Order) 1993	Order to be varied to amend the length of A4019 Tewkesbury Road subject to a 40mph speed limit. End point to be varied from the existing point 584 metres west of its junction with the centreline of Manor Road (3/85), point A on sheet 14 of the speed limits and traffic regulations plans, to a point 389 metres west of its junction with the centreline of The Green, point B on sheet 12 of the speed limits and traffic regulations plans, for a total distance of 1275 metres
Boddington Civil Parish, Tewkesbury	B4634 Old Gloucester Road	The Gloucestershire County Council (Various Speed Limits) (Various Parishes within the Tewkesbury Borough) Order 2006	Order to be varied from 50mph to 40mph between a point 850 metres west of its junction with the centreline of Pilgrove Way (40219) and a point 230 metres south-west of its junction with the centreline of Hayden Lane (40427), as shown between points C and D on sheet 16 of the speed limits and traffic regulations plans, for a total distance of 978 metres

Uckington Civil Parish, Tewkesbury	The Green (3/84)	The Gloucestershire County Council (Various Speed Limits) (Bishops Cleeve; Stoke Orchard; Tredington; Hardwicke and Uckington) Order 2005	Order to be varied from 30mph to 40mph from its junction with the proposed kerbline on the northern side of Tewkesbury Road (A4019) to a point 24 metres north of this point, as shown by point E on sheet 13 of the speed limits and traffic regulations plans, for a total distance of 24 metres

PART 7

PUBLIC RIGHTS OF WAY

<i>(1) Area</i>	<i>(2) Status and length of public right of way</i>
Uckington Civil Parish, Tewkesbury	<u>PR49</u> 309 metres of footpath to the north of the River Chelt, rerouting the existing footpath ref. AUC11 under the new River Chelt Bridge, as shown on sheet 15 of the streets, rights of way and access plans
Boddington Civil Parish, Tewkesbury	<u>PR50</u> 104 metres of footpath to the south of the River Chelt, rerouting the existing footpath ref. ABO24 under the new River Chelt Bridge, as shown on sheet 15 of the streets, rights of way and access plans
Boddington Civil Parish, Tewkesbury	<u>PR12</u> 275 metres of footpath to the west of M5 Junction 10 and to the south of the A4019, rerouting the existing footpath ref. ABO14, as shown on sheets 5 and 11 of the streets, rights of way and access plans
Boddington, Elmstone Hardwicke and Uckington Civil Parishes	<u>PR9</u> 800 metres of bridleway from the existing bridleway ref. AUC1 to Withybridge Lane via the new A4019 underpass, as shown on sheets 5, 6 and 12 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	<u>PR14</u> 167 metres of footpath to the east of the existing bridleway ref. AUC1, as shown on sheet 12 of the streets, rights of way and access plans

SCHEDULE 4

Articles 16 and 25

PERMANENT STOPPING UP OF HIGHWAYS AND PRIVATE MEANS OF ACCESS & PROVISION OF NEW HIGHWAYS AND PRIVATE MEANS OF ACCESS

In relating this Schedule to the streets, rights of way and access plans, the provisions described in this Schedule are shown on the streets, rights of way and access plans in the following manner—

- (a) Existing highways to be stopped up, as described in column (2) of Part 1 and Part 2 of this Schedule, are shown by thick black diagonal hatching (as shown in the key on the streets, rights of way and access plans) over the extent of the area to be stopped up, which is described in column (3) of Part 1 and Part 2 of this Schedule.

- (b) New highways which are to be substituted for a highway to be stopped up (or which are otherwise to be provided), as are included in column (4) of Part 2 of this Schedule, are shown by red honeycomb hatching (for motorways and trunk roads), blue honeycomb hatching (for other classified roads and highways), dashed green lines (for bridleways) and dashed red lines (for footpaths) (as shown in the key on the streets, rights of way and access plans) and are given a reference label (a reference number in a circle or for public rights of way, a reference label beginning PR in a circle) and will be a road unless otherwise stated beneath its reference in column (4) of Part 2 of this Schedule.
- (c) Private means of access to be stopped up, as described in column (2) of Parts 3 and 4 of this Schedule, are shown by thick brown diagonal hatching (as shown in the key on the streets, rights of way and access plans) over the extent of stopping up described in column (3) of Parts 3 and 4 of this Schedule, and are given a reference label (an upper case letter in a circle).
- (d) New private means of access to be substituted for a private means of access to be stopped up (or which are otherwise to be provided), as are included in column (4) of Part 4 of this Schedule, are shown by orange honeycomb hatching (as shown in the key on the streets, rights of way and access plans) and are given a reference label (a lower case letter in a circle).

PART 1

HIGHWAYS TO BE STOPPED UP FOR WHICH NO SUBSTITUTES IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Highway to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
Boddington Civil Parish, Tewkesbury	Withybridge Gardens	For a distance of 420 metres, as shown between point 5/1 on sheet 5 of the streets, rights of way and access plans and point 12/1 on sheet 12 of the streets, rights of way and access plans
Boddington and Elmstone Hardwicke Civil Parishes, Tewkesbury	Stanboro Lane / Piffs Elm Lane	For a distance of 127 metres as shown between points 5/2 and 5/3 on sheet 5 of the streets, rights of way and access plans

PART 2

HIGHWAYS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW HIGHWAYS WHICH ARE OTHERWISE TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Highway to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New Highway to be substituted/provided</i>
Uckington Civil Parish, Tewkesbury	FP AUC11	For a distance of 103 metres, as shown between points 15/1 and 15/2 on sheet 15 of the streets, rights of way and access plans	Reference PR49 309 metres of new footpath to the north of the River Chelt, rerouting the existing footpath ref. AUC11 under the new River Chelt Bridge, as shown on sheet 15 of

			the streets, rights of way and access plans
Boddington Civil Parish, Tewkesbury	FP ABO24	For a distance of 103 metres, as shown between points 15/3 and 15/4 on sheet 15 of the streets, rights of way and access plans	Reference PR50 104 metres of new footpath to the south of the River Chelt, rerouting the existing footpath ref. ABO24 under the new River Chelt Bridge, as shown on sheet 15 of the streets, rights of way and access plans
Boddington and Elmstone Hardwicke Civil Parishes, Tewkesbury	A4019 at M5 Junction 10	For a distance of 203 metres, as shown between points 5/4 and 5/5 on sheet 5 of the streets, rights of way and access plans	Reference 5/6 to 5/7 The new M5 Junction 10 circulatory carriageway (A4019) for a length of 620 metres, as shown between points 5/6 and 5/7 on sheet 5 of the streets, rights of way and access plans, including 240 metres of new cycle track (reference PR5) and 248 metres of new footway (reference PR6)
Boddington and Elmstone Hardwicke Civil Parishes, Tewkesbury	M5 Junction 10 Northbound Merge Slip Road	For a distance of 604 metres, as shown between points 5/8 and 5/9 on sheet 5 of the streets, rights of way and access plans	Reference 5/10 to 4/1 The new M5 northbound merge slip road for a length of 815 metres between point 5/10 on sheet 5 and point 4/1 on sheet 4 of the streets, rights of way and access plans
Elmstone Hardwicke Civil Parish, Tewkesbury	M5 Junction 10 Southbound Diverge Slip Road	For a distance of 256 metres, as shown between points 5/11 and 5/12 on sheet 5 of the streets, rights of way and access plans	Reference 4/2 to 5/13 The new M5 southbound diverge slip road for a length of 814 metres between point 4/2 on sheet 4 and point 5/13 on sheet 5 of the streets, rights of way and access plans
Boddington Civil Parish, Tewkesbury	FP ABO14	For a distance of 75 metres as shown between points 5/14 and 5/15 on sheet 5 of the streets, rights of way and access plans	Reference PR12 275 metres of new footpath to the west of M5 Junction 10 and to the south of the A4019, rerouting the existing footpath ref.

			ABO14, as shown on sheets 5 and 11 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	BR AUC1	For a distance of 32 metres as shown between points 12/2 and 12/3 on sheet 12 of the streets, rights of way and access plans	Reference PR9 800 metres of new bridleway from the existing bridleway ref. AUC1 to Withybridge Lane via the new A4019 underpass, as shown on sheets 5, 6 and 12 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	FP AUC8	For a distance of 28 metres as shown between points 13/1 and 13/2 on sheet 13 of the streets, rights of way and access plans	Reference PR30 12 metres of new footway connecting existing footpath FP AUC8 to the new footway provision on the northern side of the A4019, as shown on sheet 13 of the streets, rights of way and access plans
Boddington Civil Parish, Tewkesbury	FP ABO26	For a distance of 24 metres as shown between points 16/1 and 16/2 on sheet 16 of the streets, rights of way and access plans	Reference PR56 55 metres of new footway connecting existing footpath FP ABO26 to the new footway provision on the western side of the new unclassified road to the proposed West Cheltenham Golden Valley Development, as shown on sheet 16 of the streets, rights of way and access plans
Elmstone Hardwicke Civil Parish, Tewkesbury			Reference 5/13 to 5/20 New classified road (A4019) between the new M5 southbound diverge slip road and the new M5 Junction 10 circulatory carriageway (A4019) for a length of 57 metres, as shown between points 5/13 and 5/20 on sheet 5 of the streets, rights of way and access plans

Boddington Civil Parish, Tewkesbury			Reference 5/16 to 5/18 New classified road (A4019) between the new M5 northbound diverge slip road and the new M5 Junction 10 circulatory carriageway (A4019) for a length of 32 metres, as shown between points 5/16 and 5/18 on sheet 5 of the streets, rights of way and access plans
Boddington Civil Parish, Tewkesbury			Reference 5/17 to 6/1 The new M5 southbound merge slip road for a length of 741 metres between point 5/17 on sheet 5 and point 6/1 on sheet 6 of the streets, rights of way and access plans
Elmstone Hardwicke Civil Parish, Tewkesbury			Reference 5/19 to 5/10 New classified road (A4019) between the new M5 Junction 10 circulatory carriageway (A4019) and the new M5 northbound merge slip road for a length of 38 metres, as shown between points 5/19 and 5/10 on sheet 5 of the streets, rights of way and access plans
Boddington Civil Parish, Tewkesbury			Reference 5/21 to 5/17 New classified road (A4019) between the new M5 Junction 10 circulatory carriageway (A4019) and the new M5 southbound merge slip road for a length of 29 metres, as shown between points 5/21 and 5/17 on sheet 5 of the streets, rights of way and access plans

Elmstone Hardwicke and Uckington Civil Parishes, Tewkesbury and Swindon Civil Parish, Cheltenham			Reference 5/22 to 14/5 New and improved A4019 eastbound carriageway to the east of M5 Junction 10, from its tie in with the new M5 Junction 10 circulatory carriageway to its tie in with the existing A4019 eastbound carriageway for a length of 2637 metres, as shown between point 5/22 on sheet 5 and point 14/5 on sheet 14 of the streets, rights of way and access plans, including a lane with sections of bus lane, bus gates and left turn lane comprising a total length of 760 metres, 2348 metres of new cycle track (reference PR7), 1254 metres of new footway (reference PR8), 60 metres of new footway (reference PR28), 791 metres of new footway (reference PR29), 7 metres of new non-segregated footway/cycle track (reference PR33) and 228 metres of new non-segregated footway/cycle track (reference PR42) as shown on sheets 5, 12, 13 and 14 of the streets, rights of way and access plans
Boddington Civil Parish, Tewkesbury			Reference 5/24 to 5/25 New and improved A4019 westbound carriageway to the west of M5 Junction 10, from its tie in with the new M5 Junction 10 circulatory carriageway to the end

			of the proposed splitter island for a length of 207 metres, as shown between points 5/24 and 5/25 on sheet 5 of the streets, rights of way and access plans
Boddington Civil Parish, Tewkesbury			Reference 5/25 to 5/26 New and improved A4019 eastbound carriageway to the west of M5 Junction 10, from the start of the proposed splitter island to its tie in with the new M5 Junction 10 circulatory carriageway for a length of 182 metres, as shown between points 5/25 and 5/26 on sheet 5 of the streets, rights of way and access plans, including 183 metres of new cycle track (reference PR3) and 177 metres of new footway (reference PR4)
Boddington Civil Parish, Tewkesbury			Reference 5/25 to 11/1 The re-aligned A4019 to the west of the proposed splitter island west of M5 Junction 10 for a length of 362 metres, as shown between point 5/25 on sheet 5 and point 11/1 on sheet 11 of the streets, rights of way and access plans, including 53 metres of new cycle track (reference PR1), 40 metres of new footway (reference PR2), 408 metres of new non-segregated footway/cycle track (reference PR10) on the northern side of the A4019, and 65

			metres of new cycle track (reference PR13) on the southern side of the A4019, as shown on sheets 5 and 11 of the streets, rights of way and access plans
Boddington and Elmstone Hardwicke Civil Parishes, Tewkesbury			Reference 5/27 to 5/28, 5/29 and 11/2 The re-aligned unclassified road Stanboro Lane / Piffs Elm Lane for a length of 427 metres, as shown between points 5/27, 5/28 and 5/29 on sheet 5 and point 11/2 on sheet 11 of the streets, rights of way and access plans, including 40 metres of new footway (reference PR11) as shown on sheet 5 of the streets, rights of way and access plans
Boddington Civil Parish, Tewkesbury			Reference 7/1 to 5/16 The new M5 northbound diverge slip road for a length of 869 metres between point 7/1 on sheet 7 and point 5/16 on sheet 5 of the streets, rights of way and access plans
Boddington and Uckington Civil Parishes, Tewkesbury			Reference 12/4 to 16/3 New classified road (West Cheltenham Link Road), from its junction with the A4019 to its junction with the B4634 for a length of 1419 metres, as shown between point 12/4 on sheet 12 and point 16/3 on sheet 16 of the streets, rights of way and access plans, including 1445 metres of new cycle track (reference PR18) and 1438 metres of new footway (reference PR19), as shown on

			sheets 12, 15 and 16 of the streets, rights of way and access plans
Boddington and Uckington Civil Parishes, Tewkesbury			Reference 12/5 to 12/6 New unclassified road serving Cooks Lane for a length of 492 metres, as shown between points 12/5 and 12/6 on sheet 12 of the streets, rights of way and access plans, including 32 metres of new footway (reference PR20)
Uckington Civil Parish, Tewkesbury			Reference 12/7 to 12/8 and 12/9 New unclassified road on the northern arm of the A4019 junction with the new West Cheltenham Link Road for a length of 128 metres, as shown between points 12/7, 12/8 and 12/9 on sheet 12 of the streets, rights of way and access plans, including 42 metres of new footway (reference PR15)
Uckington Civil Parish, Tewkesbury			Reference 12/10 to 12/11 The re-aligned unclassified road Cooks Lane for a length of 40 metres, as shown between points 12/10 and 12/11 on sheet 12 of the streets, rights of way and access plans
Boddington and Uckington Civil Parishes, Tewkesbury			Reference 12/12 to 12/13 Altered unclassified road Withybridge Lane for a length of 157 metres, as shown between points 12/12 and 12/13 on sheet 12 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury			Reference PR14

			167 metres of new footpath to the east of the existing bridleway ref. AUC1, as shown on sheet 12 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury			Reference 13/3 to 13/4 New unclassified road west of The Green for a length of 67 metres, as shown between points 13/3 and 13/4 on sheet 13 of the streets, rights of way and access plans, including 74 metres of altered footway (reference PR24)
Uckington Civil Parish, Tewkesbury			Reference 13/5 to 13/6 New unclassified road east of The Green for a length of 236 metres, as shown between points 13/5 and 13/6 on sheet 13 of the streets, rights of way and access plans, including 241 metres of altered footway (reference PR27)
Uckington Civil Parish, Tewkesbury			Reference 13/7 to 13/8 New unclassified road on the northern arm of the new A4019 Site Access A junction for a length of 35 metres, as shown between points 13/7 and 13/8 on sheet 13 of the streets, rights of way and access plans, including 27 metres of new cycle track (reference PR31) and 20 metres of new footway (reference PR32)
Uckington Civil Parish, Tewkesbury			Reference 13/10 to 13/11 The re-aligned unclassified road Moat Lane for a

			length of 70 metres, as shown between points 13/10 and 13/11 on sheet 13 of the streets, rights of way and access plans, including 30 metres of new footway (reference PR22) on the western side of Moat Lane and 24 metres of new footway (reference PR23) on the eastern side of Moat Lane
Uckington Civil Parish, Tewkesbury			Reference 13/12 to 13/13 The re-aligned unclassified road The Green for a length of 48 metres, as shown between points 13/12 and 13/13 on sheet 13 of the streets, rights of way and access plans, including 25 metres of footway (reference PR25) on the western side of The Green and 25 metres of footway (reference PR26) on the eastern side of The Green
Uckington Civil Parish, Tewkesbury			Reference 13/14 to 13/15 Altered unclassified road Homecroft Drive for a length of 41 metres, as shown between points 13/14 and 13/15 on sheet 13 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury			Reference 14/1 to 14/2 New unclassified road on the northern arm of the new A4019 Site Access B junction for a length of 33 metres, as shown between points 14/1 and 14/2 on sheet 14 of the streets, rights of way and access plans, including 26 metres of new cycle track

			(reference PR37) and 18 metres of new footway (reference PR38)
Uckington Civil Parish, Tewkesbury			Reference 14/3 to 14/4 and 13/9 New unclassified road on the southern arm of the A4019 Site Access B junction serving Homecroft Drive and the Cheltenham West Community Fire Station for a length of 445 metres, as shown between points 14/3 and 14/4 on sheet 14 and point 13/9 on sheet 13 of the streets, rights of way and access plans, including 444 metres of improved footway (reference PR36) as shown on sheets 13 and 14 of the streets, rights of way and access plans
Boddington, Elmstone Hardwicke and Uckington Civil Parishes, Tewkesbury and Swindon Civil Parish, Cheltenham			Reference 14/6 to 5/23 New and improved A4019 westbound carriageway to the east of M5 Junction 10, from its tie in to the existing A4019 westbound carriageway to its tie in with the new M5 Junction 10 circulatory carriageway for a length of 2617 metres, as shown between point 14/6 on sheet 14 and point 5/23 on sheet 5 of the streets, rights of way and access plans, including 202 metres of new cycle track (reference PR16), 202 metres of new footway (reference PR17), 395 metres of new footway (reference PR21), 4

			metres of new non-segregated footway/cycle track (reference PR34), 113 metres of new footway (reference PR35), 400 metres of new non-segregated footway/cycle track (reference PR43) and 12 metres of new cycle track (reference PR48) as shown on sheets 12, 13 and 14 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury			Reference 14/7 to 14/8 The re-aligned B4634 carriageway for a length of 115 metres, as shown between points 14/7 and 14/8 on sheet 14 of the streets, rights of way and access plans, including 110 metres of new non-segregated footway/cycle track (reference PR44) on the western side of the B4634, 10 metres of new cycle track (reference PR45) connecting the B4634 carriageway with the new non-segregated footway/cycle track on the western side of the B4634, 95 metres of altered footway (reference PR46) on the eastern side of the B4634 and 13 metres of new cycle track (reference PR47) connecting the new non-segregated footway/cycle track on the southern side of the A4019 at Gallagher Junction to the B4634 carriageway
Uckington Civil Parish, Tewkesbury			Reference 14/9 to 14/10

			Altered unclassified road on the northern arm of the Gallagher Junction serving Gallagher Retail Park for a length of 78 metres, as shown between points 14/9 and 14/10 on sheet 14 of the streets, rights of way and access plans, including 69 metres of new cycle track (reference PR39), 61 metres of new footway (reference PR40) and 69 metres of new non-segregated footway/cycle track (reference PR41)
Boddington Civil Parish, Tewkesbury			Reference 16/4 to 16/5 New unclassified road to the proposed West Cheltenham Golden Valley Development at the new signalised junction between the new West Cheltenham Link Road and B4634 for a length of 30 metres, as shown between points 16/4 and 16/5 on sheet 16 of the streets, rights of way and access plans, including 20 metres of new cycle track (reference PR52), 30 metres of new cycle track (reference PR54), 20 metres of new footway (reference PR53) and 30 metres of new footway (reference PR55)
Boddington Civil Parish, Tewkesbury			Reference 16/6 to 16/7 The re-aligned B4634 carriageway for a length of 488 metres, as shown between points 16/6 and 16/7 on sheet 16 of the streets, rights of way and access plans,

			including 273 metres of new non-segregated footway/cycle track (reference PR51) on the northern side of the B4634

