

The Planning Act 2008

M60/M62/M66 Simister Island Interchange Project

Examining Authority's Report
of Findings and Conclusions
and

Recommendation to the Secretary of State for
Transport

Examining Authority

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9 June 2025

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OVERVIEW

File Ref: TR010064

The application, dated 2 April 2024, was made under section 37(2) of the Planning Act 2008 and was received in full by the Planning Inspectorate on that date.

The applicant is National Highways.

The application was accepted for examination on 30 April 2024.

The examination of the application began on 11 September 2024 and was completed on 11 March 2025.

The development proposed is for an improvement to the M60/M62/M66 Simister Island Interchange. The proposal comprises:

- the construction of a new free-flow link (the Northern Loop) from M60 eastbound to M60 southbound carriageways
- realignment of the M66 southbound carriageway on the approach to the junction
- construction of a new two-lane free-flow road from the M60 northbound to the M60 westbound to replace the existing single-lane
- widen the M66 southbound to four lanes through junction 18
- conversion of the hard shoulder into a permanent traffic lane between M60 junctions 17 and 18, providing five lanes in both directions
- other works including improvements to signage, signalling and drainage

Summary of Recommendation

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

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1. INTRODUCTION

1.1. BACKGROUND TO THE EXAMINATION

- 1.1.1. The application for the M60/M62/M66 Simister Island Interchange (the proposed development) was submitted by National Highways (the applicant) to the Planning Inspectorate on 2 April 2024 (reference TR010064) under section (s) 37 of the Planning Act 2008 (PA2008) and accepted for examination under s55 of the PA2008 on 30 April 2024 [\[PD-001\]](#). This report sets out the Examining Authority's (ExA) findings, conclusions and recommendations to the Secretary of State for Transport (DfT).
- 1.1.2. The legislative tests for whether the proposed development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State for Housing and Communities and Local Government in its decision to accept the application for examination in accordance with s55 of the PA2008 [\[PD-001\]](#).
- 1.1.3. The proposed development is the construction and alteration of a highway. The proposed development falls within s22 of the PA2008 and meets the definition of an NSIP set out in s14(1) of the PA2008. As such, the proposed development requires development consent in accordance with s31 of the 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, for example [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

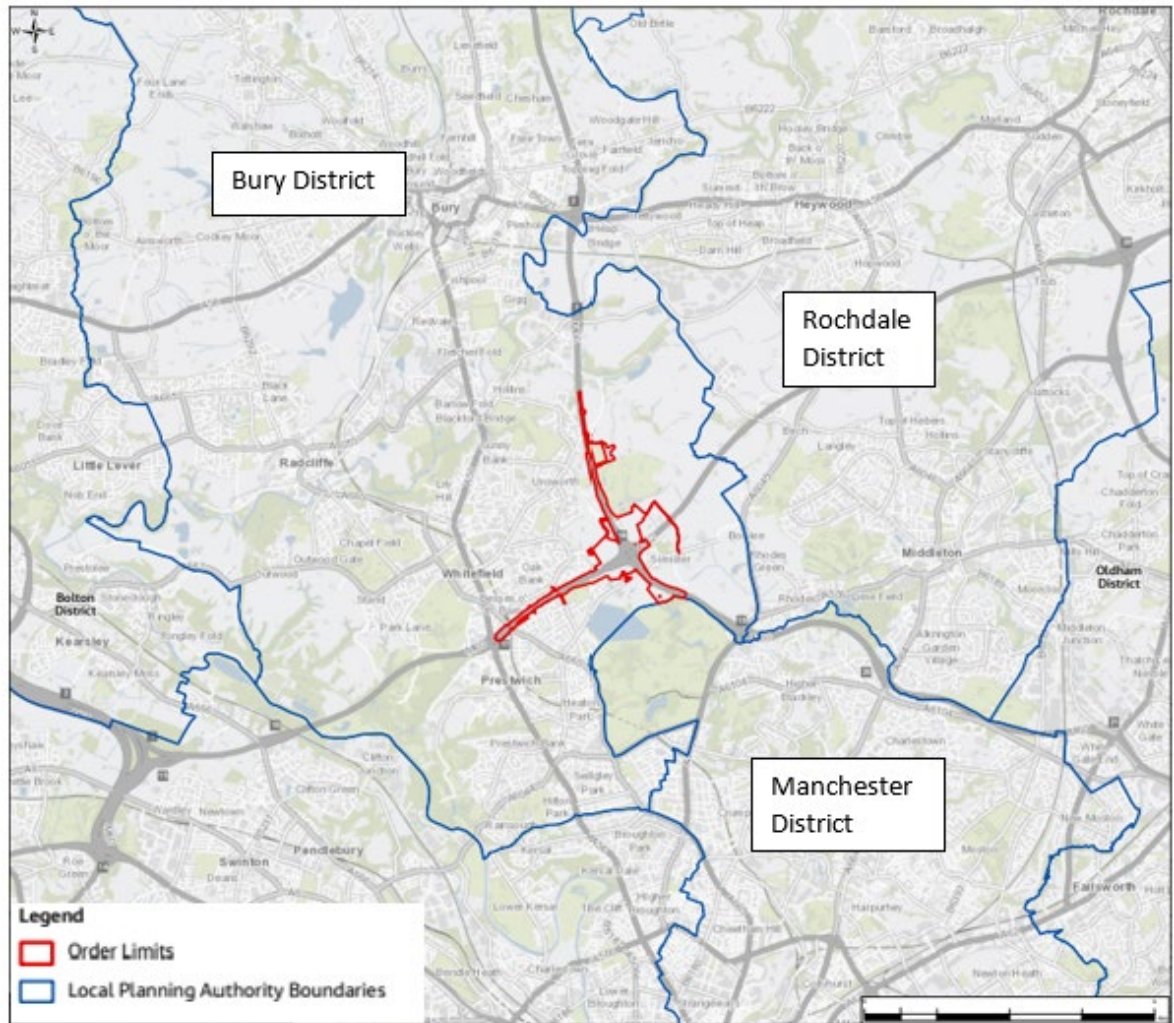
- 1.2.1. On 24 May 2024, Sarah Holmes and Andrew Robinson were appointed as the ExA for the application under s61 and s65 of the PA2008 [\[PD-004\]](#).

1.3. THE APPLICATION

Location of the Proposed Development

- 1.3.1. The location of the proposed development is shown in the location plan [\[APP-004\]](#), figure 1.1 of Environmental Statement (ES) chapter 1 [\[APP-056\]](#) (see extract in figure 1 below) and the final versions of the Land Plans [\[REP7-004\]](#). The site lies within the administrative area of Bury Metropolitan Borough Council (BMBC) and is wholly in England. The site is close to the administrative areas of Rochdale Borough Council (RBC) and Manchester City Council (MCC).

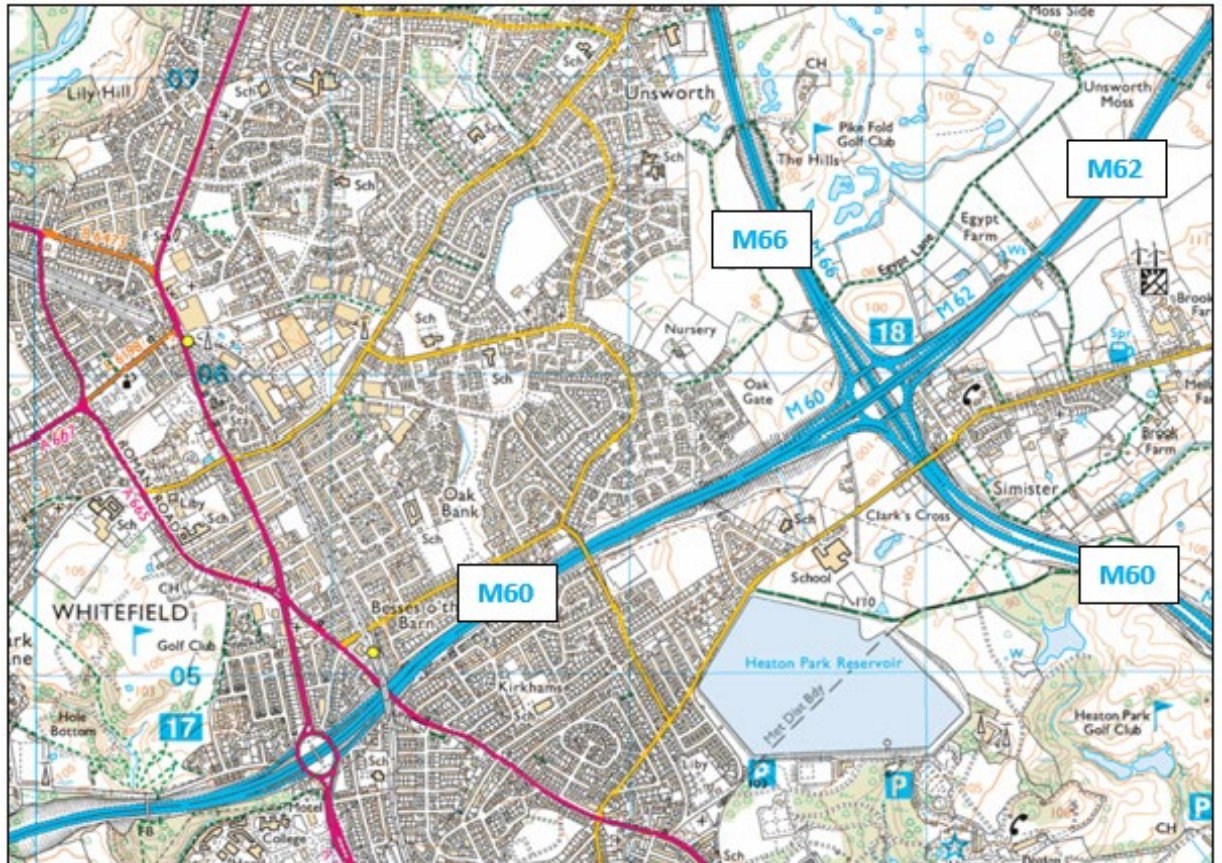
Figure 1: Location Plan (extract from ES chapter 1, figure 1.1 [APP-056] with administrative areas and key annotated)



- 1.3.2. ES chapter 2 [APP-041] provides a detailed description of the surrounding area. The proposed development is situated between several urban areas and settlements including Whitefield, Prestwich, Simister and Middleton. There are residential dwellings located adjacent to and in close proximity to the order limits to the north and south of the motorway (M) 60 between junctions (J) 17 and 18. In addition, there are educational facilities such as Unsworth Academy, Parrenthorn High School and St Margaret's Church of England Primary School located close to the order limits, and community facilities such as Pike Fold Golf Club and Unsworth Cricket Club, located within or adjacent to the order limits.
- 1.3.3. The key environmental constraints are shown on Figure 2.1 of ES chapter 2 [REP5-017] and include the Rochdale Canal Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI), located approximately 5 kilometres (km) to the east of the order limits, Green Belt land located within the order limits around M60 J18 and Haweswater aqueduct which is located within the order limits 500 metres (m) west of M60 J18.
- 1.3.4. Section 2.3 of ES chapter 2 [APP-041] provides a description of the existing locations as can be seen in figure 2 below. M60 J18 provides the interchange between the M60, M62 and M66 motorways. The proposed development encompasses the following motorways and slip roads:

- M60 between J17 – J18, in eastbound and westbound directions.
- M60 between J18 – J19, southbound and northbound, partly.
- M60 J17 eastbound entry slip road and westbound exit slip road.
- M60 J18, including all entry and exit slip roads to and from the M60, M62 and M66 motorways.
- M66 motorway from the M60 J18 (M66 J4) to M66 J3, partly.

Figure 2: Existing conditions (extract taken from Bing Maps with annotations added)



Description of the Proposed Development

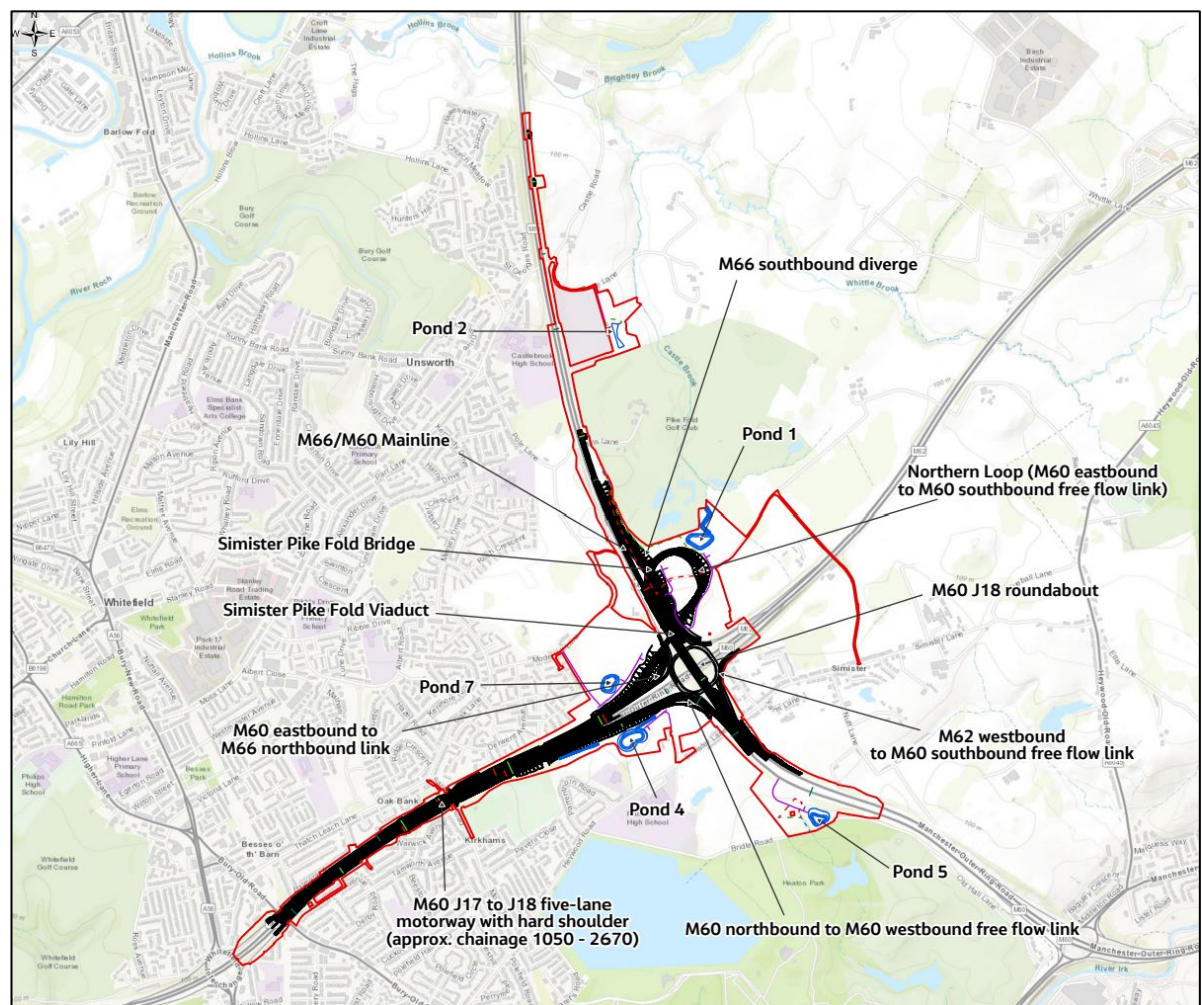
- 1.3.5. The proposed development comprises improvements to the M60 J18 interchange (also known as Simister Island) and widening of the M60 between J17 and J18 from four lanes to five lanes in both directions on the M60. The interchange is situated on more than one motorway and as a result has three junction numbers: M60 J18, M66 J4 and M62 J18. For this proposed development the interchange is referred to as M60 J18.
- 1.3.6. The key elements of the proposed development are:
- Widening of M60 J17 to J18 from four lanes to five lanes in both directions with a new hard shoulder (work numbers 02 and 03).
 - Construction of a new loop road (the Northern Loop), including a new viaduct (Pike Fold Viaduct) to provide a new free-flow link from the M60 eastbound to the M60 southbound. This would allow drivers to continue along the M60 without having to leave the motorway, navigate the roundabout and re-join the M60 (work number 05).
 - Widening of the M66 southbound through J18 from two lanes to four lanes (work number 22).

- Widening of the existing M60 northbound to M60 westbound free flow link road from one lane to two lanes (work number 17).
- Realignment of the M66 southbound slip road to M60 J18 to accommodate the Northern Loop, including a new overbridge (Pike Fold Bridge) where the slip road crosses the Northern Loop and realignment of the left turn lane to the M62 eastbound (work number 39).
- Realignment of the existing M62 westbound to M60 southbound free flow link (work number 23).
- Renewal of signs and signals, including new signs and street lighting at M60 J18 and its approaches, renewed traffic signals at the M60 J18 roundabout, and installation of gantries on the M66 southbound side and between M60 J17 to J18 (work numbers 02, 03, 22, 25 and 30).
- Construction of associated drainage works including new ponds to accommodate surface water run-off from the highway and improve water quality (work numbers 13, 21, 27, 37 and 43).

1.3.7. Details of each work number can be found in schedule 1 of the recommended Development Consent Order (rDCO) in [appendix C](#) to this report.

1.3.8. An illustrative layout of the proposed development is shown below in figure 3 (extract from ES chapter 2 figure 2.2 [\[REP7-013\]](#)).

Figure 3: Extract from ES chapter 2 figure 2.2 proposed development design [\[REP7-013\]](#)



1.4. THE EXAMINATION

Start of the Examination

- 1.4.1. Fifty-eight relevant representations (RRs) were received ([[RR-001](#)] to and including [[RR-058](#)]). All received our Rule 6 Letter [[PD-008](#)] made under the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) and were provided with an opportunity to become involved in the examination as an interested party (IP). All RRs have been fully considered by the ExA.
- 1.4.2. The preliminary meeting (PM) took place on 11 September 2024 [[EV1-001](#)]. The ExA's procedural decisions and the examination timetable took full account of matters raised at the PM. They were provided in the Rule 8 Letter dated 17 September 2024 [[PD-009](#)].
- 1.4.3. The examination began on 11 September 2024 and concluded on 11 March 2025. The principal components of and events around the examination can be seen in the [examination timetable](#) and are summarised below.
- 1.4.4. There were no changes to the application during the examination.

Procedural Decisions

- 1.4.5. The procedural decisions 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.

Statements of Common Ground

- 1.4.6. By the close of the examination, the following bodies had concluded and signed Statements of Common Ground (SoCG) with the applicant:
- Natural England [[REP1-017](#)]
 - Environment Agency [[REP1-018](#)]
 - Historic England [[REP1-019](#)]
 - Bury Metropolitan Borough Council [[REP5-028](#)].
- 1.4.7. No SoCGs remained unsigned at the close of the examination.
- 1.4.8. The signed SoCGs have been taken fully into account by the ExA in all relevant sections of this report.

Written Questions, Site Inspections and Hearings

- 1.4.9. To ensure the ExA had as much information as it needed as early as possible in the process we requested, under rule 9 of the EPR, and received additional and updated documents during the pre-examination period [[PD-005](#)].
- 1.4.10. The ExA asked two rounds of written questions (ExQ1 [[PD-011](#)] and ExQ2 [[PD-013](#)] and made two requests for further information and comments under rule 17 of the EPR [[PD-015](#)] and [[PD-017](#)].
- 1.4.11. The ExA carried out the following unaccompanied site inspections (USIs):
- USI1 [[EV2-001](#)]

- USI2 [\[EV3-001\]](#)
- USI3 [\[EV4-001\]](#)
- USI4 [\[EV8-001\]](#) and [\[EV8-002\]](#).

1.4.12. No accompanied site inspections were undertaken.

1.4.13. The following issue specific hearings (ISH) were held under s91 of the PA2008:

- ISH1 [\[EV7-001\]](#) and [\[EV7-003\]](#)
- ISH2 [\[EV10-003\]](#), [\[EV10-005\]](#), [\[EV10-007\]](#), [\[EV10-009\]](#), [\[EV10-011\]](#) and [\[EV10-013\]](#)

1.4.14. The following compulsory acquisition hearing (CAH) was held under s92 of the PA2008:

- CAH1 [\[EV9-003\]](#), [\[EV9-005\]](#) and [\[EV9-007\]](#)

1.4.15. The following open floor hearing 1(OFH) was held under s93 of the PA2008:

- OFH1 [\[EV6-001\]](#)

1.5. OTHER UNDERTAKINGS, AGREEMENTS AND CONSENTS

1.5.1. No agreements or undertakings under section 106 of the Town and Country Planning Act 1990 were put before the examination.

1.5.2. The updated Consents and Agreements Position Statement [\[REP1-008\]](#) sets out the other required consents and the position as to the status of securing those consents.

1.5.3. These consents and agreements have been taken fully into account by the ExA in all relevant sections of this report.

1.6. STRUCTURE OF THIS REPORT

1.6.1. The structure of the remainder of this report is as follows:

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

1.6.2. This report is supported by the following appendices:

- [Appendix A](#) – Reference Tables.
- [Appendix B](#) – List of Abbreviations.
- [Appendix C](#) – The rDCO.

2. HOW THE APPLICATION IS DETERMINED

2.1. LEGISLATION AND POLICY

2.1.1. This section identifies the key legislation and policy that the Examining Authority (ExA) considers to be important and relevant to its findings and recommendations to the Secretary of State.

2.1.2. 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 [appendix A](#) of this report.

2.1.3. Each chapter in the environmental statement (ES) and the Case for the Scheme [\[REP3-018\]](#) contains a section setting out the overarching environmental legislation and policy for each topic.

Planning Act 2008

2.1.4. The Planning Act 2008 (PA2008) provides a different decision-making process for Nationally Significant Infrastructure Project (NSIP) applications where a relevant National Policy Statement (NPS) has been designated from that where there is no designated NPS. As the NPS for National Networks 2015 (NPSNN) has effect in relation to development that is the subject of this application, this application is to be assessed against section (s) 104 of the PA2008.

2.1.5. S104 of the PA2008 places a statutory sustainable development duty on the Secretary of State. The duty makes specific reference to having regard to the desirability of:

- mitigating, and adapting to, climate change
- achieving good design

2.1.6. S104(2) of the PA2008 sets out the matters to which the Secretary of State must have regard in deciding an application submitted in accordance with the PA2008. In summary, the matters set out in s104(2) include any relevant NPSs, local impact report (LIR)s, matters prescribed in relation to the development, and any other matters the Secretary of State thinks are both important and relevant to the decision.

2.1.7. S104(3) of the PA2008 requires the Secretary of State to decide the application in accordance with any relevant NPS that has effect in relation to this application, subject to the exceptions in subsections 104(4) to (8) as follows:

- Deciding the application in accordance with any relevant NPS would lead to the UK being in breach of any of its international obligations.
- Deciding the application in accordance with any relevant NPS would lead to the Secretary of State being in breach of any duty imposed on her or him by or under any enactment.
- Deciding the application in accordance with any relevant NPS would be unlawful by virtue of any enactment.
- The adverse impact of the proposed development would outweigh its benefits.
- Any condition prescribed for deciding an application otherwise than in accordance with an NPS is met.

2.1.8. This report sets out our findings, conclusions and recommendations taking these matters into account and applying s104 of the PA2008.

National Policy Statement

- 2.1.9. With regard to the purposes of s104(2)(a) of the PA2008, the ExA considers that the NPSNN is relevant to the application.
- 2.1.10. The NPSNN was designated on 14 January 2015 and remains in force. It sets out the national policy for highways-related development and is relevant to this application.
- 2.1.11. The NPSNN sets out the need for government's policies to deliver development of NSIPs on the national road network in England. It states that the government has concluded that at a strategic level there is a compelling need for the development of the national road network. It makes clear that subject to the detailed policies and protections within it, and the legal constraints set out in the PA2008, there is a presumption in favour of granting development consent for national network NSIPs that fall within the need for infrastructure established in the NPSNN.
- 2.1.12. As this application was submitted before the designation of the National Networks NPS 2024 (NNNPS (2024)), it therefore falls under the transitional provisions as outlined in paragraphs 1.16 and 1.17 of the NNNPS (2024). Thus, the NPSNN holds primacy upon which the ExA has assessed the proposed development against.
- 2.1.13. NNNPS (2024), at paragraph 1.17, states that any emerging draft NPSs (or those designated but not yet having effect) are potentially capable of being important and relevant considerations in the decision-making process. The extent to which they are relevant is a matter for the relevant Secretary of State to consider within the framework of the PA2008 and with regard to the specific circumstances of each DCO application.
- 2.1.14. The ExA has considered the NPSNN and, where relevant, the newly designated NNNPS (2024) in full in examining the application. Where it is relevant to do so, the ExA draws on individual paragraphs contained within the NPSNN and NNNPS (2024) within the topics in sections 3 and 5 of this report.

Other relevant government policies, strategies and publications

- 2.1.15. Other relevant government policies, strategies and publications have been taken into account by the ExA (as listed in [appendix A](#)), including the following:
- The National Planning Policy Framework (NPPF)
 - Road Investment Strategies (RIS)
 - The Design Manual for Roads and Bridges (DMRB)
- 2.1.16. These policies are also discussed in more detail in [section 3](#) within 'The Need for the Proposed Development'.

Local policies

- 2.1.17. The Places for Everyone Joint Development Plan document for Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Tameside, Trafford and Wigan (PfE) [\[REP3-032\]](#) was adopted on 21 March 2024. Alongside the saved policies of the Bury Unitary Development Plan (UDP) and the Greater Manchester Joint Minerals and Waste Plans, it forms part of Bury Metropolitan Borough Council (BMBC)'s statutory development plan.

- 2.1.18. Of relevance to the proposed development in PfE is Policy JP-Strat 6 (Northern Areas) which states that a significant increase in the competitiveness of the northern areas in Greater Manchester will be sought. In particular, the 'North-East Growth Corridor', which includes the M62 corridor from M60 Junction 18 (Simister Island) to M62 Junction 21 (Milnrow) extending across parts of Bury, Rochdale and Oldham, proposes a nationally significant area of economic activity through the allocation of three major sites known as the 'Northern Gateway'. The sites form part of the 'Atom Valley Mayoral Development Zone'.
- 2.1.19. The most pertinent of these sites to the proposed development is Policy JP Allocation 1.1 Heywood / Pilsworth (Northern Gateway) which is a large site allocation located on land to the north-east of the Simister Island Interchange that has involved the removal of Green Belt land. The allocation proposes to deliver, amongst other things, around 1,200,000 sqm of industrial and warehousing space and 1,000 additional homes. A supplementary planning document prepared jointly by BMBC and Rochdale Borough Council (RBC), entitled the Northern Gateway Development Framework (JPA1.1) [REP8-002], was approved for adoption by BMBC towards the close of the examination [REP8-001] but was still awaiting approval for adoption by RBC.
- 2.1.20. The ExA was aware during the examination that PfE was the subject of a legal challenge by Save Greater Manchester Green Belt Limited. As this forms a separate process falling outside the scope of this examination, it was not a matter that the ExA felt necessary to consider or debate as part of this examination. Until such time as a decision on the challenge is made, PfE forms part of BMBC's development plan and applications should be considered against it unless indicated otherwise. At the close of the examination, no decision had been made on the outcome of the legal challenge. The Secretary of State may wish to obtain an update on the status of the challenge prior to issuing a decision on this application.
- 2.1.21. A list of the local policies considered important and relevant can be found in [appendix A](#).

2.2. LOCAL IMPACT REPORTS

- 2.2.1. BMBC submitted a LIR into the examination at DL1A [REP1A-001]. No other LIRs were submitted.
- 2.2.2. The LIR content has been considered and referred to through the examination and in this report. It must be considered during the decision by the Secretary of State pursuant to PA2008 s104(2)(b).
- 2.2.3. Amongst other matters, 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. The table below is an extract from BMBC's LIR [REP1A-001] where BMBC provide a summary of the impacts identified. [Section 3](#) of this report discusses the findings of the LIR in further detail.

Table 1: Summary of BMBC identified impacts (extract from BMBC LIR [[REP1A-001](#)])

LIR Chapter	Construction/Operation Phase	Assessment of Impact
Planning Policy	Primarily operation	Positive
<u>Air Quality</u>		
Dust Emissions	Primarily construction	Negative
Construction Traffic	Primarily construction	Neutral
Human Health	Construction/Operation	Neutral/Positive
Designated Habitats	Primarily operation	Neutral
Biodiversity	Construction/Operation	Neutral
Climate	Primarily operational	Negative
Geology and Soils	Primarily construction	Neutral
Green Belt	Construction	Negative
Historic Environment	Construction	Neutral
Landscape and Visual	Primarily construction	Negative
<u>Noise and Vibration</u>		
Noise	Construction Operation	Negative Negative
Vibration	Construction Operation	Negative N/A
Road Drainage and Water Environment	Construction/Operation	Primarily neutral/Neutral
Traffic, Transport and Access	Primarily construction	Negative

2.3. ENVIRONMENTAL IMPACT ASSESSMENT

- 2.3.1. On 2 July 2021, the applicant submitted a scoping report to the Secretary of State under regulation 10 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regs) in order to request an opinion about the scope of the environmental statement (ES) to be prepared (a scoping opinion) [[APP-143](#)]. It follows that the applicant is deemed to have notified the Secretary of State under regulation 8(1)(b) of the EIA Regs that it proposed to provide an ES in respect of the project. Therefore, in accordance with regulation 6(2)(a) of the EIA Regs, the proposed development is EIA development.
- 2.3.2. On 12 August 2021, the Planning Inspectorate provided a scoping opinion [[APP-144](#)] on behalf of the Secretary of State.
- 2.3.3. On 8 July 2024, the applicant provided the Planning Inspectorate with certificates confirming that s56 and s59 of the PA2008 and regulation 16 of the EIA Regs had been complied with ([[OD-003](#)], [[OD-004](#)] and [[OD-005](#)]).
- 2.3.4. Overall, the ExA considers that the ES, as supplemented with additional information during the examination, is sufficient to enable the Secretary of State to take a decision in compliance with the EIA Regs.

2.4. HABITATS REGULATIONS ASSESSMENT

- 2.4.1. The Secretary of State is the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations). The Habitats Regulations were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.

- 2.4.2. 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). As is the convention and to inform Secretary of State decisions prepared under the PA2008, a separate record of considerations relevant to HRA has been set out in [section 4](#) of this report.

2.5. TRANSBOUNDARY EFFECTS

- 2.5.1. A transboundary screening under regulation 32 of the EIA Regs was undertaken on behalf of the Secretary of State on 1 September 2021 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.
- 2.5.2. A second screening was published on 22 October 2024. 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.
- 2.5.3. The ExA has had regard to the ongoing duty of the Secretary of State for Transport under regulation 32 to have regard to transboundary matters throughout the examination. No new information or evidence has come before this examination which gives rise to the need to reconsider the transboundary screening decision.

3. THE PLANNING ISSUES

3.1. INTRODUCTION

- 3.1.1. This section sets out the Examining Authority's (ExA) findings and conclusions on the planning issues. The section is structured firstly to examine matters of principle, including need and alternatives, followed by generic topic headings which are arranged in alphabetical order. The order in which all these section headings are presented should not be taken to imply any order of merit.
- 3.1.2. In each section, the ExA will provide a summary of the application as made, then report on the main issues examined for each topic. Findings and conclusions will then be drawn for each topic, with reference to the relevant policy background, and whether the effects carry no residual effects or issues which affect the planning balance or carry little weight, moderate weight, great weight, or very great weight for or against the making of the Development Consent Order (DCO).
- 3.1.3. The ExA has listed a small number of relevant representations (RRs) for each topic to provide an example of the concerns that were raised. The ExA wishes to emphasise that the examples cited are a random sample from the RRs and should not be taken as an indication that the ExA considers these RRs more significant than any other RRs that were submitted. When considering a topic the ExA has had regard to all submissions.

Initial assessment of principal issues (IAPI)

- 3.1.4. As required by section (s) 88 of the Planning Act 2008 (PA2008) and rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010, the ExA made an IAPI 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 RRs. The list of issues relates to all phases of the proposed development. The IAPI was raised at the PM and no other key topics were identified during the examination. The IAPI can be found in annex C of the Rule 6 Letter [\[PD-008\]](#).
- 3.1.5. The ExA considers that the issues raised by interested parties (IP) were broadly in line with the IAPI and were subject to written and oral questioning during the examination. The ExA has nevertheless had regard to all submissions from IPs and has reported on these, if required, within each topic below.

The applicant's environmental management plan (EMP) process

- 3.1.6. The ES contains an assessment of the potential impacts on the environment that may arise during construction, operation and maintenance of the proposed development and describes the mitigation measures to be provided to avoid, prevent, reduce or, where practical and appropriate, offset the potential environmental impacts associated with the construction of the proposed development. The First Iteration EMP [\[REP6-006\]](#) brings together these measures and details how they would be delivered.
- 3.1.7. The purpose of the First Iteration EMP [\[REP6-006\]](#) is to:
- Document all environmental actions and commitments that are required to manage and minimise the environmental effects of the proposed development as identified in the ES. Actions and commitments are combined into a Register of Environmental Actions and Commitments (REAC).

- Provide the equivalent of a code of construction practice containing the control measures and standards to be implemented during construction, including those to avoid or reduce environmental effects.
- Form the basis for the more detailed iterations of the EMP (second and third iterations) that would follow.

3.1.8. The First Iteration EMP would be developed into a more detailed EMP (second iteration EMP) once the detailed design has been finalised (subject to the DCO being granted). The second iteration EMP would include more detailed information and methodologies on the design and construction of the proposed development. It would also include the implementation of appropriate industry standard practices and control measures for environmental impacts arising from construction works. On completion of construction, a final version of the EMP (third iteration EMP) for the operational and maintenance phase of the proposed development would be prepared by the principal contractor.

3.2. THE NEED FOR THE PROPOSED DEVELOPMENT

Application Summary

3.2.1. The Case for the Scheme [\[REP3-018\]](#) sets out the need for the proposed development. It summarises how the proposed development relates to and complies with government policy and the relevant planning policy context. It also provides details of the traffic assessment and the related economic analysis on which the need for the proposed development is based.

3.2.2. The applicant states that the proposed development was included within the 2020-2025 Road Investment Strategy (RIS2) published by government in March 2020 [\[REP3-018\]](#). Section 2.1 [\[REP3-018\]](#) explains that RIS2 committed £27.4 billion of government spending to deliver improvements in the capacity and quality of the strategic road network (SRN) between financial year 2020/21 to 2024/25. The applicant states that RIS2 set out the standard that must be met and identifies the proposed development for which funding would be made available and that the government expected would be built [\[REP3-018\]](#). The proposed development is a 'committed scheme' in the Investment Plan contained in Part 3 (d) of RIS2 which states:

"M60/M62/M66 Simister Island Interchange – improvement of the intersection between the M60 (junction 18), M62 and M66 north of Manchester that improves the traffic flow on the M60."

3.2.3. Chapter 2 [\[REP3-018\]](#) states that RIS2 sets key performance indicators (KPIs) to which the proposed development aims to contribute. Section 2.1.4 lists these KPIs as:

- improving safety for all
- providing fast and reliable journeys
- a well maintained and resilient network
- delivering better environmental outcomes
- meeting the needs of all road users
- achieving efficient delivery

3.2.4. The Case for the Scheme [\[REP3-018\]](#) details how the proposed development contributed to the KPIs. Chapter 4 of [\[REP3-018\]](#) provides further information on the transport problems that support the Case for the Scheme. Chapter 5 of

[REP3-018] summarises the economic appraisal which is used to demonstrate whether the proposed development is likely to represent value for money.

3.2.5. In relation to the transport case for the proposed development [REP3-018] chapter 4 concludes that without the proposed development almost all journey times are forecast to increase over time due to traffic demand. Chapter 4 explains that this situation would be reversed with the proposed development in place, with most journey times forecasted to improve. Chapter 4 [REP3-018] concludes that as a result of the proposed development, motorway (M) 60 junction (J)18 is forecast to operate within capacity up to and beyond 2044.

3.2.6. In relation to the economic case for the proposed development chapter 5 of [REP3-018] concludes that it had an adjusted Benefit to Cost Ratio (BCR) of 1.17 (which means that for £1 spent on the proposed development there would be a £1.17 return to society in benefits) when compared to a Present Value of Costs of £117.3 million. The applicant lists the impacts which could not be monetised but had also been considered as [REP3-018]:

- slight adverse impacts on landscape, historic environment and water environment
- a neutral impact on biodiversity, physical, security, severance and options and values
- moderate and slight beneficial impacts for journey quality and access to services

3.2.7. The Case for the Scheme [REP3-018] concludes that the proposed development objectives align with the objectives of the National Policy Statement for National Networks (NPSNN) and the (then) draft National Networks National Policy Statement 2024 (NNNPS (2024)) as well as the key performance indicators (KPIs) for RIS2. The applicant also states that the proposed development took into account the requirements of the local development plan, which was the Bury Unitary Development Plan (UDP) and the emerging Places for Everyone Joint Development Plan (PfE) [REP3-018]. The applicant concludes that overall, the proposed development is consistent with the objectives of both the UDP and PfE and aligns with the policy requirements, including providing mitigation to reduce or eliminate any potential adverse effects [REP3-018].

Examination Issues

3.2.8. Based on the comments raised by IPs and the ExA's review of the application documents, the economic case and the scheme benefits were the key issues considered during the examination.

3.2.9. Several RRs (including [RR-025], [RR-033] and [RR-034]) considered that the proposed development was not required and investment should be made to other areas of the network. Other RRs (including [RR-005], [RR-010], [RR-011] and [RR-014]) were concerned that the BCR of 1.17 was too low.

3.2.10. The applicant confirmed [REP1-020] that the scheme was originally announced in the RIS1 (2015-2020) as one to be developed for the next 'Road Period' which asked National Highways (NH) to "develop a comprehensive improvement of the intersection between the M60 (junction 18), M62 and M66 north of Manchester upgrading the critical junction for the traffic heading eastwards over the Pennines". The applicant explained that a longlist of options was developed to consider how the issues being experienced on this part of the network could be addressed and to identify those options which best met the scheme objectives to reduce congestion

and improve journey time reliability. The applicant also confirmed that the proposed development was committed to as part of RIS2 (2020-2025).

- 3.2.11. The applicant explained [\[REP1-020\]](#) that their analysis of various traffic data indicated there were significant delays throughout the scheme area on the M60, M62 and M66. The applicant stated that this was due to a combination of high volumes of traffic using this section of the network, the weaving manoeuvres associated with merging and diverging between junctions (including M60 J18 and M60 J17) and downstream slow-moving traffic extending back from M60 J15. The applicant confirmed that the network changes which would be delivered through the scheme would increase network capacity, reduce congestion/delays, and improve the flow of traffic through, and within the vicinity of, M60 J18 providing benefits to road users and freight movements.
- 3.2.12. The applicant stated [\[REP1-020\]](#) that whilst the BCR was low it was positive value for money. The applicant explained that the determination of a scheme's value for money should extend beyond its BCR value and other benefits such as promoting economic growth are not captured and monetised within the BCR [\[REP1-020\]](#).
- 3.2.13. Through first written questions (ExQ1) NE.1.1 and NE.1.4 [\[PD-011\]](#), issue specific hearing (ISH) 2 [\[EV10-001\]](#) and second written questions (ExQ2) NE.2.1 [\[PD-013\]](#) the ExA sought further detail regarding the benefits of the scheme beyond that included within the BCR. The applicant responded that the proposed development's residual capacity to accommodate potential additional traffic in the scheme area (which was not included within the BCR) would provide a benefit to PfE and regeneration in the area (particularly the South Heywood area) [\[REP4-028\]](#). They added that improved journey quality (which would reduce driver stress associated with delays in the scheme area) and benefits accrued by bus services that pass through M60 J18 such as the X43 were also benefits beyond the BCR.
- 3.2.14. Simister Village Community Association ([\[REP1-048\]](#)) and [\[REP1-034\]](#) were concerned that the proposed development had not adequately considered PfE. In response [\[REP2-008\]](#) the applicant stated that part of the proposed PfE Policy JP allocation 1.1 for Heywood/Pilsworth fell within the vicinity of the proposed Northern Loop (work number 05). The applicant explained that the overlap had been discussed with Bury Metropolitan Borough Council (BMBC) and it had been confirmed that the proposed development did not compromise the delivery of the Northern Gateway. BMBC subsequently confirmed in responses to ExQ1 CICE 1.2 and 1.3 [\[REP3-031\]](#) that the proposed Northern Loop would not compromise the delivery of the Northern Gateway. In [\[PD-017\]](#) the ExA requested an update from BMBC on the status of the consultation draft Northern Gateway Development Framework Supplementary Planning Document. In response BMBC submitted a copy of the latest version of the Northern Gateway Development Framework (March 2025) [\[REP8-002\]](#) which incorporates all elements of the proposed development (including the Northern Loop) where they overlap with the Northern Gateway Development.
- 3.2.15. In ISH2 [\[EV10-001\]](#) the ExA asked the applicant if sensitivity tests should be revisited in respect of the PfE Northern Gateway site allocations, bearing in mind the benefits that they were claiming the proposed development would provide in respect of future capacity for PfE. The applicant responded [\[REP4-028\]](#) that in accordance with the Department for Transport (DfT) Transport Analysis Guidance (TAG), development sites within PfE were classed as too uncertain to include in the core traffic forecasts. However, the applicant explained that whilst no sensitivity testing had been undertaken based on the recently emerging additional information

about PfE sites, sensitivity testing which had previously been carried out did include traffic from PfE sites. The applicant confirmed that scenarios were developed with and without the proposed development and that the results indicated that without the proposed development, the additional traffic from Northern Gateway resulted in increased delays in the scheme area. However, they stated that with the proposed development, these delays were reduced and the scheme area would largely operate within capacity in all time periods and for all movements even up to 2061. The applicant accepted that there was a high degree of uncertainty surrounding the ultimate traffic generation for the PfE sites, and how many of the additional transport infrastructure improvements would be funded and delivered. However, they concluded that the modelling work undertaken provided confidence that the scheme would supply a significant betterment over the existing layout in terms of the network's ability to accommodate PfE traffic.

ExA's Findings

- 3.2.16. The need for the development of the national networks and relevant wider government policy is detailed in chapters 2 and 3 of the NPSNN.
- 3.2.17. NPSNN paragraph 2.2 refers to there being a critical need to improve the national networks to address road congestion. Paragraph 2.10 states that: "The Government has therefore concluded 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".
- 3.2.18. The importance of improving the road network is confirmed by NPSNN paragraph 2.22, as without doing so: "... it will be difficult to support further economic development, employment and housing and this will impede economic growth and reduce people's quality of life. The Government has therefore concluded that at a strategic level there is a compelling need for development of all national road networks."
- 3.2.19. NPSNN paragraph 2.23 explains 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.
- 3.2.20. 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."
- 3.2.21. NPSNN 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."

- 3.2.22. NPSNN paragraph 5.173 states that where the project conflicts with a proposal in a development plan, the Secretary of State should take account of the stage which the development plan document has reached in deciding what weight to give to the plan.
- 3.2.23. NNNPS (2024) contains similar policy provisions to the NPSNN. Paragraph 3.22 mirrors the statement in NPSNN paragraph 2.22 stating that there is a compelling need for the development of the strategic network and adds that the Secretary of State should give substantial weight to considerations of need where these align with those set out in the NNNPS (2024).
- 3.2.24. The ExA considers that at a strategic level, there is a compelling need for development of the national networks to address road congestion and facilitate national and local economic growth. BMBC support the proposed development and consider that it would significantly improve traffic flows at J18, relieve congestion, and improve accessibility which would support the growth objectives for the nationally significant North East Growth Corridor and the wider Northern Areas [\[REP1A-001\]](#).
- 3.2.25. The ExA consider that as the Secretary of State is both the determinator and funder for the proposed development, the BCR and issues concerning value for money will be a matter for them should they be minded to make the order. However, the ExA considers the Secretary of State would likely have considered this already when formulating the said national strategies. The ExA thus did not consider this was an examination issue, and we subsequently did not explore the matter further.
- 3.2.26. The ExA is satisfied that the proposed development would not compromise the delivery of the PfE Northern Gateway allocation and therefore NPSNN Paragraph 5.173 does not apply. We are satisfied that the applicant has detailed the scheme benefits (including those which would support PfE) beyond those included within the BCR in accordance with the NPSNN (paragraph 4.3). The ExA consider that there is sufficient evidence, including from the inclusion within both RIS1 and RIS2 as a committed scheme, to find that there is a need for the proposed development. We consider the potential adverse impacts throughout the remainder of section 3 of this report.

Conclusions

- 3.2.27. National Policy Statement for National Networks (NPSNN) demonstrates a clear need for the proposed development, with particular reference to paragraph 4.2 which states that the Secretary of State must start with a presumption in favour of granting consent to applications for nationally significant infrastructure projects (NSIP). Through the inclusion of the scheme in both RIS1 and RIS2 the government has taken account of strategic effects and committed spending for this proposed development. The ExA is therefore satisfied that the NPSNN, RIS1 and RIS2 indicates that a clear need exists for road improvement projects, which include this proposed development.
- 3.2.28. The ExA concludes that the proposed development is fully in accordance with the needs case established by NPSNN. This is also reinforced by the NNNPS (2024) which places a greater weight on the consideration of need. It could also help support the growth objectives for the Northern Gateway set out in PfE. The ExA therefore considers this matter would attract great positive weight for the making of the order.

3.3. ALTERNATIVES

Application Summary

- 3.3.1. Chapter 3 of the ES [\[APP-042\]](#) details the design options which were considered and the Case for the Scheme [\[REP3-018\]](#) summarises the options and the development of the scheme.
- 3.3.2. Chapter 3 of the ES [\[APP-042\]](#) details the stages of the assessment methodology. Stage 0 'Strategy, shaping and prioritisation' lists the package of improvements that were considered would provide potential resolution to the congestion at M60 J18 as being:
- A free flow link between the anti-clockwise M60 and eastbound M62.
 - Roundabout gyratory improvements to provide additional capacity for other movements.
 - Lengthening the free flow link between the M66 and M62.
 - Lengthening the M60 westbound entry slip road.
 - A package of additional signage and technology.
 - Other free flow movements that would address the junction congestion issues.
- 3.3.3. At Stage 0 a total of 148 improvement options, formed from different combinations of 30 highway elements, were identified to provide potential resolution to the congestion at M60 J18. In October 2015, at the end of Stage 0, value management workshops sifted these options down to 5 (table 3.2) [\[APP-042\]](#) (Options A to E).
- 3.3.4. Stage 1 'Options identification' refined the five options (table 3.3) [\[APP-042\]](#). An options workshop in January 2018 considered the options against the problems to be solved and objectives to be met by the proposed development and decided which ones merited further development (table 3.4) [\[APP-042\]](#). The chosen options were (as shown in the figures below):
- Option A1 – Free flow link from M60 northbound to M60 westbound and an interchange link providing a dedicated route for M60 eastbound to M60 southbound traffic.
 - Option A2 – Similar to Option A1 but with a smaller loop for the interchange link.
 - Option C1 – Free flow interchange links for the M60 northbound to the M60 westbound and for the M60 eastbound to M66 northbound traffic. An additional new link within the existing gyratory to cater for M66 southbound to M60 westbound traffic.
 - Option C2 – Similar to Option C1 but with widening of the roundabout north overbridge to provide two lanes for the M60 northbound to M62 eastbound physically segregated from three lanes for the M60 eastbound to M60 southbound due to increases in noise in Noise Important Areas (NIA).

Figure 4: Plate 3.1 Option A1 from ES Chapter 3 [APP-042]

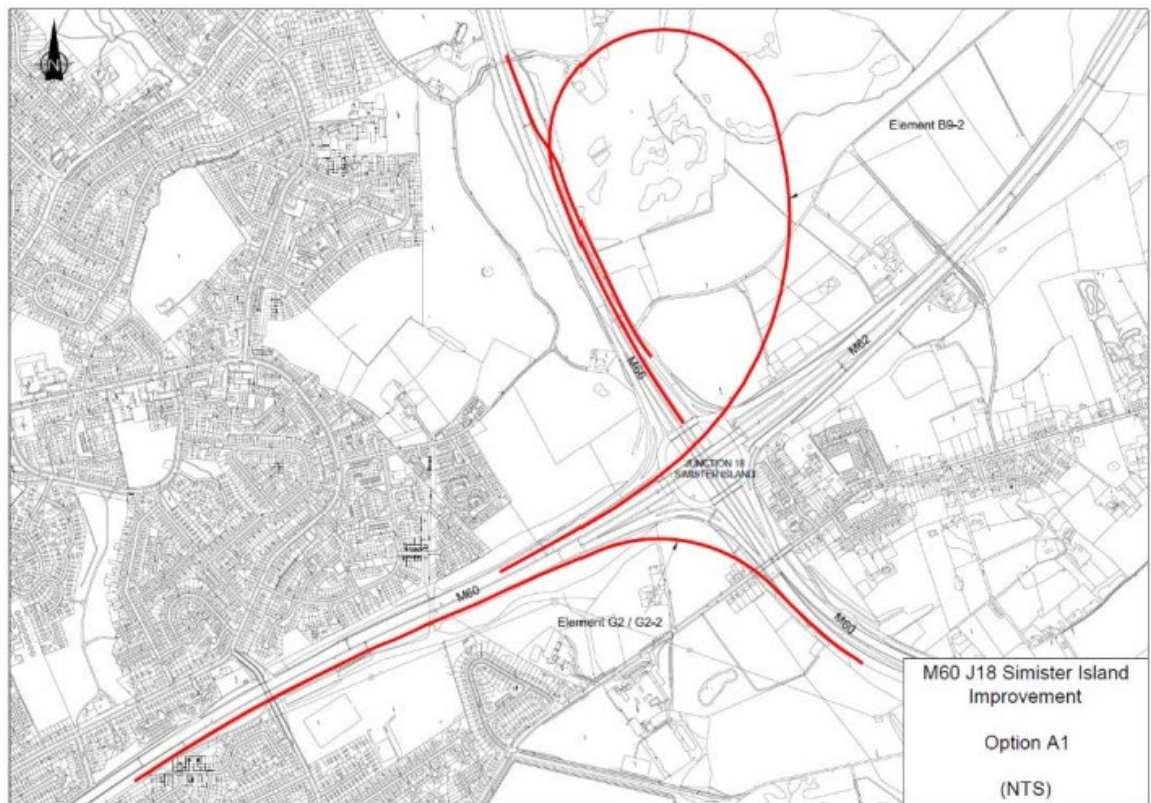


Figure 5: Plate 3.2 Option A2 from ES Chapter 3 [APP-042]

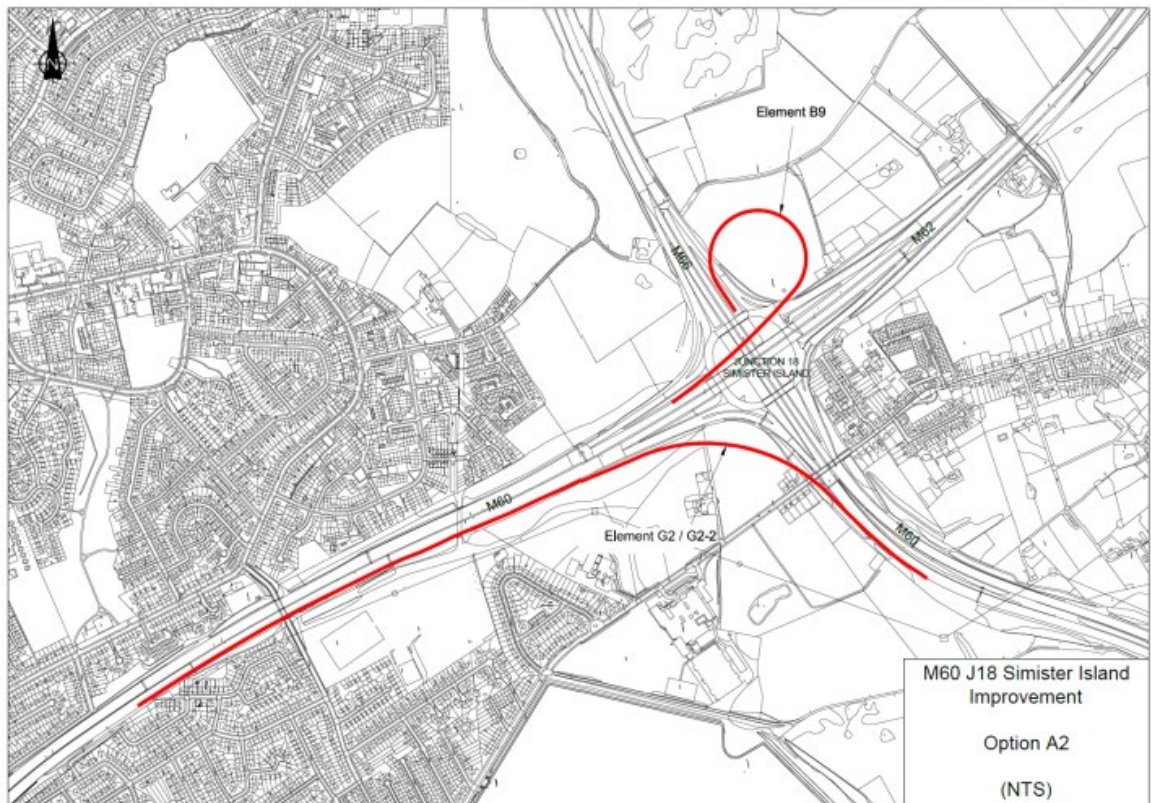


Figure 6: Plate 3.3 Option C1 from ES Chapter 3 [\[APP-042\]](#)

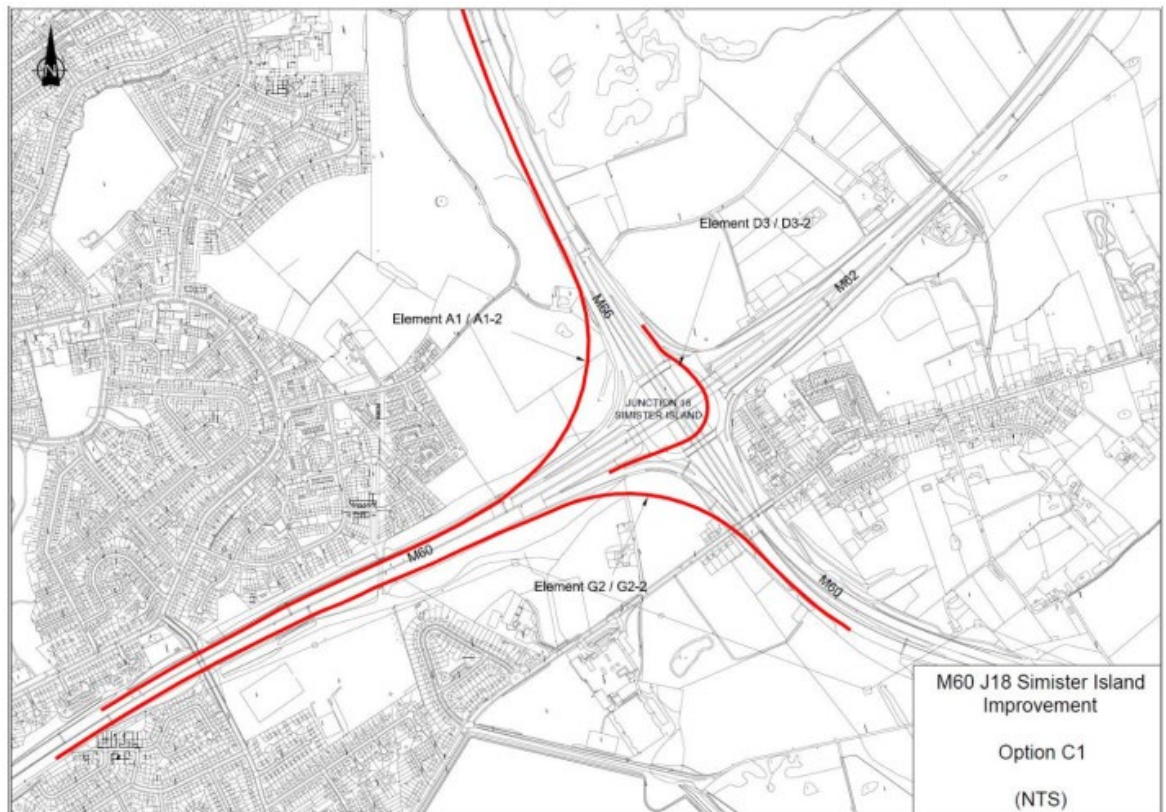
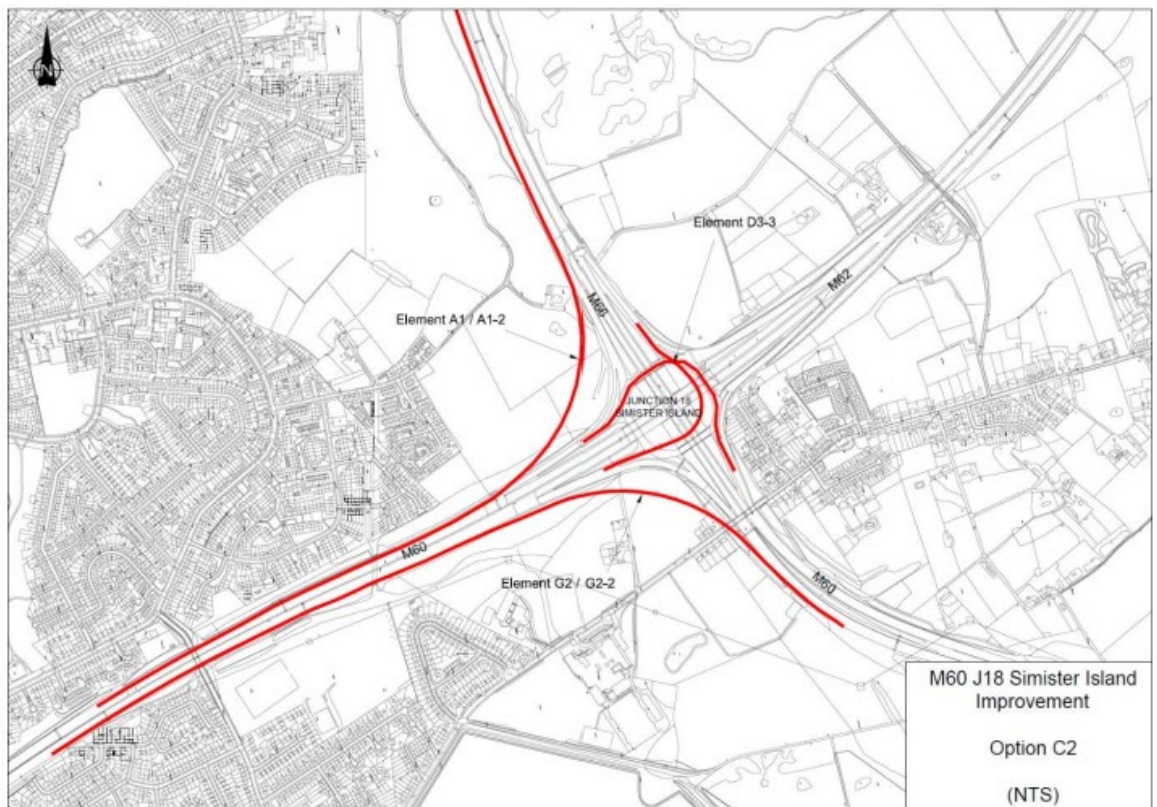


Figure 7: Plate 3.4 Option C2 from ES Chapter 3 [\[APP-042\]](#)



- 3.3.5. The applicant explains that an environmental assessment was undertaken during Stage 1 which considered the four selected options in detail [\[APP-042\]](#). The assessment found that Option A1 was likely to have the greatest impact on a number of environmental aspects (particularly noise, landscape, cultural heritage and people and communities), though all options were likely to have significant adverse policy impacts (in relation to NIAs) on noise. [\[APP-042\]](#) (table 3.5) summarises the environmental issues and possible significant environmental effects which the applicant identified for each option. The applicant also summarises the assessment results for Options A1, A2, C1 and C2 with respect to engineering, environment, land acquisition, economics, buildability and programme. The assessment found that Option A2 was forecast to produce the highest journey time benefits followed by Options A1, C2 and C1, and all options were forecast to have a small negative safety impact (though noting that this was likely to be a pessimistic forecast due to the required rise of national average data to predict future collision frequencies) (table 3.6) [\[APP-042\]](#). At the end of Stage 1, following the assessments, Options A1 and C1 were discarded for a number of design, economic, and environmental reasons following their respective assessments (detailed in table 3.6 [\[APP-042\]](#)).
- 3.3.6. Stage 2 'Option selection' developed the two remaining options (A2 and C2). These options became known as the 'Northern Loop' (developed from Option A2) and the 'Inner Links' (developed from Option C2). A public consultation was held for these two options from 22 June 2020 to 17 August 2020. ES chapter 3 table 3.10 [\[APP-042\]](#) details the key responses from statutory environmental bodies. Over 67% of respondents to the public consultation preferred the Northern Loop option (paragraph 3.3.48) [\[APP-042\]](#).
- 3.3.7. Following the public consultation the Northern Loop option was chosen as the preferred option. ES chapter 3, paragraph 3.3.47 [\[APP-042\]](#) explains that while both options would meet the proposed development objectives, it was considered that the Northern Loop would provide greater capacity improvements and journey time savings for road users when compared to the Inner Links. The applicant went on to state that the benefits would therefore be felt for longer into the future, as predicted traffic levels continued to grow, and that this would ensure that the SRN would function efficiently for longer. The applicant confirmed that although more expensive than the Inner Links option, the longer-term benefits offered by the Northern Loop option would provide better value for money.
- 3.3.8. ES chapter 3, paragraph 3.3.48 [\[APP-042\]](#) states that due to the complex design, the Inner Links option would be more challenging to build, and would require more traffic management and road closures during construction. The applicant notes that concerns were raised during consultation that introducing additional lanes and signals on the roundabout could make the junction more confusing for drivers to navigate, leading to an increased risk of accidents. As the Northern Loop option removed the need for additional lanes and signals going through the junction, the applicant considers that it would be less confusing for drivers.
- 3.3.9. In relation to environmental impacts the applicant states that the Stage 2 assessment concluded that there was little difference between the two options in terms of potential environmental impacts and that although the additional land take of the Northern Loop option means that it has slightly greater impact than the Inner Links option on some areas, particularly for landscape and loss of agricultural land, the difference was not significant enough to have an impact on the choice of preferred option to take forward to Stage 3 [\[APP-042\]](#).

- 3.3.10. The Northern Loop option was further refined during Stage 3 'Preliminary Design'. This work included taking account of the recommendation given in the Transport Select Committee's report that the construction of new all lane running motorways should be paused. A statutory consultation was undertaken between 15 February and 28 March 2023 (6 weeks) when prescribed consultees (as per the requirements of Section 42 of the PA2008) and the local community and wider public were consulted. A further supplementary consultation was undertaken between 31 July and 10 September 2023. The purpose of the supplementary consultation was to inform affected stakeholders of the updates and changes to the proposed development since the statutory consultation and allow them to provide feedback.

Examination Issues

- 3.3.11. Based on the comments raised by IPs and the ExA's review of the application documents, the main issues considered during the examination were:

- Consideration of Modal Alternatives.
- Why the Inner Links option was discarded.
- Location of the main construction compound.
- Location of attenuation pond 1.

Consideration of Modal Alternatives

- 3.3.12. Several RRs (including [\[RR-005\]](#), [\[RR-010\]](#), [\[RR-020\]](#), [\[RR-037\]](#) and [\[RR-054\]](#)) were concerned that sustainable alternatives to the proposed development had not been considered and that the funding for the proposed development should instead be spent on investment into public transport to reduce car use.

- 3.3.13. The ExA examined these concerns in compulsory acquisition hearing (CAH) 1 [\[EV9-001\]](#). The ExA asked the applicant to detail how the use of alternative transport modes had been assessed and at what stage in the process this was done. In response to action point 1 from CAH1 [\[EV9-002\]](#) the applicant stated that an assessment of alternative transport modes had been undertaken during the early development of the scheme which had included evaluation of national rail, local light rail, buses, coaches and park and ride systems. The applicant confirmed that due to the wide origin of traffic movements using the scheme area none of these alternative transport modes would reasonably solve the identified problems or represent a realistic viable alternative [\[REP4-028\]](#).

Why the Inner Links option was discarded

- 3.3.14. The inner loops option, whilst involving less land take (and less encroachment into the Green Belt), was rejected by the applicant in favour of the Northern Loop. Through ISH2 [\[EV10-001\]](#) the ExA examined the reasons why the Northern Loop was chosen as the preferred option when its impact on land take was greater, and asked for further detail regarding the comparative benefits each option supplied.
- 3.3.15. The applicant explained that since the completion of the option selection stage of the scheme in 2020 and the selection of the Northern Loop as the preferred option, there had been several updates to the traffic model, development of the scheme design, review of the scheme costs and updates to DfT's traffic and economic growth forecasts. This meant that it was not possible for the applicant to provide a BCR for the Inner Links that was consistent or comparable with the current Northern Loop adjusted BCR of 1.17 as no further assessment of the Inner Links option had been carried out since the preferred route was announced. However, the applicant

confirmed that at the time of the preferred route announcement the adjusted BCR for the Northern Loop was 2.76 and for Inner Links was 2.46 [REP4-028].

3.3.16. The applicant reiterated [REP4-028] that the Northern Loop was the preferred option for the following reasons:

- preferred by members of the public (67% vs 24% Inner Links) and many key stakeholders
- greater capacity and journey time improvement, for longer
- considered to be the safer of the two layouts
- less complex to construct with less intrusive roadworks
- less confusing for drivers to navigate
- overall represents better value for money

3.3.17. The applicant stated that at the option selection stage conclusions were made regarding the capacity and longevity of the two options. In summary the applicant confirmed that the Northern Loop option had spare capacity available for all four turns through the junction in all three forecast years (2023, 2038 and 2051) and time periods apart from the M60 northbound to M62 eastbound movement in the PM peak in 2051. The applicant concluded that the traffic modelling work undertaken prior to the DCO application (2023) for the Northern Loop option indicated that the scheme area was forecast to operate within capacity up to the latest horizon year of 2061 [REP4-028].

Location of the Main Construction Compound

3.3.18. The Environmental Scoping Report [APP-143] (paragraph 2.5.8) states that the main site compound would likely be located to the north-east of M60 J18 on land to the south of Pike Fold Golf Club. However, the works plans [REP5-004] proposes the main site compound to the north-west of M60 J18, in land adjacent to Mode Hill Lane.

3.3.19. Two people, David Heaney (at the open floor hearing (OFH1) [EV6-002]) and [RR-035], expressed concern about the effect a construction compound located off Mode Hill Lane would have on their quality of life, particularly with respect to noise. The ExA were also concerned about the potential nuisance that could be caused by a construction compound located on land adjacent to Mode Hill Lane. Through ISH2 [EV10-001] and ExQ2 PHH.2.2 [PD-013] the ExA sought clarification and justification from the applicant as to why the main site compound was proposed closer to residential areas than previously envisaged at scoping stage. The applicant confirmed [REP5-033] that locations within or adjoining the proposed development had been considered to understand the benefits and disbenefits of each location with respect to site compounds. The applicant explained [REP5-033] that several criteria were considered, including:

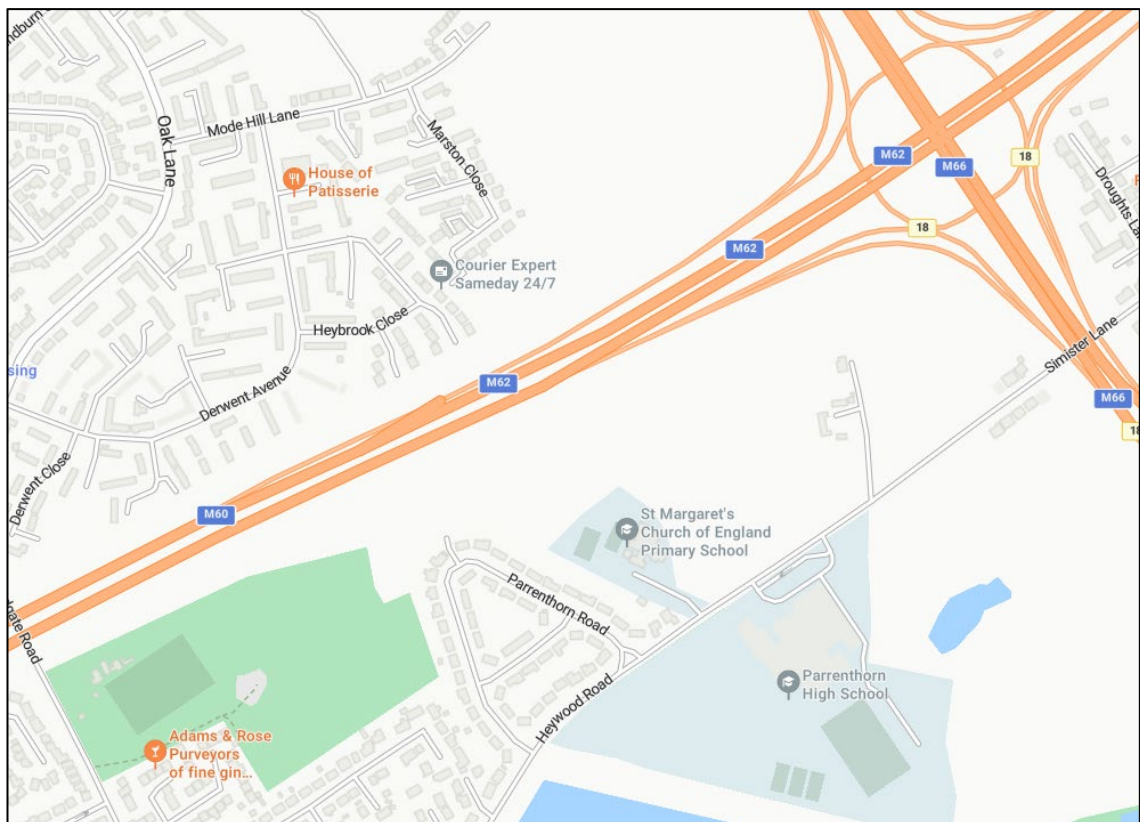
- connectivity to the site works
- proximity to environmental receptors
- accessibility from both strategic and local road networks
- requirements and interfaces with statutory utilities
- ability to retain compounds and accesses throughout the 3-year construction period
- interface with local communities including residential areas, roads and schools

3.3.20. The applicant stated that consideration of the safety of the work force and safety of the general public (both SRN road users and local communities) was prioritised when considering the temporary operation of site compounds. The applicant

explained that given the nature of the proposed development, there was very limited opportunity to locate a main site compound which could be easily and safely accessed from the local road network (LRN) only.

- 3.3.21. The applicant explained that a main site located to the north-east of M60 J18 was discounted due to the unsuitability of Egypt Lane (which is a single lane road) to accommodate traffic accessing from the LRN, and the increased interface of traffic with farm vehicles and horse riders using it. In relation to a potential main site compound on land to the south-west of M60 J18 the applicant explained that access to it would result in increased traffic on Heywood Road, which accommodated the entrances to both Parrenthorn High School and St Margaret's CoE Primary School. The applicant concluded that land in the north-east or south-west quadrants were effectively inaccessible and therefore a main site compound in land off Mode Hill Lane (north-west quadrant) was proposed [\[REP5-033\]](#) (see map below).

Figure 8: Extract from Bing maps showing Heywood Road and Mode Hill Lane



- 3.3.22. In relation to the mitigation of any nuisance related to the use of land in the north-west quadrant the applicant stated that the main site compound had been positioned to the eastern edge of the fields off Mode Hill Lane to provide a buffer between the site compound and the residential areas around Mode Hill Lane and Marston Close. The applicant also confirmed that the proposed buffer would provide opportunity to install earthworks bunds which would also provide visual screening to the residential areas [\[REP5-033\]](#).

Location of attenuation pond 1

- 3.3.23. Mr Hillary (the Hillary Family) [\[RR-032\]](#) considered that attenuation pond 1 (works number 37) should be located either within land enclosed by the Northern Loop or closer to the Northern Loop than was proposed to reduce the amount of land being

taken. The Hillary Family own plots 2/16a to and including 2/16f. Concerns in relation to compulsory acquisition (CA) are covered in more detail in section 6 of this report.

3.3.24. In CAH1 [\[EV9-001\]](#) and through response to action point 2 [\[REP4-028\]](#) the applicant detailed the reasons why it considered attenuation pond 1 (works number 37) could not be located within the land enclosed by the Northern Loop. These reasons included environmental and safety considerations and engineering constraints such as:

- The design constraints and marginal level differences between the highway infrastructure and drainage outfall to Castle Brook would result in the need for a pump if the pond was located inside the loop. A pumped solution would have associated cost and safety implications with respect to initial design and installation, and with the future operation and maintenance.
- The topography of the pond 1 site, if located within the loop, could necessitate a deep excavation in poor ground material which would have associated health and safety risks during construction, and result in large volumes of waste material.
- Positioning attenuation pond 1 within the land enclosed by the loop would pose a barrier to wildlife using it.

3.3.25. In relation to the suggestion by the Hillary Family that the pond could be positioned closer to the Northern Loop the applicant stated that the pond shape and footprint was a function of the existing topography of the land, the need to maximise distance between inlets and outlets for efficient pollutant removal, and to allow maintenance activities to be carried out [\[REP8-005\]](#).

3.3.26. The Hillary Family's summary statement [\[REP7-024\]](#) confirms that the Hillary Family maintained their objection to the location of attenuation pond 1 at the close of the examination.

ExA's Findings

3.3.27. In respect to alternatives NPSNN paragraph 4.26 states that applicants should comply with all legal requirements and any policy requirements set out in it on the assessment of alternatives. In particular, those required by the EIA Directive, specific legal requirements for the consideration of alternatives such as those under the Habitats and Water Framework Directives (WFDs) and specific NPSNN policy requirements including the flood risk sequential test and the assessment of alternatives for developments in National Parks.

3.3.28. NPSNN 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."

3.3.29. NNNPS (2024) contains similar policy provisions to the NPSNN. Paragraphs 4.21 and 4.22 provide further detail in relation to the options appraisal process.

3.3.30. The ExA is satisfied that a proportionate option consideration of alternatives was undertaken as part of the investment decision making process in accordance with NPSNN paragraph 4.27. We are also satisfied that the fundamental and identified

need for the proposed development could not be met in some other way such as investment in alternative transport modes.

- 3.3.31. The ExA is satisfied that the applicant has rigorously tested the two alternative options (Inner Links and Northern Loop) in order to determine the preferred option. The ExA is satisfied that the Northern Loop and Inner Links options are similar in terms of potential environmental impacts and any differences are not significant enough to have had an impact on the choice of the preferred option. The ExA is satisfied that the preferred Northern Loop option, in comparison to the Inner Links option, would provide (amongst other benefits) greater capacity and journey time improvements, be safer and easier to construct, and overall represent better value for money. Whilst the Northern Loop option does require more land take (including further encroachment into the Green Belt) we are satisfied that there are no other reasonable alternatives. The impact to the Green Belt is considered in more detail in section 3.9 below.
- 3.3.32. The ExA notes that the location of the construction compound closer to residential properties will undoubtedly cause nuisances to neighbouring properties, and we discuss in the population and human health section below the measures the applicant proposes to mitigate them. However, the ExA is satisfied that the compound could not realistically or practically go anywhere else. The applicant has provided sufficient evidence to demonstrate why this is the preferred location. The ExA is also satisfied that the applicant has sufficiently considered the residential receptors in determining the chosen location and is proposing appropriate mitigation measures to reduce adverse effects. These mitigation measures are within the Outline Construction Compound Management Plan [\[APP-136\]](#) (Appendix I of the First Iteration EMP) and commitments in the REAC [\[REP6-006\]](#) for example commitment NV8 which states that topsoil would be stockpiled to act as noise screens where appropriate. Matters related to the impact on population and human health from the main construction compound is considered in section 3.14.
- 3.3.33. Throughout the examination the Hillary Family maintained the opinion that attenuation pond 1 (work number 37) should be either located in the land enclosed by the Northern Loop (work number 05) or drawn much tighter to the footprint of the Northern Loop to reduce the land take ([\[RR-031\]](#), [\[RR-032\]](#), [\[REP1-040\]](#), [\[REP4-031\]](#) and [\[REP5-039\]](#) [\[REP7-024\]](#)). The ExA understand the Hillary Family's concerns and their reasons why the proposed attenuation pond should be located within the Northern Loop or drawn closer to it. However, the ExA agrees with the applicant that to do so would be impractical because of the environmental, safety and engineering constraints discussed above. For this reason, the ExA considers the applicant has provided sufficient explanation and justification as to the reasons for the pond location. Matters in relation to CA will be covered in section 6 of this report.

Conclusions

- 3.3.34. The ExA concurs with ES chapter 3 [\[APP-042\]](#) and is satisfied that the alternative options for the proposed development have been rigorously tested by the applicant. We are also satisfied that the applicant has considered reasonable alternatives suggested by IPs during the examination and justified the reasons for selecting the preferred option.
- 3.3.35. The ExA is satisfied that the proposed development is in accordance with NPSNN and, where important and relevant, NNNPS (2024), local policies and strategies and all other legislation.

3.4. AIR QUALITY

Introduction

- 3.4.1. This section examines the effects on air quality from pollutants including nitrogen oxide (NO_x), nitrogen dioxide (NO₂) and particulate matter of 10 or 2.5 micrometre or less in diameter particles (PM₁₀ and PM_{2.5}).
- 3.4.2. Emissions from carbon dioxide (CO₂) and other greenhouse gas emissions are considered in the climate section of this report (section 3.6). Impacts on ecological receptors from air quality are covered in this section although matters relating to impacts on the Rochdale Canal Special Area of Conservation (SAC) due to potential air quality impacts are considered in section 4.

Application Summary

- 3.4.3. ES chapter 5 [\[APP-044\]](#) sets out the applicant's assessment of air quality effects during construction and operation on both ecological and human health receptors from NO_x, NO₂, PM₁₀ and PM_{2.5}.
- 3.4.4. ES chapter 5 is accompanied by figures 5.1 to 5.11 [\[APP-058\]](#), [\[APP-059\]](#), [\[APP-060\]](#) and [\[APP-061\]](#). In summary these illustrate the study area, map the location of modelled human health and ecological receptors and illustrate the assessment results during construction and operation at each receptor. ES chapter 5 is also supported by the following appendices:
- Appendix 5.1: Air Quality Methodology [\[APP-079\]](#)
 - Appendix 5.2: Air Quality Results [\[APP-080\]](#)
 - Appendix 8.2: Designated Sites Air Quality Assessment [\[APP-090\]](#)
- 3.4.5. ES section 5.3 provides a summary of the relevant air quality legislation and standards that have informed the assessment. In particular, it identifies the national air quality objectives (AQO) and European Directive limit values (LV) for NO_x, NO₂, PM₁₀ and PM_{2.5} in table 5.4 of ES chapter 5 [\[APP-044\]](#). Where air quality levels are higher than stated AQOs or LVs, the terms 'exceedance' or 'exceedances' is used.
- 3.4.6. Almost all the order limits falls within the Greater Manchester Combined Authority (GMCA) Air Quality Management Area (AQMA) which was declared in May 2016 due to exceedances in the annual mean objective for NO₂ of 40 micrograms per metres cubed (µg/m³). ES figures 5.1-5.3 [\[APP-058\]](#) illustrate the boundary of the AQMA.
- 3.4.7. The study areas were established following criteria in the Design Manual for Roads and Bridges (DMRB) LA 105: Air quality (Highways England, 2019). In particular, an affected road network (ARN) based on predicted traffic changes was established using the criteria listed in paragraph 5.4.10 of ES chapter 5 [\[APP-044\]](#). A representative number of worst-case human health, compliance risk and ecological receptors situated within 200 metres (m) of the ARN were then selected for assessment. The study area for construction dust, shown on ES figure 5.7 [\[APP-059\]](#), is an area defined within 200m of the order limits.
- 3.4.8. To establish baseline conditions, air quality information including historic monitoring data and local authority annual status reports was obtained (see paragraph 5.7.2 in ES chapter 5 for full list). In addition, the applicant undertook scheme-specific monitoring during a six-month period between April and October 2021 at 22 locations to account for gaps in existing monitoring. The monitored data was subject

to a verification process (including bias-adjustment and annualisation). The annualised and bias-adjusted data for NO₂ annual mean concentrations in 2018 is presented in table 1.4 in ES Appendix 5.1 [\[APP-079\]](#) with table 5.15 in ES chapter 5 [\[APP-044\]](#) identifying the locations where exceedances in the NO₂ annual mean AQO or LV, and in some cases NO₂ 1-hour mean (60µg/m³) AQO or LV, were monitored. The full monitored NO₂ concentrations within the study area for the period 2015 to 2021 is presented in table 1.5 in [\[APP-079\]](#) which also shows similar exceedances of the NO₂ annual mean AQOs or LVs at certain monitoring stations.

- 3.4.9. To predict pollutant concentrations from the proposed development at sensitive human health and ecological receptors, the applicant undertook air quality dispersion modelling following the process explained in ES Appendix 5.1 [\[APP-079\]](#). The model uses a 2018 base year to align with the base year used in the applicant's traffic model and contains a future baseline of 2028 (construction year) and 2029 (operation year 1). Amongst other things, the model is informed using traffic data, pollution measurements and meteorological measurements from 2018.
- 3.4.10. Against the baseline conditions, ES chapter 5 [\[APP-044\]](#) considers that the sensitivity of the receiving environment is high. This is due to the GMCA AQMA designation where monitored exceedances of the NO₂ annual mean AQO has been measured in the study area and the potential for exceedances at designated ecological sites through nitrogen deposition.
- 3.4.11. Tables 5.12 and 5.13 in ES chapter 5 [\[APP-044\]](#) set out how the significance of effect is determined. For human health receptors, the magnitude of change is established based on the number of receptors which would experience an 'imperceptible' (less than 0.4µg/m³), 'small' (greater than 0.4µg/m³), 'medium' (greater than 2µg/m³) and 'large' (greater than 4µg/m³) change in concentration between the 'do minimum' (DM) (without the scheme) and 'do something' (DS) (with scheme) scenarios. Significance is then determined by the number of receptors falling within each magnitude of change category which would result in either a worsening or improvement of air quality which already exceeds the AQO or the creation or removal of an existing exceedance. For ecological receptors, significance is determined based on increases in nitrogen deposition rate (combined impact from NO₂ and ammonia).
- 3.4.12. During construction, table 1.1 in ES Appendix 5.2 [\[APP-080\]](#) presents the predicted concentrations for NO₂ and PM₁₀ at all modelled human health receptors. Exceedances of the annual mean NO₂ LV are predicted at 7 human health receptors located on Kensington Street to the north of the M60 between J17 and J18 in the DM 2028 scenario (as also identified in table 5.23 in ES chapter 5 [\[APP-044\]](#)). Concentrations at these receptors during the DS 2029 scenario are predicted to result in a 'small' reduction of 0.6µg/m³ due to decreases or rerouting of traffic although an exceedance in annual mean NO₂ at each receptor would remain. Overall, the ES predicts a reduction in annual mean NO₂ concentrations (DS-DM) at 317 of the 415 human receptors and an increase at 88 receptors. None of the receptors would exceed the hourly mean NO₂ LV or the LVs for PM₁₀ and PM_{2.5}.
- 3.4.13. For ecological receptors during construction, 4 modelled receptors across 2 ecological sites (Philips Park and North Wood Local Wildlife Site and Philips Park Local Nature Reserve) would have a predicted combined total deposition rate above the minimum critical load with both a predicted change in nitrogen deposition of more than 1% of the minimum critical load and of more than 0.4kg N/ha/year. These sites were considered further in ES chapter 8 [\[REP3-010\]](#) which concludes that there would be no significant effects.

- 3.4.14. The ES acknowledges a high risk from dust emissions during construction and identifies 1,174 human health receptors and 2 designated habitats within 200m of construction activities that could be affected. However, through the imposition of dust mitigation measures contained in commitments AQ1 and AQ2 of the REAC [\[REP6-006\]](#) and the measures set out in the Outline Air Quality and Dust Management Plan (oAQDMP) [\[APP-128\]](#), the applicant considers there would be no significant effects from dust.
- 3.4.15. During operation, table 1.2 in ES Appendix 5.2 [\[APP-080\]](#) presents the predicted concentrations at all modelled human health receptors for NO₂ and PM₁₀. Exceedances of the annual mean NO₂ LV are predicted to remain at the 7 human health receptors located on Kensington Street in the DM 2029 scenario. However, as also identified in table 5.25 in ES chapter 5 [\[APP-044\]](#), concentrations of NO₂ at each of these receptors during the DS 2029 scenario would reduce by a maximum of 4µg/m³ (medium change) below the 40µg/m³ LV primarily due to reduced congestion between M60 J17 and J18. Overall, the ES predicts a reduction in annual mean NO₂ concentrations (DS-DM) at 188 of the 557 human receptors and an increase at 368 receptors. None of the receptors would exceed the AQO or LVs in respect of annual mean NO₂, hourly mean NO₂, PM₁₀ or PM_{2.5}.
- 3.4.16. For ecological receptors during operation, 32 of the modelled receptors across 8 ecological sites would have a predicted combined total deposition rate above the minimum critical load with both a predicted change in nitrogen deposition of more than 1% of the minimum critical load and of more than 0.4kg N/ha/year. These sites are considered further in ES chapter 8 [\[REP3-010\]](#) which concludes that there would be no significant effects.
- 3.4.17. The assessment findings also include a compliance risk assessment to model the potential risk of the proposed development affecting air quality LV compliance for both construction and operation. The location of these receptors are shown in figure 5.6 [\[APP-059\]](#) and the assessment results presented in tables 1.7 and 1.8 in [\[APP-080\]](#). None of the compliance risk receptors are predicted to exceed AQOs or LVs for NO₂, PM₁₀ or PM_{2.5} during construction or operation and therefore potential impacts are considered to be not significant.
- 3.4.18. Overall, there would be no worsening in air quality at receptors already exceeding LVs in respect of NO₂ annual mean concentrations during construction and no exceedances of the AQO or LVs in respect of NO₂, PM₁₀ or PM_{2.5} are predicted during operation. Therefore, the ES considers there would be no significant effects on air quality at human health, ecological or compliance risk receptors.

Examination Issues

- 3.4.19. Over 20 RRs raised concerns relating to air quality matters during the examination. Based on the comments raised by IPs and the ExA's review of the application documents, the key issues considered during the examination were:
- Current position regarding air quality and results from recent monitoring.
 - Construction effects from dust.
 - Operational effects on human health receptors and impacts on meeting AQOs or LVs in the Greater Manchester (GM) AQMA.
 - Consideration of new PM_{2.5} targets.
 - Need for monitoring during operation.

Current position regarding air quality and results from recent monitoring

- 3.4.20. Approximately 14 RRs raised concern with existing poor levels of air quality (for example [\[RR-014\]](#), [\[RR-017\]](#), [\[RR-022\]](#) [\[RR-047\]](#) and [\[RR-056\]](#)) and considered that air pollution would remain unacceptably high, above safe limits and in some cases made worse with or without the proposed development. In addition, [\[RR-046\]](#) referred to the findings in ES chapter 5, table 5.15 [\[APP-044\]](#) and ES appendix 5.2 [\[APP-080\]](#) which shows exceedances of the NO₂ AQO at monitored sites in 2018.
- 3.4.21. Concerns were separately raised in [\[RR-011\]](#) that there were no up-to-date figures on air quality monitoring within the area nor detailed modelling carried out by the local councils or the applicant. Concerns regarding past usage of passive diffusion testing miles away from the 'Simister Circle' were raised in [\[RR-037\]](#).
- 3.4.22. Friends of Carrington Moss (FoCM) commented that GM's '5-year plan' states that NO₂ levels in GM are in breach of legal limits [\[REP1-045\]](#). They also referred to PfE paragraph 5.45 which notes that GM has signed up to achieve the World Health Organisation's (WHO) 'Breathe Life City' Status by 2030. FoCM [\[REP1-045\]](#), Simister Village Community Association [\[REP1-048\]](#) and [\[REP1-034\]](#) all raised concern that Simister and Bowlee were experiencing illegal levels of pollution.
- 3.4.23. The applicant noted the concerns raised in RRs but stated that ES chapter 5 [\[APP-044\]](#) had assessed the impact of the proposed development on air quality at relevant locations within the AQMA. In response to [\[RR-046\]](#), the applicant advised that the results in table 5.15 [\[APP-044\]](#) are for air quality monitored data in 2018 although table 1.5 in ES appendix 5.1 [\[APP-079\]](#) identifies a large number of monitoring sites in 2018 that were below the NO₂ AQO. The applicant also noted that monitoring tended to be undertaken at worst-case locations and the 2018 results are not affected by the proposed development [\[REP1-020\]](#).
- 3.4.24. The applicant further explained that the 2018 base year modelled concentrations explained in paragraphs 5.7.23 to 5.7.25 and 5.7.32 to 5.7.34 of ES chapter 5 [\[APP-044\]](#) show exceedances of the NO₂ LV close to the motorway network. However, by construction and opening year the NO₂ modelled results presented in section 5.10 of [\[APP-044\]](#) are either below the LV or reduced in concentration and therefore the proposed development would not result in non-compliance of legal limits. This was due to either a reduction in congestion, traffic being moved further away from receptors, such as by the proposed Northern Loop (work number 05), and replacement of older vehicles with newer less polluting vehicles [\[REP2-007\]](#).
- 3.4.25. The applicant also considered that the GM authorities signing up to the WHO's 'Breathelife' network was a statement on the aim to improve air quality but it does not make a legal commitment to meet the WHO guidelines, which are not legally binding and therefore does not require to be assessed against [\[REP2-007\]](#).
- 3.4.26. BMBC's local impact report (LIR) noted the location of the proposed development within the GM AQMA and that BMBC had been identified by DEFRA as an area requiring to significantly improve air quality [\[REP1A-001\]](#).
- 3.4.27. Following comments in RRs, the ExA asked BMBC in ExQ1 AQ.1.2 [\[PD-011\]](#) for details of the most recent air quality monitoring status report and to provide a summary of its findings to gain an understanding of the most up-to-date position of air quality levels in the scheme area. In response, BMBC submitted a copy of the GMCA 2023 Air Quality Annual Status Report [\[REP3-034\]](#) and provided a summary of the findings in [\[REP3-031\]](#). In summary, this reported that the Local Air Quality

Management monitoring results in 2023 identified 12 exceedances of the annual mean objective for NO₂ across the GM area at non-automatic stations and 2 exceedances at automatic stations. However, none of these were located in BMBC's area. The GM Clear Air Plan monitoring data showed 64 locations where exceedances of the NO₂ annual mean LV in GM were indicated, with a further 78 locations considered to be at risk of exceeding the limit. Five of these locations were located within BMBC with the closest diffusion tubes to the proposed development located on local roads near J17 and J19 of the M60, recording a maximum concentration of 44.3µg/m³. Overall, BMBC advised that air pollution generally decreased in 2023 compared to 2022.

- 3.4.28. BMBC provided further commentary of the results during ISH2 [EV10-001] explaining that there were two sets of monitoring network, one being local air quality where none of the diffusion tubes or automatic stations, of which there are four, recorded exceedances in 2023. They also advised that Transport for Greater Manchester have a network of diffusion tubes that monitor for NO₂ which were placed to monitor the impact of the GM Clean Air Plan where five of these show exceedances for NO₂ (see [REP3-034] for locations). BMBC further advised that there were no areas within their area that exceed PM₁₀ [EV10-008].
- 3.4.29. Noting the stated improvement in air quality reported in the recent air quality status reports in comparison to that reported for the baseline in the ES, the ExA asked the applicant in ExQ2 AQ.2.1 [PD-013] whether there is a possibility that there would be no exceedances in LVs on the SRN in a DM scenario. The applicant noted that examination of the 2023 Air Quality Annual Status Report submitted by BMBC [REP3-034] shows a downward trend where many locations including those adjacent to the proposed development are now not in exceedance of LVs. The applicant noted that sites closest to the proposed development and the ARN had not exceeded LVs since 2019. Given this data, the applicant considered that it would be highly unlikely that there would be exceedances of LVs without the Scheme (DM) in place by the opening year.
- 3.4.30. Following the applicant's responses, no substantive comments were received by those IPs who had raised concerns on this matter confirming whether their comments had been addressed.

Construction effects from dust

- 3.4.31. Approximately 5 RRs (including [RR-005], [RR-010] and [RR-048]) raised concerns regarding increased dust pollution. The applicant acknowledged the high risk from construction dust in its response to RRs but referred to the proposed measures set out in the oAQDMP [APP-128] to mitigate impacts [REP1-020]. It was stated these would be developed further as part of the second iteration EMP secured under requirement 4 of the recommended DCO (rDCO).
- 3.4.32. BMBC's LIR [REP1A-001] recognised that both human health and ecological receptors had the potential to be affected by construction dust. BMBC noted the high risk from construction dust would result in a negative impact. However, BMBC considered that the effects would be temporary and could be minimised through the proposed mitigation measures. BMBC confirmed agreement with the proposed measures in the oAQDMP [APP-128] and REAC [REP6-006] in response to ExQ1 AQ.1.8 [REP3-031].
- 3.4.33. During ISH2 [EV10-001], the ExA asked the applicant to explain how construction dust risk would be managed, particularly from stockpile areas. The applicant

referred to the measures in the oAQDMP [APP-128] and explained that stockpiles would be sited as far away as possible from residential properties. Other measures would include stockpiles being covered, seeded and fenced, and haulage roads being constructed from hard material [EV10-008].

- 3.4.34. The applicant expanded upon how proposed measures would be successful in mitigating impacts from dust in response to ISH2 action point 23 [EV10-002]. The applicant advised [REP5-031] that the oAQDMP [APP-128] was developed based on the Institute of Air Quality Management Guidance on dust assessment. The applicant provided examples of highway projects where such measures had been successful and advised that the principal contractor would sign up to and adhere to the National Considerate Constructor's Scheme (which is an independently run organisation which, amongst other things, aims to raise standards in construction by protecting communities), which would be secured under Commitment G8 of the REAC [REP6-006].
- 3.4.35. In response to the ExA's request (in ExQ2 AQ.2.6 [PD-013]) for further details of how the complaints procedure for residents would operate, as referred to in the oAQDMP [APP-128], the applicant set out the three stage process it would operate, with the third and final stage being that complaints could be escalated to an Independent Complaints Assessor [REP5-033].
- 3.4.36. Following the applicant's responses, no substantive comments were received by those IPs who had raised concerns on this matter confirming whether their comments had been addressed. However, the acceptability of the construction dust assessment and mitigation was an agreed matter between BMBC and the applicant in their statement of common ground (SoCG) [REP5-028].

Operational effects on human health receptors and impacts on meeting AQOs or LVs in the GM AQMA

- 3.4.37. Concerns that the proposed development would increase air pollution through increased traffic were raised in approximately 20 RRs, for example [RR-005], [RR-011], [RR-017] [RR-019] and [RR-048]. Furthermore, RRs noted the proposed development was already within an AQMA and would exacerbate severe air pollution that residents already experience. Comments in [RR-046] noted that 368 of 557 human health receptors were modelled to experience an increase in annual mean NO₂ concentrations and some would experience increases in PM₁₀ giving a disbenefit in cost of -£1.3m.
- 3.4.38. BMBC's LIR noted that exceedances in the annual mean NO₂ AQO were predicted in both the DM and DS construction year scenarios although no exceedances were predicted in the DS operational scenario due to predicted reduction in congestion. They also recognised the predicted reduction at 188 human receptors and increases at 368 of the 557 human receptors although noted that those experiencing increases in NO₂ would remain significantly below the annual mean AQO of 40µg/m³. BMBC considered that as all concentrations at modelled receptors would be below the AQO, the proposed development would have a positive effect on air quality for human health receptors [REP1A-001]. BMBC's SoCG with the applicant [REP5-028] confirmed agreement with the assessment findings for the operational phase.
- 3.4.39. The applicant's responses to RRs referred to the ES findings of no significant effects in air quality during construction or operation. The applicant stated the key consideration, as per the NPSNN, was whether the air quality concentrations in the

DS scenarios were at or above the relevant LV or AQO and where this was the case, by how much and whether it was an increase or decrease from the DM scenario. They noted that the ES results show NO₂ concentrations would either be below the relevant LV or AQO for construction and operation for the DS scenario or there would be a reduction in concentration (in other words air quality improves with the proposed development). As such, the applicant had concluded that the proposed development would not contribute to any non-compliance of the GM AQMA or non-compliance of LVs [\[REP1-020\]](#).

- 3.4.40. The ExA sought clarification from BMBC, Rochdale Borough Council (RBC) and Manchester City Council (MCC) whether the findings in the ES would affect or have any impact on their ability to meet local AQOs, particularly any identified exceedances or increases at individual receptors (ExQ1 AQ.1.4 [\[PD-011\]](#)). BMBC confirmed that based on the ES assessment, they were satisfied that the proposed development would not impact BMBC's ability to meet the NO₂ AQOs by 2026 or within the shortest possible time [\[REP3-031\]](#). RBC adopted a similar position to BMBC [\[REP3-040\]](#). MCC did not respond to our question nor a follow up question in EXQ2 AQ.2.2 [\[PD-013\]](#).
- 3.4.41. During ISH2, the ExA examined operational impacts in further detail [\[EV10-001\]](#). The ExA asked the applicant whether the increase in NO₂ concentrations at 368 human health receptors would be a negative effect that would weigh against the proposed development, notwithstanding that no exceedances in LV had been predicted. The applicant did not consider this would be the case as DMRB 105 was clear how significance should be determined. In the applicant's opinion, there would be areas that experience increases in NO₂ concentrations but because they would not exceed LVs, then it did not need to be considered.
- 3.4.42. FoCM DL4 submission did not agree that there would be reduced congestion and pollution overall given forecasted increases in traffic and when considered cumulatively with other development. FoCM also disputed that air pollution on the LRN would not lead to significant increases in air pollution [\[REP4-030\]](#). The applicant explained [\[REP5-032\]](#) that the predicted changes in road traffic on local roads would be too small and not meet the ARN criteria to affect air quality. They also explained how the impacts from other sites had been considered in the cumulative assessment in ES chapter 15 [\[REP5-011\]](#).
- 3.4.43. Following the applicant's responses, no substantive comments were received by FoCM or other IPs who had raised concerns on this matter confirming whether their comments had been addressed.

Consideration of New PM_{2.5} Targets

- 3.4.44. The Environment Act 2021 and the Environmental Targets (Fine Particulate Matter) (England) Regulations 2023 introduced two new legally binding long-term targets to reduce concentrations of PM_{2.5}. The two new statutory targets are an annual mean concentration of 10µg/m³ or below and a reduction in average population exposure by 35% by 2040, compared to a 2018 baseline. The Environmental Improvement Plan 2023 sets an interim target of 12µg/m³ to be achieved by January 2028.
- 3.4.45. Concerns that the proposed development would not meet these targets were raised by FoCM [\[REP1-045\]](#) and [\[RR-046\]](#). FoCM considered it unacceptable that the applicant had judged that the new PM_{2.5} targets did not apply to the proposed development as stated in ES chapter 5 paragraph 5.3.5 [\[APP-044\]](#).

- 3.4.46. The SoCG between BMBC and the applicant [REP5-028] referred to this matter in reference 2. BMBC's agreed position was that after reviewing the decision letter associated with the A12 Chelmsford to A120 Widening Scheme, they were satisfied that the interim target of $12\mu\text{g}/\text{m}^3$ was not legally binding and the 2040 target only applied to existing monitoring stations that monitored for $\text{PM}_{2.5}$ in 2023. The applicant maintained its position as stated in paragraph 5.3.3 to 5.3.5 of ES chapter 5 [APP-044], namely the outcome of the decision for the A12 Chelmsford to A120 Widening Scheme and that the targets only apply at relevant $\text{PM}_{2.5}$ monitoring stations that existed immediately before the targets came into force [REP1-020] and [REP2-007]. They further noted that the interim target of $12\mu\text{g}/\text{m}^3$ is only to track whether the $\text{PM}_{2.5}$ target is on track and is not a legal target [REP5-028].
- 3.4.47. The applicant advised that the nearest $\text{PM}_{2.5}$ monitoring stations were located at Salford Eccles and Manchester Piccadilly (managed by DEFRA) and Salford M60 and Rochdale Queensway (local authority managed). Due to their distance from the proposed development ranging between approximately 6-8 kilometres (km), the applicant's opinion was that none of the sites would be affected by the proposed development [REP1-020] and [REP2-007].
- 3.4.48. The ExA examined the legal position regarding $\text{PM}_{2.5}$ monitoring stations further in ExQ1 AQ.1.6 [PD-011]. FoCM noted that paragraph 12(3)(a) of the 2023 regulations contained provision for the Secretary of State to establish new monitoring stations. However, in the absence of any monitoring stations, FoCM did not consider this negated the need to consider the implications of increases in congestion and impact on air quality [REP3-027]. FoCM further emphasised the need to consider $\text{PM}_{2.5}$ during ISH2 [EV10-008] and in [REP4-030]. The applicant's response to ExQ1 AQ.1.6 referred to paragraph 12 of the 2023 regulations and confirmed that it was not aware of any new $\text{PM}_{2.5}$ monitoring stations being installed within 200m of the ARN. It maintained that the 2040 targets therefore did not apply [REP3-023].
- 3.4.49. The applicant emphasised in response to FoCM's response to ExQ1 AQ.1.6 that ES chapter 5 had appropriately considered the $\text{PM}_{2.5}$ LV and demonstrated that all modelled PM_{10} concentrations were less than $20\mu\text{g}/\text{m}^3$. The applicant explained that $\text{PM}_{2.5}$ is a fraction of PM_{10} concentrations and therefore if the concentrations of PM_{10} are less than $20\mu\text{g}/\text{m}^3$, it follows that $\text{PM}_{2.5}$ concentrations would also be less than $20\mu\text{g}/\text{m}^3$ [REP4-027].
- 3.4.50. The applicant also referred to updated interim guidance for $\text{PM}_{2.5}$ targets issued by DEFRA in October 2024 which sets out how developers should consider the targets. The applicant considered whether the interim guidance would affect the assessment findings and concluded that the proposed development would be unlikely to impact on the achievement of the annual mean $\text{PM}_{2.5}$ for the following reasons [REP4-027]:
- NH as an organisation has installed approximately 60 automatic stations across the SRN and all have measured $\text{PM}_{2.5}$ concentrations below the annual mean target of $10\mu\text{g}/\text{m}^3$ in 2023.
 - The nearest automatic analysers on the M602 and the M60 (between J5 and J6) were considered representative of receptor R3 of the proposed development and would therefore experience similar levels of $\text{PM}_{2.5}$.
 - The annual mean $\text{PM}_{2.5}$ recorded at these monitoring stations in 2023 were $6\mu\text{g}/\text{m}^3$ and $7\mu\text{g}/\text{m}^3$ respectively. This illustrates that the $10\mu\text{g}/\text{m}^3$ annual mean 2040 target is already achieved in 2023 and it was considered the proposed development would also have no impact on achieving the 2040 target.

3.4.51. The ExA sought clarification in ExQ2 AQ.2.6 [\[PD-013\]](#) whether the readings for NO₂ at the referred to monitoring stations were also representative of those modelled at receptor R3. The applicant confirmed that changes in NO₂ are more closely tied to local changes in traffic compared to PM_{2.5} mainly as the majority of PM_{2.5} emissions in the UK are not from road transport (see May 2022 detailed evidence report on Air Quality PM_{2.5} Targets from DEFRA). The annual mean NO₂ at the referred to M60 and M602 PM_{2.5} monitoring stations were 36µg/m³ and 26µg/m³ respectively. The applicant explained it would be more appropriate to compare the NO₂ readings to the monitoring station BU19 located closest to receptor R3 which had an annual average concentration of 33.5µg/m³ [\[REP5-033\]](#).

3.4.52. Following the applicant's responses, no substantive comments were received by FoCM confirming whether their concerns on this matter had been addressed.

Need for monitoring during operation

3.4.53. BMBC's initial SoCG with the applicant [\[REP2-006\]](#) (reference 4) considered that, notwithstanding the ES findings of no significant effects, a programme of diffusion tube (NOx) monitoring should be undertaken for human receptors by the applicant. They considered this would be a positive action to demonstrate to concerned local residents that local air quality had not been significantly worsened and that the predicted impacts of the proposed development were accurate.

3.4.54. The applicant's position in the SoCG [\[REP2-006\]](#) noted that other schemes with predicted significant effects relating to air quality undertake monitoring to assess compliance against AQOs. However, as no significant effects had been identified the applicant considered there was no requirement to undertake future monitoring. Normally, the impact on air quality would be assessed under the Post Opening Project Evaluation process undertaken at years 1 and 5 post-opening [\[REP2-006\]](#).

3.4.55. The ExA examined the need for any monitoring or future mitigation measures for the operational phase during ISH2 [\[EV10-001\]](#). In expanding upon its reasons, BMBC explained [\[EV10-010\]](#) there were four points of context that indicated it was appropriate for monitoring to be undertaken, which in summary were:

- NH as an organisation has a requirement to meet LVs.
- NH are relying upon the benefit of an improvement in air quality.
- The data that arises from monitoring is relevant to both NH and BMBC in understanding air quality, so the data was used by both parties.
- There was a real concern to residents about the lack of operational monitoring to understand what the impacts of the proposed development would be.

3.4.56. BMBC also considered the applicant was 'the agent of change' by bringing forward the proposed development and was therefore responsible to understand any additional impact. BMBC stated the applicant had already used diffusion tubes to establish baseline conditions which they understood were still present and so did not consider it would be onerous for them to undertake monitoring [\[EV10-010\]](#).

3.4.57. FoCM also confirmed during ISH2 that it wished to see monitoring in place [\[EV10-010\]](#) and maintained that position in its DL4 submission [\[REP4-030\]](#).

3.4.58. Following the ExA's questioning on the need for any post-consent monitoring during ISH2, the applicant considered that if any potential exceedances occurred, mitigation could be included in a post mitigation monitoring plan. The applicant explained that the diffusion tubes had been removed and maintained its position that monitoring was unnecessary in the absence of any predicted exceedances in

AQOs [\[EV10-010\]](#). In its response to BMBC's four points of context (ISH2 action point 25 [\[EV10-002\]](#)), the applicant explained its approach to the modelling undertaken and the verification factor it had adopted. It explained that the predicted exceedances in the DM scenario were likely to be overpredictions. The applicant acknowledged the downward trend in the air quality data supplied by BMBC [\[REP3-034\]](#) in its response to ExQ1 AQ.1.2 [\[PD-011\]](#) and considered this would continue. It also explained the uncertainty of undertaking monitoring due to variances in weather conditions. Its response to each of BMBC's four points of context were as follows [\[REP4-028\]](#):

- NH does have legal requirements to meet LV where they apply on the SRN. The compliance modelling does not show any risk of LV exceedances on the SRN network so no monitoring is required.
- Existing monitoring as well as modelling indicates no LV compliance issue with the proposed development in place so the applicant disputes BMBC's statement. However, predicted reduction in congestion would result in lower emissions.
- NH are under no obligation to undertake air quality monitoring unless there is a potential exceedance.
- Monitoring would not provide an answer to the impact of the proposed development. It would only provide a snapshot of air pollution levels at that point in time and space. Only modelling would provide evidence of the difference between with and without the proposed development.

3.4.59. BMBC expanded upon its reasons for requiring future monitoring in response to ISH2 action point 24 [\[EV10-002\]](#). It explained that a programme of monitoring using diffusion tubes would [\[REP4-029\]](#):

- Demonstrate that the proposed development would not impact the UK's ability to meet the NO₂ LVs within the shortest possible time.
- Benefit NH and BMBC in demonstrating that the LVs or AQOs were being met.
- Provide evidence that the predicted improvements and impacts were being met.
- Reassure concerned local residents that local air quality would not be significantly impacted, especially at receptors where concentrations were predicted to slightly worsen.

3.4.60. The ExA asked BMBC in ExQ2 AQ.2.3 [\[PD-013\]](#) how it considered monitoring could be secured in the draft DCO (dDCO) and how it would meet the six tests (paragraph 15 of Advice Note 15 and National Planning Policy Framework (NPPF) paragraph 57). BMBC considered that provision could be secured under the third iteration EMP by adding an additional criterion to schedule 2, part 1, paragraph 4(7)(b) of the dDCO requiring 'a programme of air quality monitoring using diffusion tubes for NO₂ for the future operation of the Scheme'. BMBC also set out how the requirement would meet the 6 tests highlighting amongst other matters that the necessity was to demonstrate that the proposed development would meet the NO₂ LV [\[REP5-033\]](#).

3.4.61. In response to BMBC's suggested addition to the dDCO, notwithstanding its position that it was not necessary, the applicant agreed that the third iteration EMP would be the correct place to include express reference to a programme for future air quality monitoring albeit with alternative wording [\[REP6-012\]](#).

3.4.62. The ExA sought further information from the applicant through ExQ2 AQ.2.4 [\[PD-013\]](#) and a rule 17 request [\[PD-015\]](#) on its legal requirements for meeting LV and undertaking monitoring. Across those responses, the applicant explained that it was commissioned by DfT to examine LV status identified on sections of the SRN by the Joint Air Quality Unit. However, the applicant stated it also has regard to

published local authority reports which they review to establish risks in LV being exceeded. It had separately been commissioned by the DfT to assess air quality at the M60/M62/M66 Simister Island Interchange the findings of which were still in draft although the evidence shows no evidence of exceedances in the annual mean NO₂ LV. The applicant explained that DMRB LA 105 sets requirements for monitoring and does not require monitoring where no exceedances are identified. It advised that BMBC could notify NH if it came across any exceedances. The applicant advised that it had limited measures it could implement if potential exceedances were experienced, which could include traffic management measures and installing barriers. Where potential exceedances are identified, a programme of air quality monitoring is established [REP5-033] and [REP6-012].

- 3.4.63. The need for future monitoring of air quality during operation remained an area of disagreement between BMBC and the applicant in their signed SoCG [REP5-028].

Other Matters

- 3.4.64. We asked several questions to the applicant in respect of the methodology adopted to air quality in our written questions [PD-011] and [PD-013] and during ISH1 [EV10-001]. The applicant provided satisfactory responses to these in [REP3-023], [REP5-033] and [EV10-008] and therefore this issue was not examined further.
- 3.4.65. Concerns on the impact on wildlife from increased pollution was raised in [RR-011]. In respect of the impact on ecological receptors from nitrogen deposition, BMBC's LIR noted that only small areas of Philips Park and North Wood Local Wildlife Site (LWS) (SBI) and Philips Park Local Nature Reserve (LNR), located next to the on-slip road heading west at M60 J17 were predicted to be affected by increased nitrogen deposition during the construction of the scheme. However, site surveys generally found an absence of species considered sensitive to nitrogen and no significant effects on designated habitats within those sites were predicted. BMBC considered this to be a neutral impact. The impacts on ecological receptors from nitrogen deposition was an agreed matter between BMBC and the applicant in the SoCG [REP5-028]. The ExA was satisfied with the comments and therefore this issue was not examined further.

ExA's Findings

- 3.4.66. NPSNN paragraphs 5.3 to 5.15 detail the main policy considerations in respect of air quality.
- 3.4.67. Paragraphs 5.3 to 5.5 recognises that construction or operational phases of projects can result in the worsening of air quality over a large area, where increased emissions can contribute to adverse impacts on human health and protected species and habitats.
- 3.4.68. Paragraphs 5.6 to 5.9 set out the requirements for applicants assessing air quality effects. As part of that assessment, the Secretary of State must be provided with a judgement on the risk as to whether the project would affect the UK's ability to comply with the Air Quality Directive.
- 3.4.69. In terms of decision making, paragraph 5.10 states the Secretary of State should consider air quality impacts over the wider area as well as in the vicinity of the scheme and must take account air quality thresholds set out in domestic and European legislation. Applicants should also seek to secure appropriate mitigation measures where a breach in air quality thresholds is likely to ensure, so far as possible, that they are not breached.

- 3.4.70. Paragraph 5.11 notes that air quality considerations are likely to be particularly relevant within or adjacent to AQMAs or where changes are sufficient to bring about the need for a new AQMA, change the size of an existing AQMA, or result in changes to exceedances in LVs.
- 3.4.71. Air quality impacts must be given substantial weight where, after taking into account mitigation, a project would lead to a significant air quality impact (paragraph 5.12). The Secretary of State should refuse consent where, after taking into account mitigation, the proposal will "... result in a zone/ agglomeration which is currently reported as being compliant with the Air Quality Directive becoming non-compliant ..." or affects "... the ability of a non-compliant area to achieve compliance ..." within required timescales (paragraph 5.13).
- 3.4.72. In respect of dust, paragraph 5.87 requires the Secretary of State to be satisfied that all reasonable steps have been taken, and will be taken, to minimise any detrimental impact on amenity from emissions including, amongst other things, dust.
- 3.4.73. The NNNPS (2024) contains similar policy provisions to the NPSNN but with updates to cover more recent legislative requirements, such as The Environmental Targets (Fine Particulate Matter) (England) Regulations 2023. Other notable changes include further matters which applicant's assessments should incorporate, including further mitigation measures taking into account Local Air Quality Action Plans and measures to reduce emissions of PM_{2.5}.
- 3.4.74. In terms of local policies, BMBC's LIR refers to PfE policy JP-S5 [\[REP3-032\]](#) which sets a range of measures to support improvements in air quality including, amongst other matters, applications for developments to submit relevant air pollution data so that adverse impacts on air quality can be fully assessed and development only permitted where they are acceptable and/or suitable mitigation can be provided.
- 3.4.75. No substantive evidence was presented to the examination to bring the applicant's approach to assessing air quality in the ES into doubt. In the absence of evidence to the contrary, the ExA concludes that the ES adequately describes existing air quality levels, forecasts of air quality at the time of opening and any significant air quality effects in accordance with NPSNN paragraph 5.7. It also adequately considers air quality impacts over the wider area as well as in the near vicinity of the proposed development, relevant statutory air quality thresholds and AQMAs as required by paragraphs 5.10 to 5.12 of the NPSNN.
- 3.4.76. The ExA understands the concerns raised by IPs regarding existing air quality in the locality particularly given the location within the GM AQMA. However, the ExA considers that BMBC's submission of the local air quality status reports [\[REP3-034\]](#) adequately demonstrate that air quality in the near vicinity of the proposed development and over the wider area has improved from the baseline conditions shown in the ES. The report also lends support to the ES assessment findings which are based on assumptions that there would be improvements in air quality, providing further confidence in the robustness of the assessment findings.
- 3.4.77. During construction, the ES highlights a high risk from construction dust potential. In accordance with NPSNN paragraph 5.82, the ExA has considered the potential impacts from dust through written questions and during ISH2. Through the applicant's responses, the ExA finds that reasonable steps have been taken to minimise detrimental impacts from construction dust in accordance with NPSNN paragraphs 5.87 and 5.89. The ExA is satisfied that adequate measures to mitigate impacts from dust are proposed through commitments AQ1 and AQ2 in the REAC

[[REP6-006](#)] and the oAQDMP [[APP-128](#)], which would be appropriately secured under requirement 4 of the rDCO.