PART 3

PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS PROVIDED

<i>(1) Area</i>	<i>(2) Private means of access to be stopped up</i>	<i>(3) Extent of stopping up</i>
Boddington Civil Parish, Tewkesbury	Reference B Access to Wayside from the existing unclassified road Stanboro Lane / Piffs Elm Lane as shown on sheet 5 of the streets, rights of way and access plans	From the existing unclassified road Stanboro Lane / Piffs Elm Lane for a length of 3 metres as shown on sheet 5 of the streets, rights of way and access plans
Boddington and Elmstone Hardwicke Civil Parishes, Tewkesbury	Reference C Access to Bridge House and Sheldon Nurseries from the existing unclassified road Stanboro Lane / Piffs Elm Lane as shown on sheet 5 of the streets, rights of way and access plans	From the existing unclassified road Stanboro Lane / Piffs Elm Lane for a length of 15 metres as shown on sheet 5 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference E Access to field north of the existing A4019 as shown on sheet 5 of the streets, rights of way and access plans	From the existing A4019 for a length of 3 metres as shown on sheet 5 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference H Access to Laburnum north of the existing A4019 as shown on sheet 12 of the streets, rights of way and access plans	From the existing A4019 for a length of 3 metres as shown on sheet 12 of the streets, rights of way and access plans
Boddington and Uckington Civil Parishes, Tewkesbury	Reference I Access to Withy Bridge north of the existing A4019 as shown on sheet 12 of the streets, rights of way and access plans	From the existing A4019 for a length of 3 metres as shown on sheet 12 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference T Access to No 1 The Row from the existing unclassified road Moat Lane as shown on sheet 13 of the streets, rights of way and access plans	From the existing unclassified road Moat Lane for a length of 3 metres as shown on sheet 13 of the streets, rights of way and access plans

Uckington Civil Parish, Tewkesbury	Reference U Access to No 2 The Row from the existing A4019 as shown on sheet 13 of the streets, rights of way and access plans	From the existing A4019 for a length of 6 metres as shown on sheet 13 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference V Access to No 3 The Row from the existing A4019 as shown on sheet 13 of the streets, rights of way and access plans	From the existing A4019 for a length of 5 metres as shown on sheet 13 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference Y Access to field north of the existing A4019 as shown on sheet 13 of the streets, rights of way and access plans	From the existing A4019 for a length of 9 metres as shown on sheet 13 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference Z Access to field north of the existing A4019 as shown on sheet 13 of the streets, rights of way and access plans	From the existing A4019 for a length of 8 metres as shown on sheet 13 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference AA Access to No. 3 Tewkesbury Road from the existing A4019 as shown on sheet 13 of the streets, rights of way and access plans	From the existing A4019 for a length of 6 metres as shown on sheet 13 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference BB Access to field north of the existing A4019 as shown on sheet 13 of the streets, rights of way and access plans	From the existing A4019 for a length of 9 metres as shown on sheet 13 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference FF Access to field north of the existing A4019 as shown on sheet 14 of the streets, rights of way and access plans	From the existing A4019 for a length of 9 metres as shown on sheet 14 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference GG Access to field north of the existing A4019 as shown on sheet 14 of the streets, rights of way and access plans	From the existing A4019 for a length of 9 metres as shown on sheet 14 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference HH Access to field north of the existing A4019 as shown on sheet 14 of the streets, rights of way and access plans	From the existing A4019 for a length of 10 metres as shown on sheet 14 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference II Access to field north of the existing A4019 as shown on sheet 14 of the streets, rights of way and access plans	From the existing A4019 for a length of 9 metres as shown on sheet 14 of the streets, rights of way and access plans

Uckington Civil Parish, Tewkesbury	Reference JJ Access to field north of the existing A4019 as shown on sheet 14 of the streets, rights of way and access plans	From the existing A4019 for a length of 9 metres as shown on sheet 14 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference LL Access to field north of the existing A4019 as shown on sheet 14 of the streets, rights of way and access plans	From the existing A4019 for a length of 5 metres as shown on sheet 14 of the streets, rights of way and access plans
Boddington Civil Parish, Tewkesbury	Reference OO Access to field north of the existing B4634 as shown on sheet 16 of the streets, rights of way and access plans	From the existing B4634 for a length of 2 metres as shown on sheet 16 of the streets, rights of way and access plans

PART 4

PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW PRIVATE MEANS OF ACCESS WHICH ARE OTHERWISE TO BE PROVIDED

<i>(1) Area</i>	<i>(2) Private means of access to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) New private means of access to be substituted/provided</i>
Boddington and Elmstone Hardwicke Civil Parishes, Tewkesbury	Reference A Access to Sheldon Cottages and Sheldon Nurseries from the existing unclassified road Stanboro Lane / Piffs Elm Lane as shown on sheet 5 of the streets, rights of way and access plans	From the existing unclassified road Stanboro Lane / Piffs Elm Lane for a length of 10 metres as shown on sheet 5 of the streets, rights of way and access plans	Reference a A new private means of access to the north-east of Stanboro Lane / Piffs Elm Lane for a length of 333 metres providing access to Sheldon Cottages, Barn Farm and the new drainage attenuation basin (2), as shown on sheet 5 of the streets, rights of way and access plans
Elmstone Hardwicke Civil Parish, Tewkesbury	Reference D Access to Barn Farm and Barn Farm Cottage from the existing unclassified road Stanboro Lane / Piffs Elm Lane as shown on sheet 5 of the streets, rights of way and access plans	From the existing unclassified road Stanboro Lane / Piffs Elm Lane for a length of 300 metres as shown on sheet 5 of the streets, rights of way and access plans	Reference a A new private means of access to the north-east of Stanboro Lane / Piffs Elm Lane for a length of 333 metres providing access to Sheldon Cottages, Barn Farm and the new drainage attenuation basin (2), as shown on sheet 5 of the streets, rights of way and access plans

Elmstone Hardwicke Civil Parish, Tewkesbury	Reference F Access to fields to the east of the M5 and north of the existing A4019 as shown on sheet 5 of the streets, rights of way and access plans	From the existing A4019 for a length of 612 metres as shown on sheet 5 of the streets, rights of way and access plans	Reference b A new private means of access from the northern arm of the new junction between the A4019 and the West Cheltenham Link Road for a length of 934 metres providing access to fields and maintenance access for highway authorities, as shown on sheets 5 and 12 of the streets, rights of way and access plans
Boddington Civil Parish, Tewkesbury	Reference G Access to field south of the existing A4019 as shown on sheet 11 of the streets, rights of way and access plans	From the existing A4019 for a length of 8 metres as shown on sheet 11 of the streets, rights of way and access plans	Reference d A new private means of access from the re-aligned A4019 for a length of 725 metres providing access to field and new drainage attenuation basin (3), as shown on sheets 5, 6 and 11 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference J Access to field north of the existing A4019 as shown as sheet 12 of the streets, rights of way and access plans	From the existing A4019 for a length of 28 metres as shown on sheet 12 of the streets, rights of way and access plans	Reference b A new private means of access from the northern arm of the new junction between the A4019 and the West Cheltenham Link Road for a length of 934 metres providing access to fields and maintenance access for highway authorities, as shown on sheets 5 and 12 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference K Access to field north of the existing A4019 as shown on sheet 12 of the streets, rights of way and access plans	From the existing A4019 for a length of 8 metres as shown on sheet 12 of the streets, rights of way and access plans	Reference b A new private means of access from the northern arm of the new junction between the A4019 and the West Cheltenham Link Road for a length of 934 metres providing access to

			fields and maintenance access for highway authorities, as shown on sheets 5 and 12 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference L Access to fields north of the existing A4019 as shown on sheet 12 of the streets, rights of way and access plans	From the existing A4019 for a length of 8 metres as shown on sheet 12 of the streets, rights of way and access plans	Reference b Field north-west of existing access to be accessed from new private means of access reference b as shown on sheet 12 of the streets, rights of way and access plans Reference k and l Fields north and north-east of the existing access to be accessed via the northern arm of the new junction between the A4019 and the West Cheltenham Link Road which is to be classified as public highway with new field gate positions at references k and l, as shown on sheet 12 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference M Access to field north of the existing A4019 as shown on sheet 12 of the streets, rights of way and access plans	From the existing A4019 for a length of 4 metres as shown on sheet 12 of the streets, rights of way and access plans	Reference m A new private means of access from the new A4019 eastbound carriageway for a length of 9 metres, as shown on sheet 13 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference N Access to field north of the existing A4019 as shown on sheet 12 of the streets, rights of way and access plans	From the existing A4019 for a length of 11 metres as shown on sheet 12 of the streets, rights of way and access plans	Reference m A new private means of access from the new A4019 eastbound carriageway for a length of 9 metres, as shown on sheet 13 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference O Access to Manor Farm south of the existing A4019 as shown on sheet 13 of	From the existing A4019 for a length of 8 metres as shown on sheet 13 of the streets,	Reference n An altered private means of access from the new A4019 westbound

	the streets, rights of way and access plans	rights of way and access plans	carriageway for a length of 13 metres, as shown on sheet 13 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference P Access to field north of the existing A4019 as shown on sheet 13 of the streets, rights of way and access plans	From the existing footway north of the existing A4019 for a length of 3 metres as shown on sheet 13 of the streets, rights of way and access plans	Reference o A new private means of access from the new service road west of The Green for a length of 10 metres, as shown on sheet 13 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference Q Access to field north of the existing A4019 as shown on sheet 13 of the streets, rights of way and access plans	From the existing A4019 for a length of 2 metres as shown on sheet 13 of the streets, rights of way and access plans	Reference o A new private means of access from the new service road west of The Green for a length of 10 metres, as shown on sheet 13 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference R Access to No. 2 Holly Bank north of the existing A4019 as shown on sheet 13 of the streets, rights of way and access plans	From the existing A4019 for a length of 2 metres as shown on sheet 13 of the streets, rights of way and access plans	Reference p An altered private means of access from the new service road west of The Green for a length of 4 metres, as shown on sheet 13 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference S Access to Manor Farm west of the existing unclassified road Moat Lane as shown on sheet 13 of the streets, rights of way and access plans	From the existing unclassified road Moat Lane for a length of 6 metres as shown on sheet 13 of the streets, rights of way and access plans	Reference r A new private means of access to the west of the realigned Moat Lane for a length of 93 metres, as shown on sheet 13 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference W Access to field south of the existing A4019 as shown on sheet 13 of the streets, rights of way and access plans	From the existing A4019 for a length of 8 metres as shown on sheet 13 of the streets, rights of way and access plans	Reference y A new private means of access to the south of the new A4019 westbound carriageway for a length of 13 metres, as shown on sheet 13 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference X Access to field north of the existing A4019 as shown on sheet 13	From the existing A4019 for a length of 4 metres as shown on sheet 13 of the streets,	Reference x Field to be accessed via the new service road east of The Green which is to be

	of the streets, rights of way and access plans	rights of way and access plans	classified as public highway with new field gate position at reference x, as shown on sheet 13 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference CC Access to Cheltenham West Community Fire Station south of the existing A4019 as shown on sheet 13 of the streets, rights of way and access plans	From the existing A4019 for a length of 8 metres as shown on sheet 13 of the streets, rights of way and access plans	Reference bb An altered private means of access from the new service road south of the A4019 for a length of 9 metres, as shown on sheet 13 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury	Reference DD Access to Maple Lodge south of the existing A4019 as shown on sheet 13 of the streets, rights of way and access plans	From the existing A4019 for a length of 5 metres as shown on sheet 13 of the streets, rights of way and access plans	Reference cc Existing access to remain in same location at edge of highway boundary, as shown on sheet 13 of the streets, rights of way and access plans, but access arrangement to be altered so that it is accessed directly from the new service road south of the A4019 rather than from the existing A4019
Uckington Civil Parish, Tewkesbury	Reference EE Access to Karinya south of the existing A4019 as shown on sheet 13 of the streets, rights of way and access plans	From the existing A4019 for a distance of 5 metres as shown on sheet 13 of the streets, rights of way and access plans	Reference dd Existing access to remain in same location at edge of highway boundary, as shown on sheet 13 of the streets, rights of way and access plans, but access arrangement to be altered so that it is accessed directly from the new service road south of the A4019 rather than from the existing A4019
Uckington Civil Parish, Tewkesbury	Reference KK Access to The Fosse and The Willows south of the existing A4019 as shown on sheet 14 of the streets, rights of way and access plans	From the existing A4019 for a distance of 2 metres as shown on sheet 14 of the streets, rights of way and access plans	Reference ff Existing access to remain in same location at edge of highway boundary, as shown on sheet 14 of the streets, rights of way and access plans,

			but access arrangement to be altered so that it is accessed directly from the new service road south of the A4019 rather than from the existing A4019
Boddington Civil Parish, Tewkesbury	Reference MM Access to field south of the existing B4634 as shown on sheet 16 of the streets, rights of way and access plans	From the existing B4634 for a length of 4 metres as shown on sheet 16 of the streets, rights of way and access plans	Reference ii An altered private means of access from the re-aligned B4634 for a length of 6 metres, as shown on sheet 16 of the streets, rights of way and access plans
Boddington Civil Parish, Tewkesbury	Reference NN Access to field south of the existing B4634 as shown on sheet 16 of the streets, rights of way and access plans	From the existing B4634 for a length of 5 metres as shown on sheet 16 of the streets, rights of way and access plans	Reference jj An altered private means of access from the re-aligned B4634 for a length of 16 metres, as shown on sheet 16 of the streets, rights of way and access plans
Boddington Civil Parish, Tewkesbury	Reference PP Access to field south of the existing B4634 as shown on sheet 16 of the streets, rights of way and access plans	From the existing B4634 for a length of 8 metres as shown on sheet 16 of the streets, rights of way and access plans	Reference kk An altered private means of access from the re-aligned B4634 for a length of 14 metres, as shown on sheet 16 of the streets, rights of way and access plans
Elmstone Hardwicke Civil Parish, Tewkesbury			Reference c An altered private means of access from the unclassified road Stanboro Lane / Piffs Elm Lane to field and new drainage attenuation basin (1) for a length of 41 metres, as shown on sheet 5 of the streets, rights of way and access plans
Boddington Civil Parish, Tewkesbury			Reference e An altered private means of access from the unclassified road Stanboro Lane / Piffs Elm Lane to Stanboro for a length of 7 metres, as shown on

			sheet 11 of the streets, rights of way and access plans
Boddington Civil Parish, Tewkesbury			Reference f A new private means of access from the re-aligned unclassified road Withybridge Lane to the new drainage attenuation basin (4) for a length of 15 metres, as shown on sheet 12 of the streets, rights of way and access plans
Boddington Civil Parish, Tewkesbury			Reference g A new private means of access from the re-aligned unclassified road Withybridge Lane to the flood storage area for a length of 14 metres, as shown on sheet 12 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury			Reference h A new private means of access from the new service road east of the new West Cheltenham Link Road to a field and maintenance access for a highway authority for a length of 420 metres, as shown on sheets 12 and 15 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury			Reference i An altered private means of access from the new service road east of the new West Cheltenham Link Road to a field for a length of 16 metres, as shown on sheet 12 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury			Reference j An altered private means of access from the new service road

			east of the new West Cheltenham Link Road to a field for a length of 20 metres, as shown on sheet 12 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury			Reference q Field west of The Green to be accessed from the unclassified road The Green which is classified as public highway with new field gate position at reference q, as shown on sheet 13 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury			Reference s An altered private means of access from the unclassified road Moat Lane to Newhouse Farm for a length of 4 metres, as shown on sheet 13 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury			Reference t An altered private means of access from the new service road east of the unclassified road The Green to Cremyll for a length of 8 metres, as shown on sheet 13 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury			Reference u An altered private means of access from the new service road east of the unclassified road The Green to Cherry Orchard and a field for a length of 12 metres, as shown on sheet 13 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury			Reference v An altered private means of access from

			the new service road east of the unclassified road The Green to Post Box Cottage and Landean for a length of 10 metres, as shown on sheet 13 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury			Reference w An altered private means of access from the new service road east of the unclassified road The Green to Elton Lawn for a length of 10 metres, as shown on sheet 13 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury			Reference z A new private means of access from the new A4019 westbound carriageway to the new drainage attenuation basin (6) for a length of 8 metres, as shown on sheet 13 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury			Reference aa An altered private means of access from the Cheltenham West Community Fire Station to the new A4019 dual carriageway for a length of 13 metres, as shown on sheet 13 of the streets, rights of way and access plans
Uckington Civil Parish, Tewkesbury			Reference ee An altered private means of access from the new service road south of the A4019 to the Cotswold Area Civil Service Sports Association for a length of 6 metres, as

			shown on sheet 14 of the streets, rights of way and access plans
Swindon Civil Parish, Cheltenham			Reference gg An altered private means of access from the re-aligned A4019 westbound carriageway to Mill Way for a length of 5 metres, as shown on sheet 14 of the streets, rights of way and access plans
Boddington Civil Parish, Tewkesbury			Reference hh A new private means of access from the West Cheltenham Link Road to a field east of the Link Road for a length of 58 metres, as shown on sheet 15 of the streets, rights of way and access plans
Boddington Civil Parish, Tewkesbury			Reference ll A new private means of access from the West Cheltenham Link Road to the new drainage attenuation basin (5) for a length of 14 metres, as shown on sheet 16 of the streets, rights of way and access plans
Boddington Civil Parish, Tewkesbury			Reference mm An altered private means of access from the re-aligned B4634 to Elm Cottage for a length of 8 metres, as shown on sheet 16 of the streets, rights of way and access plans
Boddington Civil Parish, Tewkesbury			Reference nn An altered private means of access from the re-aligned B4634 to field north of the B4634 for a length of 8 metres, as shown on sheet 16 of the streets, rights of way and access plans

Boddington Civil Parish, Tewkesbury			Reference oo An altered private means of access from the re-aligned B4634 to field north of the B4634 for a length of 6 metres, as shown on sheet 16 of the streets, rights of way and access plans
Boddington Civil Parish, Tewkesbury			Reference pp An altered private means of access from the re-aligned B4634 to Hayden Hill Farm for a length of 7 metres, as shown on sheet 16 of the streets, rights of way and access plans
Boddington Civil Parish, Tewkesbury			Reference qq An altered private means of access from the unclassified road Stanboro Lane / Piffs Elm Lane to Stanboro Lodge for a length of 5 metres, as shown on sheet 11 of the streets, rights of way and access plans
Boddington Civil Parish, Tewkesbury			Reference rr An altered private means of access from the unclassified road Moat Lane to field east of Moat Lane for a length of 8 metres, as shown on sheet 13 of the streets, rights of way and access plans

SCHEDULE 5

Article 24

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

(1) <i>Plot reference number shown on land plans</i>	(2) <i>Purpose for which rights over land may be acquired</i>	(3) <i>Relevant part of the authorised development</i>
Land Plans -Sheet 3		
3/2b	New right for temporary access for the construction of motorway signage and associated cabling and ducting works	1a

Land Plans -Sheet 4		
4/1c	New right for the construction of motorway signage and associated cabling and ducting works New right for the construction of a new southbound exit slip from the M5 to the A4019 New right for the construction of a new northbound entry slip from the A4019 to the M5 New right for the construction of an environmental barrier adjacent to Barn Farm north of Junction 10 and west of the M5	1a, 1c, 1e, 1n
4/1d	New right for the construction of a new southbound exit slip from the M5 to the A4019 New right for the construction of a new northbound entry slip from the A4019 to the M5 New right for an extension of the Leigh Brook culvert (also known as the Barn Farm culvert) New right for the construction of an environmental barrier adjacent to Barn Farm north of Junction 10 and west of the M5 New right for the construction of an environmental barrier adjacent to land housing a traveller site north of Junction 10 and east of the M5 New right for the diversion, use, protection, inspection and maintenance of electric cable and associated apparatus and equipment for the benefit of National Grid Electricity Distribution PLC	1c, 1e, 1m, 1n, 1o, 20
4/3a	New right for the construction of an environmental barrier adjacent to Barn Farm north of Junction 10 and west of the M5 New right for the diversion, use, maintenance and protection of electric cable and associated apparatus and equipment for the benefit of	1n, 20

	National Grid Electricity Distribution PLC	
4/3b	New right for the construction, use, protection, inspection and maintenance of an environmental barrier adjacent to Barn Farm north of Junction 10 and west of the M5 New right for the diversion, use, protection, inspection and maintenance of electric cable and associated apparatus and equipment for the benefit of National Grid Electricity Distribution PLC	1n, 20
4/3d	New right for the temporary access for the construction of a new southbound exit slip from the M5 to the A4019 and new permanent right of access to provide, protect, inspect and maintain environmental and ecological mitigation	1c
4/3e	New right for the temporary access for the construction of a new southbound exit slip from the M5 to the A4019 and new permanent right of access to provide, protect, inspect and maintain environmental and ecological mitigation	1c
4/3h	New right for the use of land northwest of Junction 10 as a construction compound New right to provide, protect, inspect and maintain landscaping northwest of Junction 10	1j, 2b
4/4b	New right for the temporary access for the construction of a new southbound exit slip from the M5 to the A4019 and new permanent right of access to provide, protect, inspect and maintain environmental and ecological mitigation	1c
Land Plans -Sheets 5 and 5A		
5/1a(i)	New right for the construction of new or altered private means of access New right for the diversion, use, protection and	3d, 27

	maintenance of telecommunication cable and associated apparatus and equipment	
5/2d	New right for the construction of motorway signage and associated cabling and ducting works New right for the construction of a new southbound exit slip from the M5 to the A4019 New right for the construction of a new grade separated roundabout junction and maintenance bays New right for the construction of a new roundabout over the M5 comprising a circulatory carriageway and the Piffs Elm interchange bridges (north and south) New right for the demolition of the existing A4019 bridge over the M5 New right for the diversion, use, protection, inspection and maintenance of water pipeline for the benefit of Severn Trent Water Limited New right for the diversion, use, protection, inspection and maintenance of gas main for the benefit of Wales and West Utilities Limited New right for the diversion, use, protection, inspection and maintenance of telecommunication cable and associated apparatus and equipment New right for the demolition of the existing NRTS Transmission Station and associated infrastructure	1a, 1c, 2, 2a, 2d, 15, 16, 27, 36a
5/2h	New right for the realignment and widening of the A4019 (Tewkesbury Road) northwest of Junction 10 with associated footway, cycleway, shared use path, private access points, signage and ducting New right for the realignment of the unclassified road known as Stanboro Lane	3, 3a, 10