- 3.4.78. With regard to operational effects on human health receptors and impacts on the GM AQMA, we find from the evidence presented in the ES that the proposed development would give rise to both increases and decreases in concentrations of NO₂ at receptors during operation, resulting in both negative and positive effects. However, as the 7 receptors which are identified to experience exceedances in both the DM and DS construction years would result in a reduction of NO₂ concentrations below the 40µg/m³ AQO during operation, no receptors have been identified as being at risk of exceeding the AQOs or LVs for concentrations in NO₂, PM₁₀ or PM_{2.5}. No substantive evidence was submitted to the examination to dispute those findings and therefore the ExA finds that the proposed development would not lead to any significant effects on human health receptors.
- 3.4.79. In respect of impacts on ecological receptors from nitrogen deposition, there was little substantive evidence presented during the examination to dispute the applicant's findings. Indeed, the impacts on ecological receptors from nitrogen deposition was an agreed matter between BMBC and the applicant in the SoCG [[REP5-028](#)]. Therefore, having regard to the findings in ES chapter 8 we find that, due to the temporary nature of construction impacts on species and that no nitrogen sensitive species were recorded in nitrogen affected areas of identified sites, the proposed development would give rise to neutral (not significant) effects on ecological receptors from nitrogen deposition.
- 3.4.80. Having regard to the provisions of NPSNN paragraphs 5.10 to 5.13, we find that the proposed development would not lead to a significant air quality effect in relation to EIA and would therefore not lead to a deterioration of air quality within the GM AQMA. We therefore conclude that the proposed development would meet the tests set out in NPSNN paragraphs 5.9 to 5.13.
- 3.4.81. In respect of PM_{2.5}, the ExA has considered the submissions from IPs raising concerns on this matter. Firstly, we consider that the applicant's approach to assessing PM_{2.5} following criteria within DMRB LA 105, which found that concentrations of PM_{2.5} (using modelled PM₁₀ concentrations where PM_{2.5} is a fraction of PM₁₀ concentrations) would be less than the 20µg/m³ LV as defined in the Environment (Miscellaneous Amendments) (EU Exit) Regulations 2020, to be an acceptable approach in determining significance. We accept that the Environmental Targets (Fine Particulate Matter) (England) Regulations 2023 only applies to existing PM_{2.5} monitoring stations, where none exist in the vicinity of the proposed development. Nevertheless, we consider that these regulations and the NNNPS (2024), which is capable of being an important and relevant consideration, set out a clear future direction to drive further improvements to air quality and ensure that new developments are delivering against these standards.
- 3.4.82. The applicant supplied further consideration of compliance against the new PM_{2.5} targets in [[REP4-027](#)], noting the publication by DEFRA in October 2024 of interim planning guidance on the consideration of the Environment Act PM_{2.5} targets. However, the interim guidance states that it does not apply to applications that were submitted prior to its publication. Nevertheless, we note the applicant's reference to readings at two existing PM_{2.5} monitoring stations located elsewhere in the GM area and elsewhere on the SRN which have recorded PM_{2.5} concentrations below the 10µg/m³ target to be achieved annually by 2040. Based on these findings, and in the absence of any substantive evidence to indicate otherwise, we consider it likely that the assessment findings of no significant effects would be unaltered by the

introduction of new legislation, policy and limits on PM_{2.5}. In any case, in the absence of final guidance published by DEFRA on how developers are to meet the targets and in the absence of any PM_{2.5} monitoring stations in the vicinity of the proposed development, we are satisfied with the applicant's approach to the assessment of PM_{2.5}. We are equally satisfied that the applicant has adequately considered PM_{2.5} as required in the NNNPS (2024)

- 3.4.83. Turning to whether there is a need for air quality monitoring during operation of the proposed development, the ExA has carefully considered the position of IPs that was presented throughout the examination. NPSNN paragraph 5.10 requires mitigation measures where there is likely to be a breach of the air quality thresholds. In this case, it is not a matter of dispute between BMBC and the applicant that the ES does not predict any potential exceedances of the AQO for annual mean concentrations of NO₂ during the operation period. In response to our questions, the applicant explained its legal requirements for meeting AQOs or LVs and the process it undertakes to monitoring where a potential for exceedances in LVs on the SRN are identified. For these reasons, the ExA concludes that the need to secure for future monitoring of air quality as part of the rDCO is not necessary and would not meet the tests set out in paragraph 15 of Advice Note 15 and NPPF paragraph 57.

Conclusions

- 3.4.84. The ExA concurs with ES chapter 5 [\[APP-044\]](#) that the significance of effect from the proposed development during construction and operation on air quality would not be significant as:
- the proposed development would result in reductions in predicted concentrations of NO₂ during construction at 7 human health receptors that exceed the annual mean AQO or LV of 40µg/m³
 - there are no predicted exceedances of the AQOs or LVs in respect of NO₂, PM₁₀ or PM_{2.5} during operation
- 3.4.85. The ExA is satisfied that the applicant proposes adequate mitigation to minimise detrimental impacts from construction dust through commitments AQ1 and AQ2 in the REAC [\[REP6-006\]](#) and by developing an Air Quality and Dust Management Plan which would be secured in requirement 4 of the rDCO. The ExA is satisfied that the applicant has demonstrated that such risks associated with the proposed development can be satisfactorily mitigated and managed and that appropriate mitigation would be secured by the relevant requirements in the rDCO.
- 3.4.86. The ExA is satisfied that the proposed development is in accordance with NPSNN and, where important and relevant, NNNPS (2024), local policies and strategies and all other legislation.
- 3.4.87. The ExA considers there are no residual effects or issues which affect the planning balance in respect of air quality.

3.5. BIODIVERSITY

Introduction

- 3.5.1. Matters relating to impacts on the Rochdale Canal SAC are considered under Habitats Regulation Assessment in section 4. Impacts on ecological receptors from nitrogen deposition is covered under air quality in section 3.4. There is also a cross over with matters relating to landscape mitigation which are covered under landscape and visual in section 3.11. The impact on peat is covered in more detail

under geology and soils in section 3.8 and the impacts on Groundwater Dependent Terrestrial Ecosystems (GWDTE) are covered in section 3.15 (road drainage and water environment).

Application Summary

3.5.2. The applicant's assessment of biodiversity is covered in ES chapter 8 [\[REP3-010\]](#). It follows standards and guidance contained in DMRB LA 105 Air Quality, DMRB LA 108 Biodiversity and Guidelines for Ecological Impact Assessment in the UK and Ireland and considers the potential for impacts on:

- Statutory and non-statutory designated sites.
- Protected or priority habitats including habitats of conservation importance such as hedgerows, lowland mixed deciduous woodland and lowland fen.
- Protected or priority species including animal and plant species protected by legislation, and species of conservation importance such as priority species.

3.5.3. ES chapter 8 [\[REP3-010\]](#) is supported by the following appendices and figures:

- Appendix 8.1: UK Habitat Classification Report [\[APP-087\]](#), [\[APP-088\]](#) and [\[APP-089\]](#)
- Appendix 8.2: Designated Sites Air Quality Assessment [\[APP-090\]](#)
- Appendix 8.3: Bat Survey Report [\[APP-091\]](#)
- Appendix 8.4: Badger Survey Report (Confidential) [\[APP-092\]](#)
- Appendix 8.5: Barn Owl Survey Report (Confidential) [\[APP-093\]](#)
- Appendix 8.6: Breeding Bird Survey Report [\[APP-094\]](#)
- Appendix 8.7: Wintering Bird Survey Report [\[APP-095\]](#), [\[APP-096\]](#) and [\[APP-097\]](#)
- Appendix 8.8: Great Crested Newt Survey Report [\[APP-098\]](#)
- Appendix 8.9: Riparian Mammal Survey Report [\[APP-099\]](#)
- Appendix 8.10: Reptile Survey Report [\[APP-100\]](#)
- Appendix 8.11: Terrestrial Invertebrate Survey Report [\[APP-101\]](#)
- Appendix 8.12: Biodiversity Net Gain Report [\[APP-102\]](#)
- Appendix 8.13: Habitats Regulations Assessment Report [\[APP-103\]](#)
- Appendix 8.14: Draft Badger Licence Application (Confidential) [\[REP1-029\]](#)
- Appendix 8.15: Great Crested Newt District Level Licence Impact Assessment and Conservation Payment Certificate [\[APP-105\]](#)
- ES Figures chapter 8 Biodiversity [\[APP-068\]](#) containing:
 - Figure 8.1: Designated Sites and Affected Road Network
 - Figure 8.2: Ancient Woodland and Priority Habitats
 - Figure 8.3: UK Habitats Map

3.5.4. The baseline has been informed by a combination of desk study, field surveys, air quality and noise modelling and stakeholder consultation. Species-specific and habitat surveys were carried out between February 2021 and May 2023. The study area for designated sites, habitats and species is explained in section 8.6 of ES chapter 8 [\[REP3-010\]](#).

3.5.5. ES chapter 8 identifies several designated sites within and adjacent to the order limits. There are no SACs, Special Protection Areas (SPA)s, Sites of Special Scientific Interest (SSSI) or Ramsar sites within 2km of the order limits. However, the Rochdale Canal SAC and SSSI is located within 200m of the ARN approximately 5km east of the order limits. Ashclough SSSI and Nob End SSSI are located approximately 4.8km west of the order limits which are identified to be

hydrologically connected to the proposed development via the River Irwell, the River Roch and various tributaries of the River Roch.

- 3.5.6. Local Nature Reserves (LNR) and SBI that are identified to have hydrological connectivity with the proposed development are as follows:
- Alkrington Woods LNR
 - Blackley Forest LNR
 - Clifton Country Park LNR
 - Hollins Vale LNR
 - Moses Gate LNR
 - Nob End LNR
 - Hazlitt Wood SBI
 - Hollins Plantation SBI
 - Hollins Vale SBI
 - Parr Brook SBI
 - Philips Park and North Wood SBI
 - Pilsworth SBI
 - Rhodes Farm Sewage Works SBI
- 3.5.7. No ancient woodland inventory sites are located within the order limits with the closest located at Mere Clough approximately 470m to the west.
- 3.5.8. Section 8.7 of ES chapter 8 [\[REP3-010\]](#) identifies the priority habitats located within 1km of the order limits, which are shown on ES figure 8.3 [\[APP-068\]](#). Identified protected and notable species in the ES include bats, badgers, barn owl, breeding birds, wintering birds, great crested newts, riparian mammals, reptiles, terrestrial invertebrates and other notable species including toad, common toad, brown hare and water shrew. Surveys of these species are contained in the ES appendices.
- 3.5.9. Potential impacts during construction and operation in the absence of mitigation are identified and described in section 8.8 of ES chapter 8. These include habitat loss and fragmentation, mortality and injury to species, disturbance from noise, vibration and lighting, air quality impacts, hydrology impacts and spread of invasive non-native species.
- 3.5.10. ES section 8.9 sets out several measures to avoid or mitigate potential adverse impacts on biodiversity. Embedded mitigation measures have been incorporated into the design of the proposed development which has sought to maximise biodiversity delivery. Where habitats would be lost, new habitats of equal or greater value are proposed. Other embedded measures include, but are not limited to, retention of existing vegetation, connecting habitats through new hedgerow planting and new aquatic and marginal planting.
- 3.5.11. Essential mitigation measures to reduce and offset likely significant adverse effects have been included in commitments B2 to B9 and B12 to B16 in the REAC [\[REP6-006\]](#). Further detail on proposed essential mitigation measures for habitats and species is also set out in section 8.9 of ES chapter 8.
- 3.5.12. Enhancement measures to habitats would include management of existing areas of lowland mixed deciduous woodland (0.44 hectares (ha)), 7.16ha of broadleaved woodland and 1.37ha of neutral grassland. Other enhancement measures to habitats would include new areas of species-rich grassland, trees and woodland, species-rich hedgerows and scrub comprising native trees. Measures for species include installation of bat roosting boxes and bird nesting boxes.

- 3.5.13. The ES assessment findings identified no significant effects during construction or operation on any habitats, species or designated sites following mitigation.
- 3.5.14. Slight adverse (not significant) effects were identified to the following during construction:
- Ashclough SSSI
 - Nob End SSSI
 - Hazlitt Wood SBI
 - Priority habitats of lowland mixed deciduous woodland, other lowland mixed deciduous woodland, eutrophic standing water and hedgerows
 - Barn owls
 - Freshwater fauna
- 3.5.15. Slight adverse (not significant) effects were identified to the following during operation:
- Clifton Wood Ancient Woodland
 - Bats
 - Badgers
 - Barn owl
 - Breeding and wintering birds
 - Priority species including brown hare, hedgehog, water shrew and common toad
- 3.5.16. The application is accompanied by a Biodiversity Net Gain (BNG) Report [\[APP-102\]](#) to determine if the proposed development would achieve a net gain in biodiversity. This report acknowledges that there is no current legal requirement to provide BNG (although the Environment Act 2021 provides for the introduction of a statutory requirement for NSIPs) although states that the proposed development has been designed to maximise biodiversity delivery as far as possible and has been proactive in applying the BNG Metric to assess measurable changes in biodiversity. A summary of the forecast biodiversity unit change for each biodiversity unit type (area based) is shown below, which shows no likely net loss in units.

Table 2: Summary of biodiversity units and net change (extract taken from table 3.1 [\[APP-102\]](#))

Unit type	On-site baseline units	On-site post-construction*	Total net change	
			Units	Percentage (%)
Habitat	392.80	407.28	14.47**	3.68
Hedgerow	13.09	20.74	7.66	58.50**
River and stream	7.21	7.21	0.00	0.00

Examination Issues

- 3.5.17. Based on the comments raised by IPs and the ExA's review of the application documents, the main issues considered during the examination were:
- Impact on protected and notable species and habitats.
 - Need for proposed environmental mitigation areas (work numbers 36 and 38) for biodiversity purposes on land plots 2/16b and 2/16d (the Hillary Family land).
 - BNG.

Impact on protected and notable species and habitats

- 3.5.18. General concerns were raised during the examination regarding the impact to species, including bats, badgers, birds, brown hare, deer, foxes, hedgehogs and great crested newts, for example [\[RR-041\]](#), [\[RR-046\]](#) and [\[REP1-046\]](#). More specific concerns on the impacts to bats during construction and operation were raised in [\[AS-014\]](#) and [\[AS-015\]](#) (including verbally during OFH1 [\[EV6-002\]](#)) and in [\[REP1-044\]](#) which in addition noted the impact to bats and hedgehogs from the proposed loss of habitat to the embankments of the motorway.
- 3.5.19. The applicant's written responses to the concerns raised over bats referred to its findings in ES chapter 8 [\[REP3-010\]](#) and the bat survey in ES appendix 8.3 [\[APP-091\]](#). The applicant explained that the bat survey did not identify any bat roosts within 100m of the order limits and bat activity within the order limits was associated with bats foraging along hedgerows with occasional activity over open grassland areas, particularly around Egypt Lane. Overall, the applicant stated that the ES assessment [\[REP3-010\]](#) concludes that with mitigation, there would be no significant adverse effects on bats [\[REP1-020\]](#) and [\[REP2-007\]](#).
- 3.5.20. With respect to hedgehogs, the applicant explained these are a priority species but not protected. They referred to the findings in ES chapter 8 which found neutral effects on hedgehog and brown hare during construction and slight adverse (not significant) effects to these species during operation due to potential entanglement with the proposed golf ball netting (work number 40) [\[REP1-020\]](#) and [\[REP2-007\]](#).
- 3.5.21. Natural England (NE) confirmed that it had no objections in respect of impact on protected species [\[RR-009\]](#). BMBC's LIR provided a summary of the effects on the protected species of great crested newts, barn owl, badger and bats and also priority species which confirmed it was satisfied that none would be significantly affected and their conservation status could be maintained. BMBC similarly raised no concerns in respect of impact to priority habitats [\[REP1A-001\]](#). These were also agreed matters in the SoCG between BMBC and the applicant [\[REP5-028\]](#).
- 3.5.22. Through ExQ2 BIO.2.3 and 2.4 [\[PD-013\]](#), the ExA asked written questions on the conclusions reached in the ES on the impact of lighting to bats during the construction and operation periods. In respect of construction, the applicant referred to table 1 of Bats and Artificial Lighting at Night (Guidance Note 08/23, Bat Conservation Trust and Institution of Lighting Professionals 2023) which summarises the effect of artificial lighting at night on UK bat species and concludes that lighting can have negative and positive effects on common pipistrelle species. The applicant also explained that no data is available for effects on roosting common pipistrelle although no bat roosts have been identified within 100m of the order limits. Overall, the applicant considered that commitments G6 and G7 in the REAC [\[REP6-006\]](#) would minimise impacts through measures including avoidance of light spill. For operation, the applicant explained that commitment G7 in the REAC [\[REP6-006\]](#) requires new lighting to comply with best practice which would not be worse than existing and could result in an improvement on the current high discharge lamps, such that effects would be neutral [\[REP5-033\]](#).
- 3.5.23. Following the applicant's responses, no substantive comments were received by IPs during the examination on impacts to protected and notable species and habitats.

Need for proposed environmental mitigation areas (EMAs) (work numbers 36 and 38) for biodiversity purposes on land plots 2/16b and 2/16d (the Hillary Family land)

- 3.5.24. The Hillary Family objected to the proposed EMAs on their land (land plots 2/16b and 2/16d located to the north-east of M60 J18). They stated that there was no requirement for BNG for NSIPs and also considered that the proposed mitigation could be provided elsewhere within the current or an extended boundary or located off-site [\[RR-031\]](#), [\[RR-032\]](#) and [\[REP1-040\]](#).
- 3.5.25. During ISH2 [\[EV10-012\]](#), the Hillary Family provided further comments questioning the need for hedgerows to minimise impacts to bats noting that ES chapter 8 paragraph 8.10.116 finds there would be negligible adverse effects on bats. They did not consider the retention of hedgerows justified the need for the whole EMA and considered that planting a dense row of trees between the EMAs would provide a sufficient bat foraging corridor. The Hillary Family's post hearing submission to ISH2 further questioned the need for bat mitigation noting the findings of limited effects in ES chapter 8 paragraphs 8.10.106 to 8.10.111 [\[REP3-010\]](#) and that the loss of foraging habitat would be small in relation to the overall amount available in the surrounding area [\[REP4-031\]](#).
- 3.5.26. Through [\[REP1-020\]](#) and ISH2 [\[EV10-012\]](#), the applicant provided further details on the purpose and need for the EMA's. For biodiversity purposes it was explained that they were required to mitigate impacts to bats from loss of hedgerows used for commuting and foraging, and potential impacts from collision with vehicles during operation of the Northern Loop (work number 05). It was explained that new hedgerows were proposed to mitigate impacts to bats and guide them and other wildlife around the Northern Loop noting that figure 8.3.3 [\[APP-091\]](#) (Bat Activity Visualisation) had recorded some of the highest levels of bat activity in these plots. The applicant further expanded upon these points in response to ISH2 action point 30 [\[REP4-028\]](#). The applicant also clarified that the assessment findings in ES chapter 8 referred to by the Hillary Family related to impacts following the implementation of mitigation [\[REP5-032\]](#).
- 3.5.27. In addition to bats, the applicant advised that the proposed development would result in a loss of habitats including lowland mixed deciduous woodland (priority habitat), broadleaved woodland, modified grassland, other neutral grassland and scrub which is set out in ES chapter 8 table 8.17 [\[REP3-010\]](#). In the absence of mitigation, the applicant considered the loss of habitats would result in a significant adverse impact. The applicant stated that the extent of the Hillary Family land had been driven by its use as temporary material storage areas during construction (see ES figure 2.4 [\[REP7-013\]](#)) where they could control the remediation of land following construction. The applicant also advised that by siting areas of habitat creation in and around mitigation for specific receptors, they could maximise the value of these habitats as it was an established ecological principle that habitats which are bigger are more valuable compared to multiple smaller fragments of an equivalent total size [\[REP1-020\]](#), [\[EV10-012\]](#), [\[REP4-028\]](#) and [\[REP5-032\]](#).
- 3.5.28. The applicant made clear in its responses that the EMAs were required for the purpose of essential mitigation to avoid significant adverse effects and not for BNG, although acknowledged that the habitats created for the bat and landscape mitigation contributed to the predicted net gain figures (for example [\[REP1-020\]](#)).
- 3.5.29. In ISH2 action point 29 [\[EV10-002\]](#), the ExA asked the applicant to confirm if there was a section of the NPSNN which supported the approach being undertaken in relation to the proposed environmental mitigation. The applicant considered that its

approach was supported by paragraphs 5.25, 5.33 and 5.36 as well as footnote 75 relating to biodiversity offsets [\[REP4-028\]](#).

- 3.5.30. The ExA sought further explanation from the applicant in its rule 17 letter [\[PD-015\]](#) on whether the mitigation proposed would be essential or embedded, and sought further clarification on the reference to 'habitats to be enhanced'. The applicant's response [\[REP6-012\]](#) confirmed that mitigation would be both embedded and essential mitigation and provided a breakdown on the commitments listed within the REAC [\[REP6-006\]](#) that fell into each category. The applicant explained that the area of retained habitat during construction would be managed and improved alongside the creation of new grassland around this habitat parcel in accordance with the Outline Landscape and Ecology Management Plan [\[APP-141\]](#).
- 3.5.31. The Hillary Family maintained its position that the EMAs on their land were not needed to mitigate impacts. They queried the relevance of some of the commitments in the REAC to their land and also disagreed that some of the REAC commitments could be referred to as embedded mitigation as suggested by the applicant. In respect of the stated essential mitigation measures, the Hillary Family considered that the proposed habitat creation could be provided elsewhere in the order limits and the applicant had not justified a need for them to be within the EMA's located on their land [\[REP7-024\]](#).
- 3.5.32. The applicant's response to the Hillary Family DL7 submission essentially provided a high-level summary of their previous case of the EMA's stating that there is an overlap between different aspects for providing mitigation in the EMAs between biodiversity and landscape matters. Ultimately, the applicant maintained that the EMA's would contribute to providing effective biodiversity mitigation to address effects identified in the ES which has been co-located to maximise mitigation benefit and extended beyond consideration of land ownership [\[REP8-005\]](#).
- 3.5.33. The need for mitigation in the proposed EMAs to the north-east of M60 J18 relating to biodiversity effects remained an area of disagreement between the applicant and the Hillary Family.

BNG

- 3.5.34. Both NE [\[RR-009\]](#) and BMBC [\[REP1A-001\]](#) supported the applicant's approach to BNG. This was further confirmed in their respective SoCG's with the applicant [\[REP1-017\]](#) and [\[REP5-028\]](#) where NE confirmed agreement with the use of DEFRA Metric 3.1. NE and BMBC recognised that the proposed development would not achieve at least 10% net gain on all unit type although acknowledged that the provision of BNG is not currently mandatory for NSIPs. Nevertheless, NE encouraged the applicant to achieve at least 10% net gain on all unit types. In particular, they advised that identifying opportunities for enhancement to achieve greater BNG and maximising the condition and distinctiveness of habitats to be created should be developed during detailed design stage [\[REP1-017\]](#).
- 3.5.35. The applicant acknowledged NE's comments but emphasised that the lack of legislation to deliver 10% net gains in biodiversity made it challenging for them to justify further CA of land to achieve this for the proposed development. The applicant advised that they would seek to maximise biodiversity delivery as the design evolved and measures within the Landscape and Ecology Management Plan (secured under requirement 4 of the rDCO) would seek to ensure the condition of new and retained habitats would be maximised to increase the overall number of BNG units [\[REP1-017\]](#).

3.5.36. BMBC commented in its initial SoCG [REP2-006] that it had not interrogated the BNG findings due to not being a statutory requirement for NSIPs. Noting that the ExA and Secretary of State would be nevertheless be required to give weight to the BNG findings, the ExA asked BMBC to provide more detailed comments on the suitability of the BNG Report [APP-012] in ExQ1 BIO.1.8 [PD-011]. BMBC provided detailed comments which confirmed agreement with the findings in the metric but noted that the proposed development would result in a significant loss of medium distinctiveness woodland habitat, therefore failing the trading rules. However, BMBC considered that the creation of medium distinctiveness grassland as compensation would be acceptable as it is a rarer habitat in GM than the broadleaved plantation proposed to be lost [REP3-031]. BMBC's SoCG [REP5-028] also noted that whilst the proposed development would result in a net reduction of vegetated habitat, habitats of higher ecological value than those currently present would be created. [REP5-028]. NE's SoCG also accepted the applicant's justification for not meeting the trading rules [REP1-017].

3.5.37. In response to the ExA's question on whether the introduction of a new Local Nature Recovery Strategy in GM would affect the BNG assessment (ExQ1 BIO.1.6 [PD-011]), both BMBC [REP3-031] and the applicant [REP3-023] confirmed that it would be unlikely to. BMBC advised that it would be built primarily on the same principles as the current Bury UDP policies but with some additional desk top information. However, BMBC advised that the document would unlikely be adopted until after determination of the DCO.

Other Matters

3.5.38. Other comments submitted on biodiversity matters raised by IPs during the examination not covered above were as follows:

- Negative impacts on ecology and biodiversity (for example [RR-005], [RR-010] [RR-030], [RR-044] and [RR-048]).
- Loss of fauna, flora and available countryside [RR-043].
- Impacts on LNRs and SBIs located within 1km of the order limits and 200m of the ARN [RR-046].

3.5.39. The applicant's response to these comments generally referred to the assessment findings in ES chapter 8 [REP3-010] and the mitigation measures set out in the REAC [REP6-006] which would be developed into a second iteration and secured under requirement 4 of the rDCO. The applicant noted that the ES concludes that there would be no significant effects, following mitigation, on any biodiversity receptor due to construction and operation of the proposed development. Where habitats would be lost, the applicant considered that the proposed mitigation would provide a net gain in the value of habitats lost.

3.5.40. In addition to the matters covered above, NE [RR-009] raised no objection in respect of the following matters:

- The proposed development damaging or destroying the notified features of the Ashclough SSSI and Nob End SSSI.
- Impacts on deep peaty soils.
- Ancient woodland and veteran trees.

3.5.41. The SoCG between NE and the applicant [REP1-017] also contained agreement on the following matters in addition to those identified above:

- Ancient Woodland where no direct or indirect impacts on existing Ancient Woodland or veteran trees would occur.
- Impact to peat and habitats directive annex 1 habitats.
- Impacts to designated sites.

3.5.42. In addition to the matters referred to above, BMBC's LIR provided a summary of the impacts on European protected sites, SBIs, nesting and wintering birds, invasive species, watercourses and ground water and peat raising no objection to the assessment findings in the ES on those matters [\[REP1A-001\]](#). BMBC also considered that the proposed development would contribute to the effectiveness of wildlife links through the measures and mitigation works embedded in the design of the landscaping masterplan.

3.5.43. The SoCG between BMBC and the applicant [\[REP5-028\]](#) contained agreement on the following matters:

- No significant effect on Hazlitt Wood and other Sites of Botanical Importance.
- The conservation status of nesting and wintering birds can be maintained.
- The risk of spreading from invasive species would be very low.
- No concerns on the protection of watercourses and ground water which BMBC defers to the Environment Agency (EA) for further consideration.
- Assessment findings in respect of peat.

3.5.44. There were no outstanding matters in either NE's or BMBC's SoCG with the applicant on biodiversity matters.

ExA's Findings

3.5.45. Paragraphs 5.20 to 5.38 of the NPSNN outline the national policy position relating to biodiversity and ecological conservation.

3.5.46. Under paragraph 5.22, an ES should clearly 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.

3.5.47. Paragraph 5.25 states, as a general principle, development should avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives.

3.5.48. Paragraphs 5.28 to 5.32 set criteria in respect of designated sites, both statutory and non-statutory. Paragraph 5.33 states development proposals potentially provide many opportunities for building in beneficial biodiversity as part of good design. When considering proposals, the Secretary of State should consider whether the applicant has maximised such opportunities in and around developments.

3.5.49. Paragraph 5.35 states the Secretary of State should ensure that applicants have taken measures to ensure that other species and habitats, in addition to those that receive statutory protection, are protected from the adverse effects of development including, where appropriate, through the use of requirements.

3.5.50. Paragraphs 5.36 to 5.38 contains provisions relating to mitigation with paragraph 5.36 indicating that applicants should provide appropriate mitigation measures as an integral part of their proposed development, with a list of criteria for how these should be demonstrated.

- 3.5.51. The NNNPS (2024) contains similar policy provisions to the NPSNN. However, paragraphs 4.23 to 4.26 include provisions relating to BNG stating that it should be applied in conjunction with the mitigation hierarchy. In addition to BNG, applicants should also identify and deliver appropriate opportunities for nature recovery and wider environmental enhancements.
- 3.5.52. BMBC's LIR [\[REP1A-001\]](#) refers to PfE policy JP-G8 [\[REP3-032\]](#), which seeks a net enhancement of biodiversity resources, and Bury UDP policy EN6/4 [\[REP3-033\]](#) which seeks to consolidate and where appropriate strengthen wildlife corridors.
- 3.5.53. No substantive concerns were raised during the examination on the applicant's assessment of likely significant effects on biodiversity in the ES. The ExA is therefore satisfied that the application accords with paragraph 5.22 of the NPSNN in its consideration of sites, habitats, species and potential impacts.
- 3.5.54. Due to the distance from the order limits and incorporation of mitigation measures, the proposed development would not give rise to any significant effects to designated sites, both statutory and non-statutory. The ExA is therefore satisfied that there would be no conflict with NPSNN paragraphs 5.27 to 5.32. However, as slight adverse effects (albeit temporary) would arise during construction to Ashclough SSSI, Nob End SSSI and Hazlitt Wood SBI, the ExA considers that these would be negative effects weighing against the making of the order.
- 3.5.55. The ExA acknowledges the concerns raised by IPs regarding impacts to protected and notable species. However, the ExA is satisfied that the applicant has appropriately assessed and proposed suitable measures to mitigate the effects of the proposed development on protected and notable species and habitats in accordance with NPSNN paragraph 5.35. The bat survey [\[APP-091\]](#) did not find evidence of any bat roosts in the order limits and no hard evidence was presented to dispute those findings. The ExA notes the proposed measures by the applicant to conduct further pre-construction surveys and considers this to be appropriate mitigation, which would be secured through commitments B11 and B12 of the REAC [\[REP6-006\]](#) and requirement 4 and requirement 7 of the rDCO. As required by paragraph 5.38 of the NPSNN, the applicant provided a letter of no impediment from NE in respect of badgers [\[REP1-017\]](#) and a Great Crested Newt district level licence impact assessment and conservation payment certificate [\[APP-105\]](#).
- 3.5.56. The ExA notes that the proposed development would result in the loss of several habitats as detailed in ES chapter 8 table 8.17 [\[REP3-010\]](#) which would be negative effects weighing against the making of the order. However, as also detailed in the table and ES figure 2.3 [\[REP7-013\]](#), the proposed development would deliver sufficient habitat creation and enhancement proposals, which the ExA considers to be a benefit. Overall, the ExA considers that the proposed extent of habitat creation, which in some cases would create higher value habitats than those to be lost (such as through grassland creation and lowland mixed deciduous woodland) which would be secured by the Landscape and Ecology Management Plan under requirement 4 of the rDCO and the landscaping scheme under requirement 5 of the rDCO, would be sufficient to mitigate the loss of several habitats over the longer term. The ExA is therefore satisfied that NPSNN paragraph 5.36 has been met.
- 3.5.57. The ExA has carefully considered the applicant's reasons for proposed mitigation required for biodiversity purposes on the Hillary Family land and their comments questioning its need. Overall, the ExA is satisfied that the proposed area of hedgerows would be required as part of the mitigation measures for bats. Whilst we accept that not all of the plots would be required for this purpose, as detailed on ES

figure 2.3 [\[REP7-017\]](#) the remaining areas would also provide nature conservation and biodiversity enhancements to coincide with proposed measures for landscape mitigation (which is considered separately in the landscape and visual section). Whilst the Hillary Family consider that mitigation could be provided elsewhere, other than a general suggestion for hedgerows and land to the north-west of M60 J18 we have not been provided with any compelling suggestions of any reasonable alternative locations, in addition to that already proposed elsewhere within the order limits, that would deliver the equivalent mitigation required on the Hillary Family land for the proposed nature conservation and biodiversity measures (such as new habitat creation) alongside landscape mitigation measures.

- 3.5.58. We agree with the Hillary Family that some of the applicant's listed commitments in the REAC in their response to the rule 17 letter [\[REP6-012\]](#) were arguably not directly relevant to biodiversity purposes situated in the EMA (for example G7 and B1). However, we are nevertheless satisfied that the mitigation proposed within the EMA would contribute to avoiding significant adverse effects in respect of species and habitat loss and would contribute to maximising opportunities in and around developments for beneficial biodiversity in accordance with NPSNN paragraphs 5.33 and 5.36. This latter point is particularly pertinent noting the applicant's comments regarding the need to maximise habitat creation through larger areas compared to multiple smaller fragments. The matter of whether a case has been made for CA of land plots 2/16b and 2/16d is considered separately in section 6.
- 3.5.59. The proposed development would not equate to a 10% net gain in BNG as required by PfE policy JP-G8. However, BNG is not currently mandatory for NSIPs and the applicant made this clear in its submissions (particularly when clarifying that it did not form its case for the CA of land). Nevertheless, NNNPS paragraph 4.23 (which is capable of being an important and relevant consideration) encourages applicants to identify and deliver appropriate opportunities for nature recovery and wider environmental enhancement. For the reasons above, the ExA considers this has been achieved and welcomes the applicant's approach to maximise biodiversity net gain where achievable, particularly for hedgerow unit increases, and thus going beyond what it is legally required to do. We consider that incorporating the proposed BNG as part of the overall mitigation proposals would be a positive benefit.
- 3.5.60. Overall, the ExA is satisfied that biodiversity matters have been sufficiently scoped and assessed in the ES and that following mitigation, there would be no residual significant effects.

Conclusions

- 3.5.61. The ExA concurs with ES chapter 8 [\[REP3-010\]](#) that the significance of effect from the proposed development on biodiversity receptors, taken as a whole, during construction and operation would be neutral to slight adverse (not significant).
- 3.5.62. Suitable measures to mitigate the effects of the proposed development on protected and notable species and habitats are proposed along with sufficient habitat creation and enhancement proposals. The ExA is therefore satisfied that the applicant has demonstrated that such risks associated with the proposed development can be satisfactorily mitigated and managed and that appropriate mitigation would be secured by the relevant requirements in the rDCO.
- 3.5.63. The ExA is satisfied that the proposed development is in accordance with NPSNN and, where important and relevant, NNNPS (2024), local policies (recognising that in respect of PfE policy JP-G8 achieving no less than 10% BNG is not mandatory

for NSIPs) and strategies and all other legislation. Taking into account both the negative and positive aspects, the ExA considers there are no residual effects or issues which affect the planning balance in respect of biodiversity.

3.6. CLIMATE

Introduction

- 3.6.1. This section addresses issues relating to climate. It focuses on the extent of carbon emissions that would be emitted from the proposed development and measures to combat the effects of climate change (climate change adaptation). Other emissions that affect air quality, such as NO₂, PM₁₀ and PM_{2.5}, are covered in section 3.4.

Application Summary

- 3.6.2. The applicant's assessment of climate is contained in ES Chapter 14 [\[APP-053\]](#), which was undertaken in accordance with DMRB LA 114 (Highways England 2021a). It considers the impact of the proposed development on climate, for example the nature and magnitude of greenhouse gas (GHG) emissions, and the vulnerability of the proposed development to climate change.
- 3.6.3. ES chapter 14 [\[APP-053\]](#) is supported by the following documents:
- Appendix 14.1: Estimation of Greenhouse Gas Emissions [\[APP-123\]](#)
 - Appendix 14.2: Vulnerability Assessment [\[APP-124\]](#)
 - Figures [\[APP-074\]](#) which include:
 - Figure 14.1: Study Area for Operational Road User Greenhouse Gas Emissions
 - Figure 14.2: Construction Areas Used for Land Use Change Greenhouse Gas Emissions Calculations
 - Figure 14.3: Operational Areas Used for Land Use Change Greenhouse Gas Emissions Calculations
- 3.6.4. The significance of effect in respect of GHG emissions was based on professional judgement as to whether estimated increases in GHG emissions from the proposed development could have a material impact on the ability of the UK Government to meet its carbon reduction targets. For vulnerability to changes in climate, significance was evaluated using a matrix measuring consequence against likelihood (presented in ES chapter 14, table 14.13 [\[APP-053\]](#)).
- 3.6.5. A summary of the GHG emission sources during the construction and operational phases is provided in tables 14.9 and 14.10 [\[APP-053\]](#). In summary, GHG emissions during construction would be associated with the consumption of materials, the generation and disposal of waste, and the transport of these to and from the site. During operation, GHG emissions would primarily be associated with maintenance of road infrastructure, consumption of energy and operational traffic.
- 3.6.6. Section 14.7 of ES chapter 14 [\[APP-053\]](#) describes the baseline conditions where the estimated operational GHG emissions in the 2018 base year were 482,858 tonnes of carbon dioxide equivalent (tCO₂e) for road users and 411 tCO₂e for operational maintenance. The estimated DM future GHG emissions over a 60-year appraisal period is presented in table 14.18, predicting that road user GHG emissions would decrease by approximately 24% between 2029 and 2044.

Table 3: Estimated future DM GHG emissions (taken from table 14.18 in [\[APP-053\]](#))

Source	Future baseline GHG emissions (tCO ₂ e)			
	Opening year (2029)	Design year (2044)	Future year (2061)	Appraisal period (2029–2088)
Road users	479,901	366,479	358,240	22,599,511
Operational maintenance	411	411	411	24,633

- 3.6.7. Baseline data for climate, which uses data obtained from the Met Office, is contained in ES chapter 14 tables 14.16 and 14.17. The projected changes in climate at the location of the proposed development is presented in ES chapter 14 tables 14.19 to 14.21. In summary, these predict there could be increases in temperatures during summer and precipitation in winter, increases in maximum daily temperatures and more frequent climate events.
- 3.6.8. ES chapter 14 section 14.9 sets out the embedded, essential and enhancement measures proposed in respect of GHG emissions and vulnerability to climate change. Embedded mitigation includes measures incorporated into the design to reduce GHG emissions and mitigate climate related impacts, such as but not limited to arrangement of the Northern Loop (work number 05) to reduce extent of earthworks cut and fill, utilising existing drainage infrastructure and specific measures to roads aspects of the proposal.
- 3.6.9. Essential mitigation in respect of GHG emissions are detailed in commitments C1 and C2 of the REAC [\[REP6-006\]](#) with commitments C3 and C8 including measures to reduce the vulnerability of the construction and operational phases to climate.
- 3.6.10. During construction, quarterly GHG emissions reporting would be undertaken by the principal contractor which is included as commitment C9 in the REAC [\[REP6-006\]](#). For operation, commitment C10 in the REAC [\[REP6-006\]](#) includes quarterly GHG emissions reporting of operational maintenance-related GHG emissions.
- 3.6.11. ES chapter 14 table 14.22 [\[APP-053\]](#) estimates the construction phase GHG emissions would be 62,013 tCO₂e. Table 14.23 presents the estimated GHG emissions over the 60-year appraisal period after the scheme opening between the DM and DS scenarios. This estimates that the proposed development would result in an estimated 22,773,085 tCO₂e over the 60-year appraisal period, representing an increase from the DM scenario (shown in figure 10 above) of an additional 151,090 tCO₂e. The applicant then compared the estimated GHG emissions against the UK carbon budgets in table 14.24 [\[REP6-006\]](#) which is reproduced below.

Table 4: Estimated GHG emission compared to UK carbon budgets (taken from table 14.24 [APP-053])

Scheme stage	Estimated total GHG emissions over carbon budget periods (tCO ₂ e) (DS scenario)	Net change in GHG emissions with Scheme over carbon budget periods (tCO ₂ e)	Net change in GHG emissions with Scheme within relevant carbon budget period (tCO ₂ e) (and as % of relevant carbon budget)		
			Fourth carbon budget (2023–2027)	Fifth carbon budget (2028–2032)	Sixth carbon budget (2033–2037)
Construction	1,918,002	62,013	38,414 (0.002%)	23,600 (0.001%)	-
Operation	4,085,080	34,807	-	16,914 (0.001%)	17,893 (0.002%)
Total	6,003,082	96,820	38,414 (0.002%)	40,513 (0.002%)	17,893 (0.002%)

- 3.6.12. The applicant considers that the estimated changes in GHG emissions would be negligible in comparison to UK carbon budgets. Therefore, the applicant considers the GHG emissions associated with the proposed development would be unlikely to have a material impact on the ability of the UK Government to meet its carbon reduction targets and therefore considers the effects to be not significant. The applicant also states that the findings (derived using DEFRA's EFT v 11) represent a worst case as they do not account for more recent projections of electric vehicle uptake [APP-053]. Transport Decarbonisation Plan sensitivity test results were presented in table 14.25 [APP-053].
- 3.6.13. The GHG emissions from the proposed development are benchmarked against other SRN schemes in table 14.26 [APP-053] in accordance with paragraph 3.21 of DMRB LA 114.
- 3.6.14. Potential cumulative effects are considered in paragraphs 14.10.14 to 14.10.19, which note that the assessment is inherently cumulative as the traffic data has accounted for other transport schemes, foreseeable developments and national regional growth rates ([APP-053] paragraph 14.10.14).
- 3.6.15. For vulnerability to climate, the assessment found no significant residual effects during construction or operation.
- 3.6.16. Overall, the Case for the Scheme [REP3-018] summarised that the proposed development would increase GHG emissions overall due to more traffic travelling on the SRN in the future. However, the applicant considers those emissions would decrease over the longer term. The applicant considers that the measures contained within the REAC [REP6-006] and associated appendices, particularly the Outline Carbon Management Plan [APP-142], would contribute to net zero targets during construction and operation.

Examination Issues

3.6.17. Climate was a matter of concern raised in 17 RRs (for example [\[RR-003\]](#), [\[RR-014\]](#), [\[RR-023\]](#), [\[RR-026\]](#) and [\[RR-046\]](#)). Based on the comments raised by IPs and the ExA's review of the application documents, the ExA considered the main issues during the examination were:

- Adequacy of the ES assessment of climate.
- Implications of recent legal judgements.
- Increase in GHG emissions and the ability to meet legally binding carbon reduction targets.
- Importance and relevance of the impact on local carbon budgets and climate emergency declarations.

Adequacy of the ES Assessment of Climate

3.6.18. Comments were raised by IPs questioning aspects of the methodological approach in the ES relating to climate.

3.6.19. Climate Emergency Planning and Policy (CEPP) [\[RR-003\]](#) considered ES chapter 14 had not identified and described:

- The full science-based impacts on the global climate system.
- A 'worst case' description of the likely significant impacts.
- The impacts on meeting the UK's commitments under the Paris agreement.
- Impacts on delivering the UK's climate plan, namely the 'Carbon Budget Delivery Plan'.

3.6.20. The applicant provided a detailed response CEPP's comments in [\[REP1-020\]](#), which can be summarised and generally aligned to CEPP's comments as follows:

- Global climate system: The EIA regs requires an assessment of likely significant effects in "an appropriate manner" and the ES provides clear and concise information to enable the Secretary of State to reach a reasoned conclusion on the likely effects of the proposed development. It is neither necessary nor feasible to estimate the impact of changes in GHG emissions from a proposed development on the global climate system.
- Worst case of description of effects: The ES assessment presents a greater than 'worse case' assessment. This is due to applying a 15% contingency factor to material quantities, using lower projections for electric cars and large goods vehicles, not making allowance for the proposed enhancement measures to further reduce GHG emissions and not allowing for any decarbonisation of manufacturing industries.
- Paris agreement: The ES assesses against the relevant legally binding carbon budgets (set in line with article 4 of the Paris agreement) in accordance with NNNPS 2024 paragraph 5.39. As such, the ES provides an assessment of the potential impact on the UK's commitments under the Paris agreement.
- UK climate plan: Noting NNNPS 2024 paragraph 5.38, there is no specific policy requirement to consider potential impacts on the delivery of the Carbon Budget Delivery Plan. The NPSNN and DMRB LA 114 requires an assessment against the impact on the ability of government to meet statutory carbon budgets.

3.6.21. CEPP did not provide any further comments to the applicant's response nor provided any further submissions to the examination.

- 3.6.22. The ExA sought comments from IPs on the suitability of the ES methodology in ExQ1 CC.1.3 [\[PD-011\]](#). BMBC confirmed it agreed with the methodology and it had used a whole life cycle approach using guidance from Publicly Available Specification 2080:2030 [\[REP3-031\]](#).
- 3.6.23. FoCM stated it would be challenging for them to determine whether they agreed with the methodology as ES chapter 14 [\[APP-053\]](#) only contained summary figures rather than detailed calculations. Whilst they assumed it was a competent piece of work, FoCM questioned some of the assumptions made [\[REP3-027\]](#). In so far as they related to methodology, these included:
- Lack of consideration to the cumulative impacts of increases in GHG emissions alongside other proposed developments and the extent to which this would impact on achieving the national targets (FoCM also referred to this matter in [\[REP1-045\]](#)). The key point being you cannot take one scheme in isolation and argue that the increase in emissions against carbon budgets is negligible as the increase should be considered alongside other proposed development.
 - Whether any allowance had been made for lost carbon sequestration due to land sealing.
 - Whether induced traffic had been included in the assessment calculations [\[REP3-027\]](#) which is important given the significant level of development proposed in PfE.
- 3.6.24. The applicant's response to the points raised by FoCM relating to methodology can be summarised as follows [\[REP4-027\]](#):
- Cumulative consideration of projects: The ES assessment focused solely on the potential impact of the scheme itself, as per NNNPS 2024 paragraph 5.38. As stated in ES chapter 14 paragraph 14.10.19, the assessment is also "inherently cumulative" as the traffic model includes other locally committed transport schemes. The applicant's previous response (in [\[REP1-020\]](#)) to concerns raised by FoCM on this matter (in [\[REP1-045\]](#)) also referred to the judgement by the Court of Appeal in (R (on the application of Andrew Boswell) v Secretary of State for Transport and National Highways, [2024] EWHC 1572 (Admin); [2024] EWCA Civ 145; and [2024] 5 WLUK 624) (Boswell Judgements). The applicant stated these judgements concluded that there is no meaningful way to carry out a wider assessment of cumulative emissions in the context of current scientific knowledge and the lack of any geographical boundary for such emissions.
 - Carbon sequestration: Changes in land use and carbon sequestration was considered in Appendix 14.1 section 5 [\[APP-123\]](#).
 - Induced traffic: The traffic model has been derived from Scheme-specific Simulation and Assignment of Traffic to Urban Road Networks traffic model. This contains a Variable Demand Model (VDM) implemented in accordance with DfT's TAG. Induced traffic is accounted for through the VDM process therefore the GHG assessment includes impacts from induced traffic.
- 3.6.25. The ExA examined the applicant's approach to assessing carbon emissions in more detail during ISH2 [\[EV10-001\]](#), asking the applicant to explain its approach to the assessment of GHG emissions of the proposed development during construction and operation and provide a summary of how it arrived at the figures in ES chapter 14 [\[APP-053\]](#). The applicant explained how it had estimated carbon emissions from the construction and operation of the proposed development as well as changes in land use and forestry, changes in road user emissions and emissions from operational energy consumption from lighting. The applicant also explained that the assessment had used industry recognised tools to estimate emissions, such as DEFRA's emissions toolkit to estimate changes in operational road user emissions

and the woodland carbon code calculation spreadsheet to estimate carbon sequestration in woodland. To calculate emissions, they had subtracted the DM emissions away from the DS emissions and compared these against the UK carbon budgets. In respect of cumulative, the applicant reiterated comments it had made to IPs, and that stated in the ES chapter 14, that their assessment was inherently cumulative as the traffic model accounts for other schemes in the locality.

- 3.6.26. In response to the ExA's question as to how scope 1, 2 and 3 emissions had been assessed, the applicant explained the ES assesses life cycle emissions and referred to tables 14.9 and 14.10 in ES chapter 14 [\[APP-053\]](#). The applicant explained table 14.9 lists the emission sources during the construction stage, for example emissions associated with raw material extraction, transport of those materials staff travel. Table 14.10 includes the emission sources during operation which for example includes emissions from materials to maintain the scheme over a 60-year period and changes in road user emissions. The applicant confirmed these were from direct and indirect sources [\[EV10-010\]](#).

Implications of recent legal judgements

- 3.6.27. Following submission of the application, three legal judgements were handed down which considered climate issues. The ExA considered it important to examine this matter and, through ExQ1 CC.1.5 [\[PD-011\]](#) and ExQ2 CC.2.3 [\[PD-013\]](#), asked the applicant and BMBC whether the following legal judgements would have any implications on the ES findings:

- 'Finch' - UK Supreme Court ruling in Finch R (on the application of Finch on behalf of the Weald Action Group) (Appellant) v Surrey County Council and others (Respondents) [2024] UKSC 20.
- 'FoE' - High Court ruling in Friends of the Earth and Ors v SSDESNZ [2024] EWHC 995 (Admin).
- 'Cumbria' - High court ruling of Friends of the Earth Ltd & South Lakeland Action on Climate Change vs SSLUHC, West Cumbria Mining Ltd & Cumbria CC [2024] EWHC 2349 (Admin).

- 3.6.28. The applicant assessed the implications of each of these judgements on its ES assessment findings in [\[REP5-034\]](#). In respect of 'Finch', the applicant advised that the ES had identified, assessed and presented the findings of indirect effects as appropriate. The applicant explained that the judgement in 'Finch' emphasised the need for an ES to consider all impacts where there can be considered to be an 'inevitable causation' between a project and an effect which should not be mere 'speculation or conjecture'. The applicant stated the court also emphasised that an assessment was only required if a reasoned conclusion could be reached where there must be evidence to draw a link between the project and the effect.

- 3.6.29. The applicant's review included a four-step approach which firstly involved identifying any additional indirect effects not already covered for each topic in the ES. Where these were identified, then to determine if they were likely to occur because of the proposed development and then to assess whether they would result in any likely effects. The review noted that there could be an additional indirect effect with works required to Pike Fold Golf Course due to the proposed development where further information had been submitted in respect of two applications for lawful development certificates (see BMBC response to ExQ1 CICE.1.1 [\[REP3-031\]](#) for further details). This development was subsequently included in the updated cumulative effects assessment submitted at DL5 [\[REP5-011\]](#) and [\[REP5-019\]](#).

- 3.6.30. Table 2.1 in [\[REP5-034\]](#) detailed the review of each of the topics assessed in the ES. The only topics where additional indirect effects were likely and with commentary provided were Material Assets and Waste, Population and Human Health, Road Drainage and the Water Environment and Climate. In summary, the commentary considered there was insufficient evidence of a 'casual link' between any indirect environmental effects and the proposed development in respect of these matters. Overall, the review in respect of 'Finch' concluded that there were no likely indirect effects considered to be significant that had not already been included in the ES.
- 3.6.31. In respect of 'FoE', the applicant considered that the judgement findings requiring the government to produce a revised Carbon Budget Delivery Plan would provide a route map to achieving carbon budgets and would not alter those budgets set by the UK Government. Therefore, the applicant considered it would have no implications on the assessments in the ES [\[REP5-034\]](#).
- 3.6.32. In 'Cumbria', the applicant stated the only matters of relevance considered by the High Court was in respect of the UK's leadership role in promoting international action to address climate change and the issue of offsetting measures. The applicant considered that the proposed development was not a similar project to 'Cumbria' and would not rely on offsetting measures, such that they considered the points were not applicable [\[REP5-034\]](#).
- 3.6.33. BMBC advised in its responses to ExQ1 CC.1.5 and ExQ2 CC.2.3 that it would liaise with the applicant and review and provide comments once the applicant's review was submitted [\[REP3-031\]](#) and [\[REP5-037\]](#). However, no such comments were provided by BMBC at DL6. No other IPs provided comments on the applicant's submission at DL6 as allowed for in the examination timetable [\[PD-009\]](#).
- 3.6.34. As this issue was raised by the ExA during the examination rather than any IP, it was not a matter of disagreement at the close of the examination.
- Increase in GHG emissions and the ability to meet legally binding carbon reduction targets
- 3.6.35. Approximately 16 RR's raised comments on this issue. The main concerns raised were:
- The proposed development would increase carbon emissions by 62,013 tonnes during construction and 151,090 tonnes over 60 years due to increased traffic, for example [\[RR-005\]](#), [\[RR-014\]](#), [\[RR-029\]](#), [\[RR-046\]](#) and [\[RR-054\]](#).
 - The increase in emissions would undermine reaching legally binding carbon targets, for example [\[RR-010\]](#), [\[RR-011\]](#), [\[RR-012\]](#), [\[RR-023\]](#), and [\[RR-040\]](#).
 - Decarbonisation of the transport sector requires traffic reductions and alternative travel modes to road building should be explored to achieve this, for example [\[RR-023\]](#) and [\[RR-026\]](#).
- 3.6.36. In addition, BMBC's LIR noted the proposed development would increase GHG emissions. Whilst acknowledging the applicant's position that the proposed development would not in isolation impact on national government's net zero target, BMBC considered the impact on GHG emissions would be negative [\[REP1A-001\]](#).
- 3.6.37. BMBC's LIR also noted the proposed measures in ES chapter 14 to reduce emissions. BMBC subsequently confirmed in response to ExQ1 CC.1.4 [\[PD-011\]](#) they were satisfied that there was little more mitigation the applicant could do to reduce emissions although they expected that significant effort would be made by

the applicant to carry out their suggested enhancements identified in paragraph 6.5 of their LIR [\[REP1A-001\]](#).

3.6.38. The applicant's responses to these submissions noted the requirements of the Climate Change Act 2008 to reduce carbon emissions to 'net zero'. The applicant considered ES chapter 14 [\[APP-053\]](#) had estimated changes in GHG emissions from the proposed development compared to legally binding carbon budgets in accordance with policy and guidance. The applicant found the estimated changes to be negligible and concluded that GHG emissions from the proposed development would be unlikely to have a material impact on the ability of the UK Government to meet its carbon reduction targets. The applicant also commented that the NPSNN and NNNPS 2024 makes clear that an increase in operational GHG emissions is not, of itself, a reason to refuse development consent and that road user GHG emissions will be addressed in a managed, economy-wide manner [\[REP1-020\]](#) and [\[REP2-007\]](#).

3.6.39. The applicant further considered there was also little they could do to influence road user GHG emissions where measures to reduce emissions were contained in other publications, such as 'Decarbonising Transport: A Better, Greener Britain' (DfT 2021) and NH's own 2030/2040/2050 Net Zero Highways Plan [\[REP1-020\]](#) and [\[REP2-007\]](#).

3.6.40. The ExA sought further clarity during ISH2 how significance in respect of GHG emissions was determined [\[EV10-009\]](#). The applicant advised Institute of Environmental Management and Assessment (IEMA) guidance on evaluating the significance of change in GHG emissions refers to a change of 5% of national carbon budgets as potentially being significant. However, the applicant advised that this would represent a large change and determining significance was a matter of professional judgment. In this case, the applicant considered the changes in GHG emissions as a consequence of the proposed development would be so small in the context of the UK carbon budget as to be not significant.

Importance and relevance of the impact on local carbon budgets and climate emergency declarations

3.6.41. FoCM advised that all ten districts in GM had declared a climate emergency in 2018 and agreed a target to be carbon neutral by 2038. They claimed the applicant had not properly considered this. They also considered that the proposed development would have a significant impact on carbon emissions in the local area, including the achievement of GM's 2038 target [\[REP1-045\]](#).

3.6.42. BMBC's LIR also referred to the impact of increased emissions on their target to be carbon neutral by 2038 [\[REP1A-001\]](#). Their response to ExQ1 CC.1.3 considered that ES chapter 14 should have compared the proposed development with local emissions rather than national emissions to assess whether it would have a significant impact [\[REP3-031\]](#).

3.6.43. The applicant confirmed that reference to GM's carbon neutral target was made in table 14.5 in ES chapter 14 [\[APP-053\]](#). They highlighted that paragraph 6.13.5 of the Case for the Scheme [\[REP3-018\]](#) stated "the Applicant is not aware of any relevant non-statutory targets", being any non-statutory targets set at a national level [\[REP2-007\]](#).

3.6.44. The applicant's response to BMBC's LIR explained that the estimated GHG emissions had been assessed in the context of statutory UK carbon budgets in

accordance with paragraph 5.39 of the NNNPS (2024) and DMRB LA 114 (paragraph 3.18). The applicant also referred to the IEMA guidance on 'Assessing Greenhouse Gas Emissions and Evaluating their Significance'. The applicant noted this guidance comments that whilst local or regional carbon budgets, such as those prepared by the Tyndall Centre, can be used to provide contextual information the effects of GHG emissions are not geographically restricted so a geographical budget (below a national) is not very meaningful.

- 3.6.45. The ExA sought further details from BMBC in ExQ1 CC.1.2 [\[PD-011\]](#) of their climate emergency declaration and how this would be affected by the proposed development. BMBC confirmed that their climate emergency has no statutory basis nor forms part of their development plan. However, they considered it to be a material consideration and relevant to the application as the proposed development would have a negative impact on carbon emissions. BMBC also included a table comparing the carbon budget of the proposed development to BMBC's carbon budget estimated by the Tyndall Centre, which they suggested showed the proposed development would have a significant impact on carbon emissions [\[REP3-031\]](#).
- 3.6.46. The applicant's response to the table supplied by BMBC in ExQ1 CC.1.2 highlighted that only a small proportion of the emissions shown in tables 14.22 and 14.23 of ES chapter 14 would occur within BMBC's area. This, in their opinion, highlighted why the most appropriate assessment was to compare GHG emissions for an NSIP project against budget set at a national level [\[REP4-027\]](#).
- 3.6.47. The ExA sought further explanation from BMBC on its reasons for the scheme to be compared with local emissions rather than national emissions during ISH2 [\[EV10-009\]](#) and [\[EV10-010\]](#). BMBC referred to two points of context being their climate emergency and the commitment to be carbon neutral. They did not dispute the findings in the ES but thought consideration on a local perspective to a local budget was important. BMBC did not consider that one had primacy over the other but that national and local budgets should be considered together.
- 3.6.48. During ISH2, the ExA asked BMBC what policies could be relied upon to support their request to consider local carbon budgets as well as the national budgets, which was taken away as action point 26 [\[EV10-002\]](#). In response, BMBC could not identify any policies [\[REP4-029\]](#).
- 3.6.49. The applicant considered BMBC's approach to be incorrect particularly as there were no sectorial targets for transport set at a sub-national level. They remained of the view that the only way of assessing emissions was against statutory targets set at a national level for the UK as a whole, which they considered the Boswell judgements had endorsed. The applicant also emphasised that the emissions in tables 14.9 and 14.10 of ES chapter 14 included emissions outside of BMBC's area.
- 3.6.50. BMBC did not consider that the Boswell judgements were a challenge to the choice of the national carbon budget as an appropriate comparator but considered that their request to consider the impact on the relevance of local budgets was a matter for the examiner's judgement. The applicant [\[REP4-028\]](#) and BMBC [\[REP4-029\]](#) subsequently provided an agreed note which summarised their opinion of the factual position of the Boswell judgements.
- 3.6.51. In response to ExQ2 CC.2.5 [\[PD-013\]](#), which queried whether the agreed note had any implications on BMBC's position, BMBC acknowledged that the judgements endorsed an assessment against national budgets consistent with the NPSNN

although also affirmed that the acceptability of environmental information is a matter of judgement for the decision-maker. BMBC therefore maintained that local budgets were a relevant consideration. The applicant's response to BMBC effectively summarised their previous submissions on this matter maintaining that the only statutory targets are national and their approach had been endorsed by relevant case law and should be preferred [\[REP6-011\]](#).