	New right for the diversion, use, protection and maintenance of telecommunication cable and associated apparatus and equipment	
5/2h(i)	New right for the realignment and widening of the A4019 (Tewkesbury Road) northwest of Junction 10 with associated footway, cycleway, shared use path, private access points, signage and ducting New right for the realignment of the unclassified road known as Stanboro Lane New right for the diversion, use, protection, inspection and maintenance of telecommunication cable and associated apparatus and equipment	3, 3a, 27
5/2i	New right for the realignment and widening of the A4019 (Tewkesbury Road) northwest of Junction 10 with associated footway, cycleway, shared use path, private access points, signage and ducting New right for the diversion, use, protection and maintenance of telecommunication cable and associated apparatus and equipment	3, 10
5/2j	New right for the realignment and widening of the A4019 (Tewkesbury Road) northwest of Junction 10 with associated footway, cycleway, shared use path, private access points, signage and ducting New right for the realignment of the unclassified road known as Stanboro Lane	3, 3a
5/2k	New right for the realignment of the unclassified road known as Stanboro Lane	3a
5/2l	New right for the realignment and widening of the A4019 (Tewkesbury Road) northwest of Junction 10 with associated footway, cycleway,	3, 3a

	shared use path, private access points, signage and ducting New right for the realignment of the unclassified road known as Stanboro Lane	
5/2n	New right for the construction of a new northbound exit slip from the M5 to the A4019 New right for the construction of a new southbound entry slip from the A4019 to the M5 New right for the construction of a new grade separated roundabout junction and maintenance bays New right for the construction of a new roundabout over the M5 comprising a circulatory carriageway and the Piffs Elm interchange bridges (north and south) New right for the extension of the Piffs Elm culvert New right for the demolition of the existing A4019 bridge over the M5 New right for the realignment and widening of the A4019 (Tewkesbury Road) northwest of Junction 10 with associated footway, cycleway, shared use path, private access points, signage and ducting New right for the diversion of telecommunication cable and associated apparatus and equipment New right for the diversion, use, protection and maintenance of electric cable and associated apparatus and equipment for the benefit of National Grid Distribution Limited PLC New right for the demolition of the existing NRTS Transmission Station and associated infrastructure	1b, 1d, 2, 2a, 2c, 2d, 3, 10, 19, 36a
5/2o	New right for the construction of a new grade separated roundabout junction and maintenance bays	2, 2d, 3, 19

	New right for the demolition of the existing A4019 bridge over the M5 New right for the realignment and widening of the A4019 (Tewkesbury Road) northwest of Junction 10 with associated footway, cycleway, shared use path, private access points, signage and ducting New right for the diversion, use, protection and maintenance of electric cable and associated apparatus and equipment for the benefit of National Grid Distribution Limited PLC	
5/2p	New right for the construction of a new grade separated roundabout junction and maintenance bays New right for the demolition of the existing A4019 bridge over the M5 New right for the diversion, use, protection and maintenance of electric cable and associated apparatus and equipment for the benefit of National Grid Distribution Limited PLC	2, 2d, 19
5/2r	New right for the construction of a new grade separated roundabout junction and maintenance bays New right for the realignment of the unclassified road known as Stanboro Lane New right for the diversion, use, protection and maintenance of electric cable and associated apparatus and equipment for the benefit of National Grid Distribution Limited PLC	2, 3a, 19
5/2y	New right for the construction of a new grade separated roundabout junction and maintenance bays New right for the demolition of the existing A4019 bridge over the M5	2, 2d
5/2z	New right for the construction of a new grade separated	2, 2d

	roundabout junction and maintenance bays New right for the demolition of the existing A4019 bridge over the M5	
5/2aa	New right for the construction of a new grade separated roundabout junction and maintenance bays New right for the demolition of the existing A4019 bridge over the M5	2, 2d
5/2cc	New right for the construction of a new grade separated roundabout junction and maintenance bays New right for the demolition of the existing A4019 bridge over the M5	2, 2d
5/2ee	New right for the construction of a new grade separated roundabout junction and maintenance bays New right for the demolition of the existing A4019 bridge over the M5 New right for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting New right for the construction of an underpass west of Withybridge Lane New right for the diversion and construction of bridleway BR AUC1 under the A4019 (Tewkesbury Road) New right for the diversion, use, protection and maintenance of telecommunication cable and associated apparatus and equipment	2, 2d, 4, 4b, 4c, 10
5/2gg	New right for the construction of a new grade separated roundabout junction and maintenance bays New right for the demolition of the existing A4019 bridge over the M5	2, 2d, 4, 10

	New right for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting New right for the diversion, use, protection and maintenance of telecommunication cable and associated apparatus and equipment	
5/2jj	New right for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting New right for the construction of an underpass west of Withybridge Lane New right for the diversion and construction of bridleway BR AUC1 under the A4019 (Tewkesbury Road) New right for the diversion, use, protection and maintenance of telecommunication cable and associated apparatus and equipment	4, 4b, 4c, 10
5/2kk	New right for the construction of a new grade separated roundabout junction and maintenance bays New right for the construction of a new roundabout over the M5 comprising a circulatory carriageway and the Piffs Elm interchange bridges (north and south) New right for the diversion, use, protection and maintenance of telecommunication cable and associated apparatus and equipment New right for the demolition of the existing NRTS	2, 2a, 10, 36a

	Transmission Station and associated infrastructure	
5/2mm	New right for the construction of a new grade separated roundabout junction and maintenance bays New right for the diversion, use, protection and maintenance of telecommunication cable and associated apparatus and equipment	2, 10
5/2ss	New right for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting New right for the diversion, use, protection and maintenance of telecommunication cable and associated apparatus and equipment	4, 10
5/2uu	New right for the construction of a new grade separated roundabout junction and maintenance bays New right for the construction of a new roundabout over the M5 comprising a circulatory carriageway and the Piffs Elm interchange bridges (north and south) New right for the diversion, use, protection and maintenance of telecommunication cable and associated apparatus and equipment	2, 2a, 10
5/3b	New right for the temporary access for the construction of a new southbound exit slip from the M5 to the A4019 and new permanent right of access to provide, protect, inspect and maintain environmental and ecological mitigation	1c
5/3c	New right for the temporary access for the construction of a new southbound exit slip from the M5 to the A4019	1c

	and new permanent right of access to provide, protect, inspect and maintain environmental and ecological mitigation	
5/4b	New right for the construction of new or altered private means of access New right for the diversion, use, protection, inspection and maintenance of water pipeline for the benefit of Severn Trent Water Limited New right for the diversion, use, protection, inspection and maintenance of gas main for the benefit of Wales & West Utilities Limited New right for the diversion, use, protection, inspection and maintenance of telecommunication cable and associated apparatus and equipment	4g, 15, 16, 27
5/4b(i)	New right for the construction of new or altered private means of access New right for the diversion, use, protection, inspection and maintenance of water pipeline for the benefit of Severn Trent Water Limited New right for the diversion, use, protection, inspection and maintenance of gas main for the benefit of Wales & West Utilities Limited New right for the diversion, use, protection, inspection and maintenance of telecommunication cable and associated apparatus and equipment	4g, 15, 16, 27
5/4b(ii)	New right for the diversion and construction of bridleway BR AUC1 under the A4019 (Tewkesbury Road) New right for the construction of new or altered private means of access New right for the diversion, use, protection, inspection and maintenance of water pipeline for the benefit of Severn Trent Water Limited	4c, 4g, 15, 16, 27

	New right for the diversion, use, protection, inspection and maintenance of gas main for the benefit of Wales & West Utilities Limited New right for the diversion, use, protection, inspection and maintenance of telecommunication cable and associated apparatus and equipment	
5/4b(iii)	New right for the construction of new or altered private means of access New right for the diversion, use, protection, inspection and maintenance of water pipeline for the benefit of Severn Trent Water Limited New right for the diversion, use, protection, inspection and maintenance of gas main for the benefit of Wales & West Utilities Limited New right for the diversion, use, protection, inspection and maintenance of telecommunication cable and associated apparatus and equipment	4g, 15, 16, 27
5/4d(iv)	New right for construction compound no.3 northeast of Junction 10 New right to construct, use, protect, inspect and maintain mitigation planting for dormice	1k, 4j
5/4d(v)	New right for construction compound no.3 northeast of Junction 10 New right to construct, use, protect, inspect and maintain mitigation planting for dormice	1k, 4j
5/4d(vi)	New right for construction compound no.3 northeast of Junction 10 New right to construct, use, protect, inspect and maintain mitigation planting for dormice	1k, 4j
5/4d(vii)	New right for construction compound no.3 northeast of Junction 10 New right to construct, use, protect, inspect and maintain	1k, 4j

	mitigation planting for dormice	
5/4d(viii)	New right for construction compound no.3 northeast of Junction 10 New right to construct, use, protect, inspect and maintain mitigation planting for dormice	1k, 4j
5/5a	New right for the demolition of Sheldon Nursery northwest of Junction 10 New right for the construction of new or altered private means of access New right for the diversion, use, protection and maintenance of electric cable and associated apparatus and equipment for the benefit of National Grid Electricity Distribution PLC	2f, 3d, 19
5/5b	New right for the construction compound no. 2 northwest of Junction 10 New right for the diversion, use, protection and maintenance of electric cable and associated apparatus and equipment for the benefit of National Grid Electricity Distribution PLC	1j, 19
5/5g	New right for the realignment of the unclassified road known as Stanboro Lane	3a
5/6f	New right for the construction of a new grade separated roundabout junction and maintenance bays for the demolition of the existing A4019 bridge over the M5	2, 2d
5/6g	New right for the construction of a new grade separated roundabout junction and maintenance bays New right for the demolition of the existing A4019 bridge over the M5 New right for the diversion, use, protection and maintenance of telecommunication cable and associated apparatus and equipment	2, 2d, 10

5/6h	New right for the construction of a new grade separated roundabout junction and maintenance bays New right for the demolition of the existing A4019 bridge over the M5	2, 2d
5/10d	New right for the provision, protection, inspection and maintenance of a flood compensation area at the location shown on sheets 5 and 11 of the works plans	3e
5/11b	New right for the diversion, construction, use and maintenance of bridleway BR AUC1 under the A4019 (Tewkesbury Road) New right for the construction of new or altered private means of access New right for the diversion, use, protection, inspection and maintenance of water pipeline for the benefit of Severn Trent Water Limited New right for the diversion, use, protection, inspection and maintenance of gas main for the benefit of Wales & West Utilities Limited New right for the diversion, use, protection, inspection and maintenance of telecommunication cable and associated apparatus and equipment	4c, 4g, 15, 16, 27
5/31a(i)	New right for construction compound no.3 northeast of Junction 10 New right to construct, use, protect, inspect and maintain mitigation planting for dormice	1k, 4j
5/31b(i)	New right for construction compound no.3 northeast of Junction 10 New right to construct, use, protect, inspect and maintain mitigation planting for dormice	1k, 4j
5/31c(i)	New right for construction compound no.3 northeast of Junction 10 New right to construct, use, protect, inspect and maintain	1k, 4j

	mitigation planting for dormice	
5/31d	New right for the diversion, construction, use and maintenance of bridleway BR AUC1 under the A4019 (Tewkesbury Road) New right for the construction of new or altered private means of access New right for the diversion, use, protection, inspection and maintenance of water pipeline for the benefit of Severn Trent Water Limited New right for the diversion, use, protection, inspection and maintenance of gas main for the benefit of Wales & West Utilities Limited New right for the diversion, use, protection, inspection and maintenance of telecommunication cable and associated apparatus and equipment	4c, 4g, 15, 16, 27
5/33c	New right for the temporary access for the construction of a new southbound exit slip from the M5 to the A4019 and new permanent right of access to provide, protect, inspect and maintain environmental and ecological mitigation	1c
Land Plans -Sheet 6		
6/1e	New right for the use of land southwest of Junction 10 at the location shown on sheets 5 and 6 of the works plans as a construction compound	1i
6/1g	New right to construct, use, protect, inspect and maintain the environmental mitigation associated with the construction of a new northbound exit slip from the M5 to the A4019	1b
6/3a	New right to construct, use, protect, inspect and maintain the environmental mitigation associated with the construction of a new northbound exit slip from the M5 to the A4019	1b

6/3a(i)	New right to construct, use, protect, inspect and maintain the environmental mitigation associated with the construction of a new northbound exit slip from the M5 to the A4019	1b
6/3a(ii)	New right to construct, use, protect, inspect and maintain the environmental mitigation associated with the construction of a new northbound exit slip from the M5 to the A4019	1b
6/3a(iii)	New right to construct, use, protect, inspect and maintain the environmental mitigation associated with the construction of a new northbound exit slip from the M5 to the A4019	1b
6/10a	New right to construct, use, protect, inspect and maintain a flood compensation area	5n
6/11a	New right to construct, use, protect, inspect and maintain a flood compensation area	5n
Land Plans -Sheet 7		
7/1e	New right to construct, use, protect, inspect and maintain the environmental mitigation associated with the construction of a new northbound exit slip from the M5 to the A4019	1b
7/3b	New right to construct, use, protect, inspect and maintain the environmental mitigation associated with the construction of a new southbound entry slip from the A4019 to the M5	1d
7/3b(i)	New right to construct, use, protect, inspect and maintain the environmental mitigation associated with the construction of a new southbound entry slip from the A4019 to the M5	1d
7/3c	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
7/4a	New right to construct, use, protect, inspect and maintain a flood compensation area	6d

7/4b	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
7/4b(i)	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
7/4c(i)	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
7/4d	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
7/5a	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
7/6a	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
7/6b	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
7/7a	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
Land Plans - Sheet 10		
10/3b	New right for the construction of motorway signage and associated cabling and ducting works	1a
10/3b(i)	New right for the construction of motorway signage and associated cabling and ducting works	1a
10/3b(ii)	New right for the construction of motorway signage and associated cabling and ducting works	1a
Land Plans – Sheet 11		
11/1a	New right to construct, use, protect, inspect and maintain a flood compensation area	3e
11/1b	New right to construct, use, protect, inspect and maintain a flood compensation area	3e
11/1c	New right to construct, use, protect, inspect and maintain a flood compensation area New right for the diversion, use, protection, inspection and maintenance of telecommunication cable and associated apparatus and equipment	3e, 28
11/3a	New right for the realignment and widening of the A4019	3, 3c, 3d, 10, 28

	(Tewkesbury Road) northwest of Junction 10 with associated footway, cycleway, shared use path, private access points, signage and ducting New right for the realignment of a public right of way FP ABO14 to the south side of the A4019 (Tewkesbury Road) New right for the construction of new or altered private means of access New right for the diversion, use, protection and maintenance of telecommunication cable and associated apparatus and equipment New right for the diversion, use, protection and maintenance of telecommunication cable and associated apparatus and equipment	
11/3b	New right for the realignment and widening of the A4019 (Tewkesbury Road) northwest of Junction 10 with associated footway, cycleway, shared use path, private access points, signage and ducting New right for the realignment of the unclassified road known as Stanboro Lane New right for the diversion of telecommunication cable and associated apparatus and equipment	3, 3a, 10
Land Plans - Sheets 12 and 12A		
12/1b	New right for the use of land north of the A4019 (Tewkesbury Road) as a construction compound New right to construct, use, protect, inspect and maintain mitigation planting for dormice	4i, 4j
12/1b(i)	New right for the use of land north of the A4019 (Tewkesbury Road) as a construction compound New right to construct, use, protect, inspect and maintain	4i, 4j

	mitigation planting for dormice	
12/1b(ii)	New right for the use of land north of the A4019 (Tewkesbury Road) as a construction compound New right to construct, use, protect, inspect and maintain mitigation planting for dormice	4i, 4j
12/1b(iii)	New right for the use of land north of the A4019 (Tewkesbury Road) as a construction compound New right to construct, use, protect, inspect and maintain mitigation planting for dormice	4i, 4j
12/1e	New right for the diversion, construction, use and maintenance of bridleway BR AUC1 under the A4019 (Tewkesbury Road) New right for the construction of new or altered private means of access New right for the diversion, use, protection, inspection and maintenance of water pipeline for the benefit of Severn Trent Water Limited New right for the diversion, use, protection, inspection and maintenance of gas main for the benefit of Wales & West Utilities Limited New right for the diversion, use, protection, inspection and maintenance of telecommunication cable and associated apparatus and equipment	4c, 4g, 15, 16, 27
12/2b	New right for the use of land north of the A4019 (Tewkesbury Road) as a construction compound	4i
12/2b(i)	New right for the use of land north of the A4019 (Tewkesbury Road) as a construction compound	4i
12/2c	New right for the diversion, construction, use and maintenance of bridleway BR AUC1 under the A4019 (Tewkesbury Road)	4c, 4g, 4z, 15, 16, 27

	New right for the construction of new or altered private means of access New right for the construction of a public right of way (footpath) to link to diverted bridleway BR AUC1 New right for the diversion, use, protection, inspection and maintenance of water pipeline for the benefit of Severn Trent Water Limited New right for the diversion, use, protection, inspection and maintenance of gas main for the benefit of Wales & West Utilities Limited New right for the diversion, use, protection, inspection and maintenance of telecommunication cable and associated apparatus and equipment	
12/2k	New right of temporary access for the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation New right for the use of land east of Withybridge Lane and west of new West Cheltenham Link Road as a construction compound	5, 5b
12/2k(i)	New right of temporary access for the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation New right for the use of land east of Withybridge Lane and	5, 5b, 21

	west of the new West Cheltenham Link Road as a construction compound New right for the diversion, use, protection, inspection and maintenance of electric cable and associated apparatus and equipment for the benefit of National Grid Electricity Distribution plc	
12/2v	New right of temporary access for the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation New right for the construction and use of a private means of access track to the east of the West Cheltenham Link Road New right to construct, use, protect, inspect and maintain a flood compensation area New right for the diversion, use, protection, inspection and maintenance of electric cable and associated apparatus and equipment for the benefit of National Grid Electricity Distribution plc	5, 5k, 5n, 21
12/2w	New right to construct, use, protect, inspect and maintain a flood compensation area New right to construct, use, protect, inspect and maintain a flood compensation area	5n, 5o
12/2x	New right to construct, use, protect, inspect and maintain a flood compensation area New right for the diversion, use, protection, inspection and maintenance of electric cable and associated apparatus and equipment for the benefit of National Grid Electricity Distribution plc	5n, 21
12/6a	New right for the realignment and dualling of the A4019 (Tewkesbury Road) southeast	4, 10

	of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting New right for the diversion, use, protection and maintenance of telecommunication cable and associated apparatus and equipment	
12/7a	New right for the use of land north of the A4019 (Tewkesbury Road) as a construction compound	4i
12/7b	New right for the use of land north of the A4019 (Tewkesbury Road) as a construction compound New right to construct, use, protect, inspect and maintain mitigation planting for dormice	4i, 4j
12/7b(i)	New right for the use of land north of the A4019 (Tewkesbury Road) as a construction compound	4i
12/7b(ii)	New right for the use of land north of the A4019 (Tewkesbury Road) as a construction compound	4i
12/7g	New right to construct, use, protect, inspect and maintain mitigation planting for dormice	4j
12/8b	New right to construct, use, protect, inspect and maintain mitigation planting for dormice	4j
12/9a	New right to construct, use, protect, inspect and maintain a flood compensation area	5n
12/9b	New right of temporary access for the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation	5

12/10a	New right to construct, use, protect, inspect and maintain a flood compensation area	5n
12/16a	New right for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting New right for the diversion, use, provision and maintenance of telecommunication cable and associated apparatus and equipment	4, 29
12/16b	New right for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting New right for the diversion, use, protection and maintenance of telecommunication cable and associated apparatus and equipment	4, 29
Land Plans – Sheets 13 and 13A		
13/1a	New right to construct, use, protect, inspect and maintain mitigation planting for dormice	4j
13/1a(i)	New right to construct, use, protect, inspect and maintain mitigation planting for dormice	4j
13/1e	New right for temporary access for the realignment and dualling for the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting New right to construct, use, protect, inspect and maintain mitigation planting for dormice	4, 4j

13/1e(i)	New right for temporary access for the realignment and dualling for the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting New right to construct, use, protect, inspect and maintain mitigation planting for dormice	4, 4j
13/1h	New right for the construction of new or altered private means of access New right for the diversion, use, protection and maintenance of water pipeline for the benefit of Severn Trent Water Limited	4g, 15
13/2b	New right to construct, use, protect, inspect and maintain mitigation planting for dormice	4j
13/2d	New right to construct, use, protect, inspect and maintain mitigation planting for dormice	4j
13/3o	New right for the diversion, use, protection, inspection and maintenance of electric cable and associated apparatus and equipment for the benefit of National Grid Electricity Distribution plc	23
13/3w	New right to construct, use, protect, inspect and maintain mitigation planting for dormice New right for the diversion, use, protection, inspection and maintenance of electric cable and associated apparatus and equipment for the benefit of National Grid Electricity Distribution plc	4j, 23
13/3w(i)	New right to construct, use, protect, inspect and maintain mitigation planting for dormice	4j
13/3z	New right to cleanse, widen, deepen and maintain the existing ditch outfall from the proposed attenuation pond	4q

13/6a	New right for the construction of a service road running east and west of The Green New right for the diversion, use, protection and maintenance of gas main for the benefit of Wales and West Utilities Limited New right for the diversion use, protection and maintenance of electric cable and associated apparatus and equipment for the benefit of National Grid Electricity Distribution PLC	4n, 17, 22
13/11a	New right for the construction of new or altered private means of access New right for the construction of service roads running east and west of The Green New right to construct, use, protect, inspect and maintain mitigation planting for dormice	4g, 4n, 4j
13/11b	New right to construct, use, protect, inspect and maintain mitigation planting for dormice	4j
13/12a	New right to construct, use, protect, inspect and maintain mitigation planting for dormice	4j
13/14a	New right for the construction of a service road to the south of the A4019 (Tewkesbury Road) serving properties including the Cotswold Area Civil Service Sports Association; Homecroft Drive and the West Cheltenham Community Fire Station New right for the diversion, use, protection and maintenance of water pipeline for the benefit of Severn Trent Water Limited New right for the diversion, use, protection and maintenance of gas main for the benefit of Wales and West Utilities Limited New right for the diversion, use, protection and maintenance of electric cable and associated apparatus and	4v, 15, 18, 24, 27, 32

	equipment for the benefit of National Grid Electricity Distribution PLC New right for the diversion, use, protection and maintenance of telecommunication cable and associated apparatus and equipment New right for the diversion, use, protection and maintenance of telecommunication cable and associated apparatus and equipment	
13/15a	New right for the construction of a service road to the south of the A4019 (Tewkesbury Road) serving properties including the Cotswold Area Civil Service Sports Association; Homecroft Drive; and the West Cheltenham Community Fire Station	4v
13/16a	New right for the construction of a service road to the south of the A4019 (Tewkesbury Road) serving properties including the Cotswold Area Civil Service Sports Association; Homecroft Drive and the West Cheltenham Community Fire Station New right for the diversion, use, protection and maintenance of water pipeline for the benefit of Severn Trent Water Limited New right for the diversion, use, protection and maintenance of electric cable and associated apparatus and equipment for the benefit of National Grid Electricity Distribution PLC New right for the diversion, use, protection and maintenance of telecommunication cable and associated apparatus and equipment	4v, 15, 24, 32
13/17a	New right for the construction of a service road to the south of the A4019 (Tewkesbury Road) serving properties	4v, 32

	including the Cotswold Area Civil Service Sports Association; Homecroft Drive and the West Cheltenham Community Fire Station New right for the diversion, use, protection and maintenance of telecommunication cable and associated apparatus and equipment	
13A/1a	New right to cleanse, widen, deepen and maintain the existing ditch outfall from the proposed attenuation pond	4q
13A/2a	New right to cleanse, widen, deepen and maintain the existing ditch outfall from the proposed attenuation pond	4q
Land Plans – Sheet 14		
14/6a	New right for the alteration of the signalised junction serving Gallagher Retail Park and the B4634 to the south of the A4019 (Tewkesbury Road) with maintenance bay New right for the diversion, use, protection and maintenance of gas main for the benefit of Wales and West Utilities	4x, 18
Land Plans – Sheet 15		
15/3c	New right of temporary access for the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation New right for the construction of new or altered private means of access New right for the diversion, construction, use and maintenance of public right of way FP AUC11 to the north of the River Chelt under the new River Chelt Bridge	5, 5k, 5e

15/3d	New right to construct, use, protect, inspect and maintain a flood compensation area New right to construct, use, protect, inspect and maintain a flood compensation area	5n, 5o
15/4a	New right to construct, use, protect, inspect and maintain a flood compensation area	5n
15/4b	New right of temporary access for the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation New right for the construction, use, protection and maintenance of a new bridge over the River Chelt and associated environmental mitigation New right for the diversion, construction, use and maintenance of public right of way FP AUC11 to the north of the River Chelt under the new River Chelt Bridge	5, 5d, 5e
15/4e	New right of temporary access for the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation New right for the construction, use, protection and maintenance of a new bridge over the River Chelt and associated environmental mitigation New right for the diversion, construction, use and maintenance of public right of	5, 5d, 5e

	way FP AUC11 to the north of the River Chelt under the new River Chelt Bridge	
15/4f	New right for the construction, use, protection and maintenance of a new bridge over the River Chelt and associated environmental mitigation New right for the diversion, construction, use and maintenance of public right of way FP AUC11 to the north of the River Chelt under the new River Chelt Bridge	5d, 5e
15/5b	New right of temporary access for the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation New right for the construction, use, protection and maintenance of a new bridge over the River Chelt and associated environmental mitigation New right for the diversion, construction, use and maintenance of public right of way FP AUC11 to the north of the River Chelt under the new River Chelt Bridge	5, 5d, 5e
15/5b(i)	New right for the construction, use, protection and maintenance of a new bridge over the River Chelt and associated environmental mitigation	5d
15/6a	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
15/7a	New right for the construction, use, protection and maintenance of a new bridge over the River Chelt and associated environmental mitigation	5d

15/8a	New right of temporary access for the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation New right for the construction, use, protection and maintenance of a new bridge over the River Chelt and associated environmental mitigation New right for the diversion, construction, use and maintenance of public right of way FP ABO24 to the south of the River Chelt under the new River Chelt Bridge	5, 5d, 5f
15/8a(i)	New right of temporary access for the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation New right for the diversion, use, protection, inspection and maintenance of gas main for the benefit of Wales & West Utilities Limited	5, 35
15/8b	New right of temporary access for the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation	5, 5d, 5f

	New right for the construction, use, protection and maintenance of a new bridge over the River Chelt and associated environmental mitigation New right for the diversion, construction, use and maintenance of public right of way FP ABO24 to the south of the River Chelt under the new River Chelt Bridge	
15/8c	New right of temporary access for the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation New right for the construction, use, protection and maintenance of a new bridge over the River Chelt and associated environment mitigation New right for the diversion, construction, use and maintenance of public right of way FP ABO24 to the south of the River Chelt under the new River Chelt Bridge	5, 5d, 5f
15/8c(i)	New right of temporary access for the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation New right for the use of land east of the new West Cheltenham Link Road as a construction compound	5, 5g
15/8c(ii)	New right of temporary access for the construction of	5, 5g, 35

	a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation New right for the use of land east of the new West Cheltenham Link Road as a construction compound New right for the diversion, use, protection, inspection and maintenance of gas main for the benefit of Wales & West Utilities Limited	
15/8c(iii)	New right of temporary access for the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation New right for the use of land east of the new West Cheltenham Link Road as a construction compound	5, 5g
15/8c(iv)	New right of temporary access for the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation New right for the use of land east of the new West Cheltenham Link Road as a construction compound	5, 5g
15/8c(v)	New right of temporary access for the construction of a new West Cheltenham Link	5, 5k

	Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation New right for the construction of new or altered private means of access	
15/8k	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
15/8k(i)	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
15/8l	New right for the diversion, use, protection, inspection and maintenance of 170 metres of gas main for the benefit of Wales & West Utilities Limited	35
15/8m	New right for the use of land east of the new West Cheltenham Link Road as a construction compound New right for the diversion, use, protection, inspection and maintenance of gas main for the benefit of Wales & West Utilities Limited	5g, 35
15/8n	New right for the use of land east of the new West Cheltenham Link Road as a construction compound New right for the diversion, use, protection, inspection and maintenance of gas main for the benefit of Wales & West Utilities Limited	5g, 35
15/8p	New right for the use of land east of the new West Cheltenham Link Road as a construction compound New right for the diversion, use, protection, inspection and maintenance of gas main for the benefit of Wales & West Utilities Limited	5g, 35
15/9a	New right to construct, use, protect, inspect and maintain a flood compensation area	6d

15/10a	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
15/10d	New right of temporary access for the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation	5
15/10e	New right of temporary access for the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation	5
15/10e(i)	New right for the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation.	5
15/10e(ii)	New right of temporary access for the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation	5
Land Plans – Sheets 16 and 16A		

16/1a(i)	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
16/2a	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
16/2b	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
16/2c	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
16/2d	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
16/2e	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
16/3a	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
16/3c	New right of temporary access for the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation	5
16/3c(i)	New right of temporary access for the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation	5
16/3e	New right of temporary access for the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new	5

	permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation	
16/3e(i)	New right of temporary access for the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation	5
16/3e(ii)	New right of temporary access for the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation	5
16/3e(iii)	New right of temporary access for the construction of a new West Cheltenham Link Road south of the A4019 (Tewkesbury Road) to join with the B4634 with footway and cycle track to the west and private access, signage and ducting, and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation New right for working space for the realignment of the B4634 connecting to the new West Cheltenham Link Road with shared use path, private access, signage and ducting.	5, 6
16/3i	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
16/3l	New right to construct, use, protect, inspect and maintain a flood compensation area	6d

16/3o	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
16/4a	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
16/4b	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
16/4c	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
16/4d	New right to construct, use, protect, inspect and maintain a flood compensation area	6d
16/5d	New right for working space for the realignment of the B4634 connecting to the new West Cheltenham Link Road with shared use path, private access, signage and ducting	6
16/6b	New right for the construction of new or altered private means of access New right for the diversion, use, protection and maintenance of telecommunication cable and associated apparatus and equipment. New right for the diversion, use, protection and maintenance of telecommunication cable and associated apparatus and equipment	6c, 8, 34
16/6d	New right for the diversion, use, protection, inspection and maintenance of electric cable and associated apparatus and equipment for the benefit of National Grid Electricity Distribution plc	25
16/8a	New right for the diversion, use, protection, inspection and maintenance of electric cable and associated apparatus and equipment for the benefit of National Grid Electricity Distribution plc	25
16/10c	New right for the diversion, use, protection, inspection and maintenance of electric cable and associated apparatus and equipment for	26

	the benefit of National Grid Electricity Distribution plc	

SCHEDULE 6

Article 24

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS

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 or imposition of a restrictive covenant as they apply as respects compensation for the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of 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 substitute—

“(5) (a) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the Compulsory Purchase Act 1965 (as modified by paragraph 5(5) of Schedule 6 to the M5 Junction 10 Development Consent Order 202[•] (the “M5 Junction 10 Order”));
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the Compulsory Purchase Act 1965 (as substituted by paragraph 5(8) of Schedule 6 to the M5 Junction 10 Order) to acquire an interest in the land; and
- (c) the acquiring authority enter on and take 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 purpose of exercising that right.”

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) 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 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

Application of Part 1 of the 1965 Act

4. Part 1 of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 27 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 21 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 24(1) (compulsory acquisition of rights and imposition of restrictive covenants)—

(a) 1973 c. 26.

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be 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 the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is or is to be enforceable.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act 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 or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the restrictive covenant 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) 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);
- (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 or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 21), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(a) (powers of entry: further notices of entry), 11B(b) (counter-notice requiring possession to be taken on specified date), 12 (unauthorised entry) and 13 (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(6) Section 20 (tenants at will, etc.) of the 1965 Act 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 or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 27(4) is also 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 or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A of the 1965 Act substitute—

(a) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
 (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT IN NOTICE TO TREAT

Introduction

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or a 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 28 (application of the 1981 Act) of the M5 Junction 10 Development Consent Order 202[•] in respect of the land to which the notice to treat relates.

(2) But see article 29(3) (acquisition of subsoil or airspace only) of the M5 Junction 10 Development Consent Order 202[•] which excludes the acquisition of subsoil or airspace only from this Schedule.

(3) 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.

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 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 authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the 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 the Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right of the imposition of the restrictive covenant 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 the determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed 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 or the imposition of the covenant 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 acquiring 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 it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawing of the notice.

15. Any dispute as to the compensation is to be determined by the Upper Tribunal."

SCHEDULE 7

Article 31

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1) Plot Reference Number shown on land plans</i>	<i>(2) Purpose for which temporary possession may be taken</i>	<i>(3) Relevant part of the authorised development</i>
Land Plans – Sheet 1		
1/1a	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
1/1a(i)	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
1/1a(ii)	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
1/1b	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
1A/1a	Required for the construction of motorway signage and	1a

	associated cabling and ducting works and associated works	
1A/1a(i)	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
1A/1a(ii)	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
1A/1b	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
Land Plans – Sheet 2		
2/1a	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
2/1a(i)	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
2/1b	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
2/1c	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
2/1d	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
2/1e	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
2/2a	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
Land Plans – Sheet 3		

3/1a	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
3/1b	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
3/1c	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
3/1d	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
3/1e	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
3/1f	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
3/2a	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
3/2c	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
Land Plans – Sheet 4		
4/1a	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
4/1b	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
4/1c(i)	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a

4/1e	Required for the construction of a new southbound exit slip from the M5 to the A4019 Required for the construction of an environmental barrier adjacent to land housing a traveller site north of Junction 10 and east of the M5	1c, 1o
4/2a	Required for construction of an environmental barrier adjacent to Barn Farm north of Junction 10 and west of the M5	1n
4/3g	Required for construction compound no. 2 northwest of Junction 10	1j
4/3g(i)	Required for temporary working space for the construction of a new northbound entry slip from the A4019 to the M5	1e
4/3i	Required for construction compound no. 2 northwest of Junction 10	1j
4/3k	Required for construction compound no. 2 northwest of Junction 10	1j
4/3l	Required for construction compound no. 2 northwest of Junction 10	1j
4/3m	Required for construction compound no. 2 northwest of Junction 10	1j
Land Plans – Sheets 5 and 5A		
5/1a	Required for construction compound no. 2 northwest of Junction 10	1j
5/1a(ii)	Required for construction compound no.2 northwest of Junction 10	1j
5/1c	Required for construction compound no. 2 northwest of Junction 10	1j
5/2a	Required for the construction of a new southbound exit slip from the M5 to the A4019 Required for the construction of a new northbound entry slip from the A4019 to the M5	1c, 1e
5/2b	Required for the construction of a new southbound exit slip from the M5 to the A4019	1c, 1m, 1o

	Required for the extension of the Leigh Brook culvert (also known as the Barn Farm culvert) Required for the construction of an environmental barrier adjacent to land housing a traveller site north of Junction 10 and east of the M5	
5/2c	Required for the construction of a new southbound exit slip from the M5 to the A4019 Required for the extension of the Leigh Brook culvert (also known as the Barn Farm culvert) Required for the construction of an environmental barrier adjacent to land housing a traveller site north of Junction 10 and east of the M5	1c, 1m, 1o
5/2e	Required for the construction of a new northbound entry slip from the A4019 to the M5 Required for the construction of a new grade separated roundabout junction and maintenance bays Required for the construction of a new roundabout over the M5 comprising a circulatory carriageway and the Piffs Elm interchange bridges (north and south) Required for the demolition of the existing NRTS Transmission Station and associated infrastructure	1e, 2, 2a, 36a
5/2f	Required for the construction of a new grade separated roundabout junction and maintenance bays Required for the demolition of the existing A4019 bridge over the M5	2, 2d
5/2g	Required for the construction of a new grade separated roundabout junction and maintenance bays Required for the demolition of the existing A4019 bridge over the M5	2, 2d

5/2q	Required for the construction of a new grade separated roundabout junction and maintenance bays Required for the demolition of the existing A4019 bridge over the M5	2, 2d
5/2s	Required for the construction of a new grade separated roundabout junction and maintenance bays Required for the demolition of the existing A4019 bridge over the M5	2, 2d
5/2t	Required for the construction of a new grade separated roundabout junction and maintenance bays Required for the demolition of the existing A4019 bridge over the M5	2, 2d
5/2u	Required for the construction of a new grade separated roundabout junction and maintenance bays Required for the demolition of the existing A4019 bridge over the M5	2, 2d
5/2v	Required for the construction of a new grade separated roundabout junction and maintenance bays Required for the demolition of the existing A4019 bridge over the M5	2, 2d
5/2w	Required for the construction of a new grade separated roundabout junction and maintenance bays Required for the demolition of the existing A4019 bridge over the M5	2, 2d
5/2x	Required for the construction of a new grade separated roundabout junction and maintenance bays Required for the demolition of the existing A4019 bridge over the M5	2, 2d
5/2bb	Required for the construction of a new grade separated roundabout junction and maintenance bays Required for the demolition of the existing A4019 bridge over the M5	2, 2d

5/2ff	Required for the construction of a new southbound exit slip from the M5 to the A4019 Required for the demolition of the existing M5 southbound exit slip Required for the construction of a new grade separated roundabout junction and maintenance bays Required for the demolition of the existing A4019 bridge over the M5 Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting	1c, 1g, 2, 2d, 4
5/2hh	Required for the construction of a new grade separated roundabout junction and maintenance bays Required for the demolition of the existing A4019 bridge over the M5	2, 2d
5/2ii	Required for the demolition of the existing M5 southbound exit slip Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting Required for the construction of an underpass west of Withybridge Lane Required for the diversion and construction of bridleway BR AUC1 under the A4019 (Tewkesbury Road)	1g, 4, 4b, 4c
5/2ll	Required for the construction of a new grade separated roundabout junction and maintenance bays Required for the demolition of the existing A4019 bridge over the M5	2, 2d

5/2nn	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting	4
5/2qq	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting	4
5/2rr	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting	4
5/2tt	Required for the construction of motorway signage and associated cabling and ducting works Required for the construction of a new northbound exit slip from the M5 to the A4019	1a, 1b
5/4c	Required for construction compound no. 3 northeast of Junction 10	1k
5/4c(i)	Required for construction compound no. 3 northeast of Junction 10	1k
5/4d	Required for construction compound no. 3 northeast of Junction 10	1k
5/4d(i)	Required for construction compound no. 3 northeast of Junction 10	1k
5/4d(ii)	Required for construction compound no. 3 northeast of Junction 10	1k
5/4d(iii)	Required for construction compound no. 3 northeast of Junction 10	1k
5/5a(i)	Required for construction compound no.2 northwest of Junction 10 and protection of existing features	1j

5/5a(ii)	Required for construction compound no.2 northwest of Junction 10 and protection of existing features	1j
5/5b(i)	Required for construction compound no. 2 northwest of Junction 10	1j
5/6c	Required for the construction of a new grade separated roundabout junction and maintenance bays Required for the realignment of the unclassified road known as Stanboro Lane	2, 3a
5/6d	Required for the construction of a new grade separated roundabout junction and maintenance bays Required for the demolition of the existing A4019 bridge over the M5	2, 2d
5/6d(i)	Required for the construction of a new grade separated roundabout junction and maintenance bays Required for the demolition of the existing A4019 bridge over the M5	2, 2d
5/10c	Required for temporary working space for the construction of new or altered private means of access	3d
5/10e	Required for construction compound no. 1 southwest of Junction 10	1i
5/10g	Required for construction compound no. 1 southwest of Junction 10	1i
5/11a	Required for construction compound no. 4 north of the A4019 (Tewkesbury Road)	1k
5/31a(ii)	Required for construction compound no. 3 northeast of Junction 10	1k
5/31b(ii)	Required for construction compound no. 3 northeast of Junction 10	1k
5/31c(ii)	Required for construction compound no. 3 northeast of Junction 10	1k
5/33d	Required for construction compound no. 3 northeast of Junction 10	1k
Land Plans – Sheet 6		