- 3.6.52. Whilst not included as a matter in the SoCG [\[REP5-028\]](#), the importance and relevance of considering local carbon budgets was ultimately an area where disagreement remained between BMBC and the applicant.

Other Matters

- 3.6.53. The ExA examined matters relating to climate resilience in ISH2 agenda item 9.3 [\[EV10-001\]](#). In response to the ExA's question whether any local geographical constraints had been adopted in the measures for climate change resilience in the design, the applicant advised that the potential future changes in climate had used UK projections to identify potential impacts. The applicant confirmed that the measures adopted to mitigate against climate had not gone further than that required in guidance and standards [\[EV10-009\]](#). The applicant provided further details of sensitivity testing they had undertaken in response to ISH2 action point 28 which considered a 40% uplift in rainfall but concluded that this uplift would not result in a substantial impact on the performance of the proposed drainage network [\[REP4-028\]](#).
- 3.6.54. In ExQ2 CC.2.2 [\[PD-013\]](#), the ExA asked the applicant why the proposed development had not included any voluntary measures to off-set residual carbon emissions using a recognised framework as per NNNPS (2024) paragraph 5.35. The applicant explained that as the ES had concluded the impact of the scheme on climate would not be significant, residual carbon emissions would not be (voluntarily) offset or removed using a recognised framework as there was no requirement to do so. The applicant referred to measures within the Outline Carbon Management Plan [\[APP-142\]](#) which would seek to further reduce, rather than offset GHG emissions. The applicant also stated the majority of change in GHG emissions would be through road user GHG emissions which paragraph 5.42 of NNNPS (2024) states would be addressed in a managed, economy-wide manner through measures such as the government's Transport Decarbonisation Plan [\[REP5-033\]](#).

ExA's Findings

- 3.6.55. The national policy position in respect of carbon emissions and climate change adaption are primarily contained in NPSNN paragraphs 3.6 to 3.8, 4.36 to 4.47 and 5.16 to 5.19 inclusive.
- 3.6.56. Paragraph 3.6 states that transport will play an important part in meeting the government's legally binding carbon targets and other environmental targets. Paragraph 3.8 goes on to state that the impact of road development on aggregate levels of emissions is likely to be very small and needs to be seen in the context of significant projected reductions in carbon emissions.
- 3.6.57. Paragraphs 4.36 to 4.47 contain the policy tests in respect of climate change adaption. It emphasises that adaption is necessary to deal with the effects of climate change. Paragraph 4.40 states that new national networks infrastructure will typically be long term investments which will need to remain operational over many decades in the face of a changing climate. This paragraph requires applicants to consider the impacts of climate change when planning location, design, build and

operation and for an ES to set out how the proposal will take account of the projected impacts of climate change.

- 3.6.58. Paragraph 4.42 requires applicants to take into account 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. Paragraph 4.44 provides that adaptation measures should be based on the latest set of UK Climate Projections, the government's national Climate Change Risk Assessment and consultation with statutory consultation bodies.
- 3.6.59. Paragraphs 5.16 to 5.19 contain the policy tests in respect of carbon emissions. Paragraph 5.16 refers to the government's legally binding framework to cut GHG emissions stating that emission reductions will be delivered through a system of five-year carbon budgets that set a trajectory to 2050.
- 3.6.60. Paragraph 5.17 requires an ES to describe an assessment of any likely significant climate factors in accordance with the requirements in the EIA Directive. It goes on to state that "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".
- 3.6.61. In terms of decision-making, paragraph 5.18 makes clear that any increase in carbon emissions is not a reason to refuse development consent, unless the increase in carbon emissions resulting from a proposed scheme are so significant that it would have a material impact on the ability of the government to meet its carbon reduction targets.
- 3.6.62. Paragraph 5.19 requires evidence of appropriate mitigation measures in both design and construction, which the Secretary of State is required to consider the effectiveness of.
- 3.6.63. NNNPS (2024) paragraphs 2.19 to 2.31, 3.10 to 3.13, 3.34, 4.33 to 4.44 and 5.26 to 5.42 inclusive provide more up-to-date policy provisions in respect of carbon emissions and climate change adaption. The broad thrust of the policies is similar to that in the NPSNN, particularly with regard to assessment against the government's statutory carbon budgets and that an increase in emissions in itself is not a reason to refuse development consent. However, amongst other things, the NNNPS (2024) takes into account the trajectory towards net zero and requires applicants to provide whole life carbon assessments for projects, assessing carbon emissions at all stages of the development.
- 3.6.64. Having considered the applicant's responses to questions posed by the ExA in written questions and during ISH2 [\[EV10-009\]](#) and those by IP's as detailed above, the ExA is satisfied that the approach to the assessment of vulnerability to climate and GHG emissions in ES chapter 14 [\[APP-053\]](#) (particularly tables 14.9 and 14.10 which detail the emission sources during construction and operation) has incorporated the details required in NPSNN paragraphs 4.40 to 4.42, 4.44 and 5.17 and been undertaken in accordance with appropriate guidance (DMRB LA 114).
- 3.6.65. Whilst the NPSNN does not refer to whole life carbon, we are satisfied that the applicant has taken an appropriate approach in considering the whole life carbon assessment in accordance with NNNPS 2024 paragraphs 5.31 to 5.33, which is capable of being an importance and relevant matter. The evidence before us leads

us to conclude that the Secretary of State can be satisfied that the applicant has, as far as possible, assessed the carbon emissions at all stages of the development.

- 3.6.66. The ExA is satisfied that ES chapter 14 has adequately taken into account the potential impacts of climate change using the latest UK Climate Projections in accordance with NPSNN paragraph 4.42. It has also provided sufficient evidence of the carbon impact of the proposed development and an assessment against the government's carbon budgets in accordance with NPSNN paragraph 5.17. We are also satisfied that the cumulative effects of carbon emissions is appropriately included in the ES as the traffic model used to calculate GHG emissions between the DM and DS scenarios against carbon budgets accounts for traffic growth rates, other transport proposals and other foreseeable developments, such that the assessment is inherently cumulative. All of these reasons lead us to conclude that the methodology adopted in the ES is appropriate.
- 3.6.67. The ExA is also satisfied that carbon emissions and impacts have been appropriately considered as part of the appraisal of scheme options prior to the submission of the application (page 7 of [\[APP-147\]](#) and paragraphs 5.3.9 and 5.3.10 of [\[REP3-018\]](#)) in accordance with NPSNN paragraph 5.17. The NPSNN and inclusion of the scheme in RIS2 has already taken into account and accepted the climate effects of the identified new road projects and improvements. We also note that paragraph 5.28 of the NNNPS (2024) acknowledges that the construction and operation of national network infrastructure will in itself lead to carbon emissions.
- 3.6.68. The ExA has considered the applicant's responses in respect of the implications of the recent court judgements handed down after the application was submitted. In respect of 'Finch', the ExA is satisfied that the stage 3 emissions have been adequately assessed and therefore 'Finch' has been addressed in this application. That is because the ExA does not find a casual connection with, nor has been presented with any substantive evidence of, any additional indirect effects that have not already been reported in the ES. In respect of 'FoE' and 'Cumbria', we are satisfied that these judgments would have no implications for the assessment carried out in this application.
- 3.6.69. The ExA acknowledges the concerns raised by IPs on the estimated increase in GHG emissions from the proposed development. However, paragraph 3.8 of NPSNN states the very small impact of road development in aggregate levels of emissions and impacts of road development need to be seen against significant projected reductions in carbon emissions. Similarly, paragraph 2.25 of NNNPS (2024) notes carbon emissions from construction and operation of the strategic road network represent a small proportion of emissions.
- 3.6.70. As stated in paragraph 5.18 of NPSNN, 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 materially impact the ability of government to meet its carbon reduction targets. Paragraph 5.42 of NNNPS (2024) is also clear that approval of schemes with residual carbon emissions is allowable and can be consistent with meeting net zero subject to achieving carbon reduction targets.
- 3.6.71. The ExA is satisfied that the applicant has appropriately assessed and compared the proposed development against the fourth (construction only), fifth (construction and operation) and sixth (operation) carbon budgets as required in NPSNN paragraphs 5.16 to 5.18 and NNNPS (2024) paragraph 5.35. On the evidence presented, the ExA finds that the estimated changes in GHG emissions would

amount to a total maximum of 0.002% of the total carbon budget in any of the fourth, fifth and sixth budget periods. We consider that this increase, on its own, would be unlikely to have a material impact on the UK Government meeting the carbon reduction targets. As stated above, we are also mindful that the NPSNN and RIS2 has considered the implications of increases of GHG emissions in new national network infrastructure at a national level.

- 3.6.72. The ExA has considered the concerns raised by IPs that the proposed development would undermine the ability to meet net zero and other travel modes should be prioritised. However, there are provisions in place, such as through the 'Decarbonising Transport: A Better, Greener Britain, and also the Net Zero Strategy, which provides pathways set at a national level how the UK will deliver the legislative requirements of the Climate Change Act 2008 and on the legally binding carbon budgets. Comments on the legitimacy or otherwise of the measures within these publications is not a matter for this examination.
- 3.6.73. The ExA has considered the submissions raised by IPs in respect of BMBC's local carbon budgets. However, as this is a nationally significant infrastructure project, national policy and national carbon budgets prevail. The limitations of using local carbon budgets for the purposes of assessment was identified during ISH2 [\[EV10-010\]](#) as the table of carbon budgets in BMBC's response to ExQ1 CC.1.2 [\[REP3-031\]](#) only relates to BMBC's area. It does not include budgets relating to the adjoining council areas of Rochdale or Manchester which would likely be impacted by increased GHG emissions to some degree. The GHG emissions included in tables 14.9 and 14.10 of ES chapter 14 [\[APP-053\]](#) would not be restricted to BMBC's area. We consider this highlights the limitations identified in the IEMA guidance notes referred to by the applicant ([\[REP2-008\]](#) and [\[REP6-011\]](#)) and the uncertainty of assessing impacts against local or regional budgets, particularly for a proposed development where carbon emissions would not be limited to one geographical area. In addition, the High court has confirmed that consideration against national budgets is the appropriate approach. As such we give very little weight to the proposed development's impact against the budgets included in BMBC's response to ExQ1 CC.1.2 [\[REP3-031\]](#).
- 3.6.74. The ExA acknowledges that the proposed development would generally result in an increase in GHG emissions in the BMBC and wider GM region, which we consider would be a negative impact to weigh in the balance in our conclusions on this section. However, the approach adopted by the applicant to assess the effects of GHG emissions from the proposed development against national carbon budgets, which set out the legal limits of emissions that the government has set for those periods, is consistent with the relevant legal and policy tests.
- 3.6.75. The ExA considers that the vulnerability of the proposed development to climate change has been considered by the applicant in accordance with NPSNN paragraphs 4.36 to 4.47 using the latest UK climate projections. We are satisfied that the proposed mitigation and adaptation measures for vulnerability to climate change in ES chapter 14 would ensure that the proposed development would be sufficiently resilient against the possible future impacts of climate change.
- 3.6.76. The ExA considers that appropriate embedded, essential and, where possible, enhancement measures in respect of GHG emissions and vulnerability to climate change have been incorporated into the design and construction of the proposed development in accordance with NPSNN paragraphs 5.19 and 4.44 to 4.47. The measures set out in ES chapter 14 would be taken forward through commitments

contained in the REAC [\[REP6-006\]](#) and the Outline Carbon Management Plan [\[APP-142\]](#) which would be secured by requirement 4 of the rDCO.

- 3.6.77. The ExA has considered the applicant's response to the issue of off-setting emissions [\[REP5-033\]](#) as required in NNNPS (2024) paragraph 5.35 which is capable of being an important and relevant consideration. Given that the majority of GHG emissions would be through operation, where measures exist at a national level to reduce emissions, and the applicant's proposed mitigation measures proposed to reduce GHG emissions, the ExA considers that it is not necessary to voluntarily offset emissions in this case.

Conclusions

- 3.6.78. In respect of GHG emissions, the ExA concurs with ES chapter 14 [\[APP-053\]](#) that the proposed development would be unlikely to have a material impact on the UK Government meeting its carbon reduction targets. Therefore, the proposed development would not give rise to significant effects in EIA terms during construction and operation.
- 3.6.79. In respect of vulnerability to changes in climate, the ExA also concurs with ES chapter 14 [\[APP-053\]](#) that the proposed development would not give rise to significant effects in EIA terms.
- 3.6.80. The ExA is satisfied that the applicant has demonstrated that such risks associated with the proposed development can be satisfactorily mitigated and managed and that appropriate mitigation would be secured by the relevant requirements in the rDCO.
- 3.6.81. The ExA is satisfied that the proposed development is in accordance with NPSNN and, where important and relevant, NNNPS (2024), local policies and strategies and all other legislation.
- 3.6.82. Taking into account that the proposed development would give rise to an increase in carbon emissions during both the construction and operational periods, the ExA attaches a little negative weight to climate matters against the making of the order.

3.7. DESIGN

Introduction

- 3.7.1. This section considers the overall approach adopted to the design of the proposed development as well as the design approach taken to individual aspects. As design is an overarching matter there is cross over with other subjects, such as measures to avoid and mitigate effects relating to landscape and visual impacts (section 3.11), drainage (section 3.15) and climate change (section 3.6). Consideration of the different layout options is covered in section 3.3 (alternatives).

Application Summary

- 3.7.2. The applicant's consideration of design is contained in ES chapter 2 [\[APP-041\]](#), the Scheme Design Report (SDR) [\[APP-151\]](#), the Design Principles Report (DPR) [\[REP6-010\]](#) and the Case for the Scheme (section 6.7) [\[REP3-018\]](#). Documents which illustrate the proposed preliminary design, including layout and drawings of structures, include the:

- General Arrangement Plans [\[APP-005\]](#)

- Engineering Section Drawings [[APP-011](#)]
- ES Figures – Chapter 2 The Scheme [[REP7-013](#)]
- Structures Visualisations [[PD1-007](#)]

- 3.7.3. Section 2.2 in ES chapter 2 [[APP-041](#)] outlines the main objectives of the scheme and also lists the design principles, referring to DMRB GG 103, DMRB LA 104 and DMRB LD 117 which set design standards for good road design. High level 'scheme-specific design principles' are listed in paragraph 2.2.9 which in summary, aim to retain existing vegetation and reinforce landscape character and pattern, maximise biodiversity value and improve wildlife, integrate earthworks into the landscape, carefully design structures and provide visual interest for receptors.
- 3.7.4. Section 2.5 in ES chapter 2 [[APP-041](#)] describes the individual components of the proposed development such as structures, embankments, drainage, lighting and environmental design and mitigation and the design approach taken to them.
- 3.7.5. The SDR [[APP-151](#)] provides further detail on the approach to the proposed design and identifies surrounding land uses and environmental constraints. It also explains the role of a Design Review Panel (DRP) that was set up to review the preliminary scheme design. Table 4-2 provides details of the comments that were provided by the DRP and the applicant's responses to those comments.
- 3.7.6. The preliminary design of the proposed development has been informed around the 10 principles of good design contained in Highways England (now NH) 'The Road to Good Design' (2018) (RGD) ([[REP4-028](#)], annex C). Table 4-1 in [[APP-151](#)] and table 3.1 in [[REP6-010](#)] explain how the applicant considers the proposed development meets each of the 10 principles of good design. In addition, table 3.1 in [[REP6-010](#)] provides further detail describing how each of the principles would be delivered listing commitments contained within the REAC [[REP6-006](#)] that are relevant to each principle.
- 3.7.7. A summary of the changes that were made to the design following both statutory and non-statutory consultation is summarised in the Consultation Report [[APP-021](#)]. Table 5-14 summarises the changes that were made to the design in response to comments received. Table 5-15 summarises issues raised in responses to the consultation where design changes were not made by the applicant and the reasons why. Further detail of responses received to the design during consultation is provided in annex Q of the Consultation Report [[APP-038](#)].

Examination Issues

- 3.7.8. No IPs raised specific comments on design matters. Consequently, the main issues were derived from the ExA's questioning to the applicant and BMBC. Following the ExA's review of the application documents, the main issues considered during the examination were:
- Approach to design and consultation undertaken to inform the scheme design.
 - Securing good design at detailed design stage.
 - Appropriateness of the design of Pike Fold Viaduct (work number 05) and Pike Fold Bridge (work number 39).

Approach to design and consultation undertaken to inform the scheme design

- 3.7.9. The ExA wished to further understand the applicant's approach to the design, particularly how it had been an integral consideration from the outset and how the

applicant had engaged with stakeholders to inform the design. The ExA sought explanation from the applicant on these matters during ISH2 [\[EV10-001\]](#).

3.7.10. In respect of the design approach, the applicant advised that it had its own internal guidance (the RGD) which it considered aligned with the criteria for good design and that it was required to comply with established technical standards in the DMRB [\[EV10-004\]](#). The applicant also referred to the National Infrastructure Commission's (NIC) design principles (climate, people, places and value) which it considered were embedded into the design. The applicant referred to table 4-1 in the SDR [\[APP-151\]](#), which sets out how the proposed design meets each of the 10 principles within the RGD, and briefly set out how these were met. The applicant specifically referred to the following:

- The design had been developed in line with the DMRB and by an integrated team of engineering and environmental specialists.
- The traffic model was used to define the design parameters at the outset, particularly carriageway width and required capacity.
- An overarching principle is that new infrastructure is as safe as possible, such as incorporating a hard shoulder.
- Signage and gantries had been designed to direct traffic efficiently and safely.
- The proposed development had been designed to fit into the local context and incorporate sustainability in accordance with the principles set out in the NNNPS (2024) to avoid or mitigate impacts, for example through BNG, design of landscaping and gradients of embankments.

3.7.11. The ExA asked the applicant during ISH2 [\[EV10-004\]](#) to explain further how the design had addressed the four design principles established by the NIC and how they were embedded into the design. The applicant provided a written response [\[REP4-028\]](#) which states in summary on each principle:

- Climate: The design would be resilient to climatic variations including sustainable drainage with a service life of 60 years with capacity to accommodate addition runoff with a rainfall intensity increase of 30%.
- People: The proposed design has followed extensive collaboration, consultation and would be inclusive, as set out in the Consultation Report [\[APP-021\]](#) and Equalities Impact Assessment [\[APP-152\]](#).
- Places: The design is considered to fit into the local context and is environmentally sustainable as illustrated in ES figure 2.3 [\[REP7-013\]](#).
- Value: The main contractor forms part of the design team to ensure that construction would use cost effective solutions using long lasting materials, such as bridge decks with an intended design life of 120 years.

3.7.12. Turning to consultation, the ExA sought further clarification from the applicant during ISH2 [\[EV10-001\]](#) on the role and makeup of the DRP, how the DRP had appraised the design and why some of its observations as summarised in table 4-2 of the SDR [\[APP-151\]](#) had not been incorporated into the final design. The applicant explained that it saw the DRP as an integral part of the design process and it had been formed in collaboration with the Design Council to create an independent panel. The applicant stated that the DRP were not engaged at the start of the process but at a stage where the design was at a sufficient level of detail in March 2023. The applicant explained that the principal nature of the design was to accord with the DMRB with the DRP to add value to aspects of the proposed development. The applicant clarified that the proposed development submitted at application stage was not substantially different to that considered by the DRP [\[EV10-004\]](#).

- 3.7.13. Noting the content of table 4-2 row 8 in [\[APP-151\]](#), the ExA questioned the applicant further during ISH2 why it had not incorporated the comments from the DRP which “strongly encouraged the design team to introduce more trees across the Scheme”. In its written response to ISH2 action point 9 [\[EV10-002\]](#), the applicant explained that the comments from the DRP were at a point where there was an absence of landscape planting from the visualisations and the size of the proposed development had been reduced in response to comments during the statutory consultation. The applicant considered that the volume of replacement tree planting proposed was proportionate to the loss of trees. It also explained that comments from the DRP to introduce wetlands had been incorporated into the submitted landscape design [\[REP4-028\]](#).
- 3.7.14. The ExA wished to better understand what input BMBC had into the design process and whether they considered the proposed development represented good design. Through ExQ1 DES.1.1 [\[PD-011\]](#) and ISH2 [\[EV10-001\]](#) the ExA sought clarification from BMBC on this matter. BMBC provided a brief response to ExQ1 DES.1.1 [\[PD-011\]](#) stating that it had been involved at pre-application stage although did not elaborate further on any advice given. In addition, whilst BMBC stated they considered the proposed development represented good design, other than confirming agreement with the findings in the applicant’s SDR it was unclear why they adopted this position [\[REP3-031\]](#). Following further questioning during ISH2, BMBC confirmed in response to ISH2 action point 8 [\[EV10-002\]](#) that they had been in regular dialogue with the applicant, as detailed in the SoCG [\[REP5-028\]](#) and they had not identified any local design codes or principles that would be relevant to the proposed development. BMBC confirmed that its consideration of design had been limited to landscaping, local highway interfaces, diverted public right of way (PRoW) and drainage where design matters of importance to them, namely landscape and drainage proposals, would be subject to further consultation as secured by requirement 5 and requirement 8 respectively in the rDCO [\[REP4-029\]](#).

Securing good design at detailed design stage

- 3.7.15. The ExA questioned the applicant during ISH2 [\[EV10-001\]](#) on the further design work that was required at detailed design stage. The ExA was particularly mindful that other than the ten principles set out in the RGD, the applicant had advised during ISH2 that no detailed design principles or design narrative had been established for the proposed development which could be used to take forward to detailed design. The ExA asked the applicant during ISH2 (ISH2 action point 11 [\[EV10-002\]](#)) whether a document could be produced that defined the design principles which would be incorporated into detailed design, bringing together the different design objectives and mitigation measures set out across the application documents, that could be secured as part of requirement 3 of the dDCO.
- 3.7.16. The applicant submitted the DPR at DL6 [\[REP6-010\]](#) with the purpose of summarising how the detailed design of the proposed development would be delivered and to ensure that detailed design elements would be compatible with the preliminary scheme design. Table 3.1 within the document lists each of the 10 principles contained in the RGD, sets out how the proposed development would meet each of those principles and provides an explanation how that principle would be delivered including reference to relevant commitments in the REAC [\[REP6-006\]](#). Reference was also added to requirement 5 of the dDCO at DL5 [\[REP5-005\]](#) and [\[REP6-006\]](#) requiring the authorised development to be designed so that it would be compatible with the design principles set out in the DPR [\[REP6-010\]](#).

Appropriateness of the design of Pike Fold Viaduct (work number 05) and Pike Fold Bridge (work number 39)

3.7.17. The applicant's NPSNN Accordance Tables [APP-147] and Case for the Scheme [REP3-018] both state that the proposed new viaduct and bridge are "prominent new structures and have been subject to a design process aimed at providing structures that acknowledge the potential impacts on the wider landscape". Noting these comments, through ISH2 [EV10-001] and ExQ2 [PD-011] the ExA examined the design of these structures further and sought to understand how the following matters had informed the chosen preliminary design:

- The design process that had been undertaken.
- Whether the structures had been informed by an architectural vision or design brief.
- The extent of consultation during the pre-application period.
- The different design options considered for the structures.
- The aspirations for the finished quality of the appearance for both structures.

3.7.18. The applicant explained during ISH2 that the proposed viaduct and bridge aimed to acknowledge the impacts of the proposed development and wider landscape. The applicant explained that the span arrangement had been a key consideration and the symmetrical approach adopted to the span (with a 43m, 56m and 43m span) would produce an efficient design. In terms of aesthetics, the applicant considered that the combination of weathering steel and landscape planting along with structural embankments would become visually attractive over time helping to integrate the structures into the landscape and provide a strong design statement [EV10-004]. The applicant considered that the submitted structures visualisations [PD1-007] illustrated this point, as produced below.

Figure 9: Visualisation of the proposed Pike Fold Viaduct at year 15 (work number 05) looking south from the M66 (extract from [PD1-007])



Figure 10: Visualisation of the proposed Pike Fold Bridge at year 15 (work number 39) looking west from the proposed Northern Loop (extract from [PD1-007])



- 3.7.19. The applicant advised during ISH2 that the structures had not been informed by an architectural vision. It was explained that there was a balance between what the structures needed to deliver to support the objectives of the proposed development and the required highway geometry. The applicant explained that the proposed combination of materials aligned with the way they had approached bridge designs on other projects rather than anything specific in terms of a design brief. The applicant considered that it was delivering a design in harmony with the way they approach value and economics of structural efficiency rather than focusing on a new superstructure that would form a gateway. It also explained that it was working within a constrained budget [EV10-004].
- 3.7.20. During ISH2 the ExA queried whether the structures were subject to consultation during the pre-application period, noting that questions 3 and 4 of the statutory consultation [APP-033] sought comments on other parts of the proposed development but not the proposed structures. The applicant explained that video visualisations had been displayed on its website and during public events which featured the structures. However, it could not provide reasons why specific questions on the structures was not included in the public consultation.
- 3.7.21. In respect of different design options, the applicant advised during ISH2 [EV10-004] that several structural options had been considered early in the design process in terms of different pier and span arrangements to evaluate the best form to take forward. As requested by the ExA in ExQ2 DES.2.3 [PD-013], the applicant provided detailed comments of the different options considered for both the proposed viaduct and bridge [REP5-033] which are summarised below.
- Pike Fold Viaduct:
 - The main focus of the design had been the span arrangement.
 - A cable-stayed, tied arch or suspension structure at a high level had been considered but was considered uneconomical.
 - A two-span bridge would result in an unbalanced structure and as such, a three-span arrangement was considered most appropriate.

- A steel plate girder with reinforced concrete composite deck slab superstructure had been selected to satisfy a number of structural considerations.
- Pike Fold Bridge:
 - The bridge was initially designed to go over the M66 southbound off-slip although this was subsequently altered to pass underneath the off-slip to reduce earth fill, embankment heights and the need for retaining walls.
 - Different bridge span layouts had been considered but a single-span bridge was considered the most advantageous in terms of cost, health and safety, appearance and sustainability.
 - A weathered steel beam/concrete slab was considered the preferred option to satisfy a number of structural considerations.

3.7.22. The ExA asked the applicant during ISH2 what its aspirations were for the finished quality of the appearance for both structures. In response to action point 10 [\[EV10-002\]](#), the applicant primarily reiterated the approach it had adopted to date with regard to consideration of span arrangements and choice of materials as opposed to its future aspirations but advised that it would consider the need for further commitments to the design as part of the updated dDCO at DL5 [\[REP4-028\]](#). However, other than adding reference to the DPR in requirement 3 of the DL5 dDCO [\[REP5-005\]](#), which did not include any further commitments to the design of the structures, no further information was submitted explaining the applicant's aspirations for the final design.

3.7.23. As such, as part of its schedule of changes to the dDCO [\[PD-016\]](#) the ExA recommended requirement 3 of the dDCO be expanded to include provision of a report to be prepared setting out the findings following a review of the detailed design for both Pike Fold Viaduct and Pike Fold Bridge, carried out in consultation with the DRP, the relevant planning authority and the relevant highway authority. Whilst acknowledging the functionality requirements, the ExA recommended this measure to ensure that the proposed structures would achieve good aesthetics and the highest design standards noting the requirements of paragraph 4.29 of NPSNN, which states good design of national network projects should, amongst other matters, be matched by an appearance that demonstrates good aesthetics as far as possible.

3.7.24. In its response to the ExA's schedule of changes, the applicant rejected the suggested change explaining that paragraph 4.34 of NPSNN encourages applicants to 'consider' the use of professional independent advice. The applicant stated that it had already worked with the Design Council when developing the preliminary design and had also produced a DPR [\[REP6-010\]](#). The applicant also considered that requirement 3 of the dDCO [\[REP7-005\]](#) would ensure good design principles would be embedded into the detailed design. Noting the need for functionality, the applicant considered that it had more than satisfied requirements of the NPSNN [\[REP7-019\]](#).

Other matters

3.7.25. Throughout the examination, the Planning Inspectorate's guidance Nationally Significant Infrastructure Projects: Advice on Good Design was published. In ExQ2 DES.2.2 [\[PD-013\]](#), the ExA asked the applicant to provide comments explaining how the design processes and proposals for the proposed development aligned with this advice and also where any differences existed. The applicant provided a breakdown of the key principles within the advice against the proposed

development in [\[REP5-033\]](#). In summary, the applicant considered that many of the principles within the advice are embedded into the design of the proposed development. The applicant explained, amongst other matters, that whilst a design approach document had not been produced, the applicant considered its SDR [\[APP-151\]](#) sets out its approach to the design and its 10 principles contained in the RGD. The applicant also explained that a specific design vision or narrative for the proposed development had not been set out (as it had also acknowledged during ISH2 [\[EV10-004\]](#)) although stated that the proposed development had followed the vision for the SRN set out within the RGD ([\[REP4-028\]](#), annex C).

- 3.7.26. The ExA sought clarification from the applicant how the design has had regard to the Equalities Act 2010 in ExQ2 DES.2.1 [\[PD-013\]](#). The applicant explained that the proposed development had been designed in accordance with the DMRB which considers all motorists, including those with disabilities. It provided examples of measures included in the proposed design such as how incorporating a hard shoulder would benefit users with protected characteristics, the use of clear and unambiguous signage and deploying a community liaison officer to foster relations during the construction period [\[REP5-033\]](#).

ExA's Findings

- 3.7.27. Paragraphs 4.28 to 4.35 of the NPSNN sets the criteria for good design for national networks infrastructure. In particular:

- Applicants should include design as an integral consideration from the outset of a proposal.
- Visual appearance should be a key factor in considering the design of new infrastructure, as well as functionality, fitness for purpose, sustainability and cost. Good design of national network projects should produce sustainable infrastructure sensitive to place which, amongst other matters, be matched by an appearance that demonstrates good aesthetics as far as possible.
- There may be a limit on the extent to which national infrastructure can contribute to the enhancement of the quality of the area due to its nature.
- A good design should meet the principal objectives of the scheme.
- Scheme design is a material consideration in decision making where the Secretary of State needs to be satisfied that national networks infrastructure projects are sustainable and as aesthetically sensitive, durable, adaptable and resilient as they can reasonably be.
- Applicants should take into account, as far as possible, both functionality and aesthetics. The use of professional, independent advice on the design aspects of a proposal should be considered, to ensure good design principles are embedded into infrastructure proposals.
- Applicants should demonstrate how the design process was conducted and how the proposed design evolved.

- 3.7.28. The NNNPS (2024) contains similar policy provisions to the NPSNN, reiterating that design should be an integral consideration from the outset of a proposal but recognising that good design should not be limited to general aesthetics. Reference is made in paragraph 4.27 to the four design principles developed by the NIC which includes 'Climate', 'People', 'Places' and 'Value'. NNNPS (2024) paragraph 4.28 states a good design should meet the principal objectives of the scheme by applying the mitigation hierarchy to avoid, mitigate or as a last resort compensate for identified problems and adverse impacts. Paragraph 4.31 states applicants should be able to demonstrate effective engagement with communities and stakeholders.

- 3.7.29. The ExA is satisfied that through the SDR [\[APP-151\]](#) and Consultation Report [\[APP-021\]](#), the applicant has considered design as an integral consideration from the outset of a proposal, in accordance with NPSNN paragraph 4.28. In particular, the consultation report [\[APP-021\]](#) and accompanying appendices and the SDR [\[APP-151\]](#) explains how the design process was conducted and how it evolved, in accordance with NPSNN paragraph 4.35. These documents also demonstrate that the applicant has used professional independent advice, such as the DRP, in accordance with NPSNN paragraph 4.33. They also demonstrate that the applicant has effectively engaged with communities and stakeholders to inform the chosen preliminary design, in accordance with NNNPS (2024) paragraph 4.31.
- 3.7.30. The ExA is satisfied that the applicant has sufficiently explained in [\[REP4-028\]](#) how the proposed development aligns with the NIC's four design principles of climate, people, places and value in accordance with paragraph 4.27 of the NNNPS (2024).
- 3.7.31. The application documentation acknowledges that Pike Fold Viaduct (work number 05) and Pike Fold Bridge (work number 39) would be prominent new structures. The ExA has considered the applicant's response to its rejection in [\[REP7-019\]](#) of the ExA's recommendation, in its scheduled of changes to the dDCO [\[PD-016\]](#), for the detailed design of these structures to be subject to a further design review. Whilst the ExA acknowledges that the applicant has previously engaged with the DRP, the ExA does not consider that this should negate the need for further review where justified, particularly noting that the Planning Inspectorate's Advice on Good Design includes provision for design review at post consent stage. With regard to the applicant's reference to the DPD submitted at DL6 [\[REP6-010\]](#), the ExA does not consider that this document sets out any principles (other than landscaping) or future aspirations for the detailed design of these structures.
- 3.7.32. The ExA has fully considered the applicant's responses explaining the different design options that were explored for both the proposed viaduct and bridge and how their design approach was arrived at. However, the ExA is mindful of the applicant's comments during ISH2 [\[EV10-004\]](#) that the design of these structures has been engineered led to achieve value and structural efficiency, rather than being informed by an architectural vision. Whilst the ExA appreciates that functionality requirements require engineered solutions and standards to the design, paragraph 4.29 of NPSNN emphasises the importance of visual appearance and aesthetics in addition to functionality and is clear that good design of national network projects should, amongst other matters, be matched by an appearance that demonstrates good aesthetics as far as possible. Based on what it has read and heard, the ExA is not persuaded that the applicant has sought to achieve this in respect of these structures.
- 3.7.33. To ensure that these structures achieve good aesthetics and the highest design standards as far as possible, as required by the NPSNN, the ExA remains firmly of the opinion that their final detailed design should be subject to a further independent design review process. In the absence of this mechanism, the ExA is not satisfied that the proposed development as a whole would achieve good aesthetics as far as is possible as required in the NPSNN (paragraph 4.29). Whilst paragraph 4.27 of NNNPS (2024), which is capable of being an important and relevant consideration, states that good design should not be limited to general aesthetics, paragraph 4.29 nevertheless requires applicants to consider aesthetics (including the schemes contribution to the quality of the area) as far as possible in addition to functionality. For the reasons stated above, the ExA considers that the applicant has not achieved this with regard to the design of these structures.

- 3.7.34. The ExA considers that securing an additional design review mechanism solely for the detailed design of the proposed structures under requirement 3 of the rDCO, as initially recommended in its schedule of changes to the dDCO [\[PD-016\]](#), would be a proportionate approach that would provide more assurance to the ExA and the Secretary of State that the visual appearance of the proposed development and the aesthetics have been considered as far as possible. With this mechanism in place, the ExA is satisfied that the proposed development would constitute good design in accordance with the NPSNN and that the Secretary of State can be satisfied that the proposed development taken as a whole would be sustainable and as aesthetically sensitive, durable, adaptable and resilient as it reasonably can be in accordance with NPSNN paragraph 4.32.
- 3.7.35. Noting the overall scheme objectives as set out in ES chapter 2 section 2.2, [\[APP-041\]](#), the ExA is largely satisfied that the proposed development would meet the principal objectives of the scheme as required in NPSNN paragraph 4.31. However, the ExA considers that the proposed design process would have benefited from a stronger design narrative and vision that was bespoke to the proposed development (as encouraged in the Planning Inspectorate's Advice on Good Design), particularly for the proposed viaduct and bridge. Notwithstanding, the ExA considers that the submission of the DPD at DL6 [\[REP6-010\]](#) provides a clearer link between the ten design principles set out in the SDR [\[APP-151\]](#) and how these would be delivered through the commitments in the REAC [\[REP6-006\]](#). The ExA is satisfied that the amendments to the dDCO at DL5 [\[REP5-005\]](#) requiring the detailed design to be compatible with the principles set out in the DPR would secure and embed the principles as part of the detailed design stage.

Conclusions

- 3.7.36. The ExA is satisfied that the SDR [\[APP-151\]](#), ES chapter 2 [\[APP-041\]](#) and the Case for the Scheme [\[REP3-018\]](#) demonstrate that the applicant has considered design as an integral consideration from the outset of the proposed development, explaining the approach to the proposed design, how the design process was carried out and how it has evolved.
- 3.7.37. However, the ExA is not satisfied that the visual appearance of the proposed Pike Fold Viaduct (work number 05) and Pike Fold Bridge (work number 39) would achieve good aesthetics and the highest design standards as far as possible noting the requirements of paragraph 4.29 of NPSNN. The ExA considers that the detailed design of these structures should be subject to an additional design review process to provide more assurance to the ExA and the Secretary of State that the visual appearance of the proposed development and its aesthetics have been considered as far as possible. To achieve this, the ExA has recommended additional wording to be added to requirement 3 of the rDCO.
- 3.7.38. Accounting for the provision of a further design review process and the detailed design being compatible with the DPR [\[REP6-010\]](#), the ExA is satisfied that the applicant has demonstrated that such risks associated with the proposed development can be satisfactorily mitigated and managed and that appropriate mitigation would be secured via relevant requirements in the rDCO.
- 3.7.39. The ExA is satisfied that, subject to the inclusion of a further design review process, the proposed design as a whole would be in accordance with the NPSNN and, where important and relevant, NNNPS (2024), local policies and all other relevant legislation and design guidance. In the absence of this mechanism, the ExA is not

satisfied that the proposed development as a whole would achieve good aesthetics as far as is possible as required in the NPSNN.

- 3.7.40. Overall, with the recommended addition to the rDCO requiring a further design review, the ExA attaches a little positive weight to design for the making of the order. However, if the Secretary of State decides that this provision is not necessary then the ExA considers design would attract a little negative weight against the making of the order.

3.8. GEOLOGY AND SOILS

Application Summary

- 3.8.1. The applicant's assessment of the potential effects of the proposed development on geology and soils is in chapter 9 of the ES [\[APP-048\]](#). This chapter considers the following topics in accordance with DMRB LA 109 Geology and Soils:
- geology (bedrock geology and superficial deposits, including geological designations and valuable non-designated features)
 - soil resources (mostly agricultural)
 - land contamination (effects on human health, surface water and groundwater)
- 3.8.2. The assessment in ES chapter 9 is supported by the following appendices:
- Appendix 9.1: Chemical Results Screening Tables [\[APP-106\]](#).
 - Appendix 9.2: Agricultural Land Classification Survey Report [\[APP-107\]](#).
 - Appendix 9.3: Ground Investigation Report [\[APP-108\]](#).
- 3.8.3. The ES [\[APP-048\]](#) (Section 9.6) identifies a 250m buffer around the order limits to establish baseline conditions and identify potential impacts on receptors. The applicant explains that, for the purposes of soil quality impact assessment, the study area was limited to the order limits because all the impacts were physical and would not impact beyond the order limits.
- 3.8.4. The applicant (table 9.11) [\[APP-048\]](#) allocates value (sensitivity) to the receptors in the study area. The applicant identifies features in the study area with very high and high value/sensitivity. These include:
- Human Health - Residential properties and allotments located immediately adjacent to the M60 between J17 and J18 and Heaton Park and Phillips Park.
 - Soils - Approximately 0.4ha of agricultural land classification (ALC) grade 2 soils and 4.5ha of ALC subgrade 3a.
 - Groundwater Quality - Chester Formation (Principal Aquifer) and Secondary A Aquifers.
- 3.8.5. Section 9.8 of ES chapter 9 [\[APP-048\]](#) discusses the potential impacts during construction and operation on geology, soils, human health and groundwater and surface water.
- 3.8.6. Section 9.9 of ES chapter 9 [\[APP-048\]](#) describes the proposed design, mitigation and enhancement measures. It explains how the environmental impacts have been avoided or reduced through the design of the proposed development (embedded or design mitigation) and describes the essential mitigation measures proposed for the proposed development. These essential mitigation measures include the commitments as detailed in the REAC (commitments GS1 to GS12) [\[REP6-006\]](#). The applicant (paragraph 9.9.4) [\[APP-048\]](#) considers that there are no opportunities for enhancement as no soils would be improved or released to agricultural use, no

new sites of geological interest would be improved or created and no contamination would be entirely remediated.

3.8.7. Section 9.10 of ES chapter 9 [APP-048] summarises the likely significant effects of the proposed development on geology, soils, human health and controlled water receptors during construction and operation.

3.8.8. The applicant's assessment, following the application of the mitigation measures as detailed in the REAC [REP6-006], concludes that:

- Permanent adverse (moderate) significant effects on ALC grades 2 (best and most versatile (BMV)), 3a (BMV) and 3b soils due to permanent land take requirements associated with the proposed development during the construction phase were identified.
- No residual significant effects for the operation phase were identified. The applicant did acknowledge that the permanent loss of agricultural land occurring during construction would persist during operation but did not consider it to be an additional effect.

Examination Issues

3.8.9. No IPs raised any significant concerns in relation to geology and soils. The signed SoCG between the EA and the applicant [REP1-018] confirmed that the EA agreed the applicant had adequately considered and addressed their concerns. Considering this and based on the ExA's review of the application documents, the main issues considered during the examination were:

- Land instability (peat and coal).
- BMV agricultural land.

Land Instability

3.8.10. ES chapter 9 [APP-048] identifies the presence of peat within the order limits. In ExQ1 GS.1.2 the ExA asked the applicant how the proposed development had been designed to avoid peat to reduce the risk of land instability, particularly in the vicinity of the proposed Northern Loop (work number 05) [PD-011]. The applicant confirmed that the design sequence involved identifying highway geometrical solutions to meet the proposed development objectives before the geotechnical survey was undertaken. However, the applicant stated that the results of ground investigations and soil surveys demonstrated that the presence of peat was very limited, and any interaction with localised peat had been avoided where possible. The applicant explained that in any localised areas, where peaty soils were proposed to be removed, temporary works designs would be undertaken to consider the excavation depth, specific ground conditions and site constraints. Temporary works designs would consider how the removal of peaty soils could impact adjacent land and provide control measures during the construction and operation of temporary works to ensure the safe excavation of soils [REP3-023].

3.8.11. The ExA asked the applicant and the Coal Authority to explain why a coal mining risk assessment had not been completed when ES chapter 9 (paragraphs 9.7.46 and 9.7.47) [APP-048] identified that parts of the study area were within a Development High Risk area. The applicant confirmed that the study area was not within an area where there was active or proposed underground mining, or within the boundary of a former, active or proposed opencast site and that there were no recorded mine entries within the study area [REP3-023]. The Coal Authority confirmed that on the basis of the conclusion of the applicant's ground investigation

report [APP-108], in respect of risks posed to the project by past coal mining activity, they did not require the submission of a Coal Mining Risk Assessment or any additional information [REP3-029].

BMV Agricultural Land

- 3.8.12. The ES identified that approximately 2.3ha of BMV agricultural land in total would be permanently lost (0.4ha of Grade 2 soils and 1.9ha of Grade 3a). This equates to approximately 2.7% of the order limits. Through ExQ1 GS.1.1 [PD-011] and ISH2 [EV10-001] and [EV10-002] the ExA sought clarification as to how the amount and location of BMV agricultural land within the order limits had been determined by the applicant, particularly with respect to areas of unsurveyed land. The applicant provided further detail to support their interpretation of ALC land within its DL4 submission [REP4-028]. The applicant confirmed that the predominant grade within the order limits was subgrade 3b (non-BMV), with very limited BMV land, and as such considered it appropriate to assign a provisional grade of 3b to unsurveyed land for the purposes of assessment [REP3-023]. The signed SoCG between NE and the applicant [REP1-017] confirmed that NE had reviewed the ALC information presented in the ES [APP-069] and had no comment on the mapping of grades.
- 3.8.13. In response to ExQ2 GS.2.1 [PD-013] the applicant confirmed that the proposed M60 eastbound to M66 northbound link (work number 09) could not practicably be relocated to avoid BMV agricultural land [REP5-033]. The applicant also included a commitment to re-use topsoil wherever practicable (commitment GS9), which would be secured through the EMP [REP6-006] and thus requirement 4 of the rDCO.
- 3.8.14. In response to ExQ2 GS.2.2 [PD-013] the applicant explained that whilst BMV land was present in five landholdings, the predominate grade in each given field was subgrade 3b (not BMV agricultural land). The applicant explained that any cropping regime is most likely to be tailored to the predominant ALC within that field and therefore the predominant grade in a given field is the most relevant consideration. The applicant considered that in terms of the value of the BMV land for agricultural purposes, the impacts of the proposed development in reality were very minor as it represented such a small area of the overall agricultural land and only occurred in pockets of separate fields rather than across one or more entire fields. The applicant considered that the economic and other benefits associated with the retention of the BMV agricultural land was outweighed by the benefits of the DCO proposal [REP5-033].

ExA's Findings

- 3.8.15. Section 5 of the NPSNN considers the impact of national networks on land stability, geotechnics, geology and soils.
- 3.8.16. Paragraph 5.22 of NPSNN states that the ES should set out the likely significant effects on designated sites of geological conservation importance with paragraph 5.25 stating that as a general principle, development should avoid significant harm to these sites. Paragraph 5.26 further states that the Secretary of State should ensure appropriate weight is attached to geological interests within the wider environment.
- 3.8.17. Paragraph 5.117 of NPSNN states that if land stability could be an issue, applicants should seek appropriate technical and environmental expert advice to assess the likely consequences of proposed developments on sites where subsidence, landslides and ground compression is known or suspected.

- 3.8.18. Paragraph 5.118 of NPSNN requires applicants to carry out preliminary assessment of ground instability at the earliest possible stage and undertake any necessary investigations to ascertain that the site will remain stable or can be made so as part of the development. It also requires applicants to complete a land stability or slope stability risk assessment report, taking into account the surrounding areas where subsidence, landslides and land compression could threaten the development, neighbouring land or property. Paragraph 5.119 details a summary of the range of options that the applicant can use in terms of mitigation against land instability.
- 3.8.19. Paragraph 5.168 of NPSNN requires applicants to consider the economic and other benefits of the 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.
- 3.8.20. 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.
- 3.8.21. NNNPS (2024) has similar policy provisions to NPSNN but also requires applicants to submit a coal mining risk assessment as part of their application in specific Development High Risk areas (paragraph 5.158).
- 3.8.22. In the absence of evidence to the contrary, the ExA has no obvious reason other than to consider that the potential land instability has been appropriately considered in accordance with the NPSNN. The ExA is also satisfied that the Coal Authority's written submission and explanation [\[REP3-029\]](#) sufficiently demonstrates that a coal mining risk assessment, in accordance with the NNNPS (2024), is not required for the proposed development.
- 3.8.23. By the close of the examination, no IP had raised any substantive concerns with the loss of BMV agricultural land the ExA had no obvious reason to disagree. The ExA is satisfied that the applicant has adequately assessed ALC and that it had sought to use poorer quality land in the first instance in accordance with the NPSNN.
- 3.8.24. The ES identified that approximately 2.3ha of BMV agricultural land in total would be permanently lost (approximately 2.7% of the order limits). However, the said 2.3ha are, rather than contained within one area or field, in fact contained within smaller and disjointed pockets across more than one field, and the ExA questions their value to contribute towards agricultural production when disjointed in such way. In any event, the applicant has committed through commitment GS9 to strip and sustainably re-use the topsoil where practicable. Nevertheless, recognising that there would be permanent loss of BMV, the ExA agrees with the ES assessment that this would amount to a moderate adverse effect, which is significant.

Conclusions

- 3.8.25. The ExA concurs with ES chapter 9 [\[APP-048\]](#) that the significance of effect from the proposed development on geology and soils would be moderate adverse (significant) due to the permanent loss of best and most versatile land.

- 3.8.26. The ExA is satisfied that the applicant has demonstrated that such risks associated with the proposed development can be satisfactorily mitigated and managed and that appropriate mitigation would be secured via relevant requirements in the rDCO.
- 3.8.27. The ExA is satisfied that the proposed development is in accordance with NPSNN and, where important and relevant, NNNPS (2024), local policies and strategies and all other legislation. The ExA considers this matter would attract a little negative weight against the making of the order.

3.9. GREEN BELT

Application Summary

- 3.9.1. The applicant's assessment of Green Belt is primarily contained in the Case for the Scheme [REP3-018] and the NPSNN Accordance Tables [APP-147]. [REP3-018] sets out a summary of national (based on NPPF 2023) and local Green Belt policy and identifies the extent of the proposed development that would be located within the Greater Manchester Green Belt.
- 3.9.2. At the time of submission, the Green Belt boundary identified in the Bury UDP included areas to the north-east, south-east, south-west and north-west of the Simister Island Interchange. This amounted to approximately 68 hectares of land within the order limits. The applicant's assessment in The Case for the Scheme [APP-146] (as submitted initially with the application) was based on the Green Belt boundary as defined in the Bury UDP.
- 3.9.3. Following submission, as explained in section 2 above, PfE was adopted where the land to the north-east of the Simister Island Interchange, which predominantly includes the proposed Northern Loop (work number 05), EMAs (work numbers 36 and 38) and attenuation pond 1 (work number 37), was released from the Green Belt to allow for the Heywood/Pilsworth Northern Gateway strategic site allocation. This reduced the amount of Green Belt land within the order limits by 19 hectares to a total of 49 hectares, of which 21 hectares comprises existing motorway infrastructure ([REP3-018] paragraph 6.8.7). Extracts from the Bury UDP illustrating the Green Belt boundary at the time of application submission and the new Green Belt boundary in PfE are shown below for comparison purposes.

Figure 11: Extract from The Case for the Scheme figure 6.1 [APP-146] with annotations added illustrating the Green Belt boundary in the Bury UDP

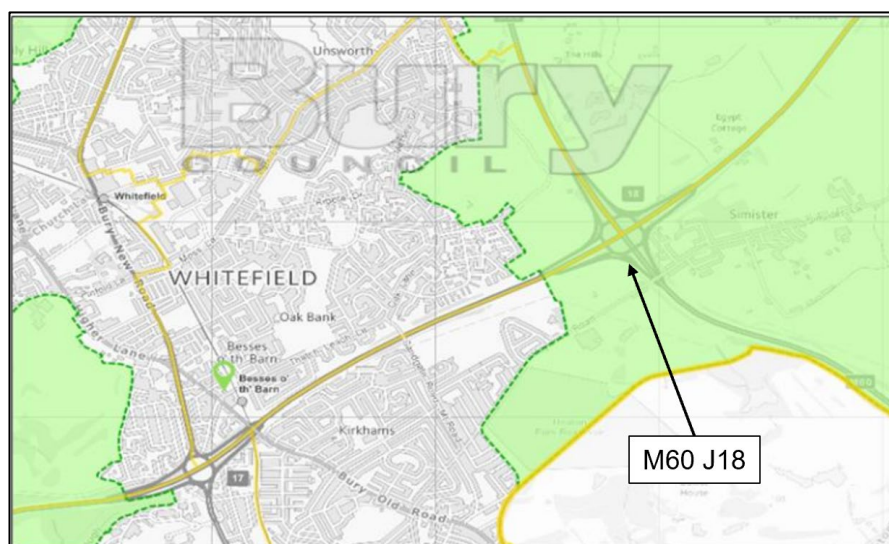
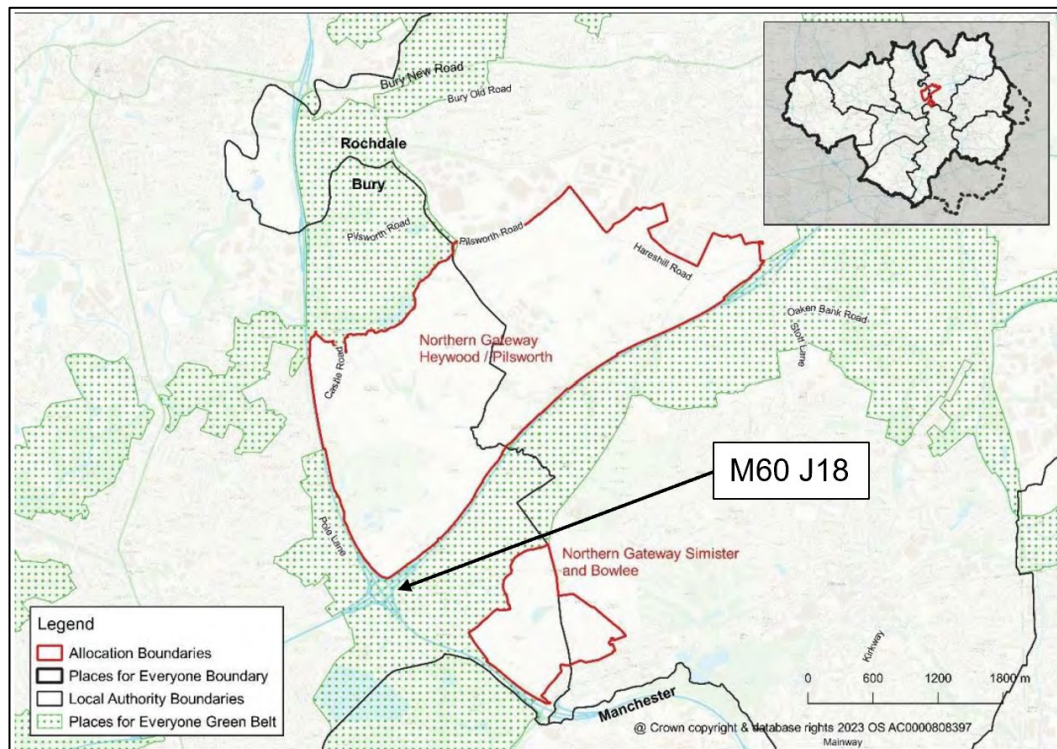


Figure 12: Extract from Places for Everyone Joint Development Plan Picture 11.3 [REP3-032] with annotations added illustrating new Green Belt boundary, motorway network and Northern Gateway allocations



3.9.4. The applicant considers that the proposed development would be a ‘major engineering operation’ under the NPPF although would not constitute ‘local transport infrastructure’ due to being part of the SRN [REP3-018] (section 6.8). However, the applicant considers that due to the substantial nature of the proposed development, which would include new sections of elevated highways, earthworks and other operational features such as signage and lighting, it would harm the openness of the Green Belt [REP3-018]. The applicant also considers the proposed development would encroach into the countryside conflicting with one of the purposes listed in the NPPF for including land in the Green Belt. As such, the applicant considers the proposed development would constitute inappropriate development in the Green Belt.

3.9.5. The applicant states that ‘very special circumstances’ (VSC) must be demonstrated to evidence that other considerations outweigh any potential harm to the Green Belt [REP3-018] (paragraph 6.8.21). Paragraph 6.8.22 states “the VSC include” the following summarised matters:

- The need for the scheme which is to improve the SRN consistent with the overall objectives for national networks set out in both the NPSNN and NNNPS 2024.
- Benefits that would include:
 - Additional capacity to meet forecasted future growth in traffic and address the problem of congestion.
 - Travel time savings and alleviated congestion that would otherwise worsen. The part of the SRN would operate within capacity up to and beyond 2044 and traffic using J18 would “save up to 1.5 minutes compared to current journey times during normal traffic conditions”.
 - An overall present value of benefits of £137.5 million.

- There is a lack of alternatives with less impact on the Green Belt as the proposed development would be to an existing section of the SRN where it is not possible to pursue an option located outside of the Green Belt.

3.9.6. Overall, the applicant states in paragraph 6.8.23 of [\[REP3-018\]](#) that “‘*other considerations*’ (in the form of VSC which include the need and national benefits of the Scheme) outweigh any harm to the Green Belt.” This conclusion remained unchanged following the adoption of PfE.

Examination Issues

3.9.7. Based on the comments raised by IPs and the ExA’s review of the application documents, the key issues considered during the examination were:

- Loss of Green Belt land and alternatives.
- Whether the proposed development is inappropriate development.
- Impact on openness.
- Any other harm and other considerations.

Loss of Green Belt land and alternatives

3.9.8. Sixteen RRs objected to the loss of Green Belt land (for example [\[RR-005\]](#), [\[RR-010\]](#), [\[RR-011\]](#), [\[RR-046\]](#) and [\[RR-048\]](#)). These primarily opposed the loss of Green Belt land in the absence of a perceived need for the scheme and the further loss in addition to that released following adoption of PfE. In response, the applicant stated national planning policy establishes that there can be other reasons in the form of VSC that justifies development in the Green Belt and outweigh any harm. It also highlighted that the impact to the Green Belt had been reduced from that previously assessed following the adoption of PfE [\[REP1-020\]](#).

3.9.9. A failure to consider alternatives to a Green Belt location was raised as an issue in [\[RR-046\]](#). The ExA sought further details from the applicant on the alternatives considered for individual aspects of the proposed development to Green Belt locations in ExQ1 GB.1.2 [\[PD-011\]](#). In response, the applicant explained that at the time of submission (prior to the adoption of PfE) all the land east of Whitefield and surrounding Simister was located in the Green Belt. Due to delays in the adoption of PfE, the applicant could not rely on land proposed to be released when finalising the proposed layout. The applicant acknowledged that the land released from the Green Belt was unrelated to the proposed development and that it may have been possible to locate more design features, such as a drainage pond, outside of the Green Belt. However, due to the proximity of the motorway to the built-up area and that alternative locations would require acquisition of additional land, the applicant stated the scope to locate more elements of the scheme outside the Green Belt was limited [\[REP3-023\]](#).

3.9.10. In response to ExQ1 GB.1.5 [\[PD-011\]](#), which queried how the proposal had offset the loss of Green Belt land through compensatory improvements in accordance with PfE policy JP-G2, the applicant [\[REP3-023\]](#) explained that it was not possible to replace Green Belt land ‘like for like’ nor was it a statutory requirement to provide compensatory measures. However, the applicant confirmed it was possible to improve the quality of the Green Belt through landscape and recreational enhancements, which was proposed through new areas of environmental mitigation within and outside the Green Belt.

Inappropriate development

- 3.9.11. BMBC's LIR [\[REP1A-001\]](#) considered that the proposed development represented inappropriate development in the Green Belt and none of the exceptions listed in the (then 2023) NPPF, whereby development in the Green Belt would not be inappropriate, applied. BMBC advised that VSC would therefore need to be demonstrated which should outweigh the harm resulting from the proposal.
- 3.9.12. During the examination, a revised NPPF was published which made changes to national Green Belt policy, such as (but not limited to) introducing grey belt land and additional exceptions whereby development would not be inappropriate. In response to ExQ2 BCG.2.1 [\[PD-013\]](#), the applicant stated that paragraph 143 did not alter the five purposes of the Green Belt, paragraph 153 reiterates the need to consider whether development is inappropriate and to demonstrate VSC and paragraph 154 lists exceptions to inappropriate development [\[REP5-033\]](#). The applicant stated that their case set out primarily in [\[REP3-018\]](#) and in further written responses [\[REP2-008\]](#), [\[REP3-023\]](#), [\[REP4-027\]](#) and [\[REP4-028\]](#), namely that the proposed development would be inappropriate development and VSC were required, remained unchanged. No comments were received from any IP on this matter.