6/1a	Required for construction compound no. 1 southwest of Junction 10	1i
6/1b	Required for construction compound no. 1 southwest of Junction 10	1i
6/1f	Required for construction compound no. 1 southwest of Junction 10	1i
6/1f(i)	Required for construction compound no. 1 southwest of Junction 10	1i
6/1h	Required for the construction of a new northbound exit slip from the M5 to the A4019	1b
6/2a	Required for the construction of a new northbound exit slip from the M5 to the A4019 Required for the construction of a new southbound entry slip from the A4019 to the M5	1b, 1d
6/2b	Required for the construction of a new northbound exit slip from the M5 to the A4019 Required for the construction of a new southbound entry slip from the A4019 to the M5	1b, 1d
6/3c	Required for the construction of a new northbound exit slip from the M5 to the A4019	1b
6/3c(i)	Required for the construction of a new northbound exit slip from the M5 to the A4019	1b
6/3c(ii)	Required for the construction of a new northbound exit slip from the M5 to the A4019	1b
6/3c(iii)	Required for the construction of a new northbound exit slip from the M5 to the A4019	1b
6/4d	Required for construction compound no. 9 south of Junction 10	1p
6/6a	Required for construction compound no. 9 south of Junction 10	1p
6/6b	Required for construction compound no. 9 south of Junction 10	1p
6/7a	Required for the realignment of Withybridge Lane connecting to the realigned and dualled A4019 (Tewkesbury Road)	4bb

6/9a	Required for the realignment of Withybridge Lane connecting to the realigned and dualled A4019 (Tewkesbury Road)	4bb
Land Plans – Sheet 7		
7/1a	Required for the construction of a new northbound exit slip from the M5 to the A4019	1b
7/1a(i)	Required for the construction of a new northbound exit slip from the M5 to the A4019	1b
7/2a	Required for the construction of motorway signage and associated cabling and ducting works and associated works Required for the construction of a new northbound exit slip from the M5 to the A4019	1a, 1b
7/2a(i)	Required for the construction of motorway signage and associated cabling and ducting works and associated works Required for the construction of a new northbound exit slip from the M5 to the A4019	1a, 1b
7/2a(ii)	Required for the construction of motorway signage and associated cabling and ducting works and associated works Required for the construction of a new northbound exit slip from the M5 to the A4019	1a, 1b
7/2b	Required for the construction of motorway signage and associated cabling and ducting works	1a
7/2c	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
7/3d	Required for the construction of a new southbound entry slip from the A4019 to the M5	1d
7/3d(i)	Required for the construction of a new southbound entry slip from the A4019 to the M5	1d
Land Plans – Sheet 8		

8/1a	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
8/1b	Required for the construction of motorway signage and associated cabling and ducting works and associated works Required for the demolition of the existing NRTS Transmission Station and associated infrastructure	1a, 36b
Land Plans – Sheet 9		
9/1a	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
9/1b	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
9/1c	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
9/1d	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
9/1e	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
9/1e(i)	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
9/1e(ii)	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
9/1f	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
Land Plans – Sheet 10		

10/1a	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
10/1b	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
10/1c	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
10/1c(i)	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
10/1d	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
10/1e	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
10/1e(i)	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
10/1e(ii)	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
10/1e(iii)	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
10/2a	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
10/3a	Required for the construction of motorway signage and associated cabling and ducting works and associated works	1a
Land Plans – Sheet 11		

11/1f	Required for the construction of new or altered private means of access	3d
11/3c	Required for the realignment and widening of the A4019 (Tewkesbury Road) northwest of Junction 10 with associated footway, cycleway, shared use path, private access points, signage and ducting	3
Land Plans – Sheets 12 and 12A		
12/1a	Required for construction compound no. 4 north of the A4019 (Tewkesbury Road)	4i
12/1d	Required for construction compound no. 4 north of the A4019 (Tewkesbury Road)	4i
12/2a	Required for construction compound no. 4 north of the A4019 (Tewkesbury Road) Required for mitigation planting for dormice	4i, 4j
12/2f	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting Required for the realignment of Withybridge Lane connecting to the realigned and dualled A4019 (Tewkesbury Road) Required for the diversion of telecommunication cable and associated apparatus and equipment Required for the diversion of telecommunication cable and associated apparatus and equipment	4, 4bb, 10, 29
12/2g	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting Required for the diversion of telecommunication cable and	4, 10

	associated apparatus and equipment	
12/2h	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting Required for the diversion of telecommunication cable and associated apparatus and equipment	4, 10
12/2j	Required for construction compound no. 5 east of Withybridge Lane and west of the West Cheltenham Link Road	5b
12/2l	Required for construction compound no. 5 east of Withybridge Lane and west of the West Cheltenham Link Road	5b
12/2m	Required for construction compound no. 5 east of Withybridge Lane and west of the West Cheltenham Link Road	5b
12/2n	Required for the construction of a service road linking properties south of the A4019 (Tewkesbury Road) and Cooks Lane Required for the diversion of telecommunication cable and associated apparatus and equipment	5a, 30
12/2o	Required for the construction of a service road linking properties south of the A4019 (Tewkesbury Road) and Cooks Lane	5a
12/2o(i)	Required for construction compound no. 6 east of the new West Cheltenham Link Road and south of the A4019 (Tewkesbury Road)	5c
12/2q	Required for the construction of a service road linking properties south of the A4019 (Tewkesbury Road) and Cooks Lane	5a
12/2r	Required for the construction of a service road linking	5a

	properties south of the A4019 (Tewkesbury Road) and Cooks Lane	
12/2s	Required for construction compound no. 6 east of the new West Cheltenham Link Road and south of the A4019 (Tewkesbury Road) Required for the diversion of National Grid Electricity Distribution PLC electric cable and associated apparatus and equipment	5c, 21
12/2t	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting Required for the removal of an existing layby south of the A4019 (Tewkesbury Road) Required for the construction of an environmental barrier south of the A4019 (Tewkesbury Road) west of Cooks Lane Junction Required for the construction of a service road linking properties south of the A4019 (Tewkesbury Road) and Cooks Lane Required for the diversion of telecommunication cable and associated apparatus and equipment Required for the diversion of Severn Trent Water Limited water pipeline Required for the diversion of telecommunication cable and associated apparatus and equipment	4, 4h, 4k, 5a, 10, 15, 30
12/2u	Required for the construction of new or altered private means of access Required for the diversion of National Grid Electricity Distribution PLC electric cable and associated apparatus and equipment	5k, 21
12/2y	Required for the realignment and dualling of the A4019	4, 10

	(Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting Required for the diversion of telecommunication cable and associated apparatus and equipment	
12/2aa	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting	4
12/7c	Required for construction compound no. 4 north of the A4019 (Tewkesbury Road)	4i
12/7e	Required for construction compound no. 4 north of the A4019 (Tewkesbury Road)	4i
12/7e(i)	Required for realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting	4
12/7f	Required to construct, use, protect, inspect and maintain mitigation planting for dormice	4j
12/7h	Required to construct, use, protect, inspect and maintain mitigation planting for dormice	4j
12/8a	Required to construct, use, protect, inspect and maintain mitigation planting for dormice	4j
12/14a	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting	4

12/15a	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting	4
12/17a	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting	4
Land Plans – Sheets 13 and 13A		
13/1b	Required to construct, use, protect, inspect and maintain mitigation planting for dormice	4j
13/1c	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting	4
13/1f	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting	4
13/2a	Required to construct, use, protect, inspect and maintain mitigation planting for dormice	4j
13/2c	Required to construct, use, protect, inspect and maintain mitigation planting for dormice	4j
13/3a	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths,	4

	private means of access, signage and ducting	
13/3c	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting Required for the construction of environmental barriers west and east of The Green, north of the A4019 (Tewkesbury Road) Required for the construction of a service road running east and west of The Green Required for the diversion of telecommunication cable and associated apparatus and equipment Required for the diversion of Severn Trent Water Limited water pipeline Required for the diversion of telecommunication cable and associated apparatus and equipment Required for the diversion of telecommunication cable and associated apparatus and equipment	4, 4n, 4o, 11, 15, 27, 31
13/3e	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting Required for the construction of new or altered private means of access Required for the diversion of telecommunication cable and associated apparatus and equipment	4, 4g, 11
13/3f	Required for the construction of new or altered private means of access Required for the diversion of telecommunication cable and	4g, 31

	associated apparatus and equipment	
13/3g	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting Required for the construction of new or altered private means of access Required for the construction of a signalised junction serving Moat Lane and The Green with pedestrian and cycle crossing points and maintenance bay Required for the construction of a service road running east and west of The Green Required for the construction of environmental barriers west and east of The Green, north of the A4019 (Tewkesbury Road) Required for the diversion of telecommunication cable and associated apparatus and equipment Required for the diversion of Severn Trent Water Limited water pipeline Required for the diversion of Wales and West Utilities Limited gas main Required for the diversion of National Grid Electricity Distribution PLC electric cable and associated apparatus and equipment Required for the diversion of telecommunication cable and associated apparatus and equipment Required for the diversion of telecommunication cable and associated apparatus and equipment	4, 4g, 4m, 4n, 4o, 11, 15, 17, 22, 27, 31
13/3g(i)	Required for the construction of a signalised junction serving Moat Lane and The Green with pedestrian and	4m, 15

	cycle crossing points and maintenance bay Required for the diversion of Severn Trent Water Limited water pipeline	
13/3g(ii)	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting Required for the construction of new or altered private means of access Required for the construction of a signalised junction serving Moat Lane and The Green with pedestrian and cycle crossing points and maintenance bay Required for the diversion of telecommunication cable and associated apparatus and equipment Required for the diversion of Wales and West Utilities Limited gas main Required for the diversion of National Grid Electricity Distribution PLC electric cable and associated apparatus and equipment	4, 4g, 4m, 11, 17, 22
13/3i	Required for the construction of new or altered private means of access Required for the demolition of buildings at Manor Farm west and southwest of Uckington Junction	4g, 4l
13/3j	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting Required for the construction of a signalised junction serving Moat Lane and The Green with pedestrian and	4, 4m, 15, 17, 27

	cycle crossing points and maintenance bay Required for the diversion of Severn Trent Water Limited water pipeline Required for the diversion of Wales and West Utilities Limited gas main Required for the diversion of telecommunication cable and associated apparatus and equipment	
13/3k	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting Required for the construction of a signalised junction serving Moat Lane and The Green with pedestrian and cycle crossing points and maintenance bay Required for the diversion of Wales and West Utilities Limited gas main	4, 4m, 17
13/3m	Required for the construction of a signalised junction serving Moat Lane and the Green with pedestrian and cycle crossing points and maintenance bay Required for the diversion of telecommunication cable and associated apparatus and equipment	4m, 31
13/3p	Required for the diversion of National Grid Electricity Distribution plc electric cable and associated apparatus and equipment	23
13/3r	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting	4, 4n, 4o, 15, 27

	Required for the construction of a service road running east and west of The Green Required for the construction of environmental barriers west and east of the Green, north of the A4019 (Tewkesbury Road) Required for the diversion of Severn Trent Water Limited water pipeline Required for the diversion of telecommunication cable and associated apparatus and equipment	
13/3s	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting Required for the construction of new or altered private means of access Required for the construction of a service road running east and west of The Green Required for the construction of an environmental barrier south of the A4019 (Tewkesbury Road) between West Cheltenham Community Fire Station and the entrance to the Cotswold Area Civil Service Sports Association Required for the construction of a service road to the south of the A4019 (Tewkesbury Road) serving properties including the Cotswold Area Civil Service Sports Association; Homecroft Drive and the West Cheltenham Community Fire Station Required for the diversion of telecommunication cable and associated apparatus and equipment Required for the diversion of Severn Trent Water Limited water pipeline	4, 4g, 4n, 4t, 4v, 13, 15, 18, 23, 24, 27, 32

	Required for the diversion of Wales and West Utilities Limited gas main Required for the diversion of National Grid Electricity Distribution PLC electric cable and associated apparatus and equipment Required for the diversion of National Grid Electricity Distribution PLC electric cable and associated apparatus and equipment Required for the diversion telecommunication cable and associated apparatus and equipment Required for the diversion of telecommunication cable and associated apparatus and equipment	
13/3y	Required for the construction of drainage attenuation basin (6) with associated drainage facilities, access and landscaping south of the A4109 (Tewkesbury Road)	4q
13/3bb	Required for the construction of a service road to the south of the A4019 (Tewkesbury Road) serving properties including the Cotswold Area Civil Service Sports Association; Homecroft Drive and the West Cheltenham Community Fire Station Required for the diversion of Wales and West Utilities Limited gas main Required for the diversion of National Grid Electricity Distribution PLC electric cable and associated apparatus and equipment Required for the diversion of 258 metres of telecommunication cable and associated apparatus and equipment	4v, 18, 24, 32
13/3cc	Required for the construction of new or altered private means of access	4g
13/3dd	Required for the construction of new or altered private means of access	4g

13/3ff	Required for the construction of a service road to the south of the A4019 (Tewkesbury Road) serving properties including the Cotswold Area Civil Service Sports Association; Homecroft Drive and the West Cheltenham Community Fire Station Required for the diversion of Wales and West Utilities Limited gas main Required for the diversion of National Grid Electricity Distribution PLC electric cable and associated apparatus and equipment Required for the diversion of telecommunication cable and associated apparatus and equipment	4v, 18, 24, 32
13/3gg	Required for the construction of a signalised junction to access development (site access A) to the north of the A4019 (Tewkesbury Road) with pedestrian and cycle crossing points	4s
13/3hh	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting	4
13/3ii	Required for the construction of new or altered private means of access Required for the construction of a service road running east and west of The Green	4g, 4n
13/4a	Required to construct, use, protect, inspect and maintain mitigation planting for dormice	4j
13/10a	Required for the construction of new or altered private means of access Required for the construction of service roads running east and west of The Green	4g, 4n
Land Plans – Sheet 14		

14/1a	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting	4
14/1a(i)	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting Required for the demolition of buildings forming part of Baileys Nursery, west of Gallagher Retail Park access Required for the diversion of electric cable and associated apparatus and equipment	4, 4y, 24
14/1a(ii)	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting Required for the diversion of electric cable and associated apparatus and equipment	4, 24
14/1c	Realignment and dualling of the A4019 (Tewkesbury Road) with associated footway; cycleway; shared use paths; private means of access; and signage and ducting southeast of Junction 10 for 2.7 kilometres to a point east of the Gallagher Junction Required for the construction of new or altered private means of access Required for the construction of an environmental barrier south of the A4019 (Tewkesbury Road) between West Cheltenham Community Fire Station and	4, 4g, 4t, 4v, 4x, 4aa, 15, 18, 27, 32, 33

	the entrance to the Cotswold Area Civil Service Sports Association Required for the construction of a service road to the south of the A4019 (Tewkesbury Road) serving properties including the Cotswold Area Civil Service Sports Association; Homecroft Drive and the West Cheltenham Community Fire Station Required for the alteration of the signalised junction serving Gallagher Retail Park and the B4634 to the south of the A4019 (Tewkesbury Road) with maintenance bay Required for the construction of a lane on the eastbound carriageway and associated works Required for the diversion of Severn Trent Water Limited water pipeline Required for the diversion of Wales and West Utilities Limited gas main Required for the diversion of telecommunication cable and associated apparatus and equipment Required for the diversion of telecommunication cable and associated apparatus and equipment Required for the diversion of telecommunication cable and associated apparatus and equipment	
14/1c(i)	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting Required for the alteration of the signalised junction serving Gallagher Retail Park and the B4634 to the south of the A4019 (Tewkesbury Road) with maintenance bay	4, 4x, 15, 18

	Required for the diversion of Severn Trent Water Limited water pipeline Required for the diversion of Wales and West Utilities Limited gas main	
14/1c(ii)	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting Required for the alteration of the signalised junction serving Gallagher Retail Park and the B4634 to the south of the A4019 (Tewkesbury Road) with maintenance bay Required for the construction of a lane on the eastbound carriageway and associated works Required for the diversion of telecommunication cable and associated apparatus and equipment	4, 4x, 4aa, 27
14/1c(iii)	Required for the alteration of the signalised junction serving Gallagher Retail Park and the B4634 to the south of the A4019 (Tewkesbury Road) with maintenance bay Required for the diversion of Severn Trent Water Limited water pipeline Required for the diversion of Wales and West Utilities gas main	4x, 15, 18
14/1d	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting Required for the construction of a service road to the south of the A4019 (Tewkesbury Road) serving properties including the Cotswold Area Civil Service Sports	4, 4v, 15, 18, 33

	Association; Homecroft Drive and the West Cheltenham Community Fire Station Required for the diversion of Severn Trent Water Limited water pipeline for the benefit of Severn Trent Water Limited Required for the diversion of Wales and West Utilities Limited gas main Required for the diversion of telecommunication cable and associated apparatus and equipment	
14/1h	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting Required for the diversion of Wales and West Utilities Limited gas main Required for the diversion of telecommunication cable and associated apparatus and equipment	4, 18, 27
14/1i	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting Required for the diversion of telecommunication cable and associated apparatus and equipment	4, 27
14/1j	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting	4, 18, 27

	Required for the diversion of Wales and West Utilities Limited gas main Required for the diversion of telecommunication cable and associated apparatus and equipment	
14/1k	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting	4
14/1l	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting	4
14/2a	Required for the construction of new or altered private means of access	4g
14/2b	Required for the construction of new or altered private means of access	4g
14/4a	Required for the alteration of the signalised junction serving Gallagher Retail Park and the B4634 to the south of the A4019 (Tewkesbury Road) with maintenance bay	4x
14/8d	Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting Required for the diversion of Wales and West Utilities Limited gas main	4, 18
Land Plans – Sheet 15		
15/1a	Required for construction compound no. 9 south of Junction 10	1p

15/1b	Required for construction compound no. 9 south of Junction 10	1p
15/2a	Required for the realignment of Withybridge Lane connecting to the realigned and dualled A4019 (Tewkesbury Road)	4bb
15/4d	Required for the construction of a new West Cheltenham Link Road	5
15/4g	Required for the construction of a new West Cheltenham Link Road	5
15/5c	Required for the construction of a new West Cheltenham Link Road	5
15/5d	Required for the construction of a new West Cheltenham Link Road	5
15/5d(i)	Required for the construction of a new West Cheltenham Link Road	5
15/7b	Required for the construction of a new West Cheltenham Link Road	5
15/8e	Required for working space for construction compound no. 7 east of the new West Cheltenham Link Road	5g
15/8e(i)	Required for working space for construction compound no. 7 east of the new West Cheltenham Link Road	5g
15/8f	Required for construction compound no. 7 east of the new West Cheltenham Link Road	5g
15/8g	Required for the construction of a new West Cheltenham Link Road	5
15/8g(i)	Required for the construction of a new West Cheltenham Link Road	5
15/8h	Required for construction compound no. 7 east of the new West Cheltenham Link Road	5g
15/8i	Required for the diversion, use, protection, inspection and maintenance of 170 metres of gas main for the benefit of Wales & West Utilities Limited	35

15/8j	Required for the construction of a new West Cheltenham Link Road	5
15/8o	Required for the diversion, use, protection, inspection and maintenance of 170 metres of gas main for the benefit of Wales & West Utilities Limited	35
15/8q	Required for the construction of a new West Cheltenham Link Road	5
15/8r	Required for construction compound no. 7 east of the new West Cheltenham Link Road Required for the construction of new or altered private means of access	5g, 5k
15/8s	Required for construction compound no. 7 east of the new West Cheltenham Link Road	5g
15/8t	Required for the construction of a new West Cheltenham Link Road Required for the construction, use, protection and maintenance of a new bridge over the River Chelt and associated environmental mitigation Required for the diversion, construction, use and maintenance of public right of way FP ABO24 to the south of the River Chelt under the new River Chelt bridge	5, 5d, 5f
15/10b	Required for the construction of a new West Cheltenham Link Road	5
15/10c	Required for the construction of a new West Cheltenham Link Road	5
15/10c(i)	Required for the construction of a new West Cheltenham Link Road	5
15/10c(ii)	Required for the construction of a new West Cheltenham Link Road	5
Land Plans – Sheets 16 and 16A		
16/3b	Required for construction compound no. 8 west of the	5h

	new West Cheltenham Link Road	
16/3b(i)	Required for the construction of a new West Cheltenham Link Road	5
16/3f	Required for the construction of a new West Cheltenham Link Road	5
16/3f(i)	Required for the construction of a new West Cheltenham Link Road	5
16/3f(ii)	Required for the construction of a new West Cheltenham Link Road	5
16/3g	Required for the provision of a flood compensation area	6d
16/3h	Required for construction compound no. 8 west of the new West Cheltenham Link Road	5h
16/3j	Required for construction compound no. 8 west of the new West Cheltenham Link Road	5h
16/3m	Required for the construction of a new West Cheltenham Link Road	5
16/3n	Required for the realignment of the B4634 connecting to the new West Cheltenham Link Road with shared use path, private access, signage and ducting	6
16/3n(i)	Required for the realignment of the B4634 connecting to the new West Cheltenham Link Road with shared use path, private access, signage and ducting	6
16/3p	Required for the realignment of the B4634 connecting to the new West Cheltenham Link Road with shared use path, private access, signage and ducting	6
16/3p(i)	Required for the realignment of the B4634 connecting to the new West Cheltenham Link Road with shared use path, private access, signage and ducting	6
16/5b	Required for working space for the diversion of National Grid Electricity Distribution PLC electric cable and	25

	associated apparatus and equipment	
16/5e	Required for the realignment of the B4634 connecting to the new West Cheltenham Link Road with shared use path, private access, signage, and ducting Required for the diversion of Severn Trent Water Limited water pipeline Required for the diversion of National Grid Electricity Distribution PLC electric cable and associated apparatus and equipment	6, 14, 25
16/6c	Required for the diversion of National Grid Electricity Distribution PLC electric cable and associated apparatus and equipment	25
16/9b	Required for the realignment of the B4634 connecting to the new West Cheltenham Link Road with shared use path, private access, signage and ducting Required for the construction of flood culverts (group 1) under the B4634 Required for the construction of flood culverts (group 2) under the B4634 Required for the construction of new or altered private means of access	6, 6a, 6b, 6c
16/10b	Required for diversion of electric cable and associated apparatus and equipment	26
16/10d	Required for the construction of a signalised junction serving the new West Cheltenham Link Road, the B4634, and the West Cheltenham Golden Valley Development land Required for the realignment of the B4634 connecting to the new West Cheltenham Link Road with shared use path, private access, signage and ducting Required for the construction of flood culverts (group 1) under the B4634	5j, 6, 6a, 6b

	Required for the construction of flood culverts (group 2) under the B4634	
16/11b	Required for the realignment of the B4634 connecting to the new West Cheltenham Link Road with shared use path, private access, signage and ducting	6
16/11b(i)	Required for the realignment of the B4634 connecting to the new West Cheltenham Link Road with shared use path, private access, signage and ducting	6
16/11b(ii)	Required for the realignment of the B4634 connecting to the new West Cheltenham Link Road with shared use path, private access, signage and ducting	6
16/12a	Required for the realignment of the B4634 connecting to the new West Cheltenham Link Road with shared use path, private access, signage and ducting	6

SCHEDULE 8

Article 37

TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>(1) Name of Order/Type of tree</i>	<i>(2) Work to be carried out</i>	<i>(3) Relevant part of the authorised development</i>
The Tewkesbury Borough Council (NO.325) (NORTH WEST CHELTENHAM, UCKINGTON) Tree Preservation Order 2010 / Poplar	Part of group to be felled, remaining trees to be protected using temporary barriers to define construction exclusion zone	Work No. 4

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, 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 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 an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989^(a)), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986^(b) for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991^(c); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act^(d),

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) 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; and

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (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,

(a) 1989 c. 29.