Impact on openness

- 3.9.13. Concerns that there had been a lack of assessment of Green Belt harm and that the proposed development would have an adverse impact on openness were raised in [\[RR-011\]](#) and [\[RR-046\]](#). The ExA sought further details from the applicant on impact to openness through ExQ1 GB.1.1 [\[PD-011\]](#) and ExQ2 GB.2.2 [\[PD-013\]](#).
- 3.9.14. The applicant explained that fewer elements of the proposed development would impact the permanent openness of the Green Belt than previously assessed in [\[APP-146\]](#) due to the adoption of PFE [\[REP3-023\]](#). The applicant provided an assessment of each of the work numbers listed in schedule 1 of the dDCO in [\[REP3-023\]](#) (appendix C) confirming whether they were located in the Green Belt and if so, whether they would or would not preserve openness. In summary, this considered that new above ground works would impact on openness albeit in the context of existing motorway infrastructure which already impacts openness both visually and spatially.
- 3.9.15. The applicant provided further details on the impact to openness from temporary works in response to ExQ2 GB.2.2 [\[REP5-033\]](#). It was explained that measures to minimise the impact on openness from temporary works, such as siting of and limiting height of stockpiles and implementing best practice measures in respect of lighting, would be managed as part of the Outline Construction Management Plan [\[APP-136\]](#). The applicant concluded that upon completion of construction and the removal of temporary structures, there would be no impact on openness.

Any other harm and other considerations

- 3.9.16. Both [\[RR-046\]](#) and [\[REP1-045\]](#) cited 'other harm' that existed which they considered would not justify inappropriate development in the Green Belt. These included:
- Increases in traffic and the number of road casualties with vehicles travelling at faster speeds.
 - Increase in air, noise, light, vibration and water pollution.
 - Increase in carbon emissions.
 - Failure to consider alternatives.

- 3.9.17. In addition, they also considered the scheme would result in a very marginal cost benefit and disputed the significance of the stated journey time savings in the Case for the Scheme paragraph 4.6.6 [\[APP-146\]](#), such that they were not sufficient to justify inappropriate development in the Green Belt.
- 3.9.18. In response the applicant referred to the requirements in the NPSNN and NNNPS (2024) which set out the overall context for development of the SRN and considered the scheme would deliver a large number of benefits. These included reducing congestion, providing additional capacity to reduce journey times and the lack of alternatives with less impact on the Green Belt [\[REP1-020\]](#) and [\[REP2-007\]](#).
- 3.9.19. BMBC did not explicitly set out its consideration of ‘any other harm’ or ‘other considerations’ in its LIR [\[REP1A-001\]](#). It instead quoted the applicant’s comments in the Case for the Scheme [\[APP-146\]](#) stating “it is considered that very special circumstances do exist which outweigh the harm to the Green Belt by way of the improvement to strategic national infrastructure, reduction in travel times and congestion, increase in capacity for forecasted growth and the resultant economic benefits”.
- 3.9.20. In the Case for the Scheme ([\[APP-146\]](#) and [\[REP3-018\]](#)) and in response to comments raised by IPs ([\[REP1-020\]](#) and [\[REP2-007\]](#)), the applicant listed matters that it (incorrectly) referred to as ‘VSC’. Through ExQ1 GB.1.3 and GB.1.4 [\[PD-011\]](#) and ExQ2 GB.2.3 [\[PD-013\]](#), the ExA sought clarification as to how the applicant and BMBC had considered ‘any other harm’ and ‘other considerations’.
- 3.9.21. In respect of ‘any other harm’, the applicant advised [\[REP3-023\]](#) that each topic-based chapter in the Case for the Scheme [\[REP3-018\]](#) had considered the conformity of the scheme against national and local policy and demonstrated compliance. In addition, the applicant stated that the details provided in response to ISH2 action points 36 and 37 [\[REP4-028\]](#) detailing the harm to two designated heritage assets would not affect these conclusions [\[REP5-033\]](#). BMBC clarified their LIR had reported negative non-Green Belt impacts in respect of dust emissions, climate, landscape and visual, noise, vibration and traffic which constituted the areas where ‘any other harm’ would arise [\[REP3-031\]](#).
- 3.9.22. In respect of ‘other considerations’, the applicant clarified that these were set out in paragraph 6.8.24 of [\[APP-146\]](#) (subsequently paragraph 6.8.22 of [\[REP3-018\]](#)), namely the national need for the scheme, its benefits and the lack of alternatives. BMBC’s response to ExQ1 GB.1.3 [\[PD-011\]](#) stated that it considered ‘other considerations’ were the need for the scheme, the benefits it would bring in terms of added capacity, the alleviation of congestion and in supporting economic growth and the lack of alternative options [\[REP3-031\]](#).

ExA’s Findings

- 3.9.23. NPSNN paragraph 5.164 states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence.
- 3.9.24. Paragraph 5.170 states that there is a general presumption against inappropriate development within the Green Belt. Such development should not be approved, except in VSC. Applicants should also determine whether their proposal, if within an established Green Belt, may be considered inappropriate development.

- 3.9.25. Paragraph 5.171 recognises that linear infrastructure linking an area near a Green Belt with other locations will often have to pass through Green Belt land and the identification of a policy need will take account of the fact that there will be an impact on the Green Belt.
- 3.9.26. Paragraph 5.178 states that when located in the Green Belt, national networks infrastructure projects may comprise inappropriate development, which is by definition harmful to the Green Belt and there is a presumption against it except in VSC. The Secretary of State will need to assess whether there are VSC to justify inappropriate development. VSC 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 Secretary of State will attach substantial weight to the harm to the Green Belt.
- 3.9.27. In terms of the NPPF, the notable difference is the reference to linear infrastructure in paragraph 5.171 of the NPSNN. In addition, NPPF paragraph 143 lists five purposes of the Green Belt and paragraphs 154 and 155 lists development which is not inappropriate in the Green Belt and any exceptions that apply.
- 3.9.28. For the purposes of assessment, the ExA is considering the impact of the proposed development on the Green Belt as defined in PfE as this replaced the Green Belt policies in the Bury UDP upon its adoption following submission of the application.
- 3.9.29. The ExA notes the concerns raised in several RRs of loss of Green Belt land although as noted above, national policy allows for this where VSC exists to justify inappropriate development. Should this criteria be met, the ExA is nevertheless satisfied that the proposed landscape and recreational enhancements listed in the applicant's response to ExQ1 GB.1.5 [\[REP3-023\]](#) would provide suitable measures to offset the loss of Green Belt land in accordance with PfE policy JP-G2.
- 3.9.30. The ExA is satisfied there are limited alternatives other than a Green Belt location for any physical upgrade to the Simister Island Interchange. This is because the order limits to the north-west and south-west of the interchange are located within the Green Belt and any option to physically upgrade the junction would not avoid development in the Green Belt. Whilst the ExA noted the applicant's response to ExQ1 GB.1.2 [\[REP3-023\]](#) acknowledged that it may have been possible to locate attenuation ponds outside the Green Belt, the ExA is satisfied that the Drainage Strategy Report [\[APP-102\]](#) demonstrates the need for these features in the locations proposed.
- 3.9.31. Whilst the Inner Links option for the upgraded junction would have resulted in less encroachment into the Green Belt, as detailed in the alternatives section of this report, the ExA concluded that the 'Northern Loop' option (work number 05) would provide (amongst other benefits) greater capacity and journey time improvements, be safer and easier to construct, and overall represent better value for money. The ExA also recognises that the release of the land from the Green Belt containing the proposed Northern Loop (work number 05) has reduced the overall extent of harm to the Green Belt, particularly in respect of openness.
- 3.9.32. No IPs disputed the applicant's finding that the proposed development would constitute inappropriate development in the Green Belt. The ExA concurs with this assessment. The ExA is satisfied the applicant's responses to our questions has provided an adequate assessment of the impact to openness from the proposed development which we consider would result in a moderate adverse impact on harm

to openness, both visually and spatially. Overall, the ExA is content that the applicant has considered whether the proposed development may be considered inappropriate development in accordance with NPSNN paragraph 5.170.

- 3.9.33. The updates to Green Belt policy within the NPPF is an important and relevant consideration, particularly as paragraph 5.178 of NPSNN specifically refers to consideration against the NPPF in respect of inappropriate development in footnote 109. However, in the absence of substantial evidence to suggest otherwise, the ExA accepts the applicant's position that the revised NPPF would not change their assessment that the proposed development would be inappropriate development.
- 3.9.34. For these reasons, the ExA finds that the proposed development would result in substantial engineering works that would increase the overall coverage of the junction. The proposed development would not preserve openness, both visually and spatially, and would result in encroachment into the countryside. Whilst engineering works can amount to not inappropriate development in the Green Belt under paragraph 154(h)(ii) of the NPPF, the proposed development's failure to preserve openness and not conflict with the purposes of including land within it results in the scheme amounting to inappropriate development. Little substantive evidence has been submitted to demonstrate that any of the criteria within paragraph 155 of the NPPF would be met whereby the proposed development should not be regarded as inappropriate development in the Green Belt and as such, the ExA does not consider that paragraph 155 applies.
- 3.9.35. Whilst incorrectly referred to as 'VSC' in the application documents, the ExA is satisfied that the applicant's response in [\[REP3-023\]](#) clarified that the reasons listed within paragraph 6.8.22 of [\[REP3-018\]](#) can be considered 'other considerations' for the purposes of applying Green Belt policy. We are not convinced however the applicant's comments that the proposed development would conform with national and local policy demonstrates a proper consideration by them of 'any other harm', primarily as 'any other harm' is not necessarily restricted to compliance with policy.
- 3.9.36. The consideration of 'any other harm' must be undertaken against all other topic areas and thus will be assessed in section 5 of this recommendation. Equally, the 'other considerations', which similarly include the need for the proposed development and other matters will be assessed in section 5. It is for the ExA to consider and the Secretary of State to determine whether these 'other considerations' are capable of amounting to the VSC necessary to outweigh the adverse effects of the proposed development on the Green Belt by way of inappropriateness, loss of openness and 'any other harm'.

Conclusions

- 3.9.37. For the purposes of the assessment, the ExA is considering the impact of the proposed development on the Green Belt as defined in the adopted PfE which replaced the Green Belt policies in the Bury UDP after the application was submitted for acceptance.
- 3.9.38. The ExA finds that the proposed development would constitute inappropriate development in the Green Belt development under NPPF paragraph 154(h)(ii). The proposed development would result in substantial engineering operations that would result in a moderate adverse impact on harm to openness, both visually and spatially, acknowledging that the degree of harm to openness has reduced following the removal of Green Belt land through the adoption of PfE. The proposed

development would also conflict with the purpose of the Green Belt to safeguard the countryside from encroachment.

- 3.9.39. Inappropriate development is by definition harmful to the Green Belt. In accordance with NPSNN paragraph 5.178 the ExA attaches substantial weight to the harm that would result to the Green Belt by reason of inappropriateness and loss of openness.
- 3.9.40. Inappropriate development should not be approved except in VSC and those circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, loss of openness and any other harm, is clearly outweighed by other considerations. This balance is undertaken in section 5.

3.10. HISTORIC ENVIRONMENT

Application Summary

- 3.10.1. The applicant's assessment of the effects on the historic environment was contained within ES chapter 6 [\[REP4-008\]](#), supported by a Cultural Heritage Desk-Based Assessment (DBA) [\[REP4-018\]](#) and figures [\[APP-062\]](#). The DBA provided more detail on the baseline conditions of heritage assets (HA(s)) (including setting and significance) and the likely impacts to them.
- 3.10.2. A study area of 1km from the order limits was adopted for designated HAs and an area of 500m for non-designated HAs to identify those assets that could be affected both physically and by virtue of changes to their setting. The assessment to changes to setting of assets was supplemented by the findings in other topic areas in the ES relating to air quality, landscape and visual, noise and vibration, and road drainage and the water environment.
- 3.10.3. The HAs included in the baseline are listed in [\[REP4-008\]](#) (table 6.8) which identifies both designated and non-designated HAs by archaeological remains, built heritage (including conservation areas), historic landscapes and important hedgerows. The location of these assets and the study area for the baseline was illustrated in [\[APP-062\]](#) (figures 6.1, 6.2 and 6.3) with important hedgerows shown in [\[APP-012\]](#).
- 3.10.4. There are no designated HAs situated within the order limits although within the study area there are:
- 13 listed buildings (one Grade I, two at Grade II* and 10 Grade II).
 - Three conservation areas (Poppythorn and parts of All Saints in Whitefield and St Mary's in Prestwich).
 - Heaton Park Registered Park and Garden (RPG) (Grade II listed) where the north-eastern boundary adjoins part of the southern boundary of the order limits.
- 3.10.5. Non-designated HAs located within the order limits include archaeological assets. Six Important Hedgerows are located within or adjoining the order limits [\[APP-012\]](#) where five are designated for their archaeological or historical importance.
- 3.10.6. Section 6.9 of ES chapter 6 [\[REP4-008\]](#) explains embedded mitigation has been incorporated into the scheme design through measures such as landscape design to reduce visual intrusion on historic buildings. Other embedded mitigation to reduce impacts to the setting of historic buildings include:
- use of low noise surface to reduce road noise
 - use of appropriate light design to reduce light spill

- limiting the amount of offline highways design to reduce material requirements and waste
- 3.10.7. Essential mitigation would be undertaken through commitments CH1, CH2 and CH3 in the REAC [\[REP6-006\]](#) which include measures to undertake trial trenching and an archaeological watching brief to identify and record any buried archaeological remains. Requirement 9 of the dDCO would require written scheme of investigations to be prepared for parts of the authorised development which would set out further detail for archaeological investigation. No enhancement measures were identified.
- 3.10.8. Tables 6.10 and 6.11 in ES chapter 6 [\[REP4-008\]](#) provide a summary of the likely significant residual effects during construction and operation following the implementation of mitigation, where no significant effects were identified to any HA.
- 3.10.9. The following construction effects were identified in the ES to HAs:
- Brick Farmhouse Grade II listed building (NHLE 1067266): Slight adverse effects through additional visual intrusion, noise, dust and lighting from construction activity associated with attenuation pond 2 (work number 43) to the west of the asset.
 - Heaton Park RPG: Slight adverse effects where visual relationship with construction operations, such as construction compounds and working areas, would temporarily change the visual and historic setting in the northern part of the park east of the reservoir.
 - Permanent slight adverse effects to the following non-designated HAs:
 - The site of a possible oven (HER 3921.1.0) which would be removed.
 - The site of two structures south of Mode Hill Lane (HER 3919.1.0) which could be damaged through compression and topsoil removal.
 - The site of former structures off Corday Lane (HER 3915.1.0) which could be removed or truncated through topsoil removal and compression.
 - Temporary slight adverse effects to the following non-designated HAs due to impact from construction operations:
 - Important Hedgerow HG_21: Limited trimming to facilitate haul road.
 - Cold Gate Farm (HER 3918.1.0): Temporary changes in setting.
 - Droughts Farm (HER 3934.1.0): Temporary changes in setting.
- 3.10.10. The following operational effects were identified in the ES to HAs:
- Heaton Park RPG: Slight adverse effects from additional road infrastructure where limited views towards the scheme within the northern part of the park would result in visual intrusion and changes to historic setting.
 - Cold Gate Farm (HER 3918.1.0): Slight adverse effects from new road infrastructure being sited closer to the asset resulting in a change to setting.
 - Unsworth Moss historic landscape (HGM 7712): Slight adverse effects owing to the Northern Loop (work number 05).
- 3.10.11. [\[APP-147\]](#) identified that there would be 'less than substantial' harm to Heaton Park RPG through changes to its setting. ES chapter 6 [\[REP4-008\]](#) states that the 'less than substantial' harm would be justified "given the public interest of the scheme in achieving transportation improvements".

Examination Issues

3.10.12. Comments on historic environment were only received from Historic England [\[RR-006\]](#) and BMBC [\[REP1A-001\]](#). Neither representation raised any areas of disagreement, including on matters relating to baseline, methodology, identification of and assessment of effects to HAs or approach to monitoring or mitigation. Agreement on all matters relating to the historic environment was confirmed in both respective signed SoCG with the applicant [\[REP1-019\]](#) and [\[REP5-028\]](#).

3.10.13. Following the ExA's review of the application documents, the key issues considered during the examination were:

- Extent of potential harm to designated HAs.
- Non-designated HAs.
- Monitoring and mitigation measures.

Extent of potential harm to designated HAs

3.10.14. The examination focused on impacts to Heaton Park RPG and Brick Farmhouse (both Grade II listed). This was due to concerns from the ExA on what appeared to be limited commentary provided in the application documentation on the extent of harm that would potentially arise to their significance where slight adverse effects had been predicted in the ES. The ExA sought further clarification on this matter in ExQ1 HE.1.7 [\[PD-011\]](#) and during ISH2 [\[EV10-001\]](#). Commentary on each asset is set out below.

Heaton Park RPG

3.10.15. A description of the RPG and its significance was contained in paragraphs 1.2.85 to 1.2.92 of the DBA [\[REP4-018\]](#). In particular, it notes that the setting of the park is urban in character but there are views over partially open countryside to the east and south-east and to the Pennines to the north and north-west. The DBA also highlights the development of the park from the 17th century and notes that the northern portion of the park has some inter-visibility with the M60 J18 due to the topography in this location and the visual prominence of the junction. The applicant attributed a 'medium' value to the asset.

3.10.16. In its response to ExQ1 HE.1.7 [\[PD-011\]](#), the applicant explained [\[REP3-023\]](#) that for Heaton Park RPG the changes to setting that would occur during construction and operation were adequately described in ES chapter 6 tables 6.10 and 6.11 [\[REP4-008\]](#). These changes were identified to be the presence of working areas during construction and changes to the historic landscape to the east of the park.

3.10.17. During ISH2 [\[EV10-001\]](#), the applicant explained there were some limited visual relationships from certain areas within the northern end of the park where there could be visual intrusion through the construction of attenuation ponds 4 (work number 13) and 5 (work number 21). Due to changes that have taken place to the park over the years, the applicant considered any visual intrusion would be marginal. The applicant stated the proposed attenuation ponds and associated landscaping could be seen as enhancements and so the change to setting would be more historic than visual.

3.10.18. Further comments were provided by the applicant in response to ISH2 action point 36 explaining how the findings of slight adverse effects had been concluded. The applicant considered the temporary changes to setting from construction activities would be minimal, warranting (at most) 'less than substantial harm'. The applicant

concluded that during operation, recognising the changes to and around the park during the modern period, changes to visual and historic setting would also be minimal, warranting ‘less than substantial’ harm “very much on the lower end of the harm scale” [\[REP4-028\]](#).

Brick Farmhouse

- 3.10.19. Paragraph 1.7.72 and annex A of the DBA [\[REP4-018\]](#) provides a description of the HA, explaining that it was the only listed building with a visual relationship with the proposed development. It lies within an open landscape approximately 330 metres east of the order limits and thought to be the oldest brick-built farmhouse in the area. In addition to its architectural qualities, the DBA notes that its setting within surrounding countryside also contributes to its significance in visual and historic terms. The applicant attributed a ‘high’ value to the asset.
- 3.10.20. In response to questions posed by the ExA during ISH2 [\[EV10-001\]](#) which sought to understand the potential harm to the significance of the HA, the applicant advised that any harm would be temporary and limited to construction from attenuation pond 2 (work number 43) and the wider working area around it. Further details were provided by the applicant in response to ISH2 action point 37 which clarified that the creation of pond 2 would result in noise, dust and lighting that would result in a temporary change to the setting west of the property where inter-visibility would be possible. The applicant concluded that these impacts would result in a temporary slight adverse effect which would equate to ‘less than substantial’ harm which the applicant considered would be “very much on the lower end of the scale, and much closer to ‘no harm’ than ‘substantial harm’” [\[REP4-028\]](#).

Non-designated HAs

- 3.10.21. The DBA [\[REP4-018\]](#) (paragraph 1.1.47) stated no archaeological investigation had been implemented to ground truth the archaeological records used in the report although acknowledged this was planned for any post-submission period. The ExA asked the applicant and BMBC in ExQ1 HE.1.3 [\[PD-011\]](#) whether this limitation could result in the significance of any archaeological asset not being properly determined as part of the application documentation.
- 3.10.22. The applicant responded that intrusive investigation was required to be on a scale suitable for clearly establishing the presence, extent and value of buried remains and this would be undertaken by a programme of archaeological trial trench investigation secured under requirement 9 of the dDCO. This would include all areas of known and potential archaeology as previously agreed with the Greater Manchester Archaeology Advisory Service. The applicant considered that being a standard method, the Secretary of State could be satisfied that the level of archaeological risk would be determined through the results of the trial trench investigation [\[REP3-023\]](#).
- 3.10.23. BMBC confirmed that the targets identified for archaeological potential, including areas of unknown potential, would be unlikely to identify or encounter archaeological remains of significance above local to regional importance and were satisfied any archaeological remains could be removed provided that appropriate recording was undertaken. Their position was based on knowledge of the local area and understanding of the development of the site including previous investigations. BMBC were satisfied that if assets of significance were found during future evaluations this could be managed as part of that process [\[REP3-031\]](#).

Monitoring and mitigation measures

- 3.10.24. BMBC's LIR [REP1A-001] referred to the possible survival of historic soil horizons in the location of attenuation proposed pond 7 (work number 27) which would require stripping of the current land surface and a scheme of archaeological work. The ExA asked BMBC (ExQ1 HE.1.9 [PD-011]) whether the DBA [APP-081] or commitments in the REAC [REP1-010] required updating to secure the works. BMBC subsequently confirmed that these documents should be updated [REP3-031] and the applicant provided updates to ES chapter 6 [REP4-008], the DBA [REP4-018] and added new commitment CH3 to the REAC [REP4-024] at DL4 to include provision of archaeological monitoring and recording on the excavation of Pond 7.
- 3.10.25. In response to ExQ1 HE.1.10 [PD-011] the applicant explained why it had not identified any enhancement measures, citing that the proposed landscaping design would have beneficial effects on the setting of affected HAs, such as the edges of Heaton Park RPG and Cold Gate Farm (HER 3918.0) through additional vegetation [REP3-023].
- 3.10.26. Overall, there were no outstanding matters at the close of the examination between IPs and the applicant on historic environment matters.

ExA's Findings

- 3.10.27. Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 requires the decision maker to have regard to the desirability of preserving, amongst other things, the setting of a listed building.
- 3.10.28. NPSNN paragraphs 5.120 to 5.142 set out the policy considerations in respect of the historic environment.
- 3.10.29. Paragraph 5.120 recognises that construction and operation of national networks infrastructure has the potential to result in adverse impacts on the historic environment. Paragraphs 5.126 and 5.127 sets out the requirements for applicants in assessing any likely significant heritage impacts and describing the significance of HAs.
- 3.10.30. Paragraphs 5.127 to 5.138 set out the decision-making considerations which the Secretary of State should take in determining applications. In particular, when considering the impact of a proposed development on the significance of a designated HA, the Secretary of State should give great weight to the asset's conservation. Where a proposed development would lead to less than substantial harm to the significance of a designated HA, this harm should be weighed against the public benefits of the proposal recognising that the greater the harm to the significance of the HA, the greater the justification that will be needed for any loss.
- 3.10.31. Paragraphs 5.139 to 5.142 sets out measures for the recording of assets which can include the Secretary of State imposing requirements to requiring applicants to record the significance of HAs.
- 3.10.32. Both NNNPS (2024) and the NPPF (paragraphs 202 to 221) sets out broadly similar policies to the NPSNN.
- 3.10.33. The ExA is satisfied that the applicant has undertaken an assessment of any likely significant heritage impacts and described the significance of HAs affected by the proposed development, including any contribution made by their setting, in accordance with NSPNN paragraphs 5.126 and 5.127. Sufficient information has

been provided in the application documentation and in response to questions during the examination to allow the ExA and Secretary of State to understand the significance of HAs that may be affected and the impact on that significance in accordance with paragraphs 5.128 to 5.131 of the NPSNN.

- 3.10.34. In respect of impacts to Heaton Park RPG, the ExA is satisfied that the applicant has adopted a realistically cautious approach when considering the impact of the proposed development on the significance of this HA. Having considered the information supplied by the applicant and its own observations during site inspections [\[EV8-002\]](#), the ExA finds that the proposed development (primarily through attenuation ponds 4 and 5 and additional road infrastructure associated with the proposed works to M60 J18) would result in additional visual intrusion and changes to the historic setting of the park through construction and operational stages. Accordingly, this would amount to harm to its setting which contributes to its significance as a HA. The ExA considers that this harm would result in less than substantial harm to its significance.
- 3.10.35. In respect of the Grade II listed Brick Farmhouse, the ExA observed views towards the HA and gained an understanding of the proximity of the proposed development to it during site inspections [\[EV8-001\]](#). Taking into account these observations and the evidence provided by the applicant, the ExA finds that the construction of attenuation pond 2 (work number 43) and associated noise, dust and lighting would undoubtedly be seen within the visual context of Brick Farmhouse. Accordingly, this would amount to temporary harm to its setting which contributes to its significance as a HA. The ExA considers that this harm would result in less than substantial harm to its significance.
- 3.10.36. The ExA is satisfied that no likely significant effects or harm to the significance of any other designated HA located within the 1km study area [\[APP-062\]](#) would arise. However, slight adverse (not significant effects) would occur to non-designated HAs. Taking this into account along with the effects and harm to the Heaton Park RPG and Brick Farmhouse, these adverse effects weigh negatively against the making of the order.
- 3.10.37. Based on BMBC's response to ExQ1 HE.1.3 [\[PD-011\]](#), the ExA is satisfied that the Secretary of State can properly discharge its duties in accordance with NPSNN paragraph 5.128 in that the absence of any archaeological trial trenching or intrusive investigation to date has not undermined the potential for the significance of any HAs of archaeological interest from being properly determined. Considering BMBC's response to ExQ1 HE.1.4 [\[REP3-031\]](#), the ExA is also satisfied that there are no known or suspected non-designated HA of archaeological significance that are demonstrably of equivalent significance to scheduled monuments that should be considered subject to the policy for designated HAs, such that NPSNN paragraph 5.124 would apply.
- 3.10.38. The ExA welcomed the inclusion of commitment CH3, which would secure additional archaeological monitoring on the excavation of pond 7, to the REAC at DL4. Overall, commitments CH1, CH2 and CH3 in the REAC [\[REP6-006\]](#) would establish trial trenching and archaeological monitoring in respect of known archaeological assets. The ExA is satisfied that these measures, and securing the need for written scheme of investigations, would form an appropriate programme of archaeological work to record and advance understanding of the significance of any non-designated HAs that may be lost, in accordance with NPSNN paragraphs 5.136 and 5.138 to 5.142.

- 3.10.39. The ExA also finds that the landscaping design would result in beneficial effects on the setting of some affected HA's and is therefore satisfied that the absence of any specific enhancement measures would not conflict with NPSNN paragraph 5.130.

Conclusions

- 3.10.40. The ExA concurs with ES chapter 6 [\[REP4-008\]](#) that slight adverse (not significant) effects would arise to the designated HAs of Heaton Park RPG (construction and operation) and Brick Farmhouse Grade II listed building (construction only) as a result of changes within their setting, which has been found would result in less than substantial harm to their significance.
- 3.10.41. Slight adverse (not significant) effects would also arise to a number of non-designated HAs during construction and operation. None of these HAs have been found to be demonstrably of equivalent significance to scheduled monuments.
- 3.10.42. The ExA is satisfied that the applicant has demonstrated that such risks associated with the proposed development can be satisfactorily mitigated and managed and that appropriate mitigation is proposed through commitments CH1 to CH3 in the REAC [\[REP6-006\]](#), which would be secured and developed further under requirement 4 and requirement 9 of the rDCO.
- 3.10.43. Subject to carrying out the required heritage balance as detailed below, the ExA is satisfied that the proposed development is in accordance with NPSNN, the NPPF and, where important and relevant, NNNPS (2024), local policies and strategies and all other relevant legislation.
- 3.10.44. Overall, the ExA concludes that less than substantial harm would occur to the identified designated HAs both individually and collectively which would weigh against the making of the order. In accordance with the NNNPS and NPPF, great weight must be attached to these asset's conservation. We also attach a little weight against the making of the order to the slight adverse effects identified to arise to the non-designated HAs noting the measures proposed to mitigate impacts to these HAs. In accordance with NPSNN paragraph 5.134 and NPPF paragraph 215, the public benefits must be weighed against development which would lead to less than substantial harm. This balance is undertaken in section 5 of this report.

3.11. LANDSCAPE AND VISUAL IMPACTS

Introduction

- 3.11.1. This section considers the impact on landscape and visual matters. There is a cross over with matters relating to biodiversity mitigation which are covered under the section on biodiversity (section 3.5). This section should also be read in conjunction with design (section 3.7).

Application Summary

- 3.11.2. A Landscape and Visual Impact Assessment (LVIA), undertaken in accordance with DMRB LA 104 and DMRB LA 107, is contained in ES chapter 7 [\[REP4-010\]](#) and is supported by the following appendices and figures:
- Appendix 7.1: LVIA Assessment Methodology [\[APP-082\]](#).
 - Appendix 7.2: Landscape and Townscape Character Baseline and Sensitivity Assessment [\[APP-083\]](#).
 - Appendix 7.3: Schedule of Landscape and Townscape Effects [\[APP-084\]](#).

- Appendix 7.4: Schedule of Visual Effects [\[REP4-020\]](#).
- Appendix 7.5: Abiotic Impact Assessment [\[REP6-004\]](#).
- ES Figures: Chapter 7 Landscape and Visual (Figures 7.1-7.5) [\[REP4-016\]](#).
- ES Figures: Chapter 7 Landscape and Visual (Figure 7.6 Representative Viewpoints 1-10) [\[APP-063\]](#).
- ES Figures: Chapter 7 Landscape and Visual Figure 7.6 Representative Viewpoints 11-20) [\[APP-064\]](#).
- ES Figures: Chapter 7 Landscape and Visual (Figure 7.6 Representative Viewpoints 21-30) [\[REP4-012\]](#).
- ES Figures: Chapter 7 Landscape and Visual (Figure 7.7 Photomontages) [\[REP4-014\]](#).

- 3.11.3. Baseline photographs during summer and winter seasons from a total of 30 representative viewpoints (VP(s)) is contained in [\[APP-063\]](#), [\[APP-064\]](#) and [\[REP4-012\]](#). Five locations have been included as photomontages (PM01 to PM05) providing illustrations of the proposed development during operation in winter year 1 and summer year 15 [\[REP4-014\]](#). The VP locations shown against a zone of theoretical visibility is mapped in figure 7.5 [\[REP4-016\]](#) within a radius of a 5km study area.
- 3.11.4. The landscape and townscape baseline is set out in ES appendix 7.2 [\[APP-083\]](#). The proposed development would be situated within and coincide with Landscape Character Areas (LCAs) and Townscape Character Areas (TCAs) which are shown in ES figure 7.4 [\[REP4-016\]](#). These are:
- LCA 19: Heaton, Prestwich, Whitefield and Stand Parklands.
 - LCA 26: Prettywood, Pilsworth and Unsworth Moss.
 - LCA 27: Simister, Slattocks and Healds Green.
 - TCA Prestwich, Whitefield, Radcliffe and Unsworth Residential.
- 3.11.5. The site is not covered by any national landscape designations. A large part of LCA 26 located to the north-east of Simister Island was located within a locally designated Special Landscape Area (SLA) identified in the Bury UDP at the time the application was submitted. However, following the adoption of PfE this designation was removed. No ancient woodlands or tree preservation orders are located within the order limits although several ancient woodlands are located in close proximity to the north and south of the M60 between J17 and J18 as illustrated on ES figure 8.2 [\[APP-068\]](#). Key landscape designations, including the boundary of the previous SLA, and features are illustrated on figure 7.3 [\[REP4-016\]](#).
- 3.11.6. The study area is predominately characterised by transport corridors situated within a transitional zone between a densely populated urban area in the west and a rural landscape to the north-east. The visual receptors include residents, walkers on public rights of way, visitors to recreational facilities and users of the road network. Table 7.7 in [\[REP4-010\]](#) lists the locations of the VPs and the receptor type. Tables 7.8 and 7.9 describe the sensitivity of the landscape and visual receptors.
- 3.11.7. Section 7.9 [\[REP4-010\]](#) explains the proposed design, mitigation and enhancement measures. Landscape objectives such as retention and replanting of vegetation to provide visual screening, use of native tree and hedge species and integration of earthworks are listed within section 2.2 of ES chapter 2 [\[APP-041\]](#) as part of the scheme-specific design principles.
- 3.11.8. The proposed mitigation includes embedded mitigation measures to avoid or reduce impacts through the scheme design. These are detailed as commitments LV1 to LV8 in the REAC [\[REP6-006\]](#) and primarily includes measures relating to planting.

To further reduce likely significant adverse effects not possible through the scheme design, essential mitigation measures are proposed. These include, amongst other aspects, additional native tree and shrub planting on adjoining land to the highway and new areas of woodland planting to break up the scale of the proposed development and integrate it into the existing landscape. The essential mitigation measures are detailed as commitments LV9 to LV17 in the REAC [\[REP6-006\]](#).

- 3.11.9. An environmental masterplan in ES figure 2.3 [\[REP7-013\]](#) identifies the spatial extent and location of proposed measures to mitigate and integrate the scheme into the surrounding landscape. The masterplan includes annotations to each planting plot to identify their environmental function.
- 3.11.10. The assessments of likely significant effects on both landscape and visual receptors during the construction and operational periods (years 1 and 15) is contained in section 7.10 of ES chapter 7 [\[REP4-010\]](#) with a summary of the significant effects identified at construction stage, year 1 (opening year) and year 15 (design year) contained in table 7.10 (landscape and townscape) and table 7.11 (visual).
- 3.11.11. A more detailed schedule of the landscape and townscape effects at each of the assessed landscape / townscape character areas at construction stage, year 1 and year 15 is contained in ES appendix 7.3 [\[APP-084\]](#). Similarly, a detailed schedule of the visual effects experienced at each of the assessed 30 VP locations is contained in ES appendix 7.4 [\[REP4-020\]](#).
- 3.11.12. For landscape and townscape receptors, a moderate adverse (significant) effect on LCA 26: Prettywood, Pilsworth and Unsworth Moss would occur during the construction period due to the partial loss of existing landscape features and addition of new noticeable features. No significant effects on landscape or townscape would occur during operation.
- 3.11.13. For visual receptors, significant adverse effects would occur at 18 of the 30 VPs during construction, where receptors represented at 13 VPs would experience very large and large adverse effects. During year 1, significant adverse visual effects would occur at 17 VPs where receptors represented at 6 VPs would experience large adverse effects.
- 3.11.14. At year 15, a significant moderate adverse visual effect would remain for residents at addresses 1 and 2 Warwick Close, 51, 53, 55, 57, 59 and 61 Kenilworth Avenue, and 2 and 4 Barnard Avenue (VP28) as open views across the M60 would remain from upper storeys. Receptors at the remaining 29 VP locations would experience a slight adverse, slight beneficial or neutral effect due to established mitigation planting and surrounding vegetation.

Examination Issues

- 3.11.15. Based on the comments raised by IPs and the ExA's review of the application documents, the main issue for the examination was the need for proposed mitigation to reduce landscape and visual effects on land plots 2/16b and 2/16d (The Hillary Family land)

Need for proposed mitigation to reduce landscape and visual effects on land plots 2/16b and 2/16d (Hillary Family land)

- 3.11.16. The Hillary Family expanded upon its general concerns raised in [\[RR-031\]](#), [\[RR-032\]](#) and [\[REP1-040\]](#), which questioned the need for the EMAs (work numbers 36 and 38) proposed to the north-east of M60 J18, during ISH2 [\[EV10-001\]](#) querying

the need for landscape mitigation in those areas to reduce visual effects. They considered planting proposed to the 'Northern Loop' (work number 05) would provide sufficient screening for visual receptors such that they queried the necessity of additional planting in the EMAs. The Hillary Family considered that planting could be located elsewhere and a dense row of trees along the boundary between the EMA and work area would provide a sufficient visual barrier [\[EV10-012\]](#).

- 3.11.17. As requested in ISH2 action point 32 [\[EV10-002\]](#), the Hillary Family provided further written details of their evidence supplied during ISH2 explaining that users of the surrounding PRow do so in full knowledge of the existing motorway infrastructure. They also disputed the findings in ES chapter 7 in respect of VPs 1 to 7 and considered that views of the proposed development were not clearly discernible from those locations due to the intervening distance. The Hillary Family also considered that VPs were located within or adjacent to the Northern Gateway site allocation where upon its completion, none of the views and potentially the receptors themselves would exist [\[REP4-031\]](#).
- 3.11.18. The applicant explained during ISH2 that the mitigation was generally required to avoid significant adverse effects identified in the ES. In respect of landscape mitigation, the applicant stated that the aim was to mitigate impacts to LCA 26 through a mix of wet woodland and shrub planting in a mosaic with grassland habitat. In terms of visual, impacts to residents, walkers and visitors to Pike Fold Golf Course were identified as represented in VPs 3, 4, 5 and 7. The applicant explained that mitigation in the form of woodland planting and landscaping, to integrate the 'Northern Loop' (work number 05), had been designed to provide visual screening for receptors and mitigate impacts [\[EV10-012\]](#). The applicant further expanded upon these points in response to ISH2 action point 30 [\[REP4-028\]](#).
- 3.11.19. In response to the Hillary Family submissions in [\[REP4-031\]](#), the applicant explained [\[REP5-032\]](#) that mitigation proposed within land plots 2/16b and 2/16d was site-specific to mitigate impacts to LCA 26 and visual impacts to residents, walkers on footpaths and visitors to Pike Fold Golf Course (VP3, VP5 and VP7). The applicant also stated the mitigation would also integrate the Northern Loop (work number 05) into the landscape. The applicant summarised the effects from each of VPs 3, 5 and 7 and stated that without mitigation planting of broadleaf woodland and shrubs with intermittent trees on embankments, significant visual effects would remain at year 1. Other reasons for planting included providing screening for the proposed attenuation pond 1 and associated fencing (work number 37) and, in respect of planting for plot 2/16d, to provide visual amenity for users of Egypt Lane and footpaths 9WHI and 46WHI. It would also provide layering of planting to visually integrate the planting along the Northern Loop and Simister Pike Fold Bridge embankments (work numbers 05 and 39) as illustrated on the photomontages in ES figure 7.7 [\[REP4-014\]](#) which is shown below (noting slightly different VP positions in winter and summer following request in ExQ1 LV.1.6 [\[PD-011\]](#)).

Figure 13: Winter year 1 photomontage from VP PM01 looking south-west from Egypt Lane (footpath 9WHI) towards the proposed Northern Loop, Pike Fold Viaduct and Pike Fold Bridge (extract from [REP4-014] with annotations added)

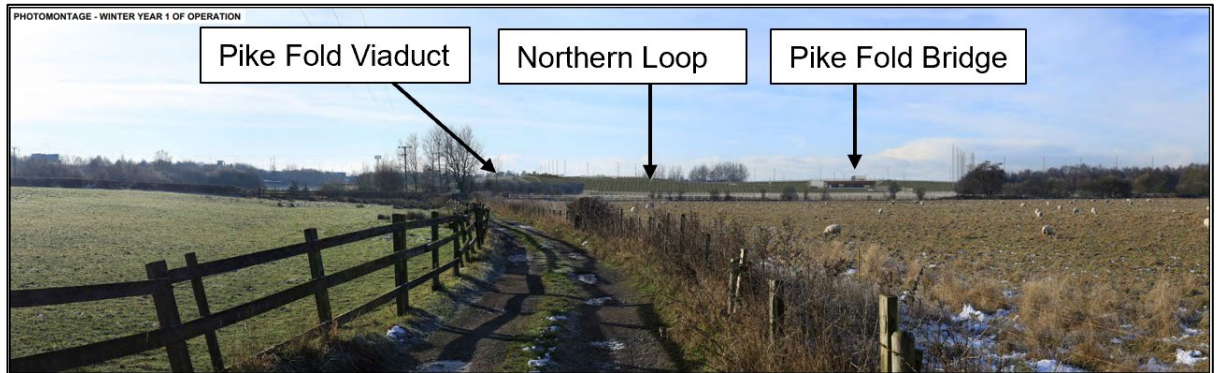
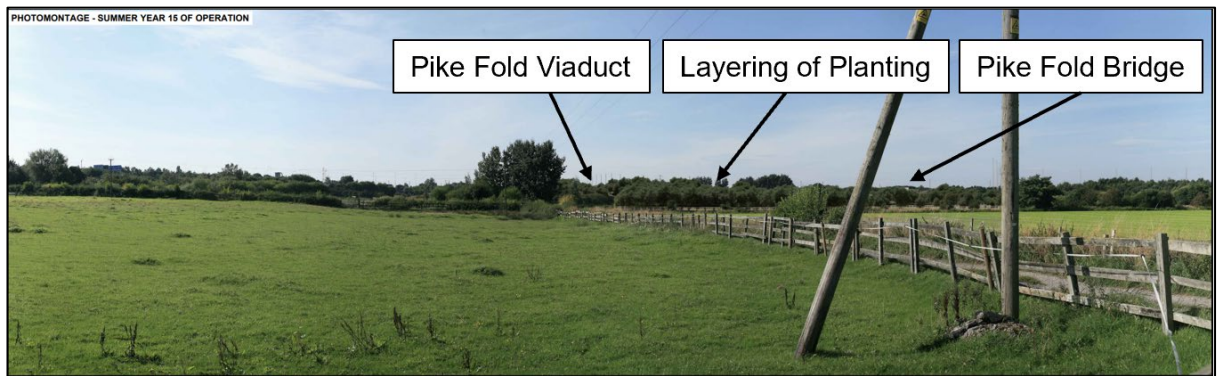


Figure 14: Summer year 15 photomontage from VP PM01 looking south-west from Egypt Lane (footpath 46WHI) towards the proposed Northern Loop showing extent of proposed planting (extract from [REP4-014] with annotations added)



3.11.20. The ExA sought further explanation from the applicant in its rule 17 letter [PD-015] how:

- The proposed areas of broadleaf woodland, areas of wet woodland and individual deciduous trees across land plots 2/16b and 2/16d would reduce identified significant effects.
- Landscape mitigation measures proposed within plots 2/16b and 2/16d would avoid significant adverse landscape effects.
- Species rich grassland would reduce identified significant effects.

3.11.21. In summary, the applicant advised the following in response [REP6-012]:

- The broadleaf woodland proposed in plot 2/16b would provide essential mitigation to reduce the visibility of traffic using the proposed Northern Loop (work number 05) and the visibility of the lighting columns at numerous receptors (for example PRoW, Pike Fold Golf Course and residential properties). It would contribute to reducing effects from moderate adverse at operation year 1 to a slight adverse effect (not significant) at year 15. Reliance on the adjacent shrubs with intermittent trees, located on the eastern and southern embankments of the Northern Loop alone would not provide the required level of screening to sufficiently reduce the level of effect to not significant for VP5 and VP7. Photomontage PM01 (shown above) illustrates the area of broadleaf woodland planting before establishment at operation year 1 and once established at year 15.

- The wet woodland planting and individual trees in plot 2/16d would, in combination with the shrubs and intermittent trees on the Northern Loop embankments and the broadleaf woodland within plot 2/16b, help to screen the proposed development (including the golf ball netting, lighting columns and attenuation pond 1) and moving traffic. Proposed planting to the north part of the Northern Loop and around Pike Fold Bridge (work numbers 05 and 39) would not fully screen the proposed development and moving traffic.
- The presence of the Northern Loop, Pike Fold Viaduct, and the Pike Fold Bridge and removal of vegetation would erode the rural landscape character and result in a greater perception of the adjacent M66 corridor and moving traffic. Commitments LV2, LV5, LV6, LV7 and LV8 in the REAC [\[REP6-006\]](#) would provide embedded mitigation measures and would provide landscape integration during the early stages to mitigate landscape impacts.
- The species rich grassland would mitigate the loss of 5.79ha of modified grassland and 21.99ha of other neutral grassland (species rich grassland). The absence of this grassland creation would be a major adverse impact to a locally important receptor (neutral (species rich) grassland), which would result in a slight adverse (not significant) effect if not created.

3.11.22. The Hillary Family maintained its position that VPs 3, 5 and to a lesser extent 7 were a considerable distance away from the order limits, and as such any additional planting on the EMAs would not materially alter the visual impact of the scheme from those viewpoints. They considered the photomontages at PM01 and PM02 [\[REP4-014\]](#) illustrated that most of the screening by year 15 would be provided by planting on new embankments and planting on the EMAs would make a very limited contribution to mitigating the proposed development. They also disputed the relevance of commitments LV2, LV5, LV7, LV8, LV10 and LV15 to the land plots 2/16b and 2/16d [\[REP7-024\]](#).

3.11.23. The applicant's response to the Hillary Family DL7 submission essentially provided a high-level summary of the case of the EMA's stating that the intention was to produce effective landscape and biodiversity mitigation, resulting in a mosaic of features which contribute to landscape character, visual and biodiversity mitigation. They considered that the location of the mitigation responded to the scheme works to maximise mitigation benefit. They also noted that the approach had been followed on other highway DCOs, notably the A12 Chelmsford to A120 Widening Scheme DCO 2024.

3.11.24. The need for mitigation in the proposed EMAs to the north-east of M60 J18 relating to landscape and visual effects remained an area of disagreement between the applicant and the Hillary Family.

Other Matters

3.11.25. No significant concerns were raised on landscape and visual impacts by IPs during the examination. However, the following general concerns were raised in RRs:

- The Trustees of Pike Fold Golf Club [\[RR-013\]](#) submitted concerns regarding the visual impact on users of the golf course.
- The EMAs proposed to the north-east of M60 J18 would give rise to adverse visual effects due to increased fly tipping and growth of invasive species [\[RR-032\]](#).
- Disagreement that visual impacts after mitigation would be 'slight adverse' and considered that features such as the proposed viaduct, new gantries, road widening and night lighting would lead to substantial adverse impacts [\[RR-046\]](#).

- Query the screening that would be provided to reduce visual impacts from the proposed Northern Loop (work number 05) [\[RR-052\]](#).
- 3.11.26. The applicant's response to the comments from the Trustees of Pike Fold Golf Club, and other IPs, largely referred to the findings in the LVIA and explained that the proposed landscape mitigation measures would reduce significant adverse visual effects in year 15. The applicant did not consider there was evidence there would be increased fly tipping and explained that it had duties under the Weeds Act 1959 and the Ragwort Control Act 2003 to manage plant species. It was also explained that the Arboricultural Impact Assessment [\[REP6-004\]](#) includes recommendations for the protection of existing trees [\[REP1-020\]](#).
- 3.11.27. In addition, a number of IPs, such as [\[RR-005\]](#), [\[RR-010\]](#), [\[RR-020\]](#), [\[RR-039\]](#) and [\[RR-047\]](#) raised concern on increased lighting. The applicant advised the LVIA contained only a brief assessment of the visual effects from street lighting and from car headlights although vegetation would largely screen or filter carriageway lighting and vehicle headlights [\[REP1-020\]](#). They further advised that a lighting strategy would also be developed through commitments G6 and G7 in the REAC [\[REP6-006\]](#) to minimise impacts on sensitive receptors.
- 3.11.28. BMBC's LIR [\[REP1A-001\]](#) confirmed agreement with the LVIA methodology [\[APP-082\]](#) and Landscape and Townscape Character Baseline and Sensitivity Assessment [\[APP-082\]](#). BMBC noted that whilst the proposed embedded mitigation measures would reduce effects from construction, effects could not be wholly mitigated due to the nature and extent of the proposed development and considered some adverse impact would still be experienced. Landscape and visual impacts is not included as a matter in the SoCG between the applicant and BMBC [\[REP5-028\]](#).
- 3.11.29. The ExA asked several questions during the examination on landscape and visual matters as discussed in the following paragraphs.
- 3.11.30. In response to ExQ1 LV.1.3 [\[PD-011\]](#), which sought comments from IPs on the suitability of the assessment findings, BMBC confirmed agreement with the findings in respect of likely significant effects at the landscape / townscape and visual receptors [\[REP3-031\]](#). No other IPs raised any disagreement with the assessment findings in the ES for landscape and visual impacts in response to this question.
- 3.11.31. BMBC confirmed in response to ExQ1 LV.1.2 [\[PD-011\]](#) that the removal of the SLA, following the adoption of PfE policy JP-G1 (which replaced Bury UDP policy EN9/1 which designated the SLA), would not change the ES findings. This was because the same findings would remain in respect of the effect upon LCA 26, which covered the SLA and would remain as having a medium sensitivity, and the views from PRoWs and properties in the surrounding area [\[REP3-031\]](#).
- 3.11.32. The ExA asked a number of questions on the suitability of the photomontages through ExQ1 LV1.5 to and including LV.1.9 [\[PD-011\]](#). The applicant produced updated photomontages at DLs 3 and 4 [\[REP4-014\]](#) in response to ExQ1 LV.1.5, 1.6 and 1.9. It also produced an additional VP location (VP30) with photography for Boz Park [\[REP4-012\]](#) in response to ExQ1 LV.1.7 along with an assessment of effects which predicted moderate adverse visual effects during construction and year 1 and slight beneficial effects at year 15.
- 3.11.33. Noting the visibility of the proposed golf ball netting (work number 40) from various viewpoint locations, the ExA queried in ExQ1 LV.1.10 [\[PD-011\]](#) the evidence that existed to justify the need for this feature, in addition to a perceived general need.

The applicant confirmed that the netting had been included on a 'worst case' scenario [REP3-023]. In further examination of this matter during ISH2 [EV10-001], the applicant advised that the final size and appearance would depend on the reconfigured layout of Pike Fold Golf Course [EV10-012]. Following discussion during ISH2, the ExA asked the applicant and BMBC to consider whether a new requirement was required in the dDCO to secure details of the final design for the golf ball netting to ensure that visual impacts would be minimised (ISH2 action point 35 [EV10-002]). This resulted in requirement 5 of the dDCO being updated at DL5 [REP5-005] to include details of the extent and form of the golf ball netting as part of the landscaping scheme to be approved by the Secretary of State [REP5-031].

- 3.11.34. The applicant responded to the ExA's queries in ExQ1 [PD-011] on the visual effects that would be experienced at and from Pike Fold Golf Course (LV.1.4), Warwick Avenue and Barnard Avenue (LV.1.5), Boz Park (LV.1.7) and Heaton Park RPG (LV.1.1) in [REP3-023]. The ExA was satisfied with the responses and saw no need to ask any further questions on these matters.
- 3.11.35. In response to the ExA's queries on the suitability of the proposed mitigation measures in ExQ1 LV.1.1 and LV.1.12 [PD-011], BMBC confirmed that they were satisfied with the proposed design, mitigation and enhancement measures outlined in section 7.9 of ES chapter 7 [REP4-010]. As such, BMBC were satisfied that the proposed development had been designed, and the scale minimised, to avoid or where unavoidable, mitigate the visual and landscape effects during construction and operation so far as is possible in accordance with the NPSNN and NNNPS (2024). BMBC also considered the measures had addressed the guidance in the Greater Manchester Landscape Character and Sensitivity Assessment (GMLCSA) [REP3-031].
- 3.11.36. Following on from the concerns raised by IPs on increased lighting as summarised above, the ExA sought further understanding on the visual impacts of lighting through ExQ2 LV.2.1 and LV.2.2 [PD-013] and during ISH2 [EV10-001]. The applicant provided further details on how the LVIA had considered the impacts from operational lighting in response to ISH2 action point 34 [EV10-002] explaining the LVIA had provided a qualitative assessment of all receptors similarly rather than those that would be most susceptible to impacts from lighting [REP4-028]. Impacts from lighting had also been considered at receptors in the schedule of landscape and townscape [APP-084] and visual effects [REP4-020]. Further details were provided in response to ExQ2 LV.2.3 how tree planting and maintenance measures would minimise visual effects to receptors from operational lighting [REP5-033].
- 3.11.37. The ExA queried issues relating to ash dieback (ADB) in [PD-015]. ADB is referred to in paragraphs 2.3.10 to and including 2.3.16 of [REP6-004]. Amongst other matters it notes that there are high number of infected trees on the site and assumes that none will survive longer than 10 years. As such, a number of trees are recommended for removal although paragraph 2.3.16 notes that "it may be pertinent to remove all ash at the pre-development stage". The ExA queried how the LVIA had assessed the impacts from ADB and also sought clarification how any ash trees that were not identified for removal in annex A of [REP6-004] would be secured [PD-015].
- 3.11.38. The applicant confirmed that the trees identified for removal in [REP6-004] were as a result of direct impacts. The assessment of landscape and visual effects in ES appendices 7.3 [APP-084] and 7.4 [REP6-004] did not include assessment of the impacts of the removal of trees solely for reasons of ADB located either inside or outside of the order limits. The applicant clarified that the removal of any trees

located within the order limits not identified for removal in the tree removal plan in [\[REP6-004\]](#) could be undertaken under article 36 of the dDCO. Only four individual ash trees located outside of the order limits near Derwent Avenue (T144 to T147) had been identified as showing signs of ADB although the applicant considered they would be unaffected by the proposed development. Any decision on their removal would rest with the landowner [\[REP6-012\]](#).

ExA's Findings

- 3.11.39. Paragraphs 5.143 to 5.161 of NPSNN set out the policy considerations in respect of landscape and visual impacts, which also extends to townscape.
- 3.11.40. Paragraphs 5.144 to 5.148 set out what applicants should include in their assessments of landscape and visual impacts. In particular, they should include an assessment of any significant effects for the construction and operation stages of the proposed development, referring to landscape character assessment studies and taking account of any relevant local development plan policies. Assessments should also include the visibility and conspicuousness of the project's potential impacts on views and visual amenity including light pollution effects.
- 3.11.41. With regard to landscape impacts, paragraph 5.149 requires consideration of the nature of existing landscapes and nature of the effects in judging the impact on landscapes. Having regard to siting, operational and other relevant constraints, the aim should be to avoid or minimise harm to the landscape, providing reasonable mitigation where possible and appropriate.
- 3.11.42. Paragraph 5.156 recognises that there are local landscapes that may be highly valued and protected locally. It goes on to state that landscape character assessments should be given consideration although local designations should not be used in themselves as reason to refuse consent. Paragraph 5.157 states that the Secretary of State "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".
- 3.11.43. In respect of visual impacts, paragraph 5.158 states that the Secretary of State will have to judge whether the 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.
- 3.11.44. Mitigation is covered in paragraphs 5.159 to 5.161, which note that reducing the scale of a project or making changes to its operation can help to avoid or mitigate effects. Adverse landscape and visual effects may also be minimised through appropriate siting of infrastructure, design and landscaping schemes. Materials and design for infrastructure should always be given careful consideration.
- 3.11.45. Both NNNPS (2024) and the NPPF sets out broadly similar policies to the NPSNN.
- 3.11.46. Turning to local policies, BMBC's LIR [\[REP1A-001\]](#) refers to PfE policy JP-G1 [\[REP3-032\]](#), which requires development within a landscape character type to reflect and respond to the special qualities and sensitivities of the key landscape characteristics of its location. The GMLCSA [\[REP3-036\]](#) provides further detail on the key characteristics, qualities and sensitivities for individual LCAs within GM.

- 3.11.47. No substantive concerns were raised during the examination on the applicant's assessment of likely significant effects on landscape and visual impacts in the ES. The LVIA has been prepared in accordance with appropriate guidance (DMRB LA 107) and the ExA considers that an appropriate assessment of the likely significant effects that would arise during construction and operation has been undertaken, as required by NPSNN paragraphs 5.144 to 5.146.
- 3.11.48. Following the amendments and additional information submitted throughout the examination, the ExA is satisfied that the visualisations are fit for purpose and the photomontages [\[REP4-014\]](#) provide a good understanding of the appearance, context, form and extent of the proposed development that would likely be experienced from different receptor locations. As such, we find the ES appropriately includes the visibility, conspicuous and presence of the proposed development during construction and operation as required by NPSNN paragraph 5.146.
- 3.11.49. There would be an adverse effect to landscape character from the proposed development as the proposed development would involve significant infrastructure works on land where there is currently little development. The most harm would be experienced to LCA 26 due to the proposed Northern Loop (work number 05) and attenuation ponds (work numbers 27 and 37). However, infrastructure works by their very nature have an unavoidable effect on landscape character. The ExA considers that the applicant has sought to avoid or minimise harm to the landscape, providing reasonable mitigation where possible and appropriate through its environmental masterplan [\[REP7-013\]](#) as required by NPSNN paragraph 5.149. Consideration has also been given to the GMLCSA in the landscape design in accordance with NPSNN paragraph 5.156.
- 3.11.50. Turning to visual effects, the proposed development (primarily through the proposed construction compounds, Northern Loop, Pike Fold Viaduct and Pike Fold Bridge, motorway widening, attenuation ponds and golf ball netting) would give rise to significant adverse effects (including very large effects) at numerous different receptor locations during construction and early operational years, whilst tree planting and vegetation grows. However, visual effects are unavoidable with any new infrastructure project and when set against the existing motorway infrastructure in this locality, the ExA does not consider that the effects would be significantly harmful in the longer term. This is because the applicant has sought to minimise and reduce effects through its proposed environmental masterplan [\[REP7-013\]](#) in accordance with NPSNN paragraph 5.160, which would be adequately secured through commitments in the REAC [\[REP6-006\]](#) and requirements 4 and 5 of the rDCO. The ExA acknowledges that at year 15, residential receptors located at VP28 would experience residual moderate adverse (significant) effects which would be negative effects weighing against the making of the order. In accordance with NPSNN paragraph 5.158, we consider whether the negative visual effects are sufficient to outweigh the benefits of the development in section 5.
- 3.11.51. The proposed tree loss would be a negative matter weighing against the proposed development. However, to accommodate the proposed development tree loss would be unavoidable. The ExA is satisfied that tree removal has been kept to a minimum and the exact trees to be removed and replaced would be adequately identified through the landscaping scheme secured by requirement 5 of the rDCO. In respect of ADB, the ExA was satisfied with the applicant's responses to our questions in [\[PD-015\]](#).
- 3.11.52. The ExA has carefully considered the applicant's reasons for proposed landscape mitigation required on land plots 2/16b and 2/16d and the Hillary Family comments

questioning its need. Overall, we consider that the proposed areas of broadleaf woodland, areas of wet woodland and individual deciduous trees would contribute to minimising significant visual effects from longer range views which is supported under NPSNN paragraph 5.160. We also note that NPSNN paragraph 5.161 generally supports undertaking landscaping off site so long as it is included within the order limits, which would apply here. Whilst the ExA notes the comments from the Hillary Family regarding the Northern Gateway site allocation that would screen views of the proposed development over time, due to the uncertainty of how that development may be built out in the future and any timescales involved the ExA gives very limited weight to this as a consideration.

- 3.11.53. In addition to the measures to minimise visual effects, the ExA recognises the proposed measures are also associated with landscape enhancement measures, primarily due to the direct effects of the proposed Northern Loop (work number 05) on LCA 26 but also associated with the proposed attenuation pond (work number 37). In accordance with NPSNN paragraph 5.149, we find that these measures would avoid or minimise harm to the landscape, providing reasonable mitigation where possible and appropriate. Whilst we agree with the Hillary Family that some of the applicant's listed commitments in the REAC in their response to the rule 17 letter [\[REP6-012\]](#) were arguably not directly relevant to landscape mitigation situated in the EMA (for example LV5), we are nevertheless satisfied that the landscape mitigation proposed within the EMAs is required, in addition to that proposed outside of the EMAs, to help avoid or mitigate identified adverse effects in the ES as required in the NPSNN. The matter of whether a case has been made for CA of plots land plots 2/16b and 2/16d is considered separately in section 6.
- 3.11.54. Based on the reasons above, the ExA finds that the embedded and essential mitigation measures to avoid or reduce significant adverse landscape and visual effects are appropriate.
- 3.11.55. Overall, the ExA concludes for the reasons stated above that the following negative landscape and visual matters would include:
- The direct harm to LCA 26, giving rise to moderate adverse effects during construction and slight adverse effects during years 1 and 15.
 - The significant (including very large and large) adverse visual effects that would arise through the construction and early operation years of the proposed development.
 - The remaining one residual significant moderate adverse effect for residential receptors located at Warwick Close, Kenilworth Avenue and Barnard Avenue.
 - Slight adverse effects on receptors represented at VPs 1-6, 7 and PM01, 10, 13, 16, 17 and PM03, 22-26, 27 and PM05, 28 and 29.
 - The removal of 18 individual trees (5 B category and 13 C category), complete removal of 36 groups of trees (17 B category and 19 C category groups), partial removal of 38 groups of trees (27 B category and 11 C category), removal of two C category hedgerows, the partial removal of 1 C category hedgerow and the partial removal of two woodlands (1 B category and 1 C category).
- 3.11.56. The ExA concludes for the reasons stated above that the following positive landscape and visual matters would include:
- The proposed embedded and essential landscaping mitigation measures that would avoid or minimise harm to the landscape which would in some cases result in beneficial improvements, such as the creation of medium distinctiveness grassland as mitigation for loss of other broadleaved woodland.

- The slight beneficial effects on receptors represented at VPs 11, 12, 14, 15 and PM02, 18, 19 and PM04, 20, 21 and 30

Conclusions

- 3.11.57. The ExA concurs with ES chapter 7 [\[REP4-010\]](#) and finds that one residual moderate adverse (significant) visual effect for residential receptors located at Warwick Close, Kenilworth Avenue and Barnard Avenue would remain. Residual effects at other landscape and visual receptors would experience a combination of slight adverse (not significant), slight beneficial (not significant) or neutral effects.
- 3.11.58. The ExA is satisfied that the applicant has adequately demonstrated that such risks associated with the proposed development can be satisfactorily mitigated and managed and that appropriate mitigation is proposed through commitments LV1 to LV17 in the REAC [\[REP6-006\]](#), which would be secured and developed further under requirement 4 the rDCO, and the detailed landscaping scheme that would be secured under requirement 5 of the rDCO.
- 3.11.59. The ExA is satisfied that the proposed development is in accordance with NPSNN and, where important and relevant, NNNPS (2024), local policies and strategies and all other legislation.
- 3.11.60. Overall, when balancing the positive and negative aspects as summarised above, the ExA considers that the remaining one residual significant moderate adverse effect and the encroachment of the proposed development into the landscape would overall result in landscape and visual matters weighing against the proposed development. Therefore, the ExA attaches a little negative weight against the making of the order in respect of landscape and visual impacts.

3.12. MATERIAL ASSETS AND WASTE

Application Summary

- 3.12.1. The applicant's assessment of the likely significant effects during the construction of the proposed development on material assets and waste is in chapter 10 of the ES [\[APP-049\]](#). Operational impacts are scoped out and not included within the applicant's assessment. This chapter considers the following topics in accordance with DMRB LA 110 Material assets and waste:
- The consumption of 'material assets': this includes materials and products from primary, secondary, recycled, sustainable and renewable sources, and the use of excavated and other arisings that fall within the scope of waste exemption criteria.
 - The production and disposal of 'waste': this includes surplus materials which can become waste, as well as other substances which the holder discards, intends to discard, or is required to discard.
- 3.12.2. The assessment in ES chapter 10 is supported by figure 10.1: Mineral Safeguarding Areas of Search and Peat Deposits of the ES figures [\[APP-070\]](#) and the following appendices to the EMP:
- Appendix C: Outline Site Waste Management Plan [\[APP-130\]](#)
 - Appendix F: Outline Soil Management Plan [\[APP-133\]](#)
 - Appendix G: Outline Minerals Management Plan [\[APP-134\]](#)
- 3.12.3. ES chapter 10, section 10.8 [\[APP-049\]](#) discusses the potential impacts during construction on consumption and use of material assets, sterilisation of mineral

safeguarding sites and peat resources and generation and disposal of waste to landfill. Section 10.8 explains that paragraph 3.21 of DMRB LA 110 specifies that the assessment should report on the first year of operational activities (opening year). The applicant assumes that no significant maintenance activities would occur during the first year of operation on a newly constructed highway asset (target opening year 2029), and so there is not likely to be significant materials consumption or waste generation.

- 3.12.4. The applicant's initial assessment of mass haul volumes for earthworks shows a net fill requirement of approximately 220,000m³ to construct the new highway embankments and widenings. This volume excludes attenuation ponds which are expected to generate up to 40,000m³ of arisings [\[APP-049\]](#) (paragraph 10.8.5). The applicant states [\[APP-049\]](#) (paragraph 10.8.6) that the first priority of the earthworks strategy would be to meet this fill requirement by utilising the cut material from the excavation of ponds and other areas of cut across the proposed development. This would be subject to geotechnical and environmental assessment of the material properties to ensure the material would be suitable for use as engineering earthworks fill. The applicant goes on to state [\[APP-049\]](#) (paragraph 10.8.7) that to satisfy any remaining fill deficit, material would be imported and that initially, the opportunity to reuse the surplus arising materials from other local and nearby construction schemes would be explored. The applicant explains that should this not be a viable option, local quarries would be used to satisfy the remaining fill deficit. The applicant confirms that no borrow pits would be created specifically for the proposed development.
- 3.12.5. In ES chapter 10 paragraphs 10.8.21 to 10.8.25 [\[APP-049\]](#) the applicant describes the range of waste types (hazardous and non-hazardous) that would be generated during the construction of the proposed development. The applicant anticipates that the largest type of waste generated would be excavated materials from site preparation and earthworks activities, however the applicant assumes that surplus earthworks materials would be reused within the construction of the proposed development where geotechnically and geochemically suitable.
- 3.12.6. In section 10.9 of ES chapter 10 [\[APP-049\]](#) the applicant describes the proposed design, mitigation and enhancement measures. Paragraphs 10.9.10 to 10.9.16 explain how the applicant seeks to avoid or reduce environmental impacts through the design of the proposed development (embedded or design mitigation). Paragraph 10.9.17 to 10.9.20 describes the essential mitigation measures for the proposed development. These essential mitigation measures include the commitments as detailed in the REAC [\[REP6-006\]](#). The applicant [\[APP-049\]](#) (paragraphs 10.9.21 to 10.9.23) states that no specific environmental enhancement measures had been identified but this would be explored throughout the design and construction of the proposed development.
- 3.12.7. The applicant's assessment (section 10.12 of ES chapter 10 [\[APP-049\]](#)) concludes that the residual environmental effects on material assets and waste of constructing the proposed development are likely to be slight adverse after the application of the design and mitigation measures (outlined in ES chapter 10, section 10.9 [\[APP-049\]](#)). The applicant concludes that based on the DMRB LA 110 significance criteria (provided in ES chapter 10, table 10.9 [\[APP-049\]](#)) this would result in slight adverse effects (not significant) during the construction and operation of the proposed development on material assets and waste.

Examination Issues

- 3.12.8. No IPs raised any concerns regarding material assets or waste. Both the mineral safeguarding sites and peat resources were scoped out of the ES assessment on the basis that they were not resources that could be worked or extracted. In response to ExQ1 MAW.1.5 [\[PD-011\]](#) BMBC confirmed that they agreed with the applicant that these aspects could be scoped out [\[REP3-031\]](#). The ExA had no reason to disagree with these opinions and therefore this issue was not examined further. Notwithstanding, following the ExA's review of the application documents, the key issues considered during the examination were:

- Mass haul balance.
- Management of Waste.

Mass Haul Balance

- 3.12.9. Through ExQ1 MAW.1.3, MAW.1.8 [\[PD-011\]](#) and ISH2 [\[EV10-001\]](#) the ExA sought evidence from the applicant and BMBC that no adverse effects beyond those reported in the ES would occur if the fill deficit predicted (approximately 220,000m³) required to be supplemented by other local construction schemes and or quarries. The ExA also sought clarification that any vehicle movements, associated with the hauling of materials, had been accounted for in the transport assessment.

- 3.12.10. Within its DL4 submission the applicant confirmed that a 15% uplift had been applied to all quantities to provide a 'worse case' assessment and that it was estimated that the average annual daily traffic (AADT) of vehicle movements associated with materials haulage would be around 45 vehicles per day [\[REP4-028\]](#). The applicant stated [\[REP4-028\]](#) that whilst cumulative effects on material assets had been scoped out of the assessment, the proposed development would likely result in a negligible uplift to regional and sub-regional sales of primary aggregates. The applicant therefore considered it unlikely that the construction of the proposed development would, in isolation, create a scenario where there was a consequential increase in annual baseline sales of primary aggregate materials beyond 'business as usual'. BMBC confirmed that they did not have any concerns about the ability of their region to supply the materials required for the proposed development [\[REP5-035\]](#).

Management of Waste

- 3.12.11. Through ExQ1 MAW.1.2, MAW.1.3, MAW.1.4, MAW.1.6 and MAW.1.7 [\[PD-011\]](#) and ISH2 [\[EV10-001\]](#) the ExA examined how the proposed development would manage waste and implement waste reduction to meet the waste recovery rates supplied in ES chapter 10 table 10.15 [\[APP-49\]](#).

- 3.12.12. In ISH2 [\[EV10-001\]](#) (action point 42) the ExA asked the applicant to provide evidence to demonstrate that the waste recovery percentages used in ES chapter 10 were appropriate. In response [\[REP4-028\]](#) the applicant explained that DMRB LA 110 Material Assets and Waste standard required that projects should aim to achieve at least 90% (by weight) material recovery of non-hazardous construction and demolition waste from landfill. The applicant stated that this target was likely to be met by the Principal Contractor (Costain), because Costain's 2023 Environmental, Social, and Governance Report confirmed that over 99% of the waste produced from its projects in 2023 was diverted from landfill through reuse or recycling. The applicant also confirmed that no surveys or other investigations had been completed to determine if a 'circular' approach would be achievable. However, they confirmed that commitment M1, contained within the REAC [\[REP6-006\]](#), would

require the principal contractor to implement 'circular' approach principles in a systematic manner to suit the scale of the proposed development, to identify, prioritise and select appropriate opportunities to improve the proposed development resource efficiency and design out waste. BMBC confirmed that having considered [\[REP4-028\]](#), it did not have any concerns over the capacities of local waste infrastructure and the effect the proposed development could have on them.

- 3.12.13. Through ExQ1 MAW.1.6 and ISH2 [\[EV10-001\]](#) the ExA examined how the proposed use of very low noise surfacing and low noise surfacing (LNS), which have shorter life spans than conventional surfacing, would affect the generation of waste during operation. The applicant explained that whilst waste generation for operation had been scoped out, the GHG emissions resulting from the disposal of waste surfacing materials during the operational maintenance of the proposed development had been assessed in ES chapter 14 [\[APP-053\]](#), and its supporting Appendix 14.1: Estimation of Greenhouse Gas Emissions [\[APP-123\]](#). The applicant confirmed that GHG emissions associated with the proposed development had been estimated and reported for the operational phase over a 60-year appraisal period.

ExA's Findings

- 3.12.14. NPSNN paragraphs 4.18 and 4.19 accept that it may not always be possible, at the time of application, to have all aspects of the proposal settled. Applicants are advised to set out in the ES, to the best of their knowledge, what the maximum extent of the proposed development may be and assess the potential adverse effects which the project could have to ensure that the impacts of the project, as it may be constructed, have been properly assessed.
- 3.12.15. NPSNN paragraph 5.169 requires applicants to safeguard any mineral resources on the proposed site as far as possible. Paragraph 5.182 requires the Secretary of State to ensure that the applicant has put forward appropriate mitigation measures to safeguard mineral resources where a proposed development has an impact on a mineral safeguarding area.
- 3.12.16. NPSNN paragraphs 5.39 to 5.41 details the government's objectives to protect human health and the environment by producing less waste and disposing in a way that is least damaging to the environment and human health. Paragraph 5.42 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.
- 3.12.17. NPSNN paragraphs 5.43 to 5.45 outline that the Secretary of State should consider the extent and effectiveness of the proposed management of waste arising from the construction and operation of the proposed development and where necessary should use requirements or planning obligations to ensure the measures are applied and relevant permits are obtained.
- 3.12.18. NNNPS (2024) contains similar policy provisions to NPSNN but additionally requires the applicant to demonstrate adherence to the waste hierarchy and that consideration be given to circular economy principles wherever practicable (paragraphs 5.71 and 5.72).
- 3.12.19. The proposed development is predicted to have a considerable fill material deficit. Notwithstanding this, the ExA is satisfied that the ES adequately assesses the potential adverse effects as a result of supplementing this deficit, recognising that the exact details are still to be finalised, in accordance with the NPSNN (paragraph

4.19). We are also satisfied that the applicant has considered mineral resources in accordance with the NPSNN (paragraph 5.169).

- 3.12.20. The ExA considers that the applicant has addressed the management of waste and waste reduction in accordance with NPSNN (paragraphs 5.42 to 5.45). We also consider that through commitment M1 in the REAC [\[REP6-006\]](#), secured by requirement 4 of the rDCO, the applicant would encourage a circular approach to waste management in accordance with NNNPS (2024) (paragraph 5.72).
- 3.12.21. The ExA is satisfied that whilst operational waste was scoped out of the ES assessment, we consider that the applicant has proposed an effective process that would be followed to ensure the effective management of waste arising from the construction and operation of the proposed development in accordance with the NNNPS (paragraph 5.43).

Conclusions

- 3.12.22. The ExA concurs with ES chapter 10 [\[APP-049\]](#) that the significance of effect from the construction and operation of the proposed development on material assets and waste would be slight adverse (not significant).
- 3.12.23. The ExA is satisfied that the applicant has demonstrated that such risks associated with the proposed development can be satisfactorily mitigated and managed and that appropriate mitigation would be secured via relevant requirements in the rDCO.
- 3.12.24. The ExA is satisfied that the proposed development is in accordance with NPSNN and, where important and relevant, NNNPS (2024), local policies and strategies and all other legislation.
- 3.12.25. The ExA considers there are no residual effects or issues which affect the planning balance.

3.13. NOISE AND VIBRATION

Introduction

- 3.13.1. This section sets out the effects of the proposed development as they relate to noise and vibration. This section should be read in conjunction with section 3.5 (biodiversity) and section 3.10 (historic environment).

Application Summary

- 3.13.2. Chapter 11 of the ES [\[APP-050\]](#) describes the applicant's assessment of noise and vibration and the likely environmental effects of the proposed development.
- 3.13.3. The assessment in ES chapter 11 is supported by ES figures 11.1a to 11.9b [\[APP-071\]](#) and the following appendices:
- Appendix 11.1: Introduction to Acoustics [\[APP-109\]](#).
 - Appendix 11.2: Noise and Vibration Assessment Guidance and Standards [\[APP-110\]](#).
 - Appendix 11.3: Baseline Noise Survey Results [\[APP-111\]](#).
 - Appendix 11.4: Construction Noise Calculations [\[APP-112\]](#).
 - Appendix 11.5: Operational Noise Calculation Results [\[APP-113\]](#).

- 3.13.4. The applicant [\[APP-050\]](#) (section 11.6) explains that the study area for an assessment of noise and vibration is chosen based on the requirements within DMRB LA 111. The study areas for the proposed development are shown in figure 11.1a [\[APP-071\]](#). In line with the provisions of the DMRB, ES chapter 11 reports on effects in these study areas; these are detailed in paragraphs 11.4.4 to 11.4.17 of the ES [\[APP-050\]](#):
- construction noise (including construction traffic noise)
 - construction vibration
 - operational traffic effects
- 3.13.5. ES chapter 11 figure 11.1a [\[APP-071\]](#) illustrates the locations of each of the six NIAs that are within or partially within the study area.
- 3.13.6. ES chapter 11, section 11.8 [\[APP-050\]](#) describes the potential impacts from noise and vibration on sensitive receptors during construction. The applicant explains that, for the potential impacts from the operation of the new road only, noise is considered for the opening year of 2029 and a future assessment year of 2044.
- 3.13.7. In ES chapter 11 the applicant explains that during certain construction activities it would be necessary to implement full closures of parts of the motorway. The applicant identifies that the sudden change of traffic levels onto diversion routes, due to night-time closures, would likely cause disturbance to receptors located within 25m of the road. A summary of carriageway closures, traffic diversion routes and the number of dwellings within 25m is detailed in table 11.27 [\[APP-050\]](#).
- 3.13.8. ES chapter 11 [\[APP-050\]](#) explains that during operation of the proposed development the running lanes of traffic on the M60 northbound and southbound, between J17 and J18, would move closer to noise sensitive receptors. Noise modelling indicates that this physical change together with changes in road traffic flows and speeds have the potential to result in noise changes of a minor magnitude increase of 1 decibel (dB) to 2.9dB. This is predicted to occur at receptors adjacent to the M60 on roads such as Kenilworth Avenue, Warwick Close, Warwick Avenue and Peveril Close to the south, Balmoral Avenue, Kensington Street, Glendevon and Conisborough Place, Duddon Close and Derwent Avenue, to the north, and closer to J18 at Brathay Close, Rothay Close, Marston Close and parts of Parrenthorn Road and Corday Lane. The applicant identified changes are potentially significant effects because existing levels of road traffic noise are above the significant observed adverse effect level (SOAEL) [\[APP-050\]](#).
- 3.13.9. Section 11.9 of ES chapter 11 [\[APP-050\]](#) describes the proposed design, mitigation and enhancement measures. Paragraphs 11.9.2 to 11.9.4 explain how environmental impacts have been avoided or reduced through the design of the proposed development and detail the embedded mitigation. Paragraph 11.9.5 and 11.9.6 describe the essential mitigation measures proposed for the proposed development. The embedded and essential mitigation measures include the commitments as detailed in the REAC [\[REP6-006\]](#). The applicant [\[APP-050\]](#) (paragraphs 11.9.7) states that providing a road surface with better noise reducing properties than a conventional LNS is required as essential mitigation for sensitive receptors, where potential significant effects are likely. However, the applicant explains that this mitigation would also provide road traffic noise reduction for other receptors within the study area. The applicant therefore concludes that this would constitute an enhancement.

- 3.13.10. Section 11.10 of ES chapter 11 [\[APP-050\]](#) summarises the likely significant effects after the embedded and essential mitigation. Table 11.34 summarises the predicted noise level changes at NIAs. The applicant predicted that (following any identified essential mitigation) there would be negligible beneficial effects (not significant) and for NIA 1671, there would be a significant beneficial effect (short-term only) associated with the resurfacing of the M60 with better noise reducing properties than a conventional LNS. Paragraph 11.10.33 explains that the significant beneficial effects that were predicted in the short-term upon proposed development opening would not be experienced at receptors over the long-term (15 years after opening), due to gradual increases in traffic growth over the time period, and an assumed reduction in performance of LNS. The identified likely significant beneficial effects in the short term were therefore not considered to be overall operational significant beneficial effects.
- 3.13.11. ES chapter 11, paragraph 11.10.37 [\[APP-050\]](#) states that an initial assessment of possible eligibility for Part 2 of The Noise Insulation Regulations 1975 (NIR) identified that there were no dwellings where the road traffic noise criteria for eligibility for the provision of noise insulation would be met. The applicant explained that this would be re-confirmed during detailed design and prior to the start of construction if development consent was granted. Commitment NV6 in the REAC [\[REP6-006\]](#) is a commitment to undertake an assessment of eligibility of residential dwellings for sound insulation measures in accordance with the NIR.
- 3.13.12. ES chapter 11, Table 11.39 [\[APP-050\]](#) concludes that the residual significant effects for noise and vibration are:
- significant adverse (temporary) effect for up to 275 receptors during daytime construction works
 - significant adverse (temporary) effect for up to 647 receptors during night-time construction works
 - no significant effects, adverse or beneficial, identified for operation

Examination Issues

- 3.13.13. Based on the comments raised by IPs and the ExA's review of the application documents, the main issues considered during the examination were:

- Construction noise and vibration.
- Operational noise and vibration.
- NIR.

Construction Noise and Vibration

- 3.13.14. Several RRs (including [\[RR-005\]](#), [\[RR-010\]](#) and [\[RR-014\]](#)) raised concerns regarding construction noise and vibration, and particularly construction noise at night. In addition [\[RR-046\]](#) and [\[REP1-048\]](#) stated that construction taking place at night over a three and half year period would cause unacceptable noise and disturbance to local residents living on streets adjacent to the motorway. BMBC LIR [\[REP1A-001\]](#) stated that although construction noise would be temporary, the duration of the proposed development's construction phase would likely be a significant number of years. BMBC therefore concluded that the noise impact from construction works (including from construction traffic and piling operations) would constitute a negative impact.

- 3.13.15. In response to BMBC's LIR the applicant agreed that there would be noise impacts during the construction phase and that these would result in an adverse effect. However, the applicant went on to state that although the total construction phase would be three and a half years, works would not be constant in any given location for that time period. The works would be carried out in different areas at different times meaning that there would be periods of adverse impact for the receptors identified at different times, with periods when there would be no impact [REP2-008]. Through ExQ1 NV.1.1 and NV.1.3 to NV.1.7 [PD-011] and ISH2 [EV10-001] the ExA examined the issue of construction noise and vibration.
- 3.13.16. The ES included a 75% activity-time assumption in the construction noise calculations. At ISH2 [EV10-001] the ExA sought justification whether this percentage was appropriate when the proposed shifts already included an hour before works commenced and at the end of the shift to set up and reposition plant. The ExA also queried the 75% figure given that a figure of 83% was applied in the A12 Chelmsford to A120 widening scheme. The applicant explained it was expected that there would be some variation in activity times between shifts and between construction phases and the 75% had been used as an average. The applicant stated that there was proportionally more night-time working programmed for the proposed development than was programmed for the A12 Chelmsford to A120 Widening Scheme, and the amount of work that could be completed in a night shift was usually less than a similar day shift. In addition, the applicant stated that for safety reasons, online night works could not be started until motorway traffic counts dropped to below a specified traffic flow, so this could also reduce the time when works could be undertaken at night. However, the applicant concluded that the use of an 83% activity time instead of 75% activity time would not materially alter the assessment findings [REP4-028].
- 3.13.17. BMBC noted that some construction work would be carried out during night-time closures and on the weekend but that the applicant would aim to reduce adverse impacts to the shortest duration possible [REP1A-001]. Through ExQ1 NV.1.6 and NV.1.7 [PD-011] the ExA asked the applicant to explain what measures were proposed to ensure adverse impacts would be reduced to the shortest duration and what mitigation was proposed to reduce the impacts of night-time construction noise and vibration. The applicant explained that a hierarchical approach would be taken with respect to any night-time working. Daytime working would be prioritised, followed by the consideration of the use of alternative construction methods to allow works to be undertaken in the daytime rather than at night. The applicant noted that commitment NV2 in the REAC [REP6-006] included a commitment to reduce the amount of night-shifts of the noisiest phases of night-time work, where practicable [REP3-023].
- 3.13.18. The applicant confirmed that alternative working methods, that had lower noise effects and could be utilised for construction processes, were being considered. The applicant detailed that these alternatives included low noise piling methods such as pressing and pre-augering. However, it was explained that the effectiveness of low noise construction methods was dependent on multiple factors, including ground conditions, working room, design requirements and other site-specific constraints. The applicant noted that commitment NV1 in the REAC [REP6-006] stated that a noise and vibration management plan would be developed which would detail the management and monitoring processes to be introduced across all construction sites and compounds [REP3-023].

3.13.19. The REAC [\[REP6-006\]](#) included the following commitments to reduce the impact of construction noise and vibration. Beyond those commitments discussed above the commitments also included were to:

- minimise the overall number of full carriageway closures (NV7)
- use material stock piles as screening where practicable (NV8)
- provide temporary noise screening to the edge of working areas where existing noise barrier has been temporarily removed (NV9)

3.13.20. The signed SoCG between the applicant and BMBC confirmed agreement that concerns in relation to construction noise and vibration had been addressed [\[REP5-028\]](#).

Operational Noise and Vibration

3.13.21. Approximately 17 RRs (including [\[RR-005\]](#), [\[RR-035\]](#), and [\[RR-039\]](#)) were concerned that the operation of the proposed development would result in an increase in noise and vibration, particularly for residential properties (including those on Brathay Close, Conisborough Place, Duddon Close, Rothay Close and Warwick Avenue) and schools adjacent to the motorway. Eight RRs (including [\[RR-012\]](#), [\[RR-016\]](#) and [\[RR-046\]](#)) raised particular concern about the effect the proposed development would have on the NIA's. BMBC's LIR [\[REP1A-001\]](#) summarised that operational noise from the proposed development would have a negative impact. BMBC identified no operational vibration impacts.

3.13.22. The applicant responded to the RRs stating that the proposed development included provision of mitigation for road traffic noise in the form of a LNS with better performance than a conventional LNS between J17 and J18 of the M60 (commitment NV4 of the REAC [\[REP6-006\]](#)). The applicant stated that the ES assessment (chapter 11 [\[APP-050\]](#)) predicted an overall reduction in road traffic noise of between 1 and 5 dB(A) at residential dwellings, depending upon location. The applicant explained that changes in road traffic noise of 3dB or more can be perceptible to people, so the reduction in road traffic noise was likely to be noticeable for some people. However, the applicant stated that predictions of road traffic noise changes in the area of Parrenthorn Road indicated a reduction in road traffic noise of between 1-3 dB on proposed development opening, which although an improvement on the current situation was unlikely to be noticeable [\[REP1-020\]](#).

3.13.23. Four RRs ([\[RR-005\]](#), [\[RR-010\]](#), [\[RR-039\]](#) and [\[RR-048\]](#)) were concerned that the proposed development would increase vibration with [\[RR-039\]](#) concerned that this could lead to damage to building foundations. The applicant responded that vibration from road traffic had been scoped out in accordance with DMRB LA 111 Noise and Vibration standard, as detailed in the Environmental Scoping Report [\[APP-143\]](#), because a maintained road surface would be free of irregularities following construction, and under general maintenance. The applicant concluded that vibration during the operation of the proposed development would therefore not have a significant effect on surrounding properties [\[REP1-020\]](#).

3.13.24. At OFH1 [\[EV6-001\]](#) Mr Peake raised a concern about the current noise and vibration at his property due to the M60 motorway and stated that these would get worse because of the proposed development (during construction and operation) which would widen the M60, moving it closer to his property. Mr Peake was particularly concerned about operational vibration and although Mr Peake did not submit a post hearing submission the ExA, through ExQ1 NV.1.1 [\[PD-011\]](#), asked the applicant to respond to his concerns. The applicant reiterated comments stated in [\[REP1-020\]](#) that operational vibration had been scoped out of the assessment

methodology as a maintained road surface would be free of irregularities as part of project design and under general maintenance, so operational vibration would not have the potential to lead to significant adverse effects. The applicant explained that in some situations there may be localised circumstances that could cause vibration to be generated, for example a buried pipe acting as a transmission path for vibration. However, without knowing exactly where Mr Peake lived, the applicant could not directly respond to this concern [\[REP3-023\]](#).

- 3.13.25. Through ExQ1 NV1.2 [\[PD-011\]](#) the ExA sought clarification from the applicant about any future maintenance regime which would ensure that ground-borne vibration would not become a problem over the lifetime of the proposed development. The applicant confirmed that future maintenance would be undertaken by the applicant pursuant to its duties and powers under the Highways Act 1980 including section 41 (duty to maintain highways maintainable at public expense), and its duties under its licence granted by the DfT. The applicant explained that the standard of maintenance would be consistent with the usual maintenance regime applied to the rest of the SRN and would be undertaken having regard to the activities required by and permitted by that statutory regime [\[REP3-023\]](#). The ExA also wanted to ensure that any future replacement of road surfaces within the order limits would have noise emission performance of no worse than that which was originally laid for the proposed development (ExQ1 NV.1.10 [\[PD-011\]](#)). The applicant secured this by revising commitment NV4 within the REAC [\[REP6-006\]](#).
- 3.13.26. ES chapter 11 paragraph 11.9.7 [\[APP-050\]](#) states that by providing a road surface with better noise reducing properties than a conventional LNS as essential mitigation for sensitive receptors where potential significant effects are likely, it would also provide road traffic noise reduction for other receptors within the study area. In ExQ1 NV.1.11 [\[PD-011\]](#) the ExA noted that the applicant concluded that providing a LNS would constitute an enhancement for some receptors and asked the applicant to clarify how many receptors within the study area would benefit. The applicant explained that there was no definition of enhancement provided within DMRB LA 111, and so it had been assumed that this would be a moderate or major magnitude of decrease in road traffic noise (a significant benefit) for those dwellings where a significant adverse increase in road traffic noise was predicted without consideration of any mitigation. The applicant confirmed that there were 208 dwellings where there was an enhancement from the provision of a road surface with better noise reducing properties than a conventional LNS as noise mitigation. The applicant also noted that there were also reductions in road traffic noise of a minor magnitude for 3,011 receptors of 1.0-2.9dB that may be perceptible to some people, but that would not be considered as a significant benefit.
- 3.13.27. Six RRs (including [\[RR-018\]](#), [\[RR-052\]](#) and [\[REP1-034\]](#)) wanted to know what noise mitigation and screening was proposed. [\[RR-036\]](#) requested that trees that had been removed were replaced. The applicant confirmed that noise mitigation for operation in the form of LNS was proposed, but that the erection of new barriers was not a mitigation measure which had been identified for the proposed development, although all existing noise barriers alongside the M60 would be retained or replaced like-for-like [\[REP2-007\]](#)). In respect of the loss of trees the applicant stated that the EMP [\[REP7-013\]](#) illustrates the landscaping proposals. The applicant also noted that commitment LV13 in the REAC [\[REP6-006\]](#) states that existing linear tree belts necessitating removal for carriageway widening would be reinstated with a higher percentage of feathered trees and evergreen species to improve visual screening in the early years. The applicant confirmed that by the design year (year 15 of operation) vegetation would establish to provide a similar level of filtering or screening of carriageway lighting and vehicle headlights as

provided before the proposed development. The applicant explained that the use of shrubs or trees as a noise barrier had been shown to be effective only if the foliage is at least 10m deep, dense and consistent for the full height of the vegetation. However, the applicant acknowledged that a persons' subjective response to a sound source can change when the sound source becomes visible, even when the acoustic influence of vegetation is minimal [\[REP1-020\]](#).

3.13.28. ES chapter 11 (paragraph 11.10.33) explains that resurfacing with better noise reducing properties than conventional LNS would only provide beneficial effects in the short term due to gradual increases in traffic growth over the time period, and an assumed reduction in performance of the LNS. Through ExQ1 NV.1.8 and NV.1.9 [\[PD-011\]](#) and ISH2 [\[EV10-001\]](#) the ExA considered this and asked why the installation of environmental barriers or bunds to provide beneficial effects on noise over the long term had not been included, particularly considering the designation of NIAs within the order limits. The applicant responded that the results of the long-term assessment were based on a conservative assumption (as presented in table 11.35 of ES chapter 11 [\[APP-050\]](#)). The applicant stated that negligible increases and decreases in noise were predicted for 1,753 and 4,638 dwellings, respectively. The applicant concluded that as the predicted changes over the long term were all of a negligible magnitude impact, which was not considered to be a significant adverse or beneficial effect, then further noise mitigation in the form of barriers or bunds had not been considered. The applicant also noted that the presence of existing noise barriers alongside the M60 meant that there was limited scope for additional noise barriers to be provided or for these to be improved [\[REP3-023\]](#).

3.13.29. Through ISH2 [\[EV10-001\]](#) and ExQ2 NV.2.3 [\[PD-013\]](#) the ExA asked the applicant to consider the effects of installing additional lengths of noise barrier, by extending the existing barriers to the M60 adjacent to residential areas, and detail how this would affect long term operational noise. In response the applicant carried out a noise modelling exercise considering the continuation of the existing noise barriers within NIA 1671 [\[REP5-033\]](#). The additional barriers were assumed to be a continuation of the height of each adjacent noise barrier:

- NB_A is a continuation of EB03 to the crossing of Sandgate Road at a 1.5m height (adjacent to Conisborough Place and Glendevon Place).
- NB_B is a continuation of EB04 to the crossing of Sandgate Road at a 2m height (adjacent to Warwick Avenue).
- NB_C is a continuation of EB05 to the re-located NB07 at a 1.5m height (adjacent to Heybrook Close, Brathay Close and Rothay Close).

3.13.30. Figures ExQ.NV.2.3a and ExQ.NV.2.3b [\[REP5-033\]](#) (extracts below) illustrate the location of the existing and extended sections of noise barrier and the magnitude of change for operational day and night in future year 2044. Extracts from chapter 11 figures 11.9a (2044 future year day time) and 11.9b (2044 future year night time) [\[APP-071\]](#) are included below for ease of comparison.

Figure 15: Extract from chapter 11 figure 11.9a (2044 future year day time) showing proposed scheme with no additional lengths of noise barrier [APP-071]



Figure 16: Extract from figure ExQ.NV.2.3a (2044 future year day time) showing proposed scheme with the additional lengths of noise barrier [REP5-033]

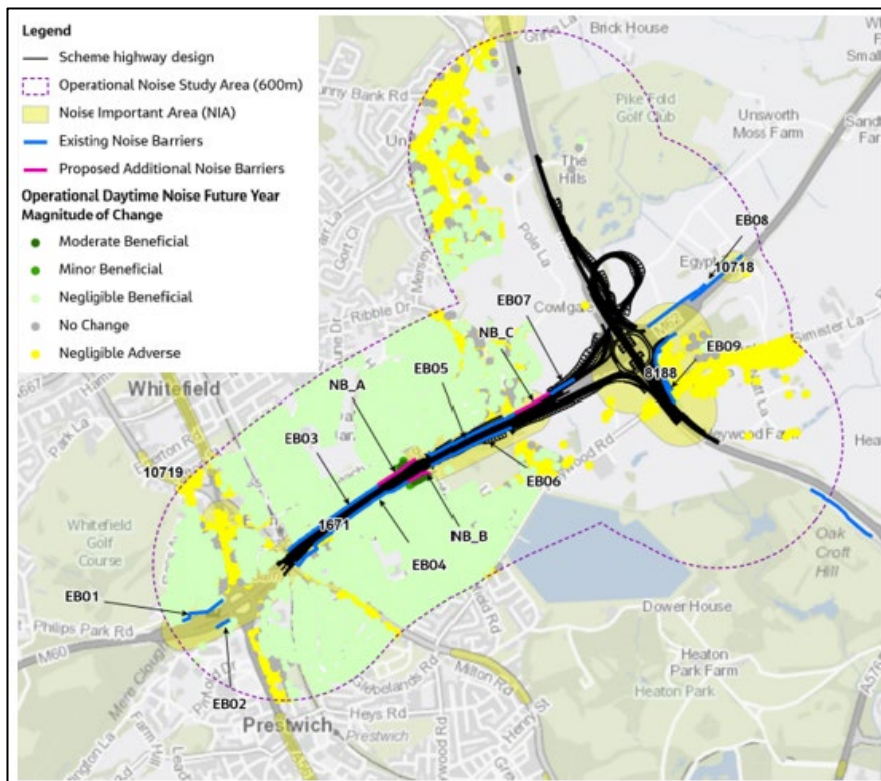
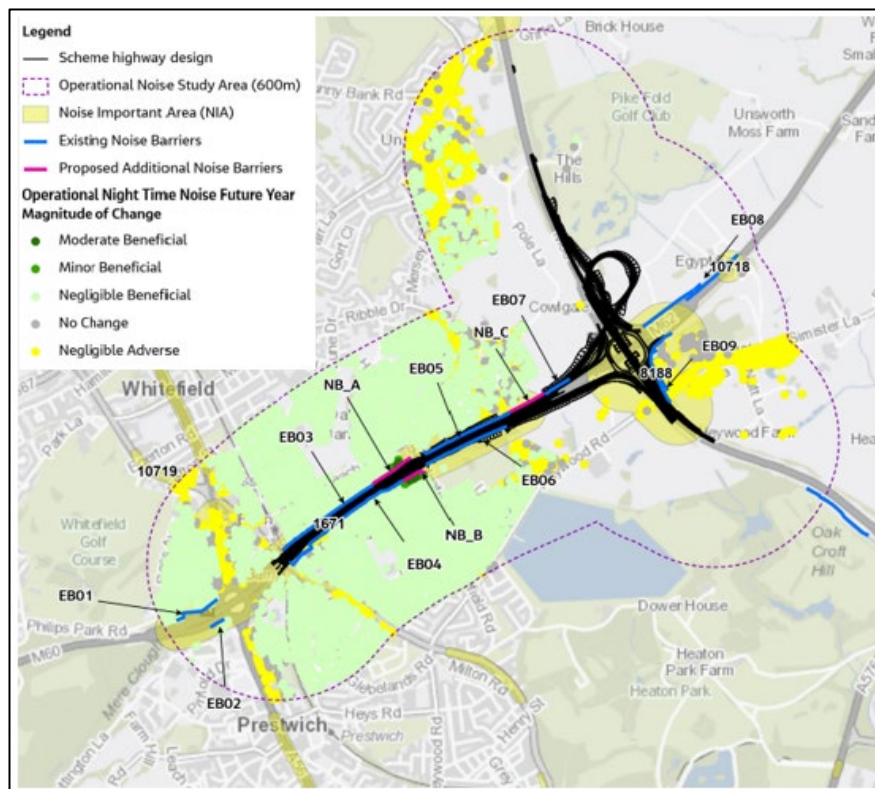


Figure 17: Extract from chapter 11 figure 11.9b (2044 future year night time) showing proposed scheme with no additional lengths of noise barrier [APP-071]



Figure 18: Extract from figure ExQ.NV.2.3b (2044 future year night time) showing proposed scheme with the additional lengths of noise barrier [REP5-033]



3.13.31. The applicant's assessment concluded that:

- NB_A: There were predicted to be significant long-term noise decreases of a moderate magnitude for four residential receptors at Conisborough Place (numbers 9, 11, 15 and 17). There were also minor magnitude decreases predicted for two additional residential receptors (7 and 19 Conisborough Place). At the remaining receptors on Conisborough Place, that would be directly behind the barrier (odd numbers 27-33), an additional decrease of between 0.4 to 1.0dB from the additional noise barrier NB_A would be experienced, with the overall magnitude of change remaining as negligible beneficial. At Glendevon Place (even numbers 22-38) the noise level change was predicted to be within 0.1dB of that with no additional noise barrier, with the magnitude remaining as negligible.
- NB_B: There were predicted to be significant long-term noise decreases of a moderate magnitude for five residential receptors at Warwick Avenue (numbers 49, 55, 53, 57 and 59). There were also minor magnitude long-term decreases predicted for five additional residential receptors (43, 45, 47, 51, 61, 63 Warwick Avenue). At the next row of residential receptors on Warwick Avenue (even numbers 112-124) noise level change in the long term was predicted to be around -2dB, with around -0.3dB provided by NB_C, remaining a negligible magnitude of change in the long term.
- NB_C: There were negligible magnitude long-term increases and decreases predicted for receptors located at Brathay Close, with the best decrease predicted for 15 Brathay Close of -0.2dB. This was a change of approximately 2dB from the negligible magnitude increase predicted with no additional noise barrier. For receptors at Rothay Close the additional noise barrier would result in long term negligible magnitude decreases in road traffic noise of up to -0.9dB (at 25 Rothay Close), which was a change from negligible magnitude increase with no additional noise barrier. For receptors at Marston Close there would be long-term decreases of road traffic noise of up to -0.8dB with the proposed additional noise barrier, which was an improvement of approximately 1.5dB, depending on location. This additional noise barrier would change the magnitude from negligible increase to negligible decrease for 101 residential dwellings.

3.13.32. In conclusion the applicant's assessment predicted that 17 properties would benefit from a significant long-term noise reduction due to the inclusion of the extended lengths of noise barrier. It also predicted noise reduction, albeit not significant, for the remaining residential properties in the following areas: Conisborough Place, Glendevon Place, Warwick Avenue, Brathay Close, Rothay Close and Marston Close [REP5-033]. As such the ExA, as part of its schedule of changes to the dDCO [PD-016] recommended a new requirement to include the additional sections of noise barriers as described above.

3.13.33. In its response to the ExA's schedule of changes the applicant rejected the recommended new requirement explaining that provision of additional noise barriers was not warranted because of the use of LNS which would eliminate all identified significant adverse effects of the proposed development from road traffic noise. The applicant stated that additional mitigation measures were therefore not needed for operational noise and would not be proportionate and reasonable [REP7-022].

NIR

3.13.34. An initial assessment of possible eligibility for Part 2 of the NIR identified that there were no dwellings where the road traffic noise criteria for eligibility for the provision of noise insulation would be met [APP-050]. Through ExQ1 NV.1.12 [PD-011], ExQ2 NV.2.2 [PD-013] and a rule 17 letter [PD-015] the ExA sought clarification as

to how the initial assessment of possible eligibility for Part 2 of the NIR was undertaken and where was the evidence within the application documents which demonstrated why receptors were not eligible. The applicant stated that the NIR criteria were as follows [\[REP3-023\]](#):

- The receptor is a dwelling or a building used for residential purposes and is located within 300m of the nearest point of the carriageway of the highway.
- The road traffic noise level at the dwelling after the work must be above a façade level of $L_{A10,18h}$ 68dB.
- Be at least 1dB(A) greater than the prevailing noise level immediately before the work; and
- The noise level from the highway, additional carriageway, or alteration must contribute at least 1dB(A) to the relevant noise level at the receptor.

3.13.35. The applicant explained that while some receptors met the first three criteria as listed above, none met all four [\[REP5-033\]](#). However, the applicant confirmed that the calculations which determined the NIR fourth criteria (contribution to the relevant noise level from the new or altered sections of road) had not been provided within the assessment contained in the application documents. The applicant stated [\[REP6-012\]](#) that notwithstanding this, the potential eligibility of all receptors for noise insulation under the NIR would be reassessed during detailed design and prior to the start of construction, as stated in commitment NV6 of the REAC [\[REP6-006\]](#).

ExA's Findings

3.13.36. The NPSNN addresses noise and vibration considerations at paragraphs 5.186 to 5.200. 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. Applicants are advised to use best available techniques to reduce noise impacts (paragraph 5.189 of the NPSNN).

3.13.37. 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 Secretary of State "... 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."

3.13.38. To mitigate the effects of noise from the construction and operational phases of NSIPs the Secretary of State "... may wish to impose requirements to ensure delivery of all mitigation measures" (paragraph 5.197 of the NPSNN). 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.

- 3.13.39. In relation to NIAs paragraph 5.200 of the NPSNN states that applicants should consider opportunities to address the noise issues associated with the Important Areas as identified through the noise action planning process.
- 3.13.40. NNNPS (2024) contains comparable policy provisions to the NPSNN.
- 3.13.41. The ExA accepts that the proposed development would result in an increase in noise and vibration during the construction phase, which would last for approximately three and a half years. This will undoubtedly cause a daily nuisance for local affected residents for a period of time, and this situation would not be ideal. However, we are satisfied that the impacts would not be constant in any one location for the entirety of the construction period and that these impacts would be appropriately mitigated as far as they can be through commitments NV1, NV2, NV7, NV8 and NV9 of the REAC [\[REP6-006\]](#) secured through requirement 4 of the rDCO. For these reasons, the ExA is satisfied that noise and vibration effects from the construction phase would be mitigated in accordance with the NPSNN.
- 3.13.42. In relation to operational noise in the short term the ExA is satisfied that the provision of mitigation for road traffic noise in the form of a LNS with better performance than a conventional LNS between J17 and J18 of the M60 (commitment NV4 of the REAC [\[REP6-006\]](#) secured through requirement 4 of the rDCO) would provide a significant beneficial effect. We are also satisfied that this would constitute an enhancement for 208 dwellings (in the short term).
- 3.13.43. The ExA is satisfied that the future maintenance regime (which would ensure that ground-borne vibration would not become a problem over the lifetime of the proposed development) would be carried out under NH duties and powers under the Highways Act 1980 and its duties under its licence granted by the DfT. We are also satisfied that any future replacement of road surfaces within the order limits would have noise emission performance of no worse than that which was originally laid for the scheme as secured by commitment NV4 within the REAC [\[REP6-006\]](#) secured through requirement 4 of the rDCO.
- 3.13.44. In relation to operational noise in the long term, the ExA notes the applicant's position that the extension of three existing noise barriers within NIA 1671 was not warranted because the use of a better performance LNS between J17 and J18 of the M60 would eliminate all identified significant adverse effects from road traffic noise.
- 3.13.45. The ExA disagrees. We accept that the provision of LNS would ensure residents would not experience significant adverse effects from road traffic noise. However, we consider that the applicant has not given adequate consideration to providing an improvement for residents in relation to noise, particularly in relation to the perception of noise. Not only would the extension of three existing noise barriers provide a predicted significant long-term noise reduction to 17 properties, it would also result in a predicted long-term noise reduction (albeit not significant) for residential properties in the following areas: Conisborough Place, Glendevon Place, Warwick Avenue, Brathay Close, Rothay Close and Marston Close. Whilst this reduction was not predicted to be significant in EIA terms, it may be perceptible to some people. That is because an individual's subjective response to a sound source can change when the sound source becomes visible, even when the acoustic influence is minimal. The ExA therefore consider that closing the existing gaps in the noise barriers would provide benefit to those residential areas adjacent to the M60. Additionally, whilst no assessment has been undertaken, the ExA consider it

would also be likely that these additional sections of noise barrier could provide noise mitigation for receptors during the construction phase.

- 3.13.46. For the reasons outlined above, the ExA considers that installing extended barriers would provide additional noise mitigation to residential properties and reduce noise impacts as encouraged in NPSNN paragraphs 5.194. We consider that this additional mitigation measure is needed and would be proportionate and reasonable. We do not consider the applicant has provided sufficient explanation as to why this mitigation should not be provided in this case. We propose the recommended requirement as detailed in the schedule of changes to the DCO [\[PD-016\]](#) be included in the rDCO in accordance with NPSNN paragraph 5.197.
- 3.13.47. The ExA considers that because the application documents did not contain all the evidence to demonstrate whether receptors were eligible for Part 2 of the NIR it would be very difficult for affected persons to determine their position. However, we are satisfied that eligibility would be reassessed during detailed design and prior to the start of construction, as stated in commitment NV6 of the REAC [\[REP6-006\]](#) secured through requirement 4 of the rDCO.

Conclusions

- 3.13.48. The ExA concurs with ES chapter 11 [\[APP-050\]](#) that the significance of effect from the proposed development on noise and vibration would be significant adverse caused by the construction activities, and no significant effects (either adverse or beneficial) from operation.
- 3.13.49. The ExA is satisfied that the applicant has demonstrated that such risks associated with the construction and operation (in the short term) of the proposed development can be satisfactorily mitigated and managed and that appropriate mitigation would be secured via requirement 4 of the rDCO.
- 3.13.50. However, the ExA considers that the applicant has not demonstrated that such risks associated with the operation of the proposed development in the long term can be satisfactorily mitigated and managed. The ExA therefore considers it appropriate that mitigation in the form of additional sections of noise barrier should be secured by way of a new requirement in the rDCO.
- 3.13.51. The ExA is satisfied that with the inclusion of new requirement 11 in the rDCO, providing additional noise barriers, the proposed development is in accordance with NPSNN and, where important and relevant, NNNPS (2024), local policies and strategies and all other legislation.
- 3.13.52. Subject to the inclusion of the new requirement 11 providing additional noise barriers, the ExA attaches a little positive weight to this effect on noise and vibration matters for the making of the order. However, if the Secretary of State decides that the proposed new requirement 11 is not necessary then the ExA would take the view that there would be adverse impacts to residential properties in the following areas: Conisborough Place, Glendevon Place, Warwick Avenue, Brathay Close, Rothay Close and Marston Close, and accordingly our planning balance would change to little negative against the making of the order.

3.14. POPULATION AND HUMAN HEALTH

Introduction

- 3.14.1. This section sets out the effects of the proposed development as they relate to population and human health. Matters relating to PRow and walking, cycling and horse riding (WCH) are also considered in section 3.16 of this report (traffic, transport and access). The consideration of effects on human health should be read in conjunction with section 3.4 (air quality) and section 3.13 (noise and vibration). Matters relating specifically to agricultural land are considered in section 3.8 (geology and soils).

Application Summary

- 3.14.2. The applicant's assessment of the potential effects of the proposed development on population and human health is in chapter 12 of the ES [\[APP-051\]](#). This chapter considers the following topics in accordance with DMRB LA 112 Population and Human Health:
- land use and accessibility (including private property and housing, community land and assets, development land and business, agricultural landholdings, and WCH)
 - human health
- 3.14.3. Chapter 12 is supported by the following ES figures [\[APP-072\]](#):
- Figure 12.1: Population and Human Health Context
 - Figure 12.2: Agricultural Landholdings
 - Figure 12.3: Key Population and Human Health Impacts
- 3.14.4. The assessment in ES chapter 12 is supported by the following appendices:
- Appendix 12.1: Detailed Private Property and Housing Assessment [\[APP-114\]](#)
 - Appendix 12.2: Human Health Literature Review and Evidence [\[APP-115\]](#)
- 3.14.5. The applicant [\[APP-051\]](#) (section 12.6) used a 100m buffer around the order limits for the study area for land use and accessibility. The applicant explains that the buffer was reduced from the 500m buffer used in the Preliminary Environmental Information Report on the basis that no effects were predicted on land use of accessibility assets beyond this distance. The study area for human health consisted of the wards that coincided with the order limits [\[APP-051\]](#) (section 12.14).
- 3.14.6. ES chapter 12, section 12.8 [\[APP-051\]](#) assesses the potential impacts of the proposed development on land use and accessibility for both construction and operation. The applicant identifies that all aspects of land use and accessibility could potentially be impacted during construction. During operation the applicant only identified potential impacts for WCH, community land and assets related to locations where permanent PRow diversions were required. The applicant identified that these could be beneficial impacts should the proposed development address locations of poor accessibility and past severance of PRow.
- 3.14.7. ES chapter 12, section 12.16 [\[APP-051\]](#) assesses the potential impacts of the proposed development on human health for both construction and operation. The applicant identifies that all aspects of human health could potentially be impacted during both construction and operation.

- 3.14.8. In section 12.9 of ES chapter 12 [\[APP-051\]](#) the applicant describes the proposed design, mitigation and enhancement measures related to land use and accessibility. Paragraphs 12.9.1 to 12.9.5 explains how environmental impacts were avoided or reduced through the design of the proposed development (embedded or design mitigation). Paragraphs 12.9.6 and 12.9.7 describe the proposed essential mitigation measures. These essential mitigation measures include the commitments as detailed in the REAC [\[REP6-006\]](#). The applicant [\[APP-051\]](#) does not identify any specific environmental measures as 'enhancement' related to land use and accessibility.
- 3.14.9. In section 12.17 of ES chapter 12 [\[APP-051\]](#) the applicant describes the proposed design, mitigation and enhancement measures related to human health. Paragraphs 12.17.2 to 12.17.4 explain how environmental impacts were avoided or reduced through the design of the proposed development (embedded or design mitigation). Paragraphs 12.17.5 to 12.17.9 describe the proposed essential mitigation measures. These essential mitigation measures include the commitments as detailed in the REAC [\[REP6-006\]](#). Paragraph 12.17.10 details the socio-economic commitments identified by the applicant and contained in the REAC [\[REP6-006\]](#). The applicant [\[APP-051\]](#) does not identify any specific environmental measures as 'enhancement' related to human health.
- 3.14.10. Section 12.10 of ES chapter 12 [\[APP-051\]](#) summarises the likely significant effects of the proposed development on land use and accessibility during construction and operation. The applicant's assessment, following the application of the mitigation measures as detailed in the REAC, concludes significant effects for:
- Agricultural landholdings – Moderate adverse (temporary) significant effects on landholdings with agricultural references SW1, NW1 and NE4, due to temporary land take requirements associated with the proposed development during the construction phase.
 - Agricultural landholdings – Moderate adverse (permanent) significant effects on landholding with agricultural reference NE2, due to permanent land take requirements associated with the proposed development during the construction phase.
 - WCH – Very large adverse (temporary) significant effects on the permissive path via the Haweswater aqueduct underpass due to a temporary closure for six to eight weeks to allow for widening of the highway around the underpass.
 - WCH – Moderate adverse (temporary) significant effect on Footpaths 9WHI and 84BUR due to a closure during construction.
 - No residual significant effects for the operation phase were identified.
- 3.14.11. Section 12.18 of ES chapter 12, table 12.38 [\[APP-051\]](#) summarises the likely significant effects of the proposed development on human health during construction and operation. The applicant's assessment, following the application of the mitigation measures as detailed in the REAC, concludes significant effects for the following wards:
- Besses – Moderate negative effect on access to the natural environment and outdoor recreation during the construction phase.
 - All wards – Large negative effect on quality of urban and natural environments due to construction related noise.
 - Besses, Holyrood and Unsworth – Moderate negative effect due to interaction of construction impacts.
 - All wards – Large positive effect on quality of urban and natural environments due to an improvement in noise pollution in the operation phase.

Examination Issues

3.14.12. Based on the comments raised by IPs and the ExA's review of the application documents, the main issues considered during the examination were:

- The construction phase.
- PRowS.

The construction phase

3.14.13. Several RRs (including [\[RR-005\]](#), [\[RR-035\]](#) and [\[RR-040\]](#)) were concerned about the general effect of the construction of the proposed development on health and wellbeing, particularly on those who are vulnerable. The applicant responded explaining that the construction methodology was developed in relation to the preliminary design of the proposed development and the space available on the existing road network. The applicant went on to state that the construction programme had been developed to be the shortest duration taking account of the construction methodology and the need to retain the existing number of open traffic lanes at peak times on the M60 / M62 / M66, to minimise the impact on all users of the motorways and the LRN [\[REP1-020\]](#).

3.14.14. Concerns that the construction of the proposed Northern Loop would result in restricted access to horses stabled on land adjacent to it were raised in [\[RR-021\]](#). In addition [\[RR-021\]](#) was also concerned that the welfare of the horses would be significantly impaired due to light, air and noise pollution. The applicant responded that an assessment of likely construction noise and vibration effects was presented in ES chapter 11 (Noise and Vibration) [\[APP-050\]](#). The applicant noted that whilst there was no specific guidance on the assessment of impacts on horses and other animals, applying the outcome of the assessments on humans, the results indicated that there would be adverse effects from construction noise during the construction phase, which includes both daytime and night-time working. However, the applicant confirmed that alongside the design, it was developing a strategy for how the proposed development would be built and that this would include details about how potential impacts such as noise and vibration would be mitigated. Measures to reduce noise from construction activities are included in the REAC [\[REP6-006\]](#) and would be incorporated into working practices [\[REP1-020\]](#).