(b) 1986 c. 44.

(c) 1991 c. 56.

(d) Section 104 was amended by section 42(3) of the Flood and Water Management Act 2010 (c. 29).

for the area of the authorised development, and in relation to any apparatus, means the utility 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 (street works in England and Wales) of the 1991 Act.

Apparatus in stopped up streets

4.—(1) Where any street is stopped up under article 16 (permanent stopping up and restriction of use of streets and private means of access), 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 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 15 (temporary stopping up and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway 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 highway.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 19 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

6. 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

7.—(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 under this Part of this Schedule, and any right of a utility undertaker 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 the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(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, 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 a utility undertaker reasonably needs to remove any of its 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.

(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 in question 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 46 (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 46 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), 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.

(6) 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.

(7) 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 laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

8.—(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 46 (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

9.—(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 of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted 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 for the protection of the 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) are to be made within a period of 21 days beginning with the date on which a plan 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 7(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 instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it 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 must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

Expenses and costs

10.—(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 inspection, removal, 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 7(2).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), 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 46 (arbitration) to be necessary then, if such placing involves cost 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 the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must 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 must 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 a utility undertaker in respect of works by virtue of sub-paragraph (1), 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 utility undertaker 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.

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2) 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 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, 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) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(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 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 (3), 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 and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise of any proceedings necessary to resist the claim or demand.

Cooperation

12. Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must 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 the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

13. 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 in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

14. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

15. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in section 106(b)(application of the electronic communications code) of the 2003 Act;

“electronic communications code network” means—

- (a) so much of an electronic communications network or infrastructure 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

(a) 2003 c. 21.

(b) Section 106 was amended by section 4 of the Digital Economy Act 2017.

- (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;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 (infrastructure system) of that code; and

“operator” means the operator of an electronic communications code network.

16. The exercise of the powers conferred by article 33 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

17.—(1) Subject to sub-paragraphs (2) to (4), if as a result of the authorised development or its construction, or of any subsidence resulting from the authorised development—

- (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 the authorised development), 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 undertaker and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise 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 46 (arbitration).

18. 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 (street works in England and Wales) 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.

19. 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 in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

Application etc.,

20.—(1) The provisions of this Part of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

(2) Except where expressly amended by the Order the operation of the powers and duties of National Highways or the Secretary of State under the 1980 Act, the 1984 Act, the 1991 Act, the Transport Act 2000, or Town and Country Planning (General Permitted Development) (England) Order 2015 which shall continue to apply in respect of the exercise of all National Highways' statutory functions.

Interpretation

21.—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with subparagraph (2) the latter prevail.

(2) In this Part of this Schedule—

“as built information” means one electronic copy of the following information—

- (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, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);
- (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 the works carried out;
- (f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) test results and records as required by the detailed design information and during construction phase of the project;
- (j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;
- (k) the health and safety file; and
- (l) such other information as is required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway's Asset Data Management Manual as is in operation at the relevant time.
- (m) “the bond sum” means the sum equal to 200% of the cost of the carrying out the specified works (to include all costs plus any commuted sum) or such other sum agreed between the undertaker and National Highways;

(n) “the cash surety” means the sum agreed between the undertaker and National Highways;

“commuted sum” means such sum calculated as provided for in paragraph 35 of this Part of this Schedule to be used to fund the future cost of maintaining any new National Highways assets or structures or apparatus provided under the Order;

“condition survey” means a survey of the condition of National Highways structures and assets within the Order limits that may be affected by the specified works;

“contractor” means any contractor or subcontractor appointed by the undertaker to carry out the specified works;

“defects period” means the period from the date of the provisional certificate to the date of the final certificate which shall be no less than 12 months from the date of the provisional certificate;

“detailed design information” means such of the following drawings specifications and calculations as are relevant to the development—

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;

- (c) road restraints systems and supporting road restraint risk appraisal process assessment;
- (d) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways;
- (e) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
- (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) regime of California Bearing Ratio testing;
- (k) electrical work for road lighting, traffic signs and signals;
- (l) motorway communications as required by DMRB;
- (m) highway structures and any required structural approval in principle;
- (n) landscaping;
- (o) proposed departures from DMRB standards;
- (p) walking, cycling and horse riding assessment and review report;
- (q) stage 1 and stage 2 road safety audits and exceptions agreed;
- (r) utilities diversions;
- (s) topographical survey;
- (t) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
- (u) health and safety information including any asbestos survey required by GG105 or any successor document; and
- (v) other such information that may be required by National Highways to be used to inform the detailed design of the specified works;

“DBFO contract” means the contract between National Highways and the highway operations and maintenance contractor for the maintenance and operation of parts of the strategic road network which are within the Order Limits or any successor or replacement contract that may be current at the relevant time;

“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;

“final certificate” means the certificate relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways pursuant to paragraph 33;

“the health and safety file” means the file or other permanent record containing the relevant health and safety information for the authorised development required by the Construction Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

“highway operations and maintenance contractor” means the contractor appointed by National Highways under the DBFO contract;

“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out of the specified works as notified to National Highways from time to time;

“programme of works” means a document setting out the sequence and timetabling of the specified works;

“provisional certificate” means the certificate of provisional completion relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be

issued by National Highways in accordance with paragraph 26 when it considers the specified works are substantially complete and may be opened for traffic;

“road safety audit” means an audit carried out in accordance with the road safety audit standard;

“road safety audit standard” means DMRB Standard HD GG119 or any replacement or modification of it;

“road space booking” means road space bookings in accordance with National Highways’ Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy;

“Specification for Highways Works” means the specification for highways works forming part of the manual of contract documents for highway works published by National Highways and setting out the requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the strategic road network;

“specified works” means so much of any work, including highway works, street works and signalisation, authorised by this Order including any maintenance of that work, as is undertaken on, in, under or over the strategic road network for which National Highways is the highway authority;

“strategic road network” means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority including drainage infrastructure, street furniture, verges and vegetation and all other land, apparatus and rights located in, on, over or under the highway;

“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.

General

22. In respect of any part of the strategic road network that is managed under a DBFO contract both National Highways and the highway operations and maintenance contractor shall have the benefit of this Part of Schedule 9 but for the purposes of any approvals required under this Part of Schedule 9 the undertaker shall liaise directly with National Highways.

23. Notwithstanding the limits of deviation permitted pursuant to article 8 of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out under the strategic road unless such works are agreed in writing with National Highways at the absolute discretion of National Highways.

24. References to any standards, manuals, contracts, regulations and directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

Works outside the Order limits

25. If the undertaker proposes to carry out works to the strategic road network that are outside of the Order Limits in connection with the authorised development, the undertaker must enter into an agreement with National Highways in respect of the carrying out of those works prior to the commencement of those works.

Prior approvals and security

26.—(1) The specified works must not commence until—

- (a) a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by National Highways;
- (b) the programme of works has been approved by National Highways;

- (c) the detailed design of the specified works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—
 - (i) the detailed design information, incorporating all recommendations and any exceptions approved by National Highways under sub-paragraph (a);
 - (ii) details of the proposed road space bookings and at the same time as submitting the relevant details the undertaker shall be entitled to submit its application for road space bookings to National Highways;
 - (iii) the identity and suitability of the contractor and nominated persons;
 - (iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker; and
 - (v) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding;
 - (d) a scheme of traffic management has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;
 - (e) stakeholder liaison has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph (c)(v) above;
 - (f) National Highways has approved the audit brief and CVs for all road safety audits and exceptions to items raised in accordance with the road safety audit standard;
 - (g) the undertaker has agreed the estimate of the commuted sum with National Highways;
 - (h) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the undertaker during the construction of the specified works (which must include winter maintenance) has been agreed in writing by National Highways;
 - (i) the undertaker has procured to National Highways collateral warranties in a form approved by National Highways from the contractor and designer of the specified works in favour of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the specified works, including in the selection of materials, goods, equipment and plant; and
 - (j) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways considers will be affected by the specified works, has been agreed in writing by National Highways.
- (2) The undertaker must not exercise—
- (a) article 6 (maintenance of authorised development);
 - (b) article 11 (street works)
 - (c) article 15 (temporary stopping up and restriction of use of streets);
 - (d) article 16 (permanent stopping up of streets, rights of way and rights of access);
 - (e) article 17 (access to Works);
 - (f) article 18 (discharge of water);
 - (g) article 19 (protective works to buildings);
 - (h) article 20 (authority to survey and investigate the land);
 - (i) article 21 (compulsory acquisition of land);
 - (j) article 24 (compulsory acquisition of rights and imposition of restrictive covenants);
 - (k) article 26 (private rights over land)
 - (l) article 29 (acquisition of subsoil or airspace only)
 - (m) article 31 (temporary use of land for carrying out the authorised development);

- (n) article 32 temporary use of land for maintaining the authorised development); or
- (o) article 36 (felling or lopping trees) of this Order,

over any part of the strategic road network or land in which National Highways has an interest without the consent of National Highways, and National Highways may in connection with any such exercise require the undertaker to provide details of any proposed road space bookings and/or submit a scheme of traffic management for National Highways' approval.

(3) National Highways must prior to the commencement of the specified works or the exercise of any power referenced in sub-paragraph (2) inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraph (1) or (2).

(4) Any approval of National Highways required under this paragraph-

- (a) must not be unreasonably withheld;
- (b) must be given in writing;
- (c) shall be deemed to have been refused if neither given nor refused within 2 months of the receipt of the information for approval or, where further particulars are requested by National Highways within 2 months of receipt of the information to which the request for further particulars relates; and
- (d) may be subject to any conditions as National Highways considers necessary.

(5) Any change to the identity of the contractor and/or designer of the specified works will be notified to National Highways immediately and details of their suitability to deliver the specified works will be provided on request along with collateral warranties in a form agreed by National Highways.

(6) Any change to the detailed design of the specified works must be approved by National Highways in accordance with paragraph 26(1) of this Part.

Construction of the specified works

27.—(1) The undertaker must give National Highways 3 months notice in writing of the date on which the specified works will start unless otherwise agreed by National Highways.

(2) The undertaker must comply with National Highways' road space booking procedures prior to and during the carrying out the specified works and no specified works for which a road space booking is required shall commence without a road space booking having first been secured from National Highways.

(3) The specified works must be carried out by the undertaker to the satisfaction of National Highways in accordance with—

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 26(1) above or as subsequently varied by agreement between the undertaker and National Highways;
- (b) the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works, together with all other relevant standards as required by National Highways to include, inter alia; all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 save to the extent that exceptions from those standards apply which have been approved by National Highways; 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, as client, must ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of National Highways.

(4) The undertaker must ensure that (where possible) without entering the highway the highway is kept free from mud, soil and litter as a result of carrying out a Specified Work.

(5) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the

undertaker by National Highways) to gain access to the works pursuant to the Order including all land in which National Highways has an interest for the purposes of inspection and supervision of the works.

(6) If any part of the specified works is constructed-

- (a) other than in accordance with the requirements of this Part of this Schedule; or
- (b) in a way that causes damage to the highway, highway structure or asset or any other land of National Highways,
- (c) National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the satisfaction of National Highways.

(7) If during the carrying out of the authorised development the undertaker or its appointed contractors or agents causes damage to the strategic road network then National Highways may by notice in writing require the undertaker, at its own expense, to remedy the damage.

(8) If within 28 days on which a notice under sub-paragraph (6) or sub-paragraph (7) is served on the undertaker (or in the event of there being, in the opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate), the undertaker has failed to take the steps required by that notice, National Highways may carry out the steps required of the undertaker and may recover any expenditure incurred by National Highways in so doing, such sum to be payable within 30 days of demand.

(9) Nothing in this Part of this Schedule prevents National Highways from carrying out any work or taking any such action as it reasonably believes to be necessary as a result of or in connection with the carrying out or maintenance of the authorised development without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and National Highways may recover any expenditure it reasonably incurs in so doing.

(10) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the satisfaction of National Highways.

(11) Until National Highways issues the provisional certificate the undertaker must carry out all maintenance (including winter maintenance) in accordance with the scope of maintenance operations agreed by National Highways pursuant to paragraph 26(1)(f) and the undertaker must carry out such maintenance at its own cost.

(12) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme pursuant to paragraph 26(1)(b) of this Part or suspends the carrying out of any specified work beyond a reasonable period of time and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

Payments

28.—(1) The undertaker must pay to National Highways a sum equal to the costs and expenses which National Highways reasonably and properly incurs (including costs and expenses for using internal or external staff and costs relating to any work which becomes abortive) in relation to the specified works and in relation to any approvals sought under this Order, or otherwise incurred under this Part, including—

- (a) the checking and approval of the information required under paragraph 26(1);
- (b) the supervision of the specified works;
- (c) the checking and approval of the information required to determine approvals under this Order;
- (d) all costs in relation to the transfer of any land required for the specified works; and
- (e) all legal and administrative costs and disbursements incurred by National Highways in connection with the Order and sub-paragraphs (a)-(d); and

- (f) any value added tax which is payable by National Highways in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising “the NH costs”.

(2) The undertaker must pay to National Highways upon demand and prior to such costs being incurred the total costs that National Highways believe will be properly and necessarily incurred by National Highways 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 authorised development.

(3) National Highways must provide the undertaker with a schedule showing its estimate of the NH costs prior to the commencement of the specified works and the undertaker must pay to National Highways the estimate of the NH costs prior to commencing the specified works and in any event prior to National Highways incurring any cost.

(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, National Highways reasonably believes that the NH costs will exceed the estimated NH costs it may give notice to the undertaker of the amount that it believes the NH costs will exceed the estimate of the NH costs (the excess) and the undertaker must pay to National Highways within 28 days of the date of the notice a sum equal to the excess.

(5) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) above within 91 days of the issue of the provisional certificate issued pursuant to paragraph 29(4).

(6) Within 28 days of the issue of the final account:

- (a) if the final account shows a further sum as due to National Highways the undertaker must pay to National Highways the sum shown due to it;
- (b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by National Highways, National Highways must refund the difference to the undertaker.

(7) 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 3% above the Bank of England base lending rate from time to time being in force 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

29.—(1) Following the completion of any specified works or prior to reopening any part of the strategic road network following any closure or partial closure, whichever shall be sooner, the undertaker shall notify National Highways who will carry out a site inspection to satisfy itself that the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of National Highways following the site inspection.

(2) As soon as the undertaker considers that the provisional certificate may be properly issued it must apply to National Highways for the provisional certificate.

(3) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable:

- (a) inspect the specified works; and
- (b) provide the undertaker with a written list of works that are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.

(4) When—

- (a) a stage 3 road safety audit for the specified works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by National Highways;

- (b) the specified works incorporating the approved remedial works under sub-paragraph (4)(a) and any further works notified to the undertaker pursuant to sub-paragraph 29(3)(b) have been completed to the satisfaction of National Highways;
- (c) the as built information has been provided to National Highways; and
- (d) the undertaker has paid the commuted sum to National Highways,

National Highways must issue the provisional certificate.

(5) On the issue of the provisional certificate the bond sum shall be reduced to 20% of the total bond sum save insofar as any claim or claims have been made against the bond before that date in which case National Highways will retain a sufficient sum to ensure it does not have to meet any costs for or arising from the specified works.

(6) The undertaker must submit a stage 4 road safety audits 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 audit and must pay all costs of and incidental to such and provide updated as-built information to National Highways.

Opening

30. The undertaker must notify National Highways not less than 56 days in advance of the intended date of opening to the public of the strategic road network and the undertaker must notify National Highways of the actual date the strategic road network will be opened to the public no less than 14 days of that date and must not open the strategic road network to the public prior to the expiration of that period.

Final condition survey

31.—(1) The undertaker must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 29(2), arrange for the highways structures and assets that were the subject of the condition survey to be re-surveyed and must submit the re-survey to National Highways for its approval. The re-survey will include a renewed geotechnical assessment required by DMRB CD622 if the specified works include any works beneath the strategic road network.

(2) If the re-surveys carried out pursuant to paragraph 31(1) indicates that any damage has been caused to a structure or asset, the undertaker must submit a scheme for remedial works in writing to National Highways for its approval in writing and the undertaker must carry out the remedial works at its own cost and in accordance with the scheme submitted.

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme, National Highways may carry out the steps required of the undertaker and may recover any expenditure it reasonably incurs in so doing.

(4) National Highways may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to paragraph 31(1) give notice in writing that National Highways will remedy any damage identified in the re-surveys and National Highways may recover any expenditure it reasonably incurs in so doing.

(5) The undertaker must make available to National Highways upon request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the undertaker may from time to time carry out.

Defects Period

32.—(1) The undertaker must at its own expense remedy any defects in the strategic road network as are reasonably required by National Highways to be remedied during the defects period. All identified defects must 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 National Highways);

- (b) in respect of matters which National Highways considers to be serious defects or faults, within 14 days of receiving notification of the same; and
- (c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same.

(2) Following the issuing of the provisional certificate National Highways has responsibility for routine maintenance of the strategic road network save for any soft landscaping works which must be established and which must thereafter be maintained for a period of 5 years by and at the expense of the undertaker.

Final Certificate

33.—(1) The undertaker must apply to National Highways for the final certificate no sooner than 12 months from the date of the provisional certificate.

(2) Following receipt of the application for the final certificate, National Highways must as soon as reasonably practicable:

- (a) inspect the strategic road network; and
- (b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the strategic road network or confirmation that no such works are required for this purpose.

(3) The undertaker must carry out such works notified to it pursuant to sub-paragraph 33(2).

(4) When National Highways is satisfied that:

- (a) any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph 33(2) and any remedial works required as a result of the stage 4 road safety audit have been made good to the satisfaction of National Highways; and
 - (b) the NH costs have been paid to National Highways in full;
- National Highways must issue the final certificate after which the bond shall be released in full.

(5) The undertaker must pay to National Highways within 28 days of demand the costs reasonably incurred by National Highways in identifying the defects and supervising and inspecting the undertaker's work to remedy the defects that it is required to remedy pursuant to these provisions.

Security

34.—(1) The specified works must not commence until—

- (a) the undertaker procures that the specified works are secured by a bond from a bondsman first approved by National Highways in the agreed form between the undertaker and National Highways to indemnify National Highways 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 the exercise of the powers under this Order and the specified works under the provisions of this Part of this Schedule provided that the maximum liability of the bond must not exceed the bond sum; or where agreed by National Highways
- (b) the undertaker has provided the cash surety which may be utilised by National Highways in the event of the undertaker failing to meet its obligations to make payments under paragraph 28 or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker under the provisions of this Part of this Schedule or a combination of a bond and cash surety together totalling 200%.

Commuted sums

35.—(1) National Highways must provide to the undertaker an estimate of the commuted sum, calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 or any successor guidance, prior to the commencement of the specified works.

(2) The undertaker must pay to National Highways the commuted sum prior to the issue of the provisional certificate.

Insurance

36. Prior to the commencement of the specified works the undertaker must effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (ten million pounds) in respect of any one claim against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of specified works or use of the strategic road network by the undertaker.

Indemnity

37.—(1) The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways arising from the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order within 14 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.

Maintenance of the specified works

38.—(1) The undertaker must, prior to the commencement of any works of maintenance to the specified works, give National Highways 28 days' notice in writing of the date on which those works will start unless otherwise agreed by National Highways, acting reasonably.

(2) If, for the purposes of maintaining the specified works, the undertaker needs to occupy any road space, the undertaker must comply with National Highways' road space booking requirements and no maintenance of the specified works for which a road space booking is required shall commence without a road space booking having first been secured.

(3) The undertaker must comply with any requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 7 days' in advance of the planned commencement date of the maintenance works.

(4) The provisions of paragraph 30 shall apply to the opening of any part of the strategic road network following occupation of any road space under this paragraph.

Land

39.—(1) Following the issue of the final certificate pursuant to paragraph 33(4) National Highways may serve notice on the undertaker that it wishes to take a freehold transfer of land within the extent of strategic road network boundary which is not in the ownership of National Highways but has been acquired by the undertaker for the purposes of carrying out the specified works.

(2) If the undertaker receives notice under sub-paragraph (1) then the undertaker must effect 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 National Highways.

(3) The undertaker must not under the powers of this Order:

- (a) acquire or use land forming part of;
- (b) acquire new or existing rights over; or
- (c) seek to impose or extinguish any restrictive covenants over;

any of the strategic road network or land owned by National Highways, or extinguish any existing rights of or interfere with apparatus of National Highways in respect of any third party property, except with the consent of National Highways by written request to legalservicesinbox@nationalhighways.co.uk

(4) Where any land or interest is proposed to be acquired for the benefit of National Highways, the undertaker must, unless otherwise agreed by National Highways, exercise article 21 (compulsory acquisition of land) and article 24 (compulsory acquisition of rights and imposition of restrictive

covenants) as applied by articles 28 (application of the 1981 Act) of this Order to directly vest in National Highways any such land or interest.

Expert Determination

40.—(1) Article 46 (arbitration) of the Order does not apply to this Part of this Schedule.

(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) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(4) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date that an expert is appointed.

(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 7 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) 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 46 (arbitration).

(7) 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.

PART 4

FOR THE PROTECTION OF SEVERN TRENT WATER LIMITED

41. For the protection of Severn Trent Water Limited the following provisions have effect, unless otherwise agreed in writing between the undertaker and Severn Trent Water Limited.

42. In this Part of this Schedule

“abandoned apparatus” means apparatus which the utility undertaker has confirmed is abandoned by the utility undertaker and no longer used in the exercise of its statutory functions;

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker to fulfil its statutory functions in a manner no less effective and efficient than previously;

“apparatus” means—

- (a) mains, pipes or other apparatus belonging to or maintained by the utility undertaker for the purposes of water supply;
- (b) any drain or works vested in the utility undertaker under the Water Industry Act 1991;
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act, and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) 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; and

(d) any alternative 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; and

“specified works” means any of the authorised 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 of which has not been required by the undertaker under paragraph 47(2) of this Part of this Schedule and for the avoidance of doubt includes all authorised works which are situated within the following distances measured in any direction from the medial line of apparatus which is a pipe:

- (a) 2.25 metres where the diameter of the pipe is less than or equal to 150 millimetres;
- (b) 3 metres where the diameter of the pipe is greater than 150 millimetres and less than or equal to 450 millimetres;
- (c) 4.5 metres where the diameter of the pipe is greater than 450 millimetres and less than or equal to 750 millimetres; and
- (d) 6 metres where the diameter of the pipe exceeds 750 millimetres.

“utility undertaker” means Severn Trent Water Limited (company number 02366686), being the water undertaker (within the meaning of the Water Industry Act 1991) and the sewerage undertaker (within the meaning of Part 1 of the Water Industry Act 1991) for the area of the authorised development.

On street apparatus

43. 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 (street works in England and Wales) of the 1991 Act.

Apparatus in stopped up streets

44.—(1) Where any street is stopped up under article 16 (permanent stopping up and restriction of use of streets and private means of access) and the utility undertaker has apparatus in that street, the utility undertaker shall have 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 47 or the power of the undertaker to carry out works under paragraph 49.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 15 (temporary stopping up and restriction of use of streets), the utility undertaker is at liberty at all times and upon giving at least 48 hours written notice in advance to the undertaker (except in cases of emergency) to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway 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 highway.

Protective works to buildings

45. The undertaker, in the case of the powers conferred by article 19 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

46. 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

47.—(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 under this Part of this Schedule, and any right of the utility undertaker 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 the utility undertaker in accordance with sub-paragraphs (2) to (7).

(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, the undertaker must give to the utility undertaker not less than 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 the utility undertaker reasonably needs to remove any of its 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.

(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 provided that nothing in this sub-paragraph shall require the utility undertaker to exercise powers of compulsory purchase available to it under the Water Industry Act 1991 or otherwise.

(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 and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) The utility undertaker must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and, subject to the right of the utility undertaker under sub-paragraph (8) to require the undertaker to itself carry out any such removal, subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), and subject to sub-paragraph (7), if the undertaker gives notice in writing to the utility undertaker 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 or to the extent that the utility undertaker fails to proceed with that work in accordance with sub-paragraph (5), provided that the utility undertaker gives its consent in writing (which shall not be unreasonably withheld or delayed and shall be deemed if no response is received by the undertaker within 28 days of the undertaker's consent request), that work, instead of being executed by the utility undertaker, may be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker and provided that the utility undertaker has been granted the necessary facilities and rights for the construction of alternative apparatus pursuant to sub-paragraph (2) or (3) above (as appropriate).

(7) If the undertaker gives notice in writing to the utility undertaker in accordance with sub-paragraph (6) to execute any work, or part of any work solely in connection with the removal of abandoned apparatus, that work, instead of being executed by the utility undertaker, may be

executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(8) If the utility undertaker on receipt of written notice pursuant to sub-paragraph (2) requires the undertaker to carry out any such removal it shall serve counter-notice on the undertaker within 14 days of receipt of the written notice and the undertaker following receipt of that counter-notice shall execute the intended works without unnecessary delay under the superintendence, if given, and to the satisfaction of the utility undertaker.

(9) The undertaker shall seek wherever reasonably practicable to allow the apparatus of the utility undertaker to remain in situ rather than remove and/or reposition it.

Facilities and rights for alternative apparatus

48.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to the 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 or in default of agreement settled by arbitration in accordance with article 46 (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 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 the utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

49.—(1) The undertaker shall consult with the utility undertaker at the earliest opportunity and in any event not less than 28 days before starting the execution of any specified works the undertaker must submit to the utility undertaker a plan of the specified works to be executed.

(2) Specified works must be executed only in accordance with the plan submitted 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 for the protection of the 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 the utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If the utility undertaker, in accordance with sub-paragraph (3) and in consequence of the specified works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 41 to 43 and 46 to 48 apply as if the removal of the apparatus had been required by the undertaker under paragraph 47(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 specified works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) Where the undertaker submits a revised plan of specified works pursuant to a reasonable requirement of the utility undertaker under sub-paragraph (3), the revised plan must be submitted no less than 14 days before commencing the execution of the specified works.

(7) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case, it must give to the utility undertaker notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

50.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the utility undertaker all expenses reasonably incurred by the utility undertaker in, or in connection with, the inspection, removal, 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 47(2) including time spent in consultation regarding or in supervision of such works and including all costs incurred by the utility undertaker in obtaining the necessary facilities and rights for the construction of alternative apparatus pursuant to paragraph 47(2) or 47(3) above (as appropriate).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), 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 46 (arbitration) to be necessary then, if such placing involves cost 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 the utility undertaker by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must 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 must 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 the utility undertaker in respect of works by virtue of sub-paragraph (1), 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 utility undertaker 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.

Liability

51.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 45, 47 and/or 49 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 those works) or property of the utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the utility undertaker, the undertaker must

- (a) bear and pay the cost reasonably incurred by the utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to the utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by the utility undertaker on behalf of the undertaker or in accordance with a plan approved by the utility undertaker or in accordance with

any requirement of the utility undertaker or under its supervision does not, subject to sub-paragraph (3), 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 the utility undertaker, its officers, servants, contractors or agents.

(4) The utility undertaker must use reasonable endeavours to mitigate in whole or in part any costs, expenses, loss, demands and penalties which the undertaker is liable for under sub-paragraph (1) save for in the event of an emergency or where it is not reasonably practicable to do so (at the Undertaker's absolute discretion).

(5) The utility undertaker must give the undertaker reasonable notice of any third party claim or demand against the utility undertaker by reason or in consequence of any damage or interruption to the utility undertaker's service and no settlement or compromise is to be made, unless payment is required in connection with a statutory compensation scheme, unless payment is required in connection with a statutory compensation scheme, without first consulting the undertaker and considering its representations (save where required by law or by order of the court).

Cooperation

52. Where in consequence of the proposed construction of any part of the authorised development, the undertaker or the utility undertaker requires the removal of apparatus under paragraph 47(2) or the utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 49, the undertaker must 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 the utility undertaker's undertaking and the utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

53. At all times the undertaker shall procure that its employees, contractors and subcontractors take all reasonable and proper precautions in exercise of powers conferred by this Order to ensure that as little damage, obstruction or interference as reasonably practicable is caused to the undertaking of the utility undertaker.

54. The undertaker shall use its reasonable endeavours during the exercise of the powers conferred by this Order to ensure that such works do not cause any interruption to the exercise by the utility undertaker of its statutory functions.

55. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and the utility undertaker in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

PART 5

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY DISTRIBUTION (WEST MIDLANDS) PLC

Application

56. For the protection of National Grid Electricity Distribution (West Midlands) plc the following provisions, unless otherwise agreed in writing between the undertaker and National Grid Electricity Distribution (West Midlands) plc, have effect.

Interpretation

57. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable NGED to fulfil its statutory functions in a manner not less efficient than previously and where the context requires includes any part of such alternative apparatus;

“alternative rights” means all and any necessary legal easements, leases, consents, or permissions required by NGED in order to permit or authorise a diversion and to permit or authorise NGED to lay, keep, operate, maintain, adjust, repair, alter, relay, renew, supplement, inspect, examine, test and remove the alternative apparatus;

“apparatus” means electric lines or electrical plant as defined in the 1989 Act^(a), belonging to or maintained by NGED;

“diversion” means an alteration to the NGED Network in order to enable or facilitate the authorised development;

“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;

“NGED” means National Grid Electricity Distribution (West Midlands) plc (company number 03600574) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB;

“NGED Network” means NGED’s distribution network operated pursuant to its distribution licence issued pursuant to section 6 of the 1989 Act;

“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:

(a) 6 metres of any apparatus.

“undertaker” means Gloucestershire County Council or such other person as has the benefit of the Order; and

other terms have the meaning given in article 2 (interpretation).

Precedence of 1991 Act in respect of apparatus in streets

58. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and NGED are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

No acquisition except by agreement

59. Regardless of any provision in this Order, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

60.—(1) If, in the exercise of the powers conferred by this Order, the undertaker requires that apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of NGED to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, alternative rights acquired or granted for the alternative apparatus and the alternative apparatus is in operation and access to it has been provided if necessary to the reasonable satisfaction of NGED in accordance with sub-paragraphs (2) to (10) or with such alternative or supplementary provisions as the undertaker and NGED may agree between them.

(2) If, for the purpose of executing any works for the authorised development in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of

(a) 1989 C. 29. The definition of “electricity plant” (in section 64) was amended by paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c.27).

any apparatus placed in that land, it must give to NGED 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.

(3) If as a direct consequence of the exercise of any of the powers conferred by this Order NGED reasonably needs to remove or divert any of its apparatus and the removal of that apparatus has not been required by the undertaker under sub-paragraph (2) then NGED must give to the undertaker 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 this Part has effect as if the removal or diversion of such apparatus had been required by the undertaker under sub-paragraph (2).

(4) If as a direct consequence of the removal or diversion of apparatus under sub-paragraph (2) or (3) alternative apparatus is to be constructed in land owned or controlled by the undertaker then the undertaker must afford to NGED the necessary facilities alternative rights and any necessary third party consent or approvals for the construction of alternative apparatus in the other land owned or controlled by the undertaker.

(5) If the undertaker or NGED requires to remove or divert any apparatus placed within the Order land and alternative apparatus is to be constructed in land not owned or controlled by the undertaker as a consequence of the removal or diversion of apparatus then NGED shall use its reasonable endeavours to obtain alternative rights in the land in which the alternative apparatus is to be constructed.

(6) If alternative apparatus is to be constructed in land not owned or controlled by the undertaker and NGED is unable to obtain such alternative rights as are mentioned in sub-paragraph (5), the undertaker and NGED shall consider whether there is an alternative engineering solution that can achieve the diversion without the need for the use of compulsory powers. Should such an alternative engineering solution not be practicable and deliverable in a reasonable timescale and at a reasonable cost (which shall be determined by the undertaker acting reasonably), NGED may but shall not be compelled to use the powers of compulsory acquisition set out in this Order or the 1989 Act to obtain the necessary facilities and rights in the land outside the Order limits in which the alternative apparatus is to be constructed in accordance with a timetable agreed between NGED and the undertaker.

(7) Any alternative apparatus required pursuant to sub-paragraphs (2) or (3) must be constructed in such manner and in such line or situation as may be agreed between NGED and the undertaker or in default of agreement settled in accordance with paragraph 65.

(8) NGED must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 65, and after the acquisition by or grant to NGED of any such facilities and alternative rights as are referred to in sub-paragraphs (2) to (6), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required to be removed under the provisions of this Part of this Schedule.

(9) Regardless of anything in sub-paragraph (8), if the undertaker gives notice in writing to NGED 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 controlled by the undertaker, that work, instead of being executed by NGED, must be executed by the undertaker—

- (a) in accordance with plans and specifications and in such line or situation agreed between the undertaker and NGED, or, in default of agreement, determined in accordance with paragraph 65; and
- (b) without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of NGED.

(10) Nothing in sub-paragraph (9) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or alternative apparatus, or execute any filling around the apparatus or alternative apparatus (where the apparatus or alternative apparatus is laid in a trench) within 600 millimetres of the point of connection or disconnection of such apparatus or alternative apparatus.

Facilities and rights for alternative apparatus

61.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to NGED facilities and alternative rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and alternative rights must be granted upon such terms and conditions as may be agreed between the undertaker and NGED or in default of agreement settled in accordance with paragraph 65.

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert must—

- (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;
- (b) have regard to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted;
- (c) have regard to NGED's ability to fulfil its service obligations and comply with its licence conditions; and
- (d) have regard to the standard form rights NGED ordinarily secures for the type of alternative apparatus to be constructed in the circumstances similar to the authorised development.

(3) If the facilities and alternative rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and alternative rights are to be granted, are in the opinion of the expert less favourable on the whole to NGED 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 must make such provision for the payment of compensation by the undertaker to NGED as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

62.—(1) Not less than 60 days before the undertaker intends to start the execution of any specified work where the removal of the apparatus in question has not been required under paragraph 60, the undertaker shall submit to NGED a plan of the specified works to be executed. Any submission must note the time limits imposed on NGED 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 NGED has identified any reasonable requirements it has for the alteration or protection of the apparatus, or for securing access to it.

(3) If by the expiry of 60 days beginning with the date on which a plan under sub-paragraph (1) is submitted NGED has not advised the undertaker in writing of any reasonable requirements for the alteration or protection of the apparatus, or for securing access to it, it shall be deemed not to have any such requirements and the undertaker shall be at liberty to proceed with the specified works.

(4) The specified works referred to in sub-paragraph (1) must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraphs (2) and (3) by NGED and NGED shall be entitled to watch and inspect the execution of those works.

(5) At all times when carrying out the authorised development the undertaker shall comply with NGED'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 NGED, in accordance with sub-paragraphs (2) and (3) and in consequence of the specified works proposed by the undertaker, reasonably requires the removal or diversion of any apparatus and gives written notice to the undertaker of that requirement, this Part of this Schedule applies as

if the removal or diversion of the apparatus had been required by the undertaker under paragraph 60(3).

(7) Nothing in this paragraph 62 (Retained apparatus) precludes 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 specified works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph 62 (Retained apparatus) apply to and in respect of the new plan.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to NGED notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with any reasonable requirements stipulated by NGED under sub-paragraph (2) and with sub-paragraphs (4) and (5) in so far as is reasonably practicable in the circumstances. Nothing in this sub-paragraph prevents NGED from exercising its rights under sub-paragraph (6).

Expenses and costs

63.—(1) Subject to the following provisions of this paragraph 63 (Expenses and costs), the undertaker must pay to NGED the proper and reasonable expenses reasonably incurred by NGED in, or in connection with, the inspection, removal, diversion, alteration or protection of any apparatus, the construction of any alternative apparatus and the acquisition or grant of alternative rights for the alternative apparatus, arising as a result of the powers conferred upon the undertaker pursuant to this Order.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule NGED requires that alternative apparatus of better type, of greater capacity, of greater dimensions or at a greater depth is necessary in substitution for existing apparatus which for NGED's network requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development, NGED shall reduce the cost of such additional requirements from the amount payable by the undertaker pursuant to sub-paragraph (1).

(4) For the purposes of sub-paragraph (3)—

- (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.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), 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 utility undertaker 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.

Liability

64.—(1) Subject to sub-paragraph (2), if by reason or in consequence of the construction of any specified work or any subsidence resulting from any of those 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 those works) or property of NGED the undertaker is to—

- (a) bear and pay the cost reasonably and properly incurred by NGED in making good such damage or restoring the supply; and
- (b) reimburse NGED for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by NGED, 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 NGED, its officers, servants, contractors or agents.

(3) NGED must give the undertaker reasonable notice of any third party claim or demand and no settlement, admission of liability 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.

(4) NGED must act reasonably in relation to any claim or demand served under sub-paragraph (1) and use its reasonable endeavours to mitigate and minimise any costs, expenses, loss, demands, proceedings and penalties to which a claim or demand under sub-paragraph (1) applies.

(5) NGED's liability to the undertaker for negligence or breach of contract, in respect of each diversion, shall be limited to the value of that diversion and NGED shall not otherwise be liable to the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of its failure to undertake works to deliver any alternative apparatus.

Expert determination

65.—(1) Article 46 (arbitration) shall apply to any difference as to the legal interpretation of this Part of this Schedule and as provided for in sub-paragraph (7).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph (7) 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 or the President of the Institution of RICS or the President of the Institution of Engineering and Technology (as relevant and agreed between NGED and the undertaker, both acting reasonably and without delay).

(3) All parties involved in settling any difference must use best endeavours to do so within 14 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 costs and fees of the expert and the costs of NGED and the undertaker are payable by the parties in such proportions as the expert may determine. In the absence of such determination the costs and fees of the expert are payable equally by the parties who shall each bear their own costs.

(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 14 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 14 days of receipt of the submissions under sub-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) NGED's service obligations and licence conditions; 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 46.

Cooperation

66. Where in consequence of the proposed construction of any part of the authorised development, the undertaker or NGED requires apparatus to be removed, relocated or diverted under paragraph 60 or NGED makes requirements for the protection or alteration of apparatus under paragraph 62, the undertaker must 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 NGED's undertaking and NGED must use its best endeavours to co-operate with the undertaker for that purpose.

PART 6

FOR THE PROTECTION OF WALES AND WEST UTILITIES

67. For the protection of Wales and West Utilities the following provisions have effect, unless otherwise agreed in writing between the undertaker and Wales and West Utilities.

68. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Wales and West Utilities to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by Wales and West Utilities for the purposes of carrying out its statutory undertaking and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and (unless otherwise specified) for the purposes of this Schedule shall include associated development and the construction, use, maintenance and decommissioning of the authorised development; “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; and

“security infrastructure” includes cameras, perimeter fencing, fencing and gates and any other security measures which are permanent in nature and reasonably required in order to ensure an appropriate level of security in respect of any apparatus;

“specified work” means so much of any of the works comprised in the authorised development or activities undertaken in association with the authorised development which:

- (a) are in, on or under any land purchased, leased, held, appropriated or used under this Order that are not in compliance with safe digging practice and WWU Guidance and are near to, or will or may affect any apparatus the removal of which is not required under this part of this Schedule; and/or
- (b) will or may be situated within 4 metres measured in any direction of any security infrastructure belonging to or maintained by Wales and West Utilities;

“Wales and West Utilities” means Wales and West Utilities Limited (Company No. 05046791) whose registered office is at Wales & West House, Spooner Close Coedkernew, Newport, South Wales, NP10 8FZ and includes any successor in title in respect of the apparatus or any successor as a gas transporter (within the meaning of Part 1 of the Gas Act 1986(a)) within the area of the authorised development.