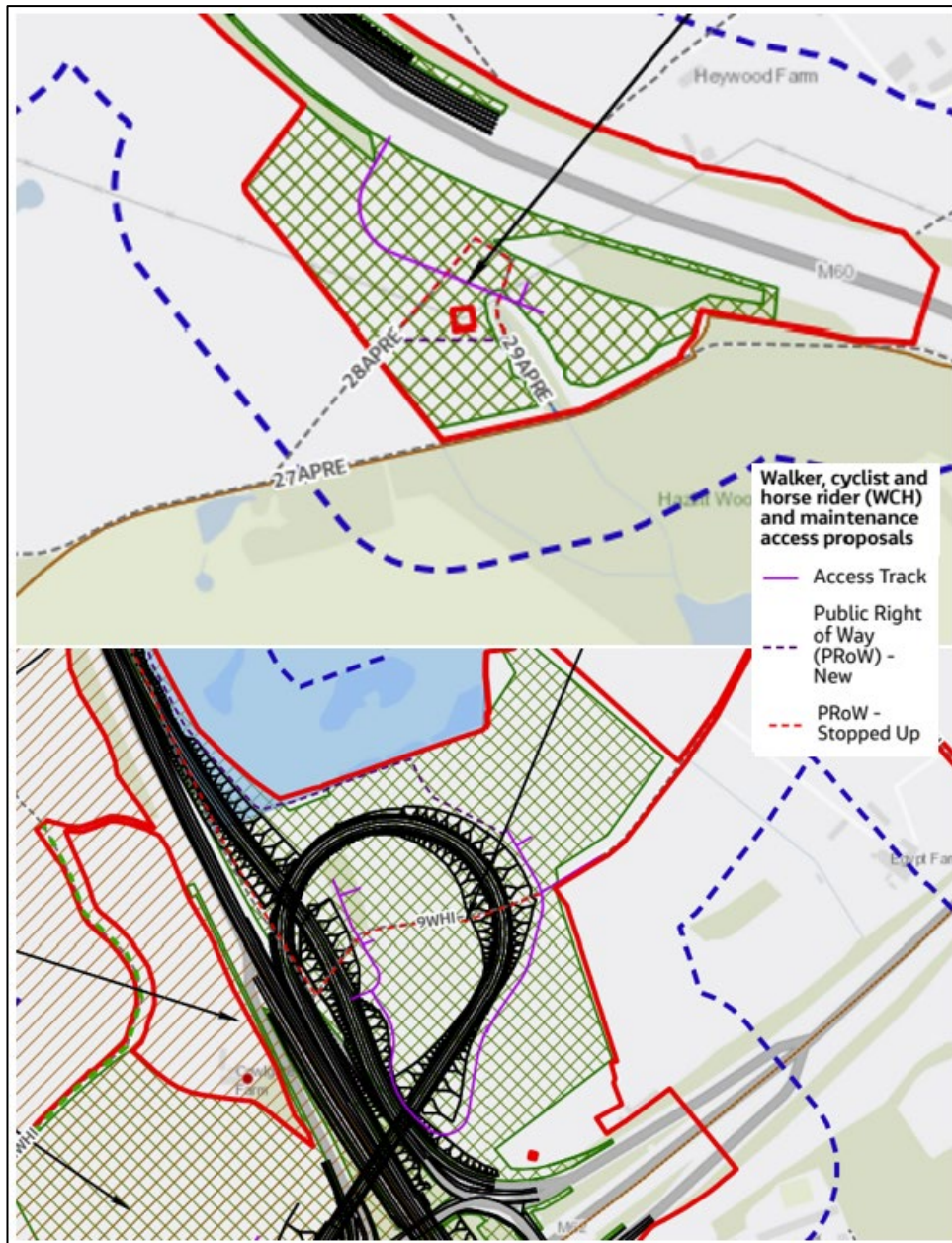
3.14.15. The ExA were concerned about the extent of the proposed working hours. In ExQ2 PHH.2.6 [\[PD-013\]](#) we asked BMBC, considering paragraph 11.4 of their LIR acknowledged that construction was "likely to take a significant number of years", whether they could provide reasoning for the acceptability, or otherwise, of the proposed construction working hours [\[PD-013\]](#). In [\[REP5-037\]](#) BMBC confirmed that they had agreed the proposed working hours with the applicant. BMBC stated that although it acknowledged there was likely to be a considerable impact on the residents affected by the proposed scheme, if the proposed hours were not accepted, then the timescale of the proposed development would lengthen and those affected would suffer from the effects of construction noise for a longer period. BMBC explained that after considering the application documents, which included the use of the best practicable means and the effects of noise nuisance over a longer period, it felt that the preferred option would be for the construction phase to be undertaken over a shorter timescale. BMBC acknowledged that the safety of those working on the construction site must be considered and as a result, night-time working must be an option. However, it considered that the management plan identified appropriate control measures for noise and vibration during the construction phase [\[REP5-037\]](#).

- 3.14.16. In relation to the proposed location of the main construction compound off Mode Hill Lane, BMBC's LIR [\[REP1A-001\]](#) stated that given the nature of the temporary intended use arising from site operations, which would include trips accessing and egressing the site, residents in close proximity would be impacted from noise, vibration, light and dust. BMBC'S LIR concluded that the use of the proposed site would therefore have a negative impact. In response the applicant acknowledged that there would be adverse impacts from construction noise in the area of Mode Hill Lane during mobilisation and online works, which included both daytime and night-time working. However, they explained that commitment NV1 in the REAC [\[REP6-006\]](#) was to develop and implement a Noise and Vibration Management Plan, which would set out the measures to mitigate noise and vibration impacts during construction [\[REP2-008\]](#).
- 3.14.17. Several RRs were concerned about the increased lighting as a result of the proposed development, and particularly during the construction phase (including [\[RR-005\]](#), [\[RR-010\]](#) and [\[RR-020\]](#)). Through ExQ2 LV.2.2 [\[PD-013\]](#) the ExA sought clarification regarding the proposed construction compound lighting strategy and how it would be secured. The applicant responded that commitment G6 [\[REP6-006\]](#) (secured by requirement 4 of the rDCO) included a number of measures to minimise the impact of lighting during construction and specifically provided that temporary lighting at site compounds would be designed to avoid impacts to residential properties [\[REP5-033\]](#). Given the proximity to residential dwellings, the ExA considered it was appropriate that details of all lighting required for the construction phase was included as part of the second iteration EMP. The ExA therefore recommended that requirement 4 of the dDCO was amended to include the provision of a construction lighting plan [\[PD-016\]](#). The applicant agreed with the amendment [\[REP7-021\]](#). This is secured as requirement 4(d)(xvi) in the rDCO.
- 3.14.18. During OFH1 [\[EV6-002\]](#) Mr Heaney raised the concern about the effect that construction would have on Mode Hill Lane and its link through to Pole Lane. Mr Heaney stated that it was a well-used route, especially by school children accessing Unsworth Academy and dog walkers, and that it should be upgraded (improved surface and lighting). Mr Heaney did not submit a post hearing submission so the ExA asked the applicant to respond at DL3 (ExQ1 PHH.1.4 [\[PD-011\]](#)). The applicant stated that it was not within the scope of the scheme to upgrade the eastern end of Mode Hill Lane and/or Pole Lane but it would repair and redress any damage to the existing surfaces resulting from the utility connection works required for the proposed development [\[REP3-023\]](#).

PRoW

- 3.14.19. BMBC's LIR [\[REP1A-001\]](#) agreed with the applicant that the diverted PRoWs 28APRE and 29APRE would constitute an enhancement but acknowledged that there would be some temporary effects on PRoW during construction. Through ExQ1 PHH.1.1, PHH.1.2 [\[PD-011\]](#) and ISH2 [\[EV10-001\]](#) the ExA sought clarification from the applicant on the effects (both positive and negative) the proposed development would have on PRoWs.
- 3.14.20. During ISH2 [\[EV10-001\]](#) the ExA challenged the applicant to explain why it considered that the diverted PRoWs 28APRE and 29APRE would constitute an enhancement. The ExA noted that these PRoWs had been assigned low value due to lack of use and meaningful route. Conversely however, the ExA noted that the diverted PRoW 9WHI was shown to be regularly used for recreation, but no enhancement was identified (ES chapter 12 table 12.15 [\[APP-051\]](#)). The figure below shows these footpaths and the proposed diversion.

Figure 19: Extract from figure 12.13 [APP-072] illustrating the location of PRoWs 28APRE, 29APRE and 9WHI



- 3.14.21. The applicant explained that diverted PRoWs 28APRE and 29APRE would pass through an area of ecological mitigation which they considered would provide a modest enhancement on the existing route [EV10-001]. In relation to PRoW 9WHI the applicant confirmed that this footpath would also be diverted through an area of proposed mitigation planting. The applicant stated that the majority of planting areas would be of a suitable size (over 5m width) that once established should provide adequate screening of views from a user of footpath 9WHI to the M66 and most of the Northern Loop traffic [REP4-028]. In [REP5-033] and [REP5-037] both the applicant and BMBC agreed that the diverted PRoW 9WHI would constitute an enhancement.
- 3.14.22. In response to ExQ1 PHH.1.2 [PD-011], which asked if any applications had been made to revise the status of any PRoW that may be affected by the proposed development, BMBC highlighted three applications to change the status of a public

footpath to a bridleway. One of these applications related to part of the proposed diverted PRow 9WHI. In ISH2 [\[EV10-001\]](#) the ExA asked the applicant how it had considered the proposed application for a change of this PRow from a footpath to a bridleway. The applicant confirmed that it had discussed this issue with BMBC and agreed that it would be outside the scope of this proposed development. However, the applicant noted that in designing the proposed development it had sought to avoid positioning permanent infrastructure which would prevent the potential upgrade of the route to a bridleway in the future. The signed SoCG between the applicant and BMBC confirms agreement on this issue [\[REP5-028\]](#).

Other Matters

- 3.14.23. ES chapter 12 [\[APP-051\]](#) includes socio-economic commitments PHH22 up to and including PHH26. These commitments relate to the proposed development providing employment opportunities, skills and training. BMBC's LIR did not comment specifically on any socio-economics issues related to the proposed development. No IPs raised any specific socio-economics concerns. Therefore, the ExA did not examine this issue further.
- 3.14.24. BMBC's LIR stated that PfE Policy JP-P6 set out a range of measures aimed at tackling health inequalities. BMBC stated that this included a requirement, as far as is practicable, for new development to be supported by a Health Impact Assessment where the development would require to be screened for an EIA, and other proposals which, due to their location, nature or proximity to sensitive receptors, were likely to have a notable impact on health and wellbeing [\[REP1A-001\]](#). The applicant's response [\[REP2-008\]](#) confirmed that the impacts of the proposed development on population and human health, including the mitigation proposed, was set out in ES chapter 12 [\[APP-051\]](#). The signed SoCG between the applicant and BMBC confirms that BMBC are satisfied with the assessment as detailed in ES chapter 12 [\[REP5-028\]](#).
- 3.14.25. Several RRs (including [\[RR-011\]](#), [\[RR-040\]](#) and [\[REP1-048\]](#)) raised concerns about the effect the proposed development would have on local schools. They stated that St Margaret's Church of England Primary School was 200m from the M62 and Parrenthorn High School was 300m away from M62 and M60, which they considered were too close and would result in the schools being negatively impacted by the proposed development. In response, the applicant explained that the use of LNS in relation to future operational noise predictions would result in a reduction in road traffic noise at St Margaret's Church of England Primary School and Parrenthorn High School of between 1-2dB at year 1 opening. The applicant confirmed that whilst this was unlikely to be noticeable it would still amount to a reduction on current levels [\[REP1-020\]](#). Neither school submitted a representation.

ExA's Findings

- 3.14.26. NPSNN paragraphs 2.22 and 2.23 state 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 will be used to enhance the existing national road network towards this vision.
- 3.14.27. Paragraph 3.3 of the NPSNN establishes the expectation that delivery of new schemes will 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.

- 3.14.28. NNNPS (2024) contains similar policy provisions to the NPSNN. Paragraphs 5.243 to 5.251 provide further detail with respect to how applicants should assess socio-economic impacts. Paragraph 5.243 acknowledges that whilst construction periods for projects can be lengthy this can generate employment in the construction period and benefit the local economy.
- 3.14.29. NPSNN paragraphs 4.79 to 4.81 state 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.
- 3.14.30. 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 Secretary of State should consider the cumulative impact on health.
- 3.14.31. The ExA understands the concerns of [\[RR-021\]](#) in relation to the adverse effect of the construction phase on locally stabled horses. The construction of the northern loop will undoubtedly cause a nuisance to any person or animal in the locality. However, the ExA is satisfied that the applicant has identified the likely significant effects from the construction of the proposed development (including the Northern Loop) and suitable means of mitigation. Notwithstanding this mitigation, and the temporary nature of the construction period, we consider the impacts on population and human health to be negative in the planning balance.
- 3.14.32. The ExA understand the concerns of Mr Heaney in relation to the effect that the construction of the proposed development could have on Mode Hill Lane and Pole Lane. The eastern end of Mode Hill Lane is a private road. Any private roads used for the construction or operation of the proposed development would be protected by article 16 of the rDCO. The ExA is therefore satisfied that whilst there would be no improvement to Mode Hill Lane or Pole Lane article 16 would ensure that any damage resulting from the proposed development would be repaired. We consider this matter to be neutral in the planning balance.
- 3.14.33. The ExA considers that the diverted PRoWs 28APRE and 29APRE would not constitute an enhancement based on the evidence that these footpaths are seldom used. However, we consider that diverted PRoW 9WHI, which is more regularly used and would pass through an area of environmental mitigation and be screened from the M66 and the Northern Loop, would constitute an enhancement. We consider this to be positive in the planning balance.
- 3.14.34. The ExA note the agreement in the SoCG between the applicant and BMBC in relation to ensuring that the proposed development would not prevent PRoW 9WHI from becoming a bridleway in the future. We have no reason to disagree with BMBC or the applicant on this matter.
- 3.14.35. The ExA is satisfied that the applicant has considered and provided appropriate commitments in relation to socio-economics. The commitments are contained in the REAC [\[REP6-006\]](#) secured by requirement 4 of the rDCO. We consider this to be positive in the planning balance.
- 3.14.36. Whilst a health impact assessment has not been submitted the signed SoCG between the applicant and BMBC confirms that BMBC are satisfied with the assessment as detailed in ES chapter 12 [\[REP5-028\]](#). The ExA is equally satisfied

that the ES effectively includes the measures required under PfE Policy JP-P6 and paragraph 4.81 of the NPSNN.

- 3.14.37. The ExA understands the concerns raised in RRs about the effect the proposed development would have on local schools. However, the ExA is satisfied that the use of LNS would result in a reduction (albeit unlikely to be noticeable) to the current road traffic noise at St Margaret's Church of England Primary School and Parrenthorn High School at year 1 opening. However, taking this matter into account, and our other assessment findings in this section, we consider that the local schools would not be adversely affected.

Conclusions

- 3.14.38. The ExA concurs with ES chapter 12 [\[APP-051\]](#) that the significance of effect from the proposed development construction for human health would be temporary negative moderate/large (significant) due to restricted access to the natural environment and outdoor recreation, and environmental noise. The ExA concurs with ES chapter 12 [\[APP-051\]](#) that the significance of effect from the proposed development operation for human health would be permanent positive large (significant) on health outcomes due to overall reductions in traffic noise.
- 3.14.39. The ExA is satisfied that the applicant has demonstrated that such risks associated with the proposed development can be satisfactorily mitigated and managed and that appropriate mitigation would be secured via article 16 and requirement 4 of the rDCO.
- 3.14.40. The ExA is satisfied that the proposed development is in accordance with NPSNN and, where important and relevant, NNNPS (2024), local policies and strategies and all other legislation.
- 3.14.41. Having considered all the matters above, which are both positive and negative, overall the ExA attaches a little positive weight to this effect on population and human health matters for the making of the order.

3.15. ROAD DRAINAGE AND WATER ENVIRONMENT

Application Summary

- 3.15.1. The applicant's assessment of the likely significant effects during the construction of the proposed development on road drainage and the water environment (RDWE) is in ES chapter 13 [\[REP1-027\]](#). This chapter considers the following topics in accordance with DMRB LA 113 RDWE:
- impacts on surface water (water quality and hydromorphology)
 - impacts on groundwater (water quality, groundwater levels and flows and GWDTE)
 - flood risk (all sources)
- 3.15.2. The assessment in ES chapter 13 is supported by ES figures 13.1 to 13.9 [\[APP-073\]](#) and the ES appendices 13.1 to 13.7 [\[APP-116\]](#) to [\[APP-122\]](#).
- 3.15.3. ES chapter 13 paragraph 13.5.1 [\[REP1-027\]](#) explains that the assessment presents a reasonable worst-case basis afforded by the limits of deviation. The applicant states that while the limits of deviation (as shown on the Works Plans [\[REP5-004\]](#)) would permit changes to the final positioning of ponds, for example, it considers that

such changes would be minor and unlikely to result in new or different outcomes to those reported in the assessment.

- 3.15.4. ES chapter 13 section 13.8 [\[REP1-027\]](#) summarises the potential impacts on the water environment that could arise from indirect and direct sources during the construction and operational phases of the proposed development.
- 3.15.5. The WFD compliance assessment report [\[APP-116\]](#) considers the impact of the construction and operation of the proposed development. It concludes that some of the construction and operation activities of the proposed development would lead to localised negative changes to water quality elements. However, with the implementation of embedded and essential mitigation, the report concludes that these impacts were unlikely to lead to deterioration in classification and/or prevent the water quality elements from either achieving good classification or achieving their River Basin Management Plan objectives. Therefore, the principles of WFD compliant design had been adhered to.
- 3.15.6. The Flood Risk Assessment (FRA) [\[APP-121\]](#) main findings are:
- The flood risk from main rivers is considered to be 'low', as the proposed development is located within Flood Zone 1.
 - The flood risk from ordinary watercourses to the proposed development is considered to be 'moderate', due to the areas of surface water flood risk shown on the Risk of Flooding from Surface Water (Environment Agency, 2023c) map that could be due to ordinary watercourse flooding.
 - The flood risk from surface water flooding is considered to be 'moderate'.
 - The flood risk from groundwater flooding is considered to be 'low'. There are areas within the proposed development, around the Northern Loop (works number 05), that have potential for groundwater flooding to occur at the surface. However, after implementation of the mitigation measures set out in paragraph 3.1.16 of the FRA [\[APP-121\]](#), groundwater flood risk is considered to be 'low'.
 - The risk of flooding from water-retaining infrastructure is considered to be 'low'.
 - The risk of flooding from sewers and artificial drainage systems to the proposed development is considered to be 'low'.
- 3.15.7. In relation to compliance with the Sequential Test the FRA [\[APP-121\]](#) states that to locate the proposed development entirely outside of areas within groundwater and surface water flood risk extents would involve moving the proposed development into a new area. Because the proposed development was upgrading existing road infrastructure, moving it to a new area would not be a viable option. The FRA [\[APP-121\]](#) confirms that elements within the proposed development, such as ponds, where the location was not dependent on the existing infrastructure, have been located in areas with lower risk of surface water flooding. The FRA [\[APP-121\]](#) concludes that as the proposed development is in Flood Zone 1, and a sequential approach had been taken to avoid locating infrastructure within areas at medium or high groundwater or surface water flood risk, the proposed development is considered to pass the Sequential Test.
- 3.15.8. The FRA [\[APP-121\]](#) confirmed that because the proposed development is entirely located within Flood Zone 1 the application of the Exception Test was not required.
- 3.15.9. In section 13.9 of ES chapter 13 [\[REP1-027\]](#) the applicant describes the proposed design, mitigation and enhancement measures. Paragraphs 13.9.2 to 13.9.20 explain the measures proposed to avoid or reduce environmental impacts through the design of the proposed development (embedded or design mitigation).

Paragraphs 13.9.21 to 13.9.29 describe the essential mitigation measures. These mitigation measures include the commitments as detailed in the REAC (Commitments W1 to W32) [\[REP6-006\]](#).

- 3.15.10. The applicant [\[REP1-027\]](#) (paragraphs 13.9.30 to 13.9.34) states that no specific environmental enhancement measures have been identified for groundwater or flood risk. The applicant identifies that surface water quality may be improved by using ponds to treat road runoff where Highways England Water Risk Assessment Tool assessments already indicate discharges comply with legal requirements and DMRB standards without such features in place.
- 3.15.11. Section 13.10 of ES chapter 13 [\[REP1-027\]](#) summarises the likely significant effects of the proposed development upon RDWE during construction and operation, supplying a summary of residual significant effects in table 13.18 [\[REP1-027\]](#). The applicant concludes that no significant residual effects were identified (for construction or operation) for surface water, hydromorphology or flood risk. In relation to groundwater, it was concluded that:
- Three GWDTE sites (Cowl Gate Farm, Castle Brook South and Egypt Lane South) would experience a large adverse (significant) effect during the construction phase due to potential changes in groundwater flows, levels and quality due to ground disturbance.
 - Three GWDTE sites (Cowl Gate Farm, Castle Brook South and Egypt Lane South) would experience moderate adverse (significant) effects during operation. This is due to permanent below ground structures including drainage, piles and backfilled open-cut trenches leading to changes in groundwater levels and flows.

Examination Issues

- 3.15.12. Based on the comments raised by IPs and the ExA's review of the application documents, the main issues considered during the examination were:
- Flood risk.
 - The protection of watercourses and waterbodies.

Flood Risk

- 3.15.13. Three IPs raised concerns about flooding. [\[RR-019\]](#) raised concern about the attenuation ponds flooding and asked who was responsible for managing them. [\[RR-036\]](#) was concerned about previous flooding incidents in the local area at M60 J17 and [\[RR-039\]](#) was specifically concerned about flooding to the field adjacent to Parrenthorn Road.
- 3.15.14. The applicant responded [\[REP1-020\]](#) that the proposed development included a drainage design which took account of flooding risk. The applicant confirmed that as part of the drainage strategy, attenuation ponds would be provided on several drainage networks. These ponds would be sized to accommodate a 1 in 100-year flow event along with a 30% increase in flow due to climate change. The applicant also stated that attenuation would be provided within the proposed development through the provision of oversized pipes which would increase the storage capacity of the system following heavy rainfall events. In relation to the M60 corridor between J17 and J18 the applicant explained that the drainage would be modified to ensure the network itself could tolerate the 1 in 100-year flow events, mitigating the risk of flooding onto private properties. The applicant confirmed that they were committed and obligated to ensure that a maintenance programme was in place during

operation of the proposed development and that this would include a programme of regular and occasional maintenance, including in respect of the ponds.

- 3.15.15. Through ExQ1 RDWE.1.1 and RDWE.1.2 [\[PD-011\]](#) and ISH2 [\[EV10-001\]](#) the ExA sought clarification from BMBC regarding the concern over localised flooding and specifically the concern raised in [\[RR-039\]](#). BMBC confirmed in [\[REP3-031\]](#) and in ISH2 [\[EV10-001\]](#) that they believed that the specific flooding concern was related to a blocked culvert running beneath the M60 but because no flooding incidents had been reported to them, in that area, for at least ten years they did not consider that the location warranted anything in addition to the drainage strategy proposed by the applicant. BMBC noted that once the detailed design of the proposed development was complete the need for localised monitoring in relation to specific flooding concerns may be highlighted, particularly during the construction phase. However, BMBC confirmed that if that situation occurred then requirements 4 (EMP) and 8 (surface and foul water) of the rDCO, which related to surface and groundwater management, and surface and foul water drainage, would pertain.
- 3.15.16. The applicant confirmed [\[REP4-027\]](#) that the drainage strategy included an upgrade to the existing drainage arrangements in the vicinity of the localised flooding concern raised by [\[RR-039\]](#). However, the applicant also highlighted that the proposed development design was not required to attenuate overland flows or inoperative third-party land drainage. The applicant stated that anecdotally, it understood that there was a problem with the drainage of the field mentioned in the concern, which if left unresolved and resulted in the uncontrolled egress of water on to neighbouring land or property, could lead to an actionable nuisance. It was the applicant's opinion that the attenuation of highway drainage flows may not therefore be related to the issue reported in [\[RR-039\]](#).

The Protection of Watercourses and Waterbodies

- 3.15.17. Two RRs were submitted in relation to the protection of watercourses and waterbodies; from the EA [\[RR-004\]](#) and United Utilities Water Limited (UU) [\[RR-015\]](#).
- 3.15.18. The EA highlighted that WFD and River Basin Management Plans require that all waterbodies are protected from deterioration and pollution [\[RR-004\]](#). The EA requested that any temporary soil bunds within 10m of a watercourse (and which would remain in place for several weeks) be seeded to minimise risk of erosion and siltation of the nearby watercourse. The applicant revised the REAC to include this provision as commitment W9 [\[REP1-010\]](#). However, in response to ExQ1 RDWE.1.3 [\[PD-011\]](#) the applicant also confirmed that it was their intention to place stockpiles more than 10m away from existing watercourses which would eliminate the potential risk of siltation [\[REP3-023\]](#).
- 3.15.19. Both RRs ([\[RR-004\]](#) and [\[RR-015\]](#)) stressed the importance of the use of sustainable drainage systems (SuDS) on the proposed development to control surface water run-off as near to source as possible and improve water quality discharges. The applicant responded [\[REP1-020\]](#) signposting to ES appendix 13.7: Drainage Strategy Report [\[APP-122\]](#) which contained details of SuDS, attenuation and treatment. In response to [\[RR-004\]](#) and ExQ1 RDWE.1.4 [\[PD-011\]](#) the applicant revised the Surface and Ground Water Management Plan of the first iteration EMP [\[REP3-016\]](#) to incorporate H.9.2 which is a commitment to consider the use of above ground SuDS as part of the temporary surface water drainage solutions, where feasible.

- 3.15.20. The applicant responded to UU in [\[REP1-020\]](#) and UU raised no further issue regarding their concerns. The signed SoCG between the EA and the applicant [\[REP1-018\]](#) confirmed that the EA agreed that the applicant had adequately considered and addressed their concerns.

Other Matters

- 3.15.21. ES chapter 13 [\[REP1-027\]](#) concludes that following the implementation of the mitigation measures, there would be no significant adverse effect on groundwater receptors aside from GWDTE sites. Three GWDTE sites (Cowl Gate Farm, Castle Brook South and Egypt Lane South) were identified which the ES concludes would experience large adverse (significant) effects during construction and moderate adverse (significant) effects during operation. The signed SoCG between the EA and the applicant [\[REP1-018\]](#) confirmed that the EA had reviewed appendix 13.5 GWDTE Assessment Report [\[APP-120\]](#) and were content that the applicant had adequately considered GWDTE sites, albeit with the caveat that if the design proposals changed, and discharges to ground were required, the applicant would be expected to undertake an appropriate level of assessment. The ExA had no reason to disagree with these opinions, therefore this issue was not examined further.
- 3.15.22. On 27 February 2025 the EA wrote to the ExA to make them aware that on the 25 March 2025 they would be publishing new data including updated flood zones [\[AS-016\]](#). The examination closed on 11 March 2025 and subsequently, the implications of this new data could not be considered.

ExA's Findings

- 3.15.23. NPSNN paragraphs 5.90 to 5.115 set out the requirement for a FRA to be submitted with the application and provides guidance on the methodology to be used. Paragraph 5.105 states that preference should be given to locating development in Flood Zone 1. Paragraph 5.99 requires that when determining an application, the Secretary of State 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.
- 3.15.24. NPSNN paragraphs 5.219 to 5.231 set out the requirement for water quality and resources which includes prevention of pollution of the water environment and adverse effects on groundwater and surface water in addition to coastal waters.
- 3.15.25. NNNPS (2024) contains similar policy provisions to the NPSNN. Paragraphs 5.136 and 5.137 provide further detail regarding SuDS stating that proposals should prioritise the use of SuDS unless there is clear evidence that this would be inappropriate. Paragraph 5.263 states that projects should identify opportunities and secure measures to protect and improve water quality and resources through green and blue infrastructure (natural and semi-natural features) and sustainable drainage.
- 3.15.26. The ExA is satisfied that the applicant has appropriately considered flood risk in accordance with the NPSNN (paragraphs 5.92 to 5.97). In relation to the specific concern raised in [\[RR-039\]](#) the ExA considers that because flooding had not been reported to BMBC in that location in recent years, and considering the anecdotal

evidence supplied by the applicant, it agrees with BMBC that the drainage strategy, as proposed, would be sufficient to mitigate any localised flooding risk associated with the proposed development.

- 3.15.27. The ExA is satisfied that the applicant has appropriately considered the protection of watercourses and waterbodies in accordance with the NPSNN (paragraphs 5.221 to 5.223). The ExA also considers that the proposed provision of SuDS would comply with PfE policy JP-S4 which sets measures for protecting the quality and quantity of water bodies and managing flood risk through, amongst other matters, sustainable drainage systems. The commitments in relation to the use of SuDS would be secured through the EMP [\[REP6-006\]](#) and thus requirement 4 of the rDCO.
- 3.15.28. The ExA agree with the ES findings in relation to the three GWDTE sites, however, as discussed earlier in section 3.5: Biodiversity, we also agreed with the ES conclusion that there would be no change to groundwater dependent habitats due to operation of the proposed development, and the overall significance of effect would be neutral (not significant). The EA was satisfied with the applicant's assessment of GWDTE and the ExA has no reason to disagree with this position. The ExA is therefore satisfied that GWDTE sites has been appropriately considered in accordance with the NPSNN (paragraph 5.223).
- 3.15.29. The ExA were made aware that new data would be published by the EA on 25 March 2025 following the close of the examination [\[AS-016\]](#). Amongst other things the EA stated the new data, relevant to planning, would include updated flood zones and river flood risk extents with, and without defences, for both present day and climate change scenarios. The ExA strongly recommends that the Secretary of State seek an update from the applicant on the implications in respect of the new EA data prior to making their decision.

Conclusions

- 3.15.30. The ExA concurs with ES chapter 13 [\[REP1-027\]](#) that the significance of effect from the construction of the proposed development on road drainage and water environment would be large adverse (significant) because of potential changes in groundwater flows, levels and quality due to ground disturbance. The ExA also concurs that significance of effect from the operation of the proposed development would be moderate adverse (significant) for groundwater due to permanent below ground structures leading to changes in groundwater levels and flow. The ExA concurs with ES chapter 13 [\[REP1-027\]](#) that there would be no significant effects of the proposed development for surface water or flood risk.
- 3.15.31. The ExA is satisfied that the applicant has demonstrated that such risks associated with the proposed development can be satisfactorily mitigated and managed and that appropriate mitigation would be secured via relevant requirements in the rDCO.
- 3.15.32. The ExA is satisfied that the proposed development is in accordance with NPSNN and, where important and relevant, NNNPS (2024), local policies and strategies and all other legislation. However, as discussed above, the ExA strongly recommends that the Secretary of State seek an update from the applicant on the implications in respect of the new EA data prior to making their decision.
- 3.15.33. The ExA considers there are no residual effects or issues which affect the planning balance.

3.16. TRAFFIC, TRANSPORT AND ACCESS

Application Summary

- 3.16.1. The applicant's assessment of traffic, transport and access matters is contained within the Transport Assessment (TA) [\[APP-149\]](#). In paragraph 1.1.3 the applicant states that the purpose of the TA "is to provide information about the transport analysis undertaken as part of the development of the Scheme."
- 3.16.2. The TA provides the following:
- baseline data and model development
 - assessment of the current network performance
 - assessment of future network performance – for the proposed development in operation and under construction
 - the existing road safety record and the forecast impact of the proposed development on accidents over a 60-year period
 - an assessment of walking, cycling and horse riding
 - public transport assessment
- 3.16.3. In relation to network performance the assessment concludes [\[APP-149\]](#) (section 9.2):
- The current base model indicated high traffic volumes on certain sections near the proposed development, particularly between M60 J17-J18 for both the eastbound and westbound directions.
 - Trafficmaster speed data highlighted that there are significant delays in the westbound direction throughout the scheme area on the M62 and M60, with speeds as low as 20mph in both AM and PM periods. This is due to a combination of the high volume of traffic using this section, the weaving and merging between junctions and downstream slow-moving traffic from M60 J15.
 - Movements through M60 J18 also experienced delays on the approach to the roundabout and on the slip roads onto the motorway network. The delays at the junction are primarily caused by high flows on conflicting traffic movements through the junction, especially from M60 eastbound to M60 southbound and M66 southbound to M60 westbound.
 - The forecast models indicate that increases in traffic is forecast throughout the study area over time. Without the proposed development the additional traffic would result in increased journey times and delays.
 - With the proposed development in place a reduction in delay and journey time was forecast for routes through the scheme area. In turn this attracted some additional traffic to the SRN around the proposed development. These increases were from a combination of reassignment from the LRN, traffic switching the junctions used to access the M60, and VDM effects as traffic sought to take advantage of the extra capacity provided by the proposed development.
- 3.16.4. In relation to traffic management during construction the assessment concludes that during construction, journey times were forecast to increase through the scheme area by up to 2 minutes on certain routes. As a result, some traffic was forecast to divert onto other nearby routes to avoid these delays. However, the volumes of traffic changing route were not forecast to be significant enough to result in substantial changes in travel time on these alternative routes [\[APP-149\]](#) (section 9.3).

- 3.16.5. In relation to road safety the assessment concludes [\[APP-149\]](#) (section 9.4):
- Over the 60-year appraisal period, the proposed development is forecast to lead to a reduction in 9 accidents. However, the number of fatal, serious and slight casualties are forecast to increase slightly. This is due to the accidents that would occur having more casualties as drivers reroute from local roads to higher speed strategic roads to take advantage of the proposed development benefits.
 - The casualties per billion vehicle kilometres had been calculated across the assessment area. This showed that the risk of accident and the risk of a personal injury accident was reduced for each driver due to the proposed development.
- 3.16.6. In relation to WCH the assessment concludes that all existing routes across the motorways were being retained in their current form. Replacement routes were being provided for the existing public footpaths affected by the proposed development including where they were affected by new drainage ponds, wetlands or swales [\[APP-149\]](#) (section 9.5).
- 3.16.7. The applicant states that no significant changes are proposed to public transport routeing or facilities as part of the proposed development [\[APP-149\]](#) (section 9.6).
- 3.16.8. The applicant concludes in section 9.7 of the TA [\[APP-149\]](#) that the proposed development would help relieve traffic congestion and improve the journey experience for motorists at M60 J18. The applicant states that traffic travelling eastbound to southbound on the M60 would use the free flow loop instead of the M60 J18 circulatory which would significantly reduce traffic flows on the M60 J18 circulatory and free up capacity for other movements at the junction. In addition, the applicant also concludes that the proposed development would provide additional capacity between M60 J17-18 with the upgrade to a dual 5-lane motorway, providing five lanes in both directions and reducing delays associated with merging and diverging traffic. The applicant states that as a result of the proposed development, M60 J18 is forecast to operate within capacity up to and beyond 2044.

Examination Issues

- 3.16.9. The benefits associated with the increased capacity which would be supplied by the proposed development on the SRN and LRN have been considered in need (section 3.1 of this report). In this section, we consider those specific traffic, transport and access matters that we have not yet concluded upon.
- 3.16.10. In April 2023 the government announced that plans for new smart motorways (sections of motorway with no hard shoulders) would be cancelled. [\[RR-054\]](#) was concerned that the proposed development would include a stretch of SMART motorway. In [\[REP1-020\]](#) the applicant confirmed that the proposed development did not include any sections of SMART motorway and instead would use variable mandatory speed limits to increase capacity and smooth flow of traffic while retaining the hard shoulder. The ExA was satisfied that this issue did not require further examination.
- 3.16.11. Considering the above, and based on the comments raised by IPs and the ExA's review of the application documents, the main issues considered during the examination were:
- Transport modelling.
 - Construction impacts.

- Road safety.
- Footpath passing through the Haweswater underpass.
- PRoW 9WHI.

Transport Modelling

- 3.16.12. No IPs raised any substantive concerns in relation to how the transport modelling had been undertaken. However, [\[RR-046\]](#) was concerned that the presentation of the traffic data was unclear and that the figures showing the change in AADT had been designed to confuse and deter people from understanding how the traffic changes would affect local roads. The applicant responded in [\[REP1-020\]](#) acknowledging the concern and providing further clarification. The applicant explained that figures 4-4 and 4-8 within the TA [\[APP-149\]](#) were colour coded to highlight where AADTs were expected to increase and decrease, with the numbers being included to enable members of the public to check the scale of change at the specific locations of interest to them.
- 3.16.13. In response to the applicant's identification of predicted increases of traffic on the A576 ([\[APP-149\]](#) paragraph 4.2.11) the ExA asked BMBC if they had any concerns in ExQ1 TTA.1.1 [\[PD-011\]](#) and ISH2 [\[EV10-001\]](#). BMBC [\[REP4-029\]](#) confirmed that traffic increases as a consequence of the proposed development on the A576 within Bury would be relatively minor and would not significantly affect the appearance and use of the highway. BMBC stated that only a short length of the A576 Middleton Road was the responsibility of BMBC as highway authority and that sections to the east were the responsibility of RBC whilst to the west, responsibility laid with MCC. Neither of these highway authorities raised any material concern regarding the predicted increase of traffic on the A576 resulting from the proposed development. BMBC also confirmed that the proposed development aligned with the Greater Manchester Transport Strategy 2040 [\[REP1A-001\]](#). Considering this the ExA did not examine this issue further.
- 3.16.14. Several RRs (including [\[REP1-038\]](#) and [\[REP1-045\]](#)) were concerned that traffic would be induced to the M60 as a result of the proposed development. In ISH2 (action point 19) [\[EV10-001\]](#) the ExA sought further details on how induced traffic had been considered. In response the applicant provided further detail to explain how the traffic modelling had taken account of induced traffic and how it had been incorporated within the BCR calculation [\[REP4-028\]](#). The ExA were satisfied with the applicant's explanation and this issue was not examined further.

Construction Impacts

- 3.16.15. Five RRs (including [\[RR-022\]](#), [\[RR-040\]](#) and [\[RR-045\]](#)) were concerned about the potential impacts on traffic during the construction stage of the proposed development, particularly the effect on the LRN due to night-time closures of the motorway. The applicant responded that there were no predicted significant adverse effects from night-time traffic diversions during construction as the timetable for full-carriageway closures would be kept to a minimum [\[REP1-020\]](#). Table 1 of the Outline Traffic Management Plan [\[REP6-013\]](#) details the type of closure currently planned and the locations and time of day the closures would occur. The applicant confirmed that existing diversion routes currently used would be utilised for this scheme, and details of the diversion routes would be agreed with the relevant local highway authorities where the LRN was to be used (secured by requirement 10 of the rDCO).
- 3.16.16. BMBC's LIR [\[REP1A-001\]](#) raised concern that the increased vehicle movements on Mode Hill Lane, as a result of construction traffic accessing the main site compound,

would likely cause surface damage and derogation. Through ExQ1 TTA.1.2 to TTA.1.4 [PD-011], ISH2 [EV10-001] and ExQ2 PHH.2.3 to PHH.2.5 [PD-013] the ExA examined the impact of construction traffic on the LRN, particularly in relation to construction traffic accessing the site compounds.

- 3.16.17. The applicant confirmed there would be approximately 230 construction staff on-site during the peak construction period [REP3-023]. The applicant clarified that construction traffic incorporated all traffic occurring throughout the construction period, including rerouted traffic due to restrictions around the proposed development, and construction related vehicles and workers vehicles travelling to site. The applicant confirmed [REP3-023] that 'construction traffic' was embedded within the overall assessment, the results of which were presented within the TA [APP-149]. In [REP4-028] the applicant explained that temporary construction access and egress off the M60 and M66 motorway network into the main site compound would be installed which would reduce the use of Mode Hill Lane to only private commuting.
- 3.16.18. In relation to BMBC's concern that construction traffic would affect the physical condition of Mode Hill Lane, the applicant confirmed that a joint inspection with BMBC highways representatives would be undertaken in each work location prior to the commencement of works in any particular area. It was also stated that any remedial work identified as arising from construction access, during or upon the completion of the works, would be discussed with BMBC based on the earlier inspection records [REP5-037]. In [PD-015] the ExA asked the applicant and BMBC how joint inspections would be secured. In response the applicant revised the Outline Traffic Management Plan [REP6-013] and added commitment G11 to the REAC [REP6-006] to ensure that before construction of each construction compound commenced, the principal contractor would undertake a joint inspection of the relevant part of the LRN used to access that construction compound with the local highway authority to determine its condition. Commitment G11 includes that on removal of each construction compound, the principal contractor would carry out any necessary remediation works to reinstate the relevant part of the LRN so that it would be in no worse condition than that identified in the joint inspection. Commitment G11 requires that such works would be undertaken to the reasonable satisfaction of the local highway authority. BMBC [REP6-015] subsequently confirmed agreement with the approach proposed by the applicant.
- 3.16.19. Three RRs ([RR-020], [RR-021] and [RR-049]) raised concerns about how the proposed development would affect access and in particular how it would affect horse-riding on Simister Lane and Egypt Lane. There are several private roads (including Egypt Lane, Griffe Lane and the end of Mode Hill Lane beyond Marston Close) that would be used for access both during the construction and later operation (for example the maintenance of the attenuation ponds) of the proposed development. Whilst commitment G11 would ensure that any repair, loss or damage of the LRN because of the proposed development would be mitigated, the ExA were concerned that this same protection would not be afforded to private roads. The ExA therefore recommended a new article to their schedule of changes to the dDCO [PD-016] (row 15). This provision was accepted by the applicant but incorporated into article 16 (access to works) of the final draft DCO [REP7-005].
- 3.16.20. Through ExQ1 TTA.1.5 the ExA sought clarification from the applicant as to whether there would be any disruption to public transport during the construction phase and if so, what was proposed to minimise this. The applicant responded that there were two bus services (the X41 and X43) that travelled between M60 J17 and J18 as well as through the M60 J18 gyratory. The applicant stated that the TA forecast that

these services would experience a less than 1 minute's delay in both the AM and PM peak periods during the construction phase. The applicant concluded that given these services took around 80 minutes to travel the entire length of the route, the additional 1-minute delay forecast to the service was not identified as significant. The applicant also noted that other bus services (the 95, 97, 98 and 135) were forecast to be delayed during the construction period but the delay would be less than 1 minute so this was not considered significant [\[REP3-023\]](#).

Road Safety

- 3.16.21. Seven RRs (including [\[RR-005\]](#), [\[RR-010\]](#) and [\[RR-014\]](#)) were concerned that the proposed development would increase accidents. In response, the applicant confirmed that an assessment of accident impacts forecasted a reduction in accidents as a result of the proposed development [\[REP1-020\]](#). The applicant explained that the TA [\[APP-149\]](#) indicated that the SRN was forecast to experience an increase in accidents as more people were attracted to using it because of better journey reliability once the proposed development was operational. They explained that much of the additional SRN traffic is traffic rerouted from the LRN. The applicant went on to explain that because of the proposed development, 61 fewer 'personal injury accidents' (PIA) were forecast on the LRN (included in the DfT's Cost Benefit to Accidents – Light Touch (COBALT) assessment). TA table 6-3 (shown below) [\[APP-149\]](#) showed that while there was a slight decrease in the overall volume of accidents, the number of fatal, serious and slight casualties increased slightly, equivalent to 1.0, 1.2 and 12.7 additional fatal, serious and slight casualties over the 60-year appraisal period [\[REP1-020\]](#).

Table 5: Casualties impact table (table 6-3 from the TA [\[APP-149\]](#))

Scenario	Casualties						Change in Total Casualties		
	Without Scheme			With Scheme					
	Fatal	Serious	Slight	Fatal	Serious	Slight	Fatal	Serious	Slight
2029	1.84	21.23	243.40	1.85	21.23	243.31	0.01	-0.00	-0.09
2044	1.80	20.63	237.90	1.82	20.65	238.03	0.02	0.02	0.13
2061	1.87	21.38	246.69	1.89	21.41	247.01	0.02	0.02	0.32
Appraisal Period (60 Years)	110	1,264	14,577	111	1,265	14,590	0.96	1.16	12.66

- 3.16.22. The applicant explained that M60 J18 was forecast to experience 35 fewer PIAs over 60 years due to the proposed development removing traffic from J18 onto the Northern Loop (see table below). Conversely the increased traffic flows using M60 J17 taking advantage of the proposed development resulted in 14 additional PIAs forecast on this junction. The applicant concluded that as more people would use the proposed development, this meant overall there would be more users, and more miles would be driven. Subsequently the casualties per billion vehicle kilometres, calculated across the assessment area, showed that the risk of accident and the risk of a PIA was reduced for each driver due to the proposed development [\[REP1-020\]](#).

Table 6: PIA impact by location (table 6-4 from the TA [APP-149])

Type	Location	Change in PIAs
Strategic road section	M60 J16-J17	8
	M60 J17-J18	31
	M66 North	16
	M60 SouthEast	12
	M60 J18 - M62 J19	3
	M62 J19-J20	4
Junctions	M60 J17	14
	M60 J18	-35
	M66 J3	-1
	M62 J19	-1
	M60 J19	1
Local Roads	Outer M60 (NorthWest)	-24
	Inner M60	-22
	Outer M60 (East)	-15
	Total	-9

3.16.23. During ISH2 [EV10-001] the ExA examined the safety of the proposed development in more detail, particularly at M60 J17 and M60 J18. The ExA were concerned about the forecasted increase in PIAs at M60 J17 and the impact of the proposed physical layout changes at M60 J18 on road users. The applicant explained that whilst the proposed development did not include any changes to the layout of J17 the scheme was forecast to attract more traffic to that particular location. Subsequently, while the accident rate wouldn't change, the absolute number of accidents would increase slightly in line with the increase in traffic volumes. Conversely, the proposed development would remove traffic from using M60 J18 gyratory by introducing the free flow links, which would remove the number of conflicts that are occurring between vehicles, and therefore reduces the accident rate [EV10-008]. Tables 6-5 and 6-6 of the TA [APP-149] illustrate the overall accident rate and the change in casualties.

Table 7: Accident change per billion vehicle kilometres (table 6-5 from the TA [APP-149])

Scenario	2029	2044	2061
Without Scheme	80.8	71.3	71.1
With Scheme	78.0	69.0	68.7
Change	-2.8	-2.3	-2.4

Table 8: Change in casualties per billion vehicle kilometres (table 6-6 from the TA [APP-149])

Scenario	Casualties per Billion VehKms						Change in Total Casualties		
	Without Scheme			With Scheme			per Billion VehKms		
	Fatal	Serious	Slight	Fatal	Serious	Slight	Fatal	Serious	Slight
2029	0.79	9.10	104.37	0.77	8.81	100.94	-0.02	-0.30	-3.43
2044	0.70	8.00	92.26	0.68	7.76	89.40	-0.02	-0.25	-2.86
2061	0.70	7.98	92.03	0.68	7.72	89.13	-0.02	-0.25	-2.89

- 3.16.24. The proposed changes to the layout of M60 J18 would result in the closure of the M60 eastbound entry to the roundabout and the M60 southbound exit from the roundabout. The ExA were concerned that this closure would have a detrimental effect on the emergency services if access was restricted. In ExQ2 TTA.2.1 [PD-013] the ExA asked the applicant to explain the consultation undertaken with the emergency services in relation to these closures. The applicant confirmed that they had consulted with Greater Manchester Police, the North West Ambulance Service and Greater Manchester Fire Service as part of the preliminary design stage for the scheme. The applicant stated that all parties supported the design proposals associated with the existing M60 eastbound link to the signalised junction and the exit from the signalised junction to the M60 southbound. The applicant confirmed that the emergency services consulted agreed that closure of the links to use by the general public would assist emergency service response times. The applicant noted that there had been discussion as to whether a gate should be provided or not, the debate focusing on the fact a gate would prevent misuse by the public but could be a blocker to incident response times. The applicant stated that during the development of the detailed design, further discussions were held with the Police and the Traffic Officer Service and that it had been agreed that a gate would be provided, but it would not be locked [REP5-033].

Footpath passing through the Haweswater underpass

- 3.16.25. A footpath (see the figures below) passes through the Haweswater underpass, which connects residential areas to the north of the M60 to residential, school and leisure facilities to the south. [APP-051] (table 12.15) explains that the underpass exists to provide maintenance access to the Haweswater aqueduct, a strategic water pipeline, but is also used by pedestrians. The applicant's assessment of WCH [APP-051] (table 12.15) confirms that the route appears well used and offers a more direct route for schoolchildren than Sandgate Road, but can get very muddy, has no lighting provision and has evidence of attracting anti-social behaviour. The applicant confirmed that public feedback during statutory consultation suggested that this was viewed as an important route for schoolchildren despite the conditions and therefore, it was assigned a very high value in the ES.

Figure 20: The footpath which passes through the Haweswater underpass (extract taken from google maps with annotations added)

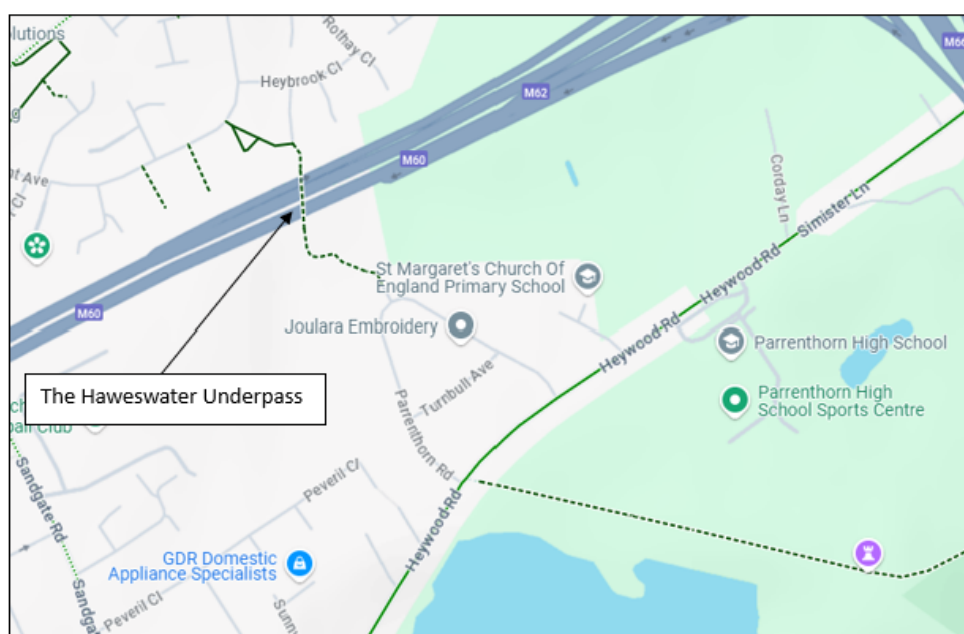


Figure 21: Extract from the applicant's response to ExQ1 [REP3-023]

Photographs – taken by during site visit for Walking, Cycling, Horse-Riding Assessment and Review Site Visit 6 November, 2023.

Photographs 1A and 1B - Permissive path via Haweswater Underpass



Photograph 1A Vegetation hides view of subway (but can be seen that the route is regularly used)



Photograph 1B Route through subway is unlit, muddy and uneven (but can be seen that the route is regularly used).

- 3.16.26. The Scheme Design Report [APP-151] records that the independent DRP stated “Haweswater underpass - National Highways to introduce better lighting and surfacing as a matter of urgency. Employing an architect to do a feasibility study for the underpass can support applications for designated funds for any future works on the site. The future aesthetic treatment of this underpass could be a positive transformation for pedestrian safety and enjoyment for relatively little money.”
- 3.16.27. In response the applicant explained that opportunities to improve the Haweswater underpass were being investigated, but, because the proposed development would not directly impact the underpass, any enhancements would not form part of the application for development consent or the scheme scope. However, construction of the proposed development would result in the temporary closure of the underpass for 6 to 8 weeks to allow for the widening of the highway around the underpass and work to the underpass structure for the construction of the proposed development [APP-051]. The applicant acknowledged that the diversion via Sandgate Road, whilst the underpass was closed, would be 1.7km longer which would add considerable distance for some schoolchildren north of the M60 who were in the catchment for Parrenthorn High School [APP-051]. This was identified in the ES as a very large adverse (temporary) effect [APP-051] (table 12.20).
- 3.16.28. [RR-057] raised safety concerns over the Haweswater underpass, stating that work needed to be done to make it safe, including that it should be lit. The ExA were also concerned about the safety of underpass users and the condition of the path passing through it following the unaccompanied site inspection (USI) [EV3-001].
- 3.16.29. BMBC confirmed that they agreed with the applicant that the footpath through the underpass fell outside of the scope for the proposed development because improvements to the underpass are not necessary to deliver the DCO Scheme. However, BMBC also highlighted safety concerns, stating that the route offered an alternative route away from busy trafficked roads and improvements could be made to surfacing, lighting and surveillance, which could make the route safer for pedestrians, many of whom are school children. BMBC stated that PfE Policy JP-C5 – Streets for All, would support and justify the upgrade of the path, as it seeks to ensure (amongst other matters) that “(c) delivering new and improved walking and cycling routes and facilities as part of the delivery of an integrated sustainable transport network”; and “(d) Maximising the ability of pedestrians and cyclists to

navigate easily, safely and without delay, and minimising barriers and obstacles to their movement” [\[REP3-031\]](#).

- 3.16.30. The ExA was very concerned regarding the usage of the underpass and the refusal by the applicant to include any improvements as part of the proposed development. Whilst the ExA understood that no construction work was directly required to the footpath for the delivery of the proposed development, the footpath would be closed, albeit temporarily, for an extensive period of time resulting in a very long diversion route as a result of this scheme. Through ExQ1 PHH.1.1, PHH.1.2, PHH1.5, PHH.1.6 and TTA.1.9 [\[PD-011\]](#) and ISH2 [\[EV10-001\]](#) the ExA sought further clarification and justification why the footpath through the underpass could not be improved as part of the proposed development.
- 3.16.31. In response to ExQ1 PHH.1.1 [\[PD-011\]](#) the applicant confirmed that a walkover survey in relation to WCH had been undertaken in November 2023. The applicant provided photographs of the underpass and confirmed that the survey identified that the path between Heybrook close and Parrenthorn Road through the Haweswater underpass was still being used daily [\[REP3-023\]](#).
- 3.16.32. In response to ExQ1 TTA.1.9 the applicant confirmed that the proposed development would not cause any new community severance. The applicant explained that there were already several formal crossing points of the M60 and M66 within the order limits (Sandgate Road, Castle Road, Hills Lane, and Simister Lane) as well as Old Hall Lane Footbridge just south of the order limits. The applicant stated that as bridges across the M60 and M66 were provided as part of the original construction of the motorway, they did not consider that there was historical severance within the order limits or the surrounding area [\[REP3-023\]](#).
- 3.16.33. In response to ExQ PHH.1.6 [\[REP3-023\]](#) the applicant restated that the path through the Haweswater underpass was not directly impacted by the proposed development and was not directly related to the scheme’s objectives and the improvement of the SRN. However, the applicant confirmed it was aware that the underpass provided a walking and cycling link between Parrenthorn School and the residential areas to the north and would potentially benefit from improvement. The applicant stated that it was therefore exploring an opportunity to deliver some improvements through NH designated funding for delivery outside of the scheme. However, the applicant noted that a number of bids were made for use of designated funding, and it could not be guaranteed at this stage that a bid would be successful. The applicant also clarified that the opportunity to deliver any improvement would also be dependent on agreement with other parties such as UU who have apparatus in the area and BMBC.
- 3.16.34. In ISH2 [\[EV10-001\]](#) the ExA asked the applicant, in light of NPSNN paragraph 5.814, to consider opportunities to improve the path through the underpass as part of the proposed development. The applicant agreed to consider potential improvements but also explained that as they considered the path to be a ‘permissive path’ they could also close it [\[EV10-006\]](#).
- 3.16.35. Throughout the application documents the path through the Haweswater underpass is described as a ‘permissive path’. A permissive path is a route where a landowner grants the public permission to use it, but this permission can be withdrawn at any time, and the path is not considered a formal public right of way. In essence, it’s a route the landowner allows the public to use, but without obligating them to maintain it or guaranteeing ongoing access. In ExQ2 PHH.2.7 [\[PD-013\]](#) the ExA asked the applicant and BMBC to provide evidence to demonstrate that the path between

Heybrook Close and Parrenthorn Road, through the Haweswater underpass, was a 'permissive path' and specifically that permission for its use had been given by all the landowners affected. BMBC stated that they were not aware of anyone giving explicit permission to users and that it was a route that appeared to have been used by the public without let or hindrance for several years [REP5-037]. The applicant also confirmed that, as far as they were aware, there was no formal agreement in place for the footpath [REP5-033]. The Haweswater underpass is a publicly used path. Overall, in the absence of substantive evidence to demonstrate that the path through the Haweswater underpass is a permissive path, the ExA considers that it may be an unrecorded public right of way. However, it was not the purpose of this examination to determine the legal status of the footpath, and this matter was not examined further.

3.16.36. In response to the ExA's request to the applicant to consider improvements to the path through the underpass as part of the proposed development the applicant added commitment G9 to the REAC [REP6-006]. Commitment G9 requires that prior to reinstatement of plots 1/1k and 2/1a, the principal contractor would consult with the relevant planning authority, BMBC and UU to discuss, and endeavour to agree, retention of temporary surface treatment to improve access along the permissive path through Haweswater underpass [REP4-028].

3.16.37. ExQ2 PHH.2.8 [PD-013] asked the applicant what improvements they would consider implementing to the path through the underpass if their bid for designated funding was successful. The applicant responded [REP5-033], stating that:

"The Applicant confirms whilst the work does not form part of the application for development consent for the Scheme, it is considered that the works to Haweswater underpass could comprise the following, should designated funding be secured

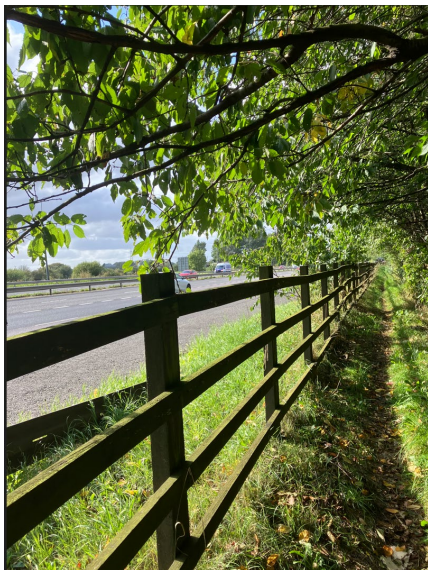
- Cutting back of overgrown vegetation
- Provision of wayfinding signs
- Install granular/ filter material to aid drainage to prevent path waterlogging in future
- Provide low level planting to avoid areas where anti-social behaviour/ loitering can occur
- Provide lighting (subject to cost) within underpass and along path.
- Variations of the following dependent upon location:-
 - Infill undulations in levels with a granular material to improve ground conditions for pedestrians.
 - Provide 3m wide unbound material path or surface (such as self-binding aggregate, flexible sealed paving or rubber crumb) edged in concrete or timber for pedestrians, cyclists and equestrians exact choice of surface to be subject to further design work and discussion with Local Authorities and end user groups."

PRoW 9WHI

3.16.38. The ExA had safety concerns in relation to the proximity of the existing PRoW 9WHI to the M66 southbound carriageway. Whilst PRoW 9WHI would be diverted as part of the proposed development, it would still remain parallel to the M66 albeit moved further east to accommodate the additional southbound lane. Through ExQ1 TTA.1.7 the ExA sought clarification regarding the proposed location of the diverted PRoW with respect to the M66 carriageway. The applicant confirmed that the realigned PRoW 9WHI was not identified as an issue within the Stage 1 Road Safety Audit (RSA) [REP3-023]. The applicant explained that during detailed design,

a detailed assessment of risk would be undertaken that considered the proximity of the new PRow to the M66 southbound diverge link and the height of embankment to determine whether a safety barrier would need to be installed and over what longitudinal distance. The applicant went on to say that where a safety barrier was required on the approach to the Pike Fold Bridge, it would connect to the parapet of the new Pike Fold Bridge and this combination of safety barrier and bridge parapet would ensure that vehicles could not deflect down and onto the new PRow. The applicant also confirmed that a Stage 2 RSA would be undertaken at detailed design.

Figure 22: Photograph taken during USI [EV3-001] on PRow 9WHI adjacent to M66 southbound carriageway in vicinity of work number 39



ExA's Findings

- 3.16.39. The NPSNN (paragraph 2.2) states that there is a “critical need to improve 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”.
- 3.16.40. The NPSNN (paragraphs 5.211 and 5.212) require Examining Authorities and the Secretary of State to “... give due consideration on impacts on local transport networks ...”, while schemes should be developed, and options considered in the light of relevant local policies and local plans.
- 3.16.41. With respect to mitigating the effects of schemes on transport networks, the mitigation to be provided should be proportionate and reasonable and “... Where development would worsen accessibility such impacts should be mitigated so far as reasonably possible. There is a very strong expectation that impacts on accessibility for non-motorised users should be mitigated” (paragraphs 5.215 and 5.216 of the NPSNN). Paragraph 3.20 states that “All reasonable opportunities to deliver improvements in accessibility on and to the existing national road network should also be taken wherever appropriate.”
- 3.16.42. The NPSNN (paragraph 4.64) requires that the applicant demonstrate that their scheme is consistent with the Highways Agency's Safety Framework for the SRN and with the National Strategic Framework for Road Safety. The NPSNN states that applicants will wish to show that they have taken all steps that are reasonably

required to minimise the risk of death and injury arising from their development, contribute to an overall reduction in road casualties, contribute to an overall reduction in the number of unplanned incidents; and contribute to improvements in road safety for walkers and cyclists.

- 3.16.43. 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).
- 3.16.44. The NPSNN (paragraph 5.184) states that “applicants are expected to take appropriate mitigation measures to address adverse effects on coastal access, National Trails, other public rights of way and open access land and, where appropriate, to consider what opportunities there may be to improve access. In considering revisions to an existing right of way consideration needs to be given to the use, character, attractiveness and convenience of the right of way. The Secretary of State should consider whether the mitigation measures put forward by an applicant are acceptable and whether requirements in respect of these measures might be attached to any grant of development consent.”
- 3.16.45. NNNPS (2024) contains similar policy provisions to the NPSNN. Paragraph 3.3 explains that induced demand for road travel can be broadly defined as ‘the increment in new vehicle traffic that would not have occurred without the improvement of the network capacity’. However, it goes on to state that induced demand is likely to have only a very marginal effect on overall traffic demand. Paragraph 4.78 states that applicants should demonstrate that all reasonable opportunities to deliver improvements in accessibility on and to the existing national road network should be taken, including improvements for non-motorised users.
- 3.16.46. The ExA considers that the applicant has undertaken appropriate transport modelling and detailed the results within the TA [\[APP-149\]](#). The ExA is satisfied that the applicant has had regard to the policies set out in local plans and has consulted the appropriate highway authorities on the assessment of transport impacts in accordance with the NPSNN.
- 3.16.47. The ExA is satisfied that the applicant has sufficiently considered the effects of construction traffic within the TA. The ExA is satisfied that full motorway closures would be restricted to nights and weekends whenever possible in accordance with commitment PHH15 in the REAC [\[REP6-006\]](#) and any full closures would be kept to a minimum in accordance with commitment NV7 REAC [\[REP6-006\]](#) secured through requirement 4 of the rDCO.
- 3.16.48. The ExA is satisfied that the LRN and any private roads used for the construction or operation of the proposed development would be protected by commitment G11 in the REAC [\[REP6-006\]](#) secured through requirement 4 of the rDCO.
- 3.16.49. Whilst the number of PIAs will go up at M60 J17 the ExA are satisfied that this would be a consequence of a general increase in traffic which would not all be as a direct result of the proposed development. We are satisfied that through the scheme design all reasonable steps have been taken and would be taken to minimise the risk of road casualties arising from the scheme and contribute to an overall improvement in the safety of the SRN.
- 3.16.50. The ExA is satisfied that whilst safety aspects relating to the diverted PRow 9WHI were not identified in the Stage 1 RSA it would be considered as part of the Stage 2 RSA. The ExA is satisfied that during detailed design, a detailed assessment of risk

would be undertaken that considered new PRow proximity to the M66 southbound diverge link.

- 3.16.51. In relation to the footpath through the Haweswater underpass the ExA finds that the applicant has provided insufficient tangible improvements for pedestrians and other non-motorised users. We consider that improvements should be made to the entire path between Heybrook Close and Parrenthorn Road (passing through the Haweswater underpass) as part of the proposed development, bearing in mind the NPSNN and the NNNPS (2024) urges the applicant to consider all reasonable opportunities for improvement of access, particularly for non-motorised users. The applicant has recognised the high importance of this route to the local community and acknowledges its current very poor condition. Regardless of the technical legal status of this route it is clear that, if it deteriorates further, or is closed, this would be to the detriment of the local community. Given that alternative routes avoiding the underpass would be considerably longer (an additional 1.7km) and alongside main roads, we consider that such a situation would be clearly undesirable for users of the route, such as children attending Parrenthorn High School and residents living to the north of the M60.
- 3.16.52. Notwithstanding that commitment G9 in the REAC [\[REP6-006\]](#), secured through requirement 4 of the rDCO, would improve the surface to the area immediately adjacent to the Haweswater underpass the ExA, having reflected on the matters above, considers that further improvements be included as part of the proposed development to the entire path. We consider that including the improvements, listed above in paragraph 3.16.37, which would be considered if the bid for designated funding was successful, would ensure that the applicant complies with the NPSNN and NNNPS (2024). However, the designated funding sits outside of the planning process and to rely solely on that could endanger the delivery of the improvements. Therefore, the ExA strongly recommends the insertion of an additional requirement to the rDCO which requires a scheme of improvements for the path. This scheme of improvements, to be submitted to the Secretary of State following consultation with BMBC, would be secured through new requirement 12 in the rDCO.
- 3.16.53. It is possible that, when the Secretary of State makes their decision on this application, the applicant may have been successful in their bid for designated funding and subsequently evidence exists that a package of improvements will be delivered such that the ExA's new recommended requirement would no longer be necessary. The Secretary of State may wish to seek an update from the applicant on this matter prior to making their decision. Subject to the additional requirement to improve the footpath between Heybrook Close and Parrenthorn Road (passing through the Haweswater underpass), the ExA is satisfied that the relevant policy tests within NPSNN and NNNPS (2024) are met.

Conclusions

- 3.16.54. The ExA concurs with the findings and conclusions of the TA [\[APP-149\]](#) that with the proposed development the M60 J18 is forecasted to operate within capacity up to and beyond 2044.
- 3.16.55. The ExA is satisfied that the applicant has demonstrated that such risks associated with the proposed development in relation to traffic and transport can be satisfactorily mitigated and managed and that appropriate mitigation would be secured via requirement 4 of the rDCO. Notwithstanding this the ExA considers that the applicant has not demonstrated that such risks associated with access would be satisfactorily mitigated and managed. The ExA therefore considers it appropriate

that mitigation in the form of a scheme of improvements to the footpath between Heybrook Close and Parrenthorn Road (passing through the Haweswater underpass) should be secured by way of a new requirement in the rDCO.

- 3.16.56. The ExA is satisfied that with the inclusion of new requirement 12 in the rDCO, providing a scheme of improvement to the footpath through the Haweswater underpass, the proposed development is in accordance with NPSNN and, where important and relevant, NNNPS (2024), local policies and strategies and all other legislation.
- 3.16.57. With the new requirement 12 providing access improvements, the ExA attaches great positive weight to this effect on traffic, transport and access matters for the making of the order. However, if the Secretary of State decides that the proposed new requirement 12 is not necessary then we are not satisfied that the applicant has considered all reasonable opportunities for improvement of access, particularly for non-motorised users as encouraged by the NPSNN. Thus, this would only attract moderate positive weight for the making of the order.

3.17. COMBINED AND CUMULATIVE EFFECTS

Introduction

- 3.17.1. This section considers the combined and cumulative effects of the proposed development which covers:
- The accumulation of, and interrelationship between, the effects of different environmental aspects such as air quality, noise and landscape arising from the proposed development affecting a single receptor (combined or in-combination effects)
 - Interactions between the effects of the proposed development and the effects of other existing and approved projects on a single receptor (inter-project effects).

Application Summary

- 3.17.2. ES chapter 15 [\[REP5-011\]](#) assesses the incremental environmental impacts caused by other developments together with the proposed development (referred to as inter-project cumulative effects). It is supported by appendix 15.1 [\[REP5-019\]](#) which contains the long and short list of developments considered as part of the inter-project cumulative effects assessment (CEA). The figures for ES chapter 15 [\[REP5-015\]](#) maps the location of the short list of developments.

Combined Effects

- 3.17.3. ES chapter 15 does not report on combined effects. These interrelationships are grouped into four categories and assessed separately within the following chapters of the ES:
- Effects on residential receptors and communities from air quality, noise, contamination, severance and changes to view and setting – ES chapter 12 [\[APP-051\]](#).
 - Effects on the historic environment from noise, vibration, dust deposition, land use change, dewatering, and changes in setting – ES chapter 6 [\[REP4-008\]](#).
 - Effects on biodiversity from changes to air quality, noise, light, habitat loss and fragmentation – ES chapter 8 [\[REP3-010\]](#).
 - Effects on the water environment from physical works, road run-off, accidental spillage and contaminated land – ES chapter 13 [\[REP1-027\]](#).

Inter-project Cumulative Effects

- 3.17.4. The applicant's approach to the CEA is based upon DMRB LA 104 and the Planning Inspectorate's Advice Note 17 using the four-stage approach establishing a long list and short list of developments followed by assessment. Table 4.1 in ES appendix 15.1 [REP5-019] sets out the inter-project CEA for four developments that were progressed to stages 3 and 4. These relate to the following developments (where their locations are annotated in [REP5-015]):
- BMBC-APP-010: Hybrid planning application for commercial development located to the north-west of the order limits.
 - BMBC-APP-022: Hybrid planning application for construction of a new link road and major mixed-use development on part of PfE site allocation JPA.1.1 (Northern Gateway) located to the east of order limits (within RBC area).
 - BMBC-APP-035: Hybrid planning application for Prestwich town centre regeneration located to the south of the order limits.
 - BMBC-APP-040: Scoping opinion request for part of PfE site allocation JPA.1.1 (Northern Gateway) located to the north-east of the order limits.
- 3.17.5. Potential significant adverse cumulative effects were only identified by the applicant with BMBC-APP-040 in respect of the following environmental matters:
- During construction: cultural heritage, landscape and visual, geology and soils, noise and vibration, and population and human health.
 - During operation: air quality, landscape and visual (in operation year 1, reducing to not significant by year 15), biodiversity, and noise and vibration.
- 3.17.6. Due to the early stages of this development, the applicant considers the potential effects are uncertain and it would be for BMBC-APP-040 to make its own assessment of and mitigate against any potential cumulative effects.

Examination Issues

- 3.17.7. Based on the comments raised by IPs and the ExA's review of the application documents, the key issues considered during the examination were:
- Approach to CEA (inter-project effects)
 - Interactions with PfE site allocation JPA.1.1 (Northern Gateway)

Approach to CEA (inter-project effects)

- 3.17.8. Concerns were raised in [RR-046] that ES chapter 15 had not provided details of further interventions that could be required to the SRN if plans or projects came to fruition. The applicant considered that the four-stage approach in the CEA to identifying existing and committed developments sufficiently addressed this matter. Whilst site allocations were not progressed to the shortlisting stage of assessment (due to insufficient information and uncertainty around the assessment of cumulative effects), the applicant considered that the proposed development would provide sufficient additional SRN capacity to accommodate these [REP1-020].
- 3.17.9. The Planning Inspectorate published updated advice on CEA replacing PINS Advice Note 17 throughout the examination. In response to ExQ2 CICE.2.1 [PD-013], the applicant provided a summary of the key changes compared to their CEA. The applicant concluded that the updated advice note would not affect the CEA, noting that the shortlisting criteria of other existing and approved development had been undertaken in accordance with schedule 3 of the EIA Regs. Whilst the applicant had not produced an effects interactions table for combined effects as referenced in the

updated advice, it considered that the four category groups for potential interrelationships assessed within individual chapters was sufficient [\[REP5-033\]](#).

- 3.17.10. During ISH2 [\[EV10-003\]](#), the applicant advised that they had undertaken a review to establish whether there had been any new planning submissions since the CEA was completed. Due to the submission of a scoping opinion request to BMBC for the PfE site allocation (BMBC-APP-040), the applicant provided an updated CEA at DL5 [\[REP5-011\]](#) which assessed this site and an approved application for the regeneration of Prestwich town centre (BMBC-APP-035).
- 3.17.11. The ExA subsequently asked the applicant to confirm whether the traffic model had been updated to account for the Prestwich Regeneration development, noting that there would be interactions with this development on the ARN [\[PD-015\]](#). The applicant confirmed the development had not been included in the traffic model for the proposed development although a review of the transport assessment submitted for the Prestwich regeneration development indicated a maximum number of 'to and from' vehicle trips of 57 per hour (17:30 to 18:30). The applicant considered this was a relatively low level of trip generation that would not have an impact on the proposed development [\[REP6-012\]](#).

Interactions with PfE site allocation JPA.1.1 (Northern Gateway)

- 3.17.12. Concerns were raised by IPs that insufficient consideration had been given to the extent the proposed Northern Gateway development would affect the proposed development, where it was alleged that traffic modelling had only considered the current situation and not mitigated against future developments (for example [\[REP1-034\]](#) and [\[REP1-048\]](#)). The applicant advised that the CEA set out how the effects of the proposed development would combine and interact with the effects of other identified development projects and the only assessment they could undertake with the Northern Gateway allocation was in respect of BMBC-APP-022 situated within RBC. The applicant explained that the part of the site allocation falling within BMBC's area was not subject to a planning application and it was therefore not possible to provide a robust CEA in respect of air, noise, light, vibration, water, carbon and traffic [\[REP2-007\]](#).
- 3.17.13. The ExA examined why the applicant was unable to undertake a CEA in respect of the Northern Gateway allocation in ExQ1 CICE.1.4 [\[PD-011\]](#) and ISH2 [\[EV10-003\]](#). The applicant acknowledged that whilst the site allocation in PfE included indicative details of commercial floorspace and dwelling numbers, more robust data was required to undertake a meaningful CEA and this would not be possible until a planning application was submitted. The applicant considered that it would be for future planning applications submitted as part of the Northern Gateway allocation to undertake their own CEA and incorporate any mitigation measures [\[REP3-023\]](#).
- 3.17.14. In ISH2 [\[EV10-003\]](#) the applicant explained further why the wider Northern Gateway development had not progressed to a stage 2 assessment in the absence of details relating to design and location, construction, operation and decommissioning information, timetabling and baseline data. The applicant also explained that the traffic modelling had followed DfT's TAG which sets out that only those sites with planning permission can be included in core traffic forecasts. In response to ISH2 action point 4 [\[EV10-002\]](#), the applicant confirmed it was unable to undertake a meaningful sensitivity test due to ongoing uncertainty with regards to the exact levels of PfE traffic generation and the impact and delivery of complementary transport infrastructure improvements [\[REP4-028\]](#).

- 3.17.15. Other concerns were raised in [\[REP1-035\]](#), [\[REP1-039\]](#) and [\[REP1-040\]](#) that parts of the proposed development located to the north-east of the Simister Island Interchange, such as the proposed attenuation ponds (work numbers 37 and 43) would affect the delivery of the Northern Gateway development. The applicant provided reasons why aspects of the proposed development were required in these areas and that they had been fully aware of the Northern Gateway allocation in shaping the proposed development [\[REP2-007\]](#). BMBC were satisfied that the proposed development would not compromise the delivery of the Northern Gateway allocation [\[REP3-031\]](#).

ExA's Findings

- 3.17.16. The legislative requirements to consider, amongst other things, the direct and indirect significant effects of the proposed development as part of the EIA process and the cumulation of effects with other existing and/or approved projects is set out in regulation 5(2)(e) and paragraph 5(e) of Schedule 4 of the EIA Regs.
- 3.17.17. Paragraphs 4.3, 4.16 and 4.17 of the NPSNN and paragraph 4.12 of the NNNPS (2024) require consideration of combined cumulative effects with other development and how significant effects and the interrelationship between effects might as a whole effect the environment.
- 3.17.18. Cumulative and combined effects was not a matter included in the SoCG between the applicant and BMBC [\[REP5-028\]](#).
- 3.17.19. The ExA is satisfied that the applicant's CEA has appropriately considered the full list of developments where likely significant inter-project cumulative effects could arise in accordance with the NPSNN. In the absence of any contrary opinions, the ExA is also content that an update to the transport assessment to assess likely significant inter-project cumulative effects with the Prestwich regeneration development is not necessary.
- 3.17.20. The ExA accepts that the applicant has provided all it reasonably can in respect of assessing the likely significant inter-project cumulative effects with the Northern Gateway site allocation (BMBC-APP-040) in its CEA given the uncertainty of the development that would progress. We are therefore satisfied that the updated CEA at DL5 [\[REP5-011\]](#) contains a reasonable worst-case assessment of potential significant adverse cumulative effects based on the information available.

Conclusions

- 3.17.21. The ExA is satisfied that the applicant has undertaken a robust assessment of both combined and inter-project cumulative effects in accordance with the EIA Regs, NPSNN paragraphs 4.16 and 4.17 and paragraph 4.12 of NNNPS (2024).
- 3.17.22. Whilst the ExA notes that the potential for significant adverse cumulative effects with Northern Gateway site allocation has been identified in its CEA, given the very early stage of this development where the extent of effects are unknown, we give very limited weight to this matter. In the absence of any other identified significant adverse inter-protect cumulative effects, we consider this matter attracts neutral weight in the planning balance and does not weigh for or against the making of the order. To avoid any potential double counting, we have not included a weighting in this section for combined effects noting that these matters have been considered in our assessments for other topics.

4. THE HABITATS REGULATIONS ASSESSMENT

4.1. INTRODUCTION

- 4.1.1. This section sets out the Examining Authority's (ExA) analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State, as the competent authority, in performing their duties under The Conservation of Habitats and Species Regulations 2017 ('The Habitats Regulations').
- 4.1.2. This section is structured as follows:
- Section 4.2: Findings in relation to Likely Significant Effects.
 - Section 4.3: Conservation Objectives.
 - Section 4.4: Findings in relation to Adverse Effects on Integrity.
 - Section 4.5: HRA conclusions.
- 4.1.3. 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).
- 4.1.4. 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.
- 4.1.5. Policy considerations and the legal obligations under The Habitats Regulations are set out in section 2 of this report.
- 4.1.6. The ExA has been mindful throughout the examination of the need to ensure that the Secretary of State 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, through written questions and issue specific hearings (ISH).

Report on the Implications for European Sites (RIES) and consultation

- 4.1.7. The ExA produced a RIES [\[PD-014\]](#) which compiled, documented, and signposted HRA-relevant information provided in the Development Consent Order (DCO) application and examination representations up to deadline (DL) 5 (10 January 2025). 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 14 January and 11 February 2025. Comments were received from the applicant [\[REP6-001\]](#) at DL6 (11 February 2025).
- 4.1.8. 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 Secretary of State wish to do so.

Proposed development description and HRA implications

- 4.1.9. The proposed development is described in section 1 of this report.
- 4.1.10. The spatial relationship between the order limits of the proposed development and European sites is shown on figure 8.13.1 of the Habitat Regulations Assessment Report [\[APP-103\]](#).
- 4.1.11. The proposed development is not directly connected with, or necessary to, the management of a European site [\[APP-103\]](#). Therefore, the Secretary of State must make an 'appropriate assessment' of the implications of the proposed development on potentially affected European sites in light of their Conservation Objectives.
- 4.1.12. The applicant's assessment of effects is presented in the following application document(s):
- Habitats Regulations Assessment Report [\[APP-103\]](#) hereafter referred to as 'the HRA report'.
- 4.1.13. The applicant did not identify any likely significant effects (LSE) on non-UK European sites in European Economic Area States in its HRA Report [\[APP-103\]](#). Only one UK European site is addressed in this report. No such impacts were raised for discussion by any IPs during the examination.

4.2. FINDINGS IN RELATION TO LSE

- 4.2.1. 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.
- 4.2.2. The European sites and qualifying features that were considered in the applicant's assessment of effects are presented in section 4 of the applicant's HRA report [\[APP-103\]](#). The applicant's HRA report sets out the methodology applied to determining what would constitute a 'significant effect' [\[APP-103\]](#).
- 4.2.3. Section 1.6 of the HRA report [\[APP-103\]](#) details that the identification of European sites was based on criteria set out in the Design Manual for Roads and Bridges (DMRB) LA 115 Habitats Regulations assessment, which includes whether the proposed development:
- is within 2 kilometres (km) of any SAC, candidate SAC, potential SAC, SPA, potential SPA or Ramsar site
 - is within 30km of any SAC, candidate SAC or potential SAC where bats are one of the qualifying interests
 - crosses or lies adjacent to, upstream of, or downstream of a watercourse which is designated in part or wholly as a European site
 - has a potential hydrological or hydrogeological linkage to a European site containing a groundwater dependant terrestrial ecosystem (GWDTE) which triggers assessment in DMRB LA 113 Road drainage and the water environment
 - has an affected road network (ARN) which triggers the criteria for assessment of European sites within DMRB LA 105 Air Quality

- 4.2.4. In addition, European sites should be subject to screening where the existence of ecological connectivity between projects and European sites is identified beyond the screening criteria.
- 4.2.5. The applicant's HRA report [\[APP-103\]](#) identifies one European site within the UK National Site Network for inclusion within the assessment. This is the Rochdale Canal SAC.
- 4.2.6. The applicant's conclusions in respect of screening are presented in chapter 5 of the HRA report [\[APP-103\]](#).
- 4.2.7. In its local impact report, Bury Metropolitan Borough Council (BMBC) noted that the South Pennines SPA, South Pennines SAC and Manchester Mosses SAC were not referenced in the assessment and commented that increased traffic on the M62 during operation could have potential significant effects on these European sites [\[REP1A-001\]](#).
- 4.2.8. The ExA asked NE in its first written questions (ExQ1) (BIO.1.1) [\[PD-011\]](#) whether they considered further assessment on these European sites was required. NE confirmed that further assessment was not required for these European sites based on their distance from the proposed development [\[REP3-028\]](#). BMBC's statement of common ground (SoCG) with the applicant [\[REP5-028\]](#) noted NE's position in response to ExQ1 BIO.1.1, and that in its relevant representation (RR) [\[RR-009\]](#) and SoCG [\[REP1-017\]](#) that all relevant European sites and European site features that could be affected by the project had been identified by the applicant, and subsequently confirmed that they had no further comment on the matter.
- 4.2.9. No further matters were raised in the examination in relation to the applicant's screening assessment.

LSE from the proposed development alone

- 4.2.10. The applicant identified potential impacts of the proposed development considered to have the potential to result in LSE alone in chapter 5 of the HRA Report [\[APP-103\]](#).
- 4.2.11. The applicant considered that a reduction of habitat area through changes in air quality during operation have the potential to result in LSE.

LSE from the proposed development in combination

- 4.2.12. The applicant addressed potential in-combination effects arising from the proposed development within [\[APP-122\]](#) which sets out the methodology applied.
- 4.2.13. In many cases, where the applicant's screening exercise established the potential for LSE to arise from the proposed development alone, the potential for in-combination effects was also considered and discussed in the applicant's HRA Report [\[APP-122\]](#). This approach as far as it has a bearing on the screening for LSE was not a matter for discussion in the examination.
- 4.2.14. In ExQ1 BIO.1.3 [\[PD-011\]](#), the ExA noted that a description of the other plans and projects included in the HRA had not been provided in the HRA Report and requested that the applicant confirm which other proposed projects or plans have been included. The applicant clarified in its response to ExQ1 BIO.1.3 that the HRA Report has not presented an assessment of the effects of the proposed development in combination with other plans or projects, because it was concluded

that there would be no adverse effect on the integrity of the Rochdale Canal SAC as a result of the proposed development alone [\[REP3-023\]](#). It was therefore unnecessary to consider and assess the likely effects of the proposed development in combination with other plans or projects. In response, NE confirmed that it agreed with the applicant's approach to the in-combination assessment [\[REP3-028\]](#).

LSE assessment outcomes

- 4.2.15. The Rochdale Canal SAC was assessed by the applicant to determine if they could be subject to adverse effects on integrity, as a result of the proposed development alone or in combination with other plans and projects, in view of its conservation objectives and the following qualifying features:

- Annex II species: Floating water-plaintain *Luronium natans*.

- 4.2.16. 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 likely significant effects.

- 4.2.17. 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 paragraph 4.2.11 on the qualifying features of the Rochdale Canal SAC when considered alone, or in combination with other plans or projects. This was not disputed by IPs, including NE, during the examination.

4.3. CONSERVATION OBJECTIVES

- 4.3.1. The conservation objectives for the sites and features are identified in the applicant's HRA Report ([\[APP-103\]](#) table 4.2).

- 4.3.2. No matters were raised in the examination regarding the identified sites conservation objectives.

4.4. FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY (AEoI)

- 4.4.1. The Rochdale Canal SAC and its qualifying features identified in chapter 5 of the HRA Report [\[APP-103\]](#) were further assessed by the applicant to determine if they could be subject to adverse effects on integrity (AEoI) from the proposed development, either alone or in-combination. The assessment of AEoI was made in light of the conservation objectives for the European sites [\[APP-103\]](#).

- 4.4.2. The ExA is satisfied, based on the information provided that the correct impacts have been assessed. This section discusses the conclusions with respect to AEoI for the Rochdale Canal SAC.

- 4.4.3. The applicant's approach to the in-combination assessment is set out in section 3.2 of the HRA Report [\[APP-103\]](#).

- 4.4.4. Based on the findings of the examination, the ExA is satisfied that an assessment of AEoI from the proposed development in combination with other plans or projects can be based on this information and that no other plans or projects are required to be taken into account.

Mitigation

- 4.4.5. The applicant's HRA Report does not identify any mitigation measures which were taken into account in the applicant's assessment of effects on integrity.

Sites for which the applicant concluded AEol can be excluded

Rochdale Canal SAC

- 4.4.6. The applicant's HRA Report [APP-103] concludes that the proposed development would not result in AEol of the Rochdale Canal SAC, either alone or in-combination with other plans and projects.
- 4.4.7. NE stated in its RR [RR-009] that it concurred with the applicant's conclusion and the justification for reaching its conclusion. NE confirmed they were satisfied the project would have no adverse effects on the Rochdale Canal SAC and this was an agreed matter in their SoCG with the applicant [REP1-017]. Similarly, BMBC confirmed agreement with the findings in the applicant's HRA report in its SoCG [REP5-028]. No other IP raised concerns in relation to the applicant's conclusions for the Rochdale Canal SAC and its qualifying features.
- 4.4.8. The ExA is satisfied on the basis of the information above that AEol on the Rochdale Canal SAC and its qualifying features can be excluded.

4.5. HRA CONCLUSIONS

- 4.5.1. The proposed development is not directly connected with, or necessary to, the management of a European site, and therefore the implications of the project with respect to adverse effects on potentially affected sites must be assessed by the Secretary of State.
- 4.5.2. The Rochdale Canal SAC and its qualifying features were considered in the applicant's assessment of LSE. LSE were identified for the Rochdale Canal SAC as set out in chapter 5 of the applicant's HRA Report [APP-103], both from the proposed development alone and in-combination with other plans or projects.
- 4.5.3. As discussed above, BMBC raised concern regarding potential impact pathway on the South Pennines SPA, South Pennines SAC and Manchester Mosses SAC. Considering all the evidence provided, 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.
- 4.5.4. The methodology and outcomes of the applicant's screening for LSE on European sites was subject to some discussion and scrutiny, however, other than this, the sites and features for which LSE were identified were not disputed by any IP.
- 4.5.5. Overall, the ExA's findings are that AEol on the Rochdale Canal SAC from the proposed development when considered alone or in-combination with other plans or projects can be excluded from the impact-effect pathways assessed.

5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

5.1. INTRODUCTION

- 5.1.1. This section provides an evaluation of the planning merits of the proposed development. It considers the legal and policy context set out in section 2 and individual applicable legal and policy requirements identified in sections 3 and 4 above. Whilst the Habitat Regulations Assessment (HRA) has been documented separately in section 4, relevant facts and issues set out in that section are taken fully into account.
- 5.1.2. In reporting on the planning issues below, the Examining Authority (ExA) confirms that the applicant has complied with all pre-application requirements in respect to the Environmental Impact Assessment Regulations 2017 (EIA Regs). We are content that the environmental statement (ES) and associated information submitted by the applicant at the time of making the application and subsequently during the examination, have provided an adequate assessment of the environmental effects of the proposed development.

5.2. SUMMARY OF THE MAIN PLANNING ISSUES

The Need for the Proposed Development

- 5.2.1. National Policy Statement for National Networks (NPSNN) demonstrates a clear need for the proposed development, with particular reference to paragraph 4.2 which states that the Secretary of State must start with a presumption in favour of granting consent to applications for nationally significant infrastructure projects (NSIP). Through the inclusion of the scheme in both Road Investment Strategy (RIS) 1 and RIS2 the government has taken account of strategic effects and committed spending for this proposed development. The ExA is therefore satisfied that the NPSNN, RIS1 and RIS2 indicates that a clear need exists for road improvement projects, which include this proposed development.
- 5.2.2. The ExA concludes that the proposed development is fully in accordance with the needs case established by NPSNN. This is also reinforced by the National Networks National Policy Statement 2024 (NNNPS (2024)) which places a greater weight on the consideration of need. It could also help support the growth objectives for the Northern Gateway set out in Places for Everyone Joint Development Plan Document for Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Tameside, Trafford and Wigan (PfE). The ExA therefore considers this matter would attract great positive weight for the making of the order.

Alternatives

- 5.2.3. The ExA concurs with ES chapter 3 [\[APP-042\]](#) and is satisfied that the alternative options for the proposed development have been rigorously tested by the applicant. We are also satisfied that the applicant has considered reasonable alternatives suggested by interested parties (IP)s during the examination and justified the reasons for selecting the preferred option.
- 5.2.4. The ExA is satisfied that the proposed development is in accordance with NPSNN and, where important and relevant, NNNPS (2024), local policies and strategies and all other legislation.

Air Quality

- 5.2.5. The ExA concurs with ES chapter 5 [\[APP-044\]](#) that the significance of effect from the proposed development during construction and operation on air quality would not be significant as:
- the proposed development would result in reductions in predicted concentrations of nitrogen dioxide (NO₂) during construction at seven human health receptors that exceed the annual mean air quality objective or limit value of 40µg/m³
 - there are no predicted exceedances of the air quality objectives or limit values in respect of NO₂ or particulate matter of 10 or 2.5 micrometre or less in diameter particles (PM₁₀ or PM_{2.5}) during operation.
- 5.2.6. The ExA is satisfied that the applicant proposes adequate mitigation to minimise detrimental impacts from construction dust through commitments AQ1 and AQ2 in the Register of Environmental Actions and Commitments (REAC) [\[REP6-006\]](#) and by developing an Air Quality and Dust Management Plan which would be secured in requirement 4 of the recommended Development Consent Order (rDCO). The ExA is satisfied that the applicant has demonstrated that such risks associated with the proposed development can be satisfactorily mitigated and managed and that appropriate mitigation would be secured by the relevant requirements in the rDCO.
- 5.2.7. The ExA is satisfied that the proposed development is in accordance with NPSNN and, where important and relevant, NNNPS (2024), local policies and strategies and all other legislation.
- 5.2.8. The ExA considers there are no residual effects or issues which affect the planning balance in respect of air quality.

Biodiversity

- 5.2.9. The ExA concurs with ES chapter 8 [\[REP3-010\]](#) that the significance of effect from the proposed development on biodiversity receptors, taken as a whole, during construction and operation would be neutral to slight adverse (not significant).
- 5.2.10. The ExA is satisfied that the proposed extent of habitat creation, which in some cases would create higher value habitats than those to be lost (such as through grassland creation and lowland mixed deciduous woodland) would be sufficient to mitigate the loss of several habitats over the longer term. These measures would be secured by commitments in the REAC [\[REP6-006\]](#), the landscape and ecology management plan to be prepared under requirement 4 and the landscaping scheme under requirement 5 of the rDCO. The ExA is also satisfied that suitable measures to mitigate the effects on protected and notable species through pre-construction surveys would be secured under requirement 4 and requirement 7 of the rDCO. Through these measures, the ExA is satisfied that the applicant has demonstrated that such risks associated with the proposed development can be satisfactorily mitigated and managed and that appropriate mitigation would be secured by the relevant requirements in the rDCO.
- 5.2.11. The ExA is satisfied that the proposed development is in accordance with NPSNN and, where important and relevant, NNNPS (2024), local policies (recognising that in respect of PfE policy JP-G8 achieving no less than 10% biodiversity net gain is not mandatory for NSIPs) and strategies and all other legislation.

- 5.2.12. Overall, the proposed development would give rise to negative aspects (including impacts to designated sites, species and habitats) and positive aspects (including habitat creation to mitigate the loss of several habitats over the longer term). Taking into account both the negative and positive aspects, the ExA considers there are no residual effects or issues which affect the planning balance in respect of biodiversity.

Climate

- 5.2.13. In respect of greenhouse gas (GHG) emissions, the ExA concurs with ES chapter 14 [\[APP-053\]](#) that the proposed development would be unlikely to have a material impact on the UK Government meeting its carbon reduction targets. Therefore, the proposed development would not give rise to significant effects in environmental impact assessment (EIA) terms during construction and operation.
- 5.2.14. In respect of vulnerability to changes in climate, the ExA also concurs with ES chapter 14 [\[APP-053\]](#) that the proposed development would not give rise to significant effects in EIA terms.
- 5.2.15. The ExA is satisfied that the applicant has demonstrated that such risks associated with the proposed development can be satisfactorily mitigated and managed and that appropriate mitigation would be secured by the relevant requirements in the rDCO.
- 5.2.16. The ExA is satisfied that the proposed development is in accordance with NPSNN and, where important and relevant, NNNPS (2024), local policies and strategies and all other relevant legislation.
- 5.2.17. Taking into account that the proposed development would give rise to an increase in carbon emissions during both the construction and operational periods, the ExA attaches a little negative weight to climate matters against the making of the order.

Design

- 5.2.18. The ExA is satisfied that the Scheme Design Report [\[APP-151\]](#), ES chapter 2 [\[APP-041\]](#) and the Case for the Scheme [\[REP3-018\]](#) demonstrate that the applicant has considered design as an integral consideration from the outset of the proposed development, explaining the approach to the proposed design, how the design process was carried out and how it has evolved.
- 5.2.19. For the reasons stated in section 3.7, the ExA is not satisfied that the visual appearance of the proposed Pike Fold Viaduct (work number 05) and Pike Fold Bridge (work number 39), which the applicant acknowledges would be prominent new structures, would achieve good aesthetics and the highest design standards as far as possible noting the requirements of paragraph 4.29 of NPSNN. To achieve this, the ExA consider that the detailed design of these structures should be subject to an additional design review process which would provide more assurance to the ExA and the Secretary of State that the visual appearance of the proposed development and its aesthetics have been considered as far as possible. As part of its rDCO, the ExA has recommended additional wording be included to requirement 3 to secure this mechanism.
- 5.2.20. Accounting for the provision of a further design review process and the detailed design being compatible with the Design Principles Report [\[REP6-010\]](#), the ExA is satisfied that the applicant has demonstrated that such risks associated with the

proposed development can be satisfactorily mitigated and managed and that appropriate mitigation would be secured via relevant requirements in the rDCO.

- 5.2.21. The ExA is satisfied that, subject to the inclusion of a further design review process, the proposed design as a whole would be in accordance with the NPSNN and, where important and relevant, NNNPS (2024), local policies and all other relevant legislation and design guidance. In the absence of this mechanism, the ExA is not satisfied that the proposed development as a whole would achieve good aesthetics as far as is possible as required in the NPSNN.
- 5.2.22. Overall, with the recommended addition to the rDCO requiring a further design review, the ExA attaches a little positive weight to design for the making of the order. However, if the Secretary of State decides that this provision is not necessary then the ExA considers design would attract a little negative weight against the making of the order.

Geology and Soils

- 5.2.23. The ExA concurs with ES chapter 9 [\[APP-048\]](#) that the significance of effect from the proposed development on geology and soils would be moderate adverse (significant) due to the permanent loss of best and most versatile (BMV) agricultural land.
- 5.2.24. The ExA is satisfied that the applicant has demonstrated that such risks associated with the proposed development can be satisfactorily mitigated and managed and that appropriate mitigation would be secured via relevant requirements in the rDCO.
- 5.2.25. The ExA is satisfied that the proposed development is in accordance with NPSNN and, where important and relevant, NNNPS (2024), local policies and strategies and all other legislation.
- 5.2.26. The ExA considers this matter would attract a little negative weight against the making of the order.

Green Belt

- 5.2.27. As set out in sections 2.1 and 3.9, PfE was adopted following submission of the application which removed approximately 19 hectares of land within the order limits from the Green Belt located to the north-east of the Simister Island Interchange. Therefore, for the purposes of the assessment, the ExA is considering the impact of the proposed development on the Green Belt as defined in the adopted PfE which replaced the Green Belt policies in the Bury Unitary Development Plan after the application was submitted for acceptance. However, as noted in section 2, at the close of the examination the ExA was aware that PfE was subject to judicial review which could be determined during the Secretary of State's decision period. Depending on the outcome of the judicial review this may have implications on the extent of Green Belt land falling within the order limits, and the degree of harm to its openness, which we consider below.
- 5.2.28. The ExA finds that the proposed development would constitute inappropriate development in the Green Belt development under National Planning Policy Framework (NPPF) paragraph 154(h)(ii). The proposed development would result in substantial engineering operations that would result in moderate adverse impact on harm to openness, both visually and spatially, acknowledging that the degree of harm has reduced following the removal of Green Belt land through the adoption of PfE. The proposed development would also conflict with the purpose of the Green

Belt to safeguard the countryside from encroachment. That the proposed development would be inappropriate development was also acknowledged by the applicant, Bury Metropolitan Borough Council (BMBC) and other IPs.

- 5.2.29. Inappropriate development is by definition harmful to the Green Belt. In accordance with NPSNN paragraph 5.178 the ExA attaches substantial weight to the harm that would result to the Green Belt by reason of inappropriateness and loss of openness.
- 5.2.30. Inappropriate development should not be approved except in very special circumstances and those circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, loss of openness and any other harm, is clearly outweighed by other considerations. This balance is undertaken later in this section.

Historic Environment

- 5.2.31. The ExA concurs with ES chapter 6 [\[REP4-008\]](#) that slight adverse (not significant) effects would arise to the designated heritage assets (HAs) of Heaton Park Registered Park and Garden (during construction and operation) and Brick Farmhouse Grade II listed building (during construction only) as a result of changes within their setting. In respect of the NPSNN and NPPF, the ExA finds that the identified slight adverse effects to these designated HAs in ES chapter 6 would result in less than substantial harm to their significance.
- 5.2.32. Slight adverse (not significant) effects would also arise to a number of non-designated HAs during construction and operation. None of these HAs have been found to be demonstrably of equivalent significance to scheduled monuments.
- 5.2.33. The ExA is satisfied that the applicant proposes adequate mitigation through commitments CH1 to CH3 in the REAC [\[REP6-006\]](#), which would establish trial trenching and archaeological monitoring in respect of known archaeological assets. These would be secured and developed further under requirement 4 and requirement 9 of the rDCO. The ExA is therefore satisfied that the applicant has demonstrated that such risks associated with the proposed development can be satisfactorily mitigated and managed and that appropriate mitigation would be secured via relevant requirements in the rDCO.
- 5.2.34. Subject to carrying out the required heritage balance as set out below, the ExA is satisfied that the proposed development is in accordance with NPSNN, the NPPF and, where important and relevant, NNNPS (2024), local policies and strategies and all other relevant legislation.
- 5.2.35. Overall, the ExA concludes that less than substantial harm would occur to the identified designated HAs both individually and collectively which would weigh against the making of the order. In accordance with the NNNPS and NPPF, great weight must be attached to these asset's conservation. We also attach a little weight against the making of the order to the slight adverse effects identified to the non-designated HAs noting the measures proposed to mitigate impacts to these HAs. In accordance with NPSNN paragraph 5.134 and NPPF paragraph 215, the public benefits must be weighed against development which would lead to less than substantial harm. This balance is undertaken later in this section 5.

Landscape and Visual Impacts

- 5.2.36. The ExA concurs with ES chapter 7 [\[REP4-010\]](#) and finds that one residual moderate adverse (significant) visual effect for residential receptors located at Warwick Close, Kenilworth Avenue and Barnard Avenue would remain. Residual

effects at other landscape and visual receptors would experience a combination of slight adverse (not significant), slight beneficial (not significant) or neutral effects.

- 5.2.37. The ExA is satisfied that the applicant has adequately demonstrated that such risks associated with the proposed development can be satisfactorily mitigated and managed and that appropriate mitigation is proposed through commitments LV1 to LV17 in the REAC [\[REP6-006\]](#), which broadly set criteria for the landscaping proposals. These commitments would be secured and developed further under requirement 4 the rDCO and the detailed landscaping scheme that would be secured under requirement 5 of the rDCO.
- 5.2.38. The ExA is satisfied that the proposed development is in accordance with NPSNN and, where important and relevant, NNNPS (2024), local policies and strategies and all other legislation.
- 5.2.39. Overall, the proposed development would give rise to positive and negative landscape and visual aspects as set out in section 3.11. When taken these matters into consideration, the ExA considers that the remaining one residual significant moderate adverse effect and the encroachment of the proposed development into the landscape means that overall, the ExA attaches a little negative weight against the making of the order in respect of landscape and visual impacts.

Material Assets and Waste

- 5.2.40. The ExA concurs with ES chapter 10 [\[APP-049\]](#) that the significance of effect from the construction and operation of the proposed development on material assets and waste would be slight adverse (not significant).
- 5.2.41. The ExA is satisfied that the applicant has demonstrated that such risks associated with the proposed development can be satisfactorily mitigated and managed and that appropriate mitigation would be secured via relevant requirements in the rDCO.
- 5.2.42. The ExA is satisfied that the proposed development is in accordance with NPSNN and, where important and relevant, NNNPS (2024), local policies and strategies and all other legislation.
- 5.2.43. The ExA considers there are no residual effects or issues which affect the planning balance.

Noise and Vibration

- 5.2.44. The ExA concurs with ES Chapter 11 [\[APP-050\]](#) that the significance of effect from the proposed development on noise and vibration would be significant adverse caused by the construction activities, and no significant effects (either adverse or beneficial) from operation.
- 5.2.45. The ExA is satisfied that the applicant has demonstrated that such risks associated with the construction and operation (in the short term) of the proposed development can be satisfactorily mitigated and managed and that appropriate mitigation would be secured via requirement 4 of the rDCO.
- 5.2.46. However, as discussed in section 3.13 above, the ExA consider that the applicant has not satisfactorily demonstrated that such risks associated with the operation of the proposed development in the long term can be satisfactorily mitigated and managed. We consider that the applicant has not given adequate consideration to providing an improvement for residents in relation to noise, particularly in relation to

the perception of noise. The ExA therefore considers it appropriate that mitigation in the form of additional sections of noise barrier should be secured by way of a new requirement in the rDCO.

- 5.2.47. The ExA is satisfied that with the inclusion of new requirement 11 in the rDCO, providing additional noise barriers, the proposed development would be in accordance with NPSNN and, where important and relevant, NNNPS (2024), local policies and strategies and all other legislation.
- 5.2.48. Subject to the inclusion of the new requirement 11 providing additional noise barriers, the ExA attaches a little positive weight to this effect on noise and vibration matters for the making of the order. However, if the Secretary of State decides that the proposed new requirement 11 is not necessary then the ExA would take the view that there would be adverse impacts to residential properties in the following areas: Conisborough Place, Glendevon Place, Warwick Avenue, Brathay Close, Rothay Close and Marston Close, and accordingly our planning balance would change to little negative against the making of the order.

Population and Human Health

- 5.2.49. The ExA concurs with ES chapter 12 [\[APP-051\]](#) that the significance of effect from the construction of the proposed development for human health would be temporary negative moderate/large (significant) due to restricted access to the natural environment and outdoor recreation, and environmental noise. The ExA concurs with ES chapter 12 [\[APP-051\]](#) that the significance of effect from the operation of the proposed development for human health would be permanent positive large (significant) on health outcomes due to overall reductions in traffic noise.
- 5.2.50. The ExA is satisfied that the applicant has demonstrated that such risks associated with the proposed development can be satisfactorily mitigated and managed and that appropriate mitigation would be secured via article 16 and requirement 4 of the rDCO.
- 5.2.51. The ExA is satisfied that the proposed development is in accordance with NPSNN and, where important and relevant, NNNPS (2024), local policies and strategies and all other legislation.
- 5.2.52. Having considered all the matters within section 3.14 above in respect to population and human health, the ExA concludes that the positive socio-economic effects and enhanced public rights of way outweighs the temporary negative effects caused by the construction. The ExA thus attributes little positive weight for the making of the order.

Road Drainage and Water Environment

- 5.2.53. The ExA concurs with ES chapter 13 [\[REP1-027\]](#) that the significance of effect from the construction of the proposed development on road drainage and water environment would be large adverse (significant) because of potential changes in groundwater flows, levels and quality due to ground disturbance. The ExA also concurs that significance of effect from the operation of the proposed development would be moderate adverse (significant) for groundwater due to permanent below ground structures leading to changes in groundwater levels and flow. The ExA concurs with ES chapter 13 [\[REP1-027\]](#) that there would be no significant effects of the proposed development for surface water or flood risk.

- 5.2.54. The ExA is satisfied that the applicant has demonstrated that such risks associated with the proposed development can be satisfactorily mitigated and managed and that appropriate mitigation would be secured via relevant requirements in the rDCO.
- 5.2.55. The ExA is satisfied that the proposed development is in accordance with NPSNN and, where important and relevant, NNNPS (2024), local policies and strategies and all other legislation. However, as discussed in section 3.15 above, the ExA strongly recommends that the Secretary of State seek an update from the applicant on the implications in respect of the new Environment Agency data prior to making their decision.
- 5.2.56. The ExA considers there are no residual effects or issues which affect the planning balance.

Traffic, Transport and Access

- 5.2.57. The ExA concurs with the findings and conclusions of the Transport Assessment [APP-149] which conclude that with the proposed development the M60 J18 is forecasted to operate within capacity up to and beyond 2044.
- 5.2.58. The ExA is satisfied that the applicant has demonstrated that such risks associated with the proposed development in relation to traffic and transport can be satisfactorily mitigated and managed and that appropriate mitigation would be secured via requirement 4 of the rDCO.
- 5.2.59. However, as discussed in section 3.16 above, the ExA consider that the applicant has not satisfactorily demonstrated that such risks associated with access would be satisfactorily mitigated and managed. We consider that the applicant has provided insufficient tangible improvements for pedestrians and other non-motorised users. The ExA therefore considers it appropriate that mitigation in the form of a scheme of improvements to the footpath between Heybrook Close and Parrenthorn Road (passing through the Haweswater underpass) should be secured by way of a new requirement in the rDCO.
- 5.2.60. The ExA is satisfied that with the inclusion of new requirement 12 in the rDCO, providing a scheme of improvements to the footpath through the Haweswater underpass, the proposed development is in accordance with NPSNN and, where important and relevant, NNNPS (2024), local policies and strategies and all other legislation.
- 5.2.61. With the new requirement 12 providing access improvements, the ExA attaches great positive weight to this effect on traffic, transport and access matters for the making of the order. However, if the Secretary of State decides that the proposed new requirement 12 is not necessary then we are not satisfied that the applicant has considered all reasonable opportunities for improvement of access, particularly for non-motorised users as encouraged by the NPSNN. Thus, this would only attract moderate positive weight for the making of the order.

Combined and Cumulative Effects

- 5.2.62. The ExA is satisfied that the applicant has undertaken a robust assessment of both combined and inter-project cumulative effects in accordance with the EIA Regs, NPSNN paragraphs 4.16 and 4.17 and paragraph 4.12 of NNNPS (2024).
- 5.2.63. Whilst the ExA notes that the potential for significant adverse cumulative effects with the Northern Gateway site allocation has been identified in its cumulative effects

assessment [[REP5-011](#)], given the very early stage of this development where the extent of effects are unknown we give very limited weight to this matter. In the absence of any other identified significant adverse inter-project cumulative effects, we consider there are no residual effects or issues which affect the planning balance. To avoid any potential double counting, we have not included a weighting for combined effects noting that these matters have been considered in our assessments for other topics.

Habitat Regulations Assessment

- 5.2.64. 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 sites must be assessed by the Secretary of State.
- 5.2.65. The Rochdale Canal Special Area of Conservation (SAC) and its qualifying features were considered in the applicant's assessment of likely significant effects (LSE). LSE were identified for the Rochdale Canal SAC as set out in chapter 5 of the applicant's HRA Report [[APP-103](#)], both from the proposed development alone and in-combination with other plans or projects.
- 5.2.66. As discussed above, BMBC raised concern regarding potential impact pathway on the South Pennines Special Protection Areas (SPA), South Pennines SAC and Manchester Mosses SAC. Considering all the evidence provided, 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.
- 5.2.67. The methodology and outcomes of the applicant's screening for LSE on European sites was subject to some discussion and scrutiny, however, other than this, the sites and features for which LSE were identified were not disputed by any IP.
- 5.2.68. Overall, the ExA's findings are that adverse effects on integrity (AEol) on the Rochdale Canal SAC from the proposed development when considered alone or in-combination with other plans or projects can be excluded from the impact-effect pathways assessed.

5.3. THE OVERALL PLANNING BALANCE

- 5.3.1. The ExA has been mindful of the legal framework within which the Secretary of State must decide this application and has sought to explore and seek representations on the operation of s104 of the Planning Act 2008 (PA2008) and the planning balance.
- 5.3.2. S104(2) and s104(3) of the PA2008 require the Secretary of State to have regard to, and to decide the application in accordance with any national policy statement (NPS) except to the extent that one or more of subsections (4) to (8) apply.
- 5.3.3. The ExA conclude that the NPSNN sets out the need for additional road infrastructure in general and that subject to the detailed policies and protections within it, and the legal constraints set out in the PA2008, there is a presumption in favour of granting development consent for national networks NSIPs that fall within the need for infrastructure established within the NPSNN.

- 5.3.4. The ExA concludes that the proposed development meets the need as established in the NPSNN and satisfies the tests of s104(2) and s104(3) of the PA2008 and accordingly should be determined as such.
- 5.3.5. S104(4), s104(5) and s104(6) of the PA2008 require the Secretary of State to have regard to, and to decide the application in accordance with any NPS and having regard to local impact reports (LIR)s, unless the proposed development breaches any international obligation; any duty imposed on the Secretary of State by or under any enactment; or would be unlawful by any enactment.
- 5.3.6. The proposed development would result in an increase in GHG emissions over the 60-year appraisal period. However, we have concluded above that this increase would be unlikely to have a material impact on the UK Government meeting its carbon reduction targets. As such, the ExA advises the Secretary of State that the proposed development, taken by itself or in-combination with other road projects as set out in RIS2, accords with the overall policy on transport, the Paris Agreement 2015 and the Climate Change Act 2008, and accordingly does not conflict with s104(4), s104(5) and s104(6) of the PA2008.
- 5.3.7. BMBC's LIR [\[REP1A-001\]](#) expressed general support for the principal of the proposed development and did not identify any specific potential conflict from the proposed development with any other legislation or obligation. Any outstanding concerns are capable of being resolved through the detailed design process and the discharge of the requirements. The ExA therefore considers s104(4), s104(5) and s104(6) do not apply.
- 5.3.8. In respect to HRA matters, the ExA recommends that AEoI on the Rochdale Canal SAC from the proposed development when considered alone or in-combination with other plans or projects can be excluded from the impact-effect pathways assessed.
- 5.3.9. S104(7) of the PA2008 applies if the Secretary of State is satisfied that the adverse impact of the proposed development would outweigh its benefits. We have found that in most topic areas, there are no residual effects or issues which affect the planning balance because any negative effect would be offset by adequate mitigation which is secured in the rDCO.
- 5.3.10. For the reasons set out in section 3 of this report, the ExA has identified the following where negative weight is attached:
- Climate – A little negative weight because the proposed development would give rise to an increase in carbon emissions.
 - Design – A little negative if the additional wording to requirement 3 of the rDCO requiring a further design review process is not included.
 - Green Belt – Substantial negative weight to Green Belt harm by reason of inappropriateness and loss of openness, where the proposed development would result in a moderate adverse impact on harm to openness (increased to large adverse if a worst-case situation was to arise whereby PfE is quashed following judicial review and the BMBC UDP boundary is reinstated).
 - Geology and Soils – A little negative weight because of the permanent loss of BMV agricultural land.
 - Historic Environment – Great weight to the conservation of the designated HAs of Heaton Park Registered Park and Garden and Brick Farmhouse Grade II listed building where less than substantial harm would occur to their significance and a little negative weight to the slight adverse effects to identified non-designated HAs.

- Landscape and Visual – A little negative weight because of the one residual adverse visual effect for residential receptors
- Noise and Vibration – A little negative weight if the new requirement is not included in the rDCO because of insufficient mitigation for long term noise in Noise Important Areas.

5.3.11. For the reasons set out in section 3 of this report, the ExA has identified the following where positive weight is attached:

- Need – Great positive weight consistent with the NPSNN as well as promoting economic benefits for the region.
- Design – A little positive weight if the additional wording requiring a further design review process is included in requirement 3 of the rDCO.
- Noise and Vibration - A little positive weight if the new requirement is included in the rDCO which would mitigate long term noise in Noise Important Areas.
- Traffic, Transport and Access - Great positive weight because of the improvements in traffic flows and access, reducing to moderate positive weight if the improvements to the footpath through the Haweswater underpass are not included in the rDCO.

5.3.12. In all other areas, the ExA has identified that measures proposed within the Environmental Management Plan to mitigate the effects of the proposed development, which is secured by requirement 4 of the rDCO, are sufficient to have a neutral planning effect.

5.3.13. In applying the overall planning balance, the great weight attached to the compelling need established by NPSNN, taken with the improvements to the road network are considered to be sufficient to outweigh the identified negative effects to green belt, climate, geology and soils, historic environment and landscape and visual taken cumulatively. Our conclusions on this balance would not change should negative weight be applied to noise and vibration and design, and reduced positive weight be applied to traffic, transport and access in the circumstance that the new requirements are not included.

5.3.14. In reaching this recommendation, the ExA considers that the positive benefits of the proposed development, as listed above, would outweigh in each case the less than substantial harm that would occur to the identified designated HAs. Taking account of the significant public benefits of the proposed development, we are satisfied that there is clear and convincing justification for the harm that would result to the significance of the identified designated HAs, both individually and collectively. Consequently, we are satisfied that matters concerning the historic environment would accord with the relevant policy provisions of the NPSNN and NPPF.

5.3.15. Also, in reaching this recommendation, we have considered the harm to the Green belt by way of inappropriateness, loss of openness and any other harm identified in sections 3 and 5 as summarised above. In doing so we have considered the differing opinions of IPs as summarised in section 3.9 both for and against as to whether there are very special circumstances to justify inappropriate development in the Green Belt.

5.3.16. The ExA considers that the other considerations, specifically the significant positive weight to be applied to the need for the scheme as identified in NPSNN, and other matters identified above, are more than capable of amounting to the ‘very special circumstances’ necessary to outweigh the substantial weight to be applied to harm to the Green Belt by way of inappropriateness, loss of openness and any other harm. The ExA is also mindful of the content of paragraph 5.171 of NPSNN which

recognises that linear infrastructure linking an area near a Green Belt with other locations will often have to pass through Green Belt land and accepts in this case that any physically upgrade to the Simister Island interchange would be unable to avoid the Green Belt.

- 5.3.17. Drawing together the above assessment, we consider that the harm to the Green Belt by reason of inappropriateness and loss of openness, and the other harm we have identified taken as a whole, would be clearly outweighed by the other considerations set out above. 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 and the NPPF. Even if a situation were to arise whereby PfE was quashed as part of the aforementioned judicial review and the Green Belt boundary was reinstated to that in the Bury UDP, whereby the harm to be attributed to loss of openness would increase, our conclusions would remain unchanged.
- 5.3.18. The ExA concludes that, on the planning merits, the adverse effects do not outweigh the benefits of the development. Accordingly, s104(7) of the PA2008 does not apply. The ExA also considers s104(8) is not applicable. In conclusion therefore, the case for development consent is made.

6. LAND RIGHTS AND RELATED MATTERS

6.1. INTRODUCTION

- 6.1.1. The application includes proposals for the compulsory acquisition (CA) of the freehold of land, the CA of rights over land, the creation of new rights in land and the temporary possession (TP) of land.

6.2. LEGISLATIVE REQUIREMENTS

The Planning Act 2008

- 6.2.1. Section (s) 122(2) of the Planning Act 2008 (PA2008) provides that a development consent order (DCO) may include provision authorising CA only if the Secretary of State is satisfied that certain conditions are met. These include that the land subject to CA is required for the development to which development consent relates or is required to facilitate or is incidental to it.
- 6.2.2. In addition, s122(3) requires that there must be a compelling case in the public interest for the land to be acquired compulsorily. For this to be met the Department for Community and Local Government's 'Guidance related to procedures for the compulsory acquisition of land' published September 2013 (CA Guidance) indicates the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the CA will outweigh the private loss that would be suffered by those whose land is to be acquired.
- 6.2.3. Section 123 requires the Secretary of State to be satisfied that one of the three procedural conditions set out in subsections (2) to (4) are met, namely:
- that the application for the order included a request for CA of (rights over) the land to be authorised – s123(2); or
 - that all persons with an interest in the land consent to the inclusion of the provision – s123(3); or
 - that the prescribed procedure has been followed in relation to the land – s123(4)
- 6.2.4. Section 127 of the PA2008 applies to Statutory Undertakers (SU) land. Section 127(2) and (3) state that an order granting development consent may include provisions authorising the CA of SU land only to the extent that the Secretary of State is satisfied that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking or if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the undertaking. Similarly, s127(5) and (6) of the PA2008 provide that an order granting development consent may only include provision authorising the CA of rights belonging to SUs to the extent that the Secretary of State is satisfied that the right can be taken without serious detriment to the carrying out of the undertaking, or that any detriment can be made good by the undertakers by the use of other land belonging to or available for acquisition by them. A number of SUs have land interests within the order limits. These are set out in the Book of Reference (BoR) [[REP7-005](#)].
- 6.2.5. Section 138 of the PA2008 relates