(a) 1986 c. 44.

“WWU Guidance” means WW/SP/SSW/22 in relation to intermediate pressure pipelines and high pressure pipelines and the Medium Pressure General Conditions covering medium pressure pipelines or such replacement guidance issued by Wales and West Utilities.

On street apparatus

69. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Wales and West Utilities are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act^(a).

Apparatus in stopped up streets

70.—(1) Where any street is stopped up under article 16 (permanent stopping up and restriction of use of streets and private means of access) and Wales and West Utilities has apparatus in the street, Wales and West Utilities shall have the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Wales and West Utilities legal easements reasonably satisfactory to Wales and West Utilities in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of Wales and West Utilities to require the removal of that apparatus under paragraph 73 or the power of the undertaker to carry out works under paragraph 75.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 15 (temporary stopping up and restriction of use of streets), Wales and West Utilities is at liberty at all times upon giving reasonable notice to the undertaker save for in cases of emergency, to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway 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 highway.

Protective works to buildings

71. The undertaker, in the case of the powers conferred by article 19 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

No acquisition except by agreement

72. Regardless of any provision in this Order, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

73.—(1) If, in the exercise of the powers conferred by this Order the undertaker acquires any interest in, on or under any land in which any apparatus is placed or over which access is enjoyed by Wales and West Utilities or which requires that Wales and West Utilities’ apparatus is relocated or diverted, that apparatus must not be decommissioned or removed under this Part of this Schedule, and any right of Wales and West Utilities to maintain that apparatus in that land or to gain access over it must not be extinguished or interfered with until alternative apparatus has been constructed and is in operation with the facilities and rights referred to in sub-paragraph (2) to the reasonable satisfaction of Wales and West Utilities in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, leased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Wales and West Utilities at least 28 days’ written notice of that requirement, together with a plan, description 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 Wales and West Utilities

(a) 1991 c. 56.

reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Wales and West Utilities the necessary facilities and rights for the construction of and access to alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus along with any appropriate working areas.

(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, Wales and West Utilities must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its reasonable 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 Wales and West Utilities and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (Arbitration).

(5) Wales and West Utilities must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46 (Arbitration), and after the grant to Wales and West Utilities of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or 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

74.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Wales and West Utilities facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed or decommissioned, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Wales and West Utilities or in default of agreement settled by arbitration in accordance with article 46 (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 Wales and West Utilities than the facilities and rights enjoyed by it in respect of the apparatus to be removed or decommissioned 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 Wales and West Utilities as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

75.—(1) Not less than 42 days before starting the execution of any specified works, the undertaker must submit to Wales and West Utilities a plan, section and description of the specified works to be executed.

(2) Those specified works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Wales and West Utilities for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Wales and West Utilities is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Wales and West Utilities under sub-paragraph (2) are to be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) is submitted to it.

(4) If Wales and West Utilities, in accordance with sub-paragraph (3) and in consequence of the specified works proposed by the undertaker, reasonably requires the removal or decommissioning of any apparatus or any protective works and gives written notice to the undertaker of that

requirement, paragraphs 67 to 69 and 72 to 74 apply as if the removal or decommissioning of the apparatus or the protective works had been required by the undertaker under paragraph 73(2).

(5) Nothing in this paragraph 75 (retained apparatus) 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 specified works, a new plan section or description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph 75 (retained apparatus) apply to and in respect of the new plan, section and description.

(6) Where the undertaker submits a revised plan of specified works pursuant to a reasonable requirement of Wales and West Utilities under this paragraph 75 (retained apparatus) the revised plan must be submitted no less than 21 days before commencing the execution of the specified works.

(7) Subject to sub-paragraph (8), the undertaker shall not commence any specified works to which sub-paragraph (7) applies until Wales and West Utilities has identified any reasonable requirements it has for the alteration or protection of the apparatus, or for securing access to it (such reasonable requirements to be identified by Wales and West Utilities without unreasonable delay).

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Wales and West Utilities notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

Expenses and costs

76.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Wales and West Utilities on demand all expenses reasonably incurred by Wales and West Utilities in, or in connection with, the inspection, relaying, replacing, removal, decommissioning, alteration or protection of any apparatus or security infrastructure or the construction of any new apparatus or security infrastructure which may be required in consequence of the execution of any such works as are referred to in paragraph 73(2).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), 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 46 (arbitration) to be necessary then, if such placing involves cost 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 Wales and West Utilities in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must 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 must 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 Wales and West Utilities in respect of works by virtue of sub-paragraph (1), 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 Wales and West Utilities 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.

77.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 71 or 73(2) or any specified 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 those works) or property of Wales and West Utilities, or there is any interruption in any service provided, or in the supply of any goods, by Wales and West Utilities, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Wales and West Utilities Limited in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Wales and West Utilities for any other expenses, loss, damages, penalty or costs incurred by Wales and West Utilities,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by Wales and West Utilities on behalf of the undertaker or in accordance with a plan, section or description approved by Wales and West Utilities or in accordance with any requirement of Wales and West Utilities or under its supervision does not, subject to sub-paragraph (3), 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 or contributed by the act, neglect or default of Wales and West Utilities, its officers, servants, contractors or agents.

(4) Wales and West Utilities must act reasonably in relation to any claim or demand served under sub-paragraph (1) and use reasonable endeavours to mitigate and minimise any costs, expenses, loss, demands, proceedings and penalties to which a claim or demand under sub-paragraph (1) applies.

(5) Wales and West Utilities must give the undertaker reasonable notice of any such- claim or demand against Wales and West Utilities and no settlement or compromise is to be made without the consent of the undertaker and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise of any proceedings necessary to resist the claim or demand unless payment is required in connection with a statutory compensation scheme.

(6) In respect of any claim under paragraphs 76(1) or 77(1), Wales and West Utilities shall on reasonable request from the undertaker provide written evidence of how the claimed expenses, loss, damages, penalties or costs have reasonably and properly been incurred. Any dispute between the Parties as to the reasonableness of the costs, charges and expenses shall be resolved in accordance with article 46 (Arbitration).

Cooperation

78. Where in consequence of the proposed construction of any part of the authorised development, the undertaker or Wales and West Utilities requires the removal or decommissioning of apparatus under paragraph 73(2) or Wales and West Utilities makes requirements for the protection or alteration of apparatus under paragraph 75, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Wales and West Utilities' undertaking and Wales and West Utilities must use best endeavours to co-operate with the undertaker for that purpose.

79. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Wales and West Utilities in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

PART 7

FOR THE PROTECTION OF BT OPENREACH LIMITED

80. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

81. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in section 106(b) (application of the electronic communications code) of the 2003 Act;

“electronic communications code network” means—

- (a) so much of an electronic communications network or infrastructure 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;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 (infrastructure system) of that code; and

“operator” means the operator of an electronic communications code network.

82. The exercise of the powers conferred by article 33 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

83.—(1) Subject to sub-paragraphs (2) to (4), if as a result of the authorised development or its construction, or of any subsidence resulting from the authorised development—

- (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 the authorised development), 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 undertaker and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise 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 46 (arbitration).

(a) 2003 c. 21.

(b) Section 106 was amended by section 4 of the Digital Economy Act 2017.

84. 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 (street works in England and Wales) 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.

85. 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 in land belonging to the undertaker on the date on which this Order is made.

HVDC Installation

86. High Voltage – DC Construction - The Communications Code 2003, Part 10 provides for the protection of Code Operator Networks from potential damage which may be caused as a result of a new construction introduced by other undertakers.

- (a) Where a proposed new HV/DC construction is likely to come close to existing BT Network / Infrastructure or Exchange building, it is for the Undertaker to carry out the necessary evaluation, to determine whether, as a result of that proposed construction, if there is a likelihood of physical damage, or electrical interference/ interruption to BT's Network.
- (b) Where the evaluation identifies potential for such damage / interference, it is for the Undertaker to decide the level and nature of mitigation required to eliminate that risk. In order to support the evaluation, Openreach will provide a full list of Network Cable types, building diagrams and policy requirements for the Telecommunications apparatus. If the undertaker requires more specific information, a more detailed site study can be provided by Openreach. The latter is a significant undertaking and one which would be chargeable.
- (c) The Undertakers evaluation must cover all aspects of any potential interference both physical and safety during any proposed alterations and the potential impact once the Undertakers apparatus is operational. i.e. potential impact from outages / maintenance routines after installation is complete. Any alterations must be within Openreach's planning policy tolerance and agreed at each stage and for any alterations during build that are altered from the original specification.
- (d) Where the mitigation proposed by the Undertaker involves shifting / re-arrangement of BT's Network / Infrastructure, that can be arranged and agreed through the Openreach Network Re-Arrangement Team, who can provide an estimate of costs for the work required and will work with the Undertaker to arrive at an agreed solution to protect the BT assets.
- (e) Whilst Openreach may carry out mitigation works as requested by the Undertaker; it bears no responsibility for the effectiveness of that solution. Such responsibility lies with the Undertaker.

SCHEDULE 10

Article 44

DOCUMENTS TO BE CERTIFIED

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Document Reference</i>	<i>(3)</i> <i>Revision</i>
Book of reference	Volume 4, Document 4.3	5
Works plans (part 1)	Volume 2, Document 2.4	3
Works plans (part 2)	Volume 2, Document 2.4	3
Land plans	Volume 2, Document 2.2	6
Crown land plans	Volume 2, Document 2.7	2
Streets, rights of way and access plans (part 1)	Volume 2, Document 2.5	3

Streets, rights of way and access plans (part 2)	Volume 2, Document 2.5	2
Classification of roads plans (part 1)	Volume 2, Document 2.8	1
Classification of roads plans (part 2)	Volume 2, Document 2.8	1
Speed limits and traffic regulations plans (part 1)	Volume 2, Document 2.14	1
Speed limits and traffic regulations plans (part 2)	Volume 2, Document 2.14	1
Environmental masterplan (part 1)	Volume 2, Document 2.13	3
Environmental masterplan (part 2)	Volume 2, Document 2.13	3
General arrangement plans (part 1)	Volume 2, Document 2.9	3
General arrangement plans (part 2)	Volume 2, Document 2.9	3
Engineering drawings and sections (part 1)	Volume 2, Document 2.10	1
Engineering drawings and sections (part 2)	Volume 2, Document 2.10	1
Engineering drawings and sections (part 3)	Volume 2, Document 2.10	1
Environmental statement - non-technical summary	Volume 6, Document 6.1	1
Environmental statement - chapter 1: introduction	Volume 6, Document 6.2	1
Environmental statement - chapter 2: the scheme	Volume 6, Document 6.2	1
Environmental statement - chapter 3: assessment of alternatives	Volume 6, Document 6.2	1
Environmental statement - chapter 4: environmental assessment methodology	Volume 6, Document 6.2	1
Environmental statement - chapter 5: air quality	Volume 6, Document 6.3	1
Environmental statement - chapter 6: noise and vibration	Volume 6, Document 6.4	2
Environmental statement - chapter 7: biodiversity	Volume 6, Document 6.5	2
Environmental statement - chapter 8: road drainage and the water environment	Volume 6, Document 6.6	3
Environmental statement - chapter 9: landscape	Volume 6, Document 6.7	3
Environmental statement - chapter 10: geology and soils	Volume 6, Document 6.8	1
Environmental statement - chapter 11: cultural heritage	Volume 6, Document 6.9	2

Environmental statement - chapter 12: materials and waste	Volume 6, Document 6.10	1
Environmental statement - chapter 13: population and human health	Volume 6, Document 6.11	3
Environmental statement - chapter 14: climate	Volume 6, Document 6.12	2
Environmental statement - chapter 15: assessment of cumulative effects	Volume 6, Document 6.13	1
Environmental statement - chapter 16: summary	Volume 9, Document 9.30	0
Environmental statement - change application 2: environmental statement addendum	Volume 10, Document 10.23	0
Environmental statement - appendix 1.1: glossary	Volume 6, Document 6.15	0
Environmental statement - appendix 1.2: scoping opinion responses	Volume 6, Document 6.15	0
Environmental statement - appendix 1.3: scheme figures	Volume 6, Document 6.15	0
Environmental statement - appendix 1.4: major accidents and disasters assessment	Volume 6, Document 6.15	1
Environmental statement - appendix 2.1: drainage strategy report	Volume 6, Document 6.15	0
Environmental statement - appendix 2.2: drainage strategy figures	Volume 6, Document 6.15	0
Environmental statement - appendix 5.1: air quality emission modelling	Volume 6, Document 6.15	1
Environmental statement - appendix 5.2: air quality chapter figures	Volume 6, Document 6.15	0
Environmental statement - appendix 6.1: noise chapter figures (part 1)	Volume 6, Document 6.15	0
Environmental statement - appendix 6.1: noise chapter figures (part 2)	Volume 6, Document 6.15	0
Environmental statement - appendix 6.1: noise chapter figures (part 3)	Volume 6, Document 6.15	0
Environmental statement - appendix 7.1: phase 1 habitat survey	Volume 6, Document 6.15	0

Environmental statement - appendix 7.2: hedgerow survey	Volume 6, Document 6.15	0
Environmental statement - appendix 7.3: bat survey (part 1)	Volume 6, Document 6.15	1
Environmental statement - appendix 7.3: bat survey (part 2)	Volume 6, Document 6.15	0
Environmental statement - appendix 7.4: dormouse survey	Volume 6, Document 6.15	0
Environmental statement - appendix 7.5: badger survey	Volume 6, Document 6.15	0
Environmental statement - appendix 7.6: otter survey	Volume 6, Document 6.15	0
Environmental statement - appendix 7.7: water vole survey	Volume 6, Document 6.15	0
Environmental statement - appendix 7.8: breeding birds survey	Volume 6, Document 6.15	0
Environmental statement - appendix 7.9: wintering bird survey	Volume 6, Document 6.15	0
Environmental statement - appendix 7.10: reptile survey	Volume 6, Document 6.15	0
Environmental statement - appendix 7.11: great crested newt survey	Volume 6, Document 6.15	0
Environmental statement - appendix 7.12: aquatic ecology survey	Volume 6, Document 6.15	0
Environmental statement - appendix 7.13: habitats regulations assessment screening	Volume 6, Document 6.15	1
Environmental statement - change application 2: environmental statement: appendix 7.13 habitats regulations assessment screening addendum	Volume 10, Document 10.24	0
Environmental statement - appendix 7.14: habitats regulation assessment – statement to inform an appropriate assessment	Volume 6, Document 6.15	1
Environmental statement - appendix 7.15: bat mitigation strategy	Volume 6, Document 6.15	0

Environmental statement - appendix 7.16: barn owl survey	Volume 6, Document 6.15	0
Environmental statement - appendix 7.17: validation report	Volume 6, Document 6.15	0
Environmental statement - appendix 7.18: biodiversity net gain	Volume 6, Document 6.15	0
Environmental statement - appendix 7.19: biodiversity chapter figures	Volume 6, Document 6.15	0
Environmental statement - appendix 8.1: flood risk assessment (part 1)	Volume 6, Document 6.15	2
Environmental statement - appendix 8.1: flood risk assessment (part 2)	Volume 6, Document 6.15	1
Environmental statement - change application 2: environmental statement: appendix 8.1 flood risk assessment addendum	Volume 10, Document 10.25	0
Environmental statement - appendix 8.2: water framework directive compliance assessment	Volume 6, Document 6.15	2
Environmental statement - appendix 8.2A: water framework directive surface water impact assessment	Volume 6, Document 6.15	0
Environmental statement - appendix 8.2B: water framework directive groundwater impact assessment	Volume 6, Document 6.15	0
Environmental statement - appendix 8.3: surface water quality assessment	Volume 6, Document 6.15	0
Environmental statement - appendix 8.4: road drainage and the water environment chapter figures	Volume 6, Document 6.15	0
Environmental statement - appendix 9.1: LVIA chapter figures	Volume 6, Document 6.15	1
Environmental statement - appendix 9.2: visual assessment table	Volume 6, Document 6.15	1
Environmental statement - appendix 9.3: LVIA chapter photo sheets	Volume 6, Document 6.15	1
Environmental statement - appendix 9.4: arboricultural survey and AIA (part 1)	Volume 6, Document 6.15	0

Environmental statement - appendix 9.4: arboricultural survey and AIA (part 2)	Volume 6, Document 6.15	0
Environmental statement - appendix 10.1: definitions of probability	Volume 6, Document 6.15	0
Environmental statement - appendix 10.2: conceptual site models	Volume 6, Document 6.15	0
Environmental statement - appendix 10.3: land contamination impact assessment	Volume 6, Document 6.15	0
Environmental statement - appendix 10.4: agricultural land classification	Volume 6, Document 6.15	0
Environmental statement - appendix 10.5: agricultural land survey flood storage area	Volume 6, Document 6.15	0
Environmental statement - appendix 10.6: agricultural land survey additional areas	Volume 6, Document 6.15	0
Environmental statement - appendix 10.7: ground investigation report	Volume 6, Document 6.15	0
Environmental statement - appendix 10.8: geology and soils chapter figures	Volume 6, Document 6.15	1
Environmental statement - appendix 11.1: gazetteer	Volume 6, Document 6.15	1
Environmental statement - appendix 11.2: cultural heritage chapter figures	Volume 6, Document 6.15	1
Environmental statement - appendix 11.3: geophysical survey report	Volume 6, Document 6.15	0
Environmental statement - appendix 11.4: evaluation trenching report	Volume 6, Document 6.15	0
Environmental statement - appendix 11.5: MOLA geophysical survey first interim report	Volume 9, Document 9.89	0
Environmental statement - appendix 12.1: materials and waste chapter figures	Volume 6, Document 6.15	0
Environmental statement - appendix 13.1: population and human health chapter figures	Volume 6, Document 6.15	0
Environmental statement - appendix 15.1: RFFP long list	Volume 6, Document 6.15	0

Environmental statement - appendix 15.2: cumulative effects assessment figures	Volume 6, Document 6.15	0
Environmental statement - landscape visualisations: viewpoint 1	Volume 9, Document 9.34	0
Environmental statement - landscape visualisations: viewpoint 2	Volume 9, Document 9.35	1
Environmental statement - landscape visualisations: viewpoint 3	Volume 9, Document 9.36	0
Environmental statement - landscape visualisations: viewpoint 4 and 5	Volume 9, Document 9.37	0
Environmental statement - landscape visualisations: viewpoint 6	Volume 9, Document 9.38	0
Environmental statement - bat technical appendix addendum	Volume 9, Document 9.45	0
Environmental statement – HEWRAT assessment for DCO change requirements	Volume 10, Document 10.42	0
Statement of statutory nuisance	Volume 6, Document 6.16	0
Environmental management plan (1 st iteration)	Volume 7, Document 7.3	2
Materials management plan	Volume 9, Document 9.1	0
Soil handling management plan	Volume 9, Document 9.2	0
Noise and vibration management plan	Volume 9, Document 9.3	0
Air quality management plan	Volume 9, Document 9.4	0
Landscape and ecology management plan	Volume 9, Document 9.5	0
Emergency preparedness and response plan	Volume 9, Document 9.6	0
Severe weather plan	Volume 9, Document 9.25	1
Pollution prevention and control management plan	Volume 9, Document 9.7	0
Archaeological management plan	Volume 9, Document 9.8	1
Operational unexploded ordnance emergency response plan	Volume 9, Document 9.24	1
Traffic management plan	Volume 9, Document 9.12	1
Site waste management plan	Volume 9, Document 9.9	0
Public rights of way management plan	Volume 9, Document 9.13	0

Emergency vehicle movement management plan	Volume 9, Document 9.14	0
Community engagement plan	Volume 9, Document 9.10	0
Carbon management plan	Volume 9, Document 9.11	0
River realignment and channel diversion management plan	Volume 9, Document 9.88	0
Register of environmental actions and commitments	Volume 7, Document 7.4	5
Design principles report	Volume 9, Document 9.70	1

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Gloucestershire County Council to carry out alteration works to Junction 10 of the M5 motorway, in summary comprising the demolition of the existing A4019 overbridge and the construction of a new grade separated junction with four slip roads to and from the M5 motorway; to dual sections of the A4019; to construct the West Cheltenham Link Road; and to carry out all associated works.

This Order permits Gloucestershire County Council to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also makes provision in connection with the maintenance of the authorised development.

A copy of the plans, engineering drawings and sections, book of reference and environmental statement mentioned in this Order and certified in accordance with article 44 (certification of plans etc.) may be inspected free of charge during working hours at Shire Hall, Westgate Street, Gloucester GL1 2TG; Tewkesbury Borough Council, Gloucester Road, Tewkesbury, Gloucestershire GL20 5TT; and Cheltenham Borough Council, Municipal Offices, Promenade, Cheltenham GL50 9SA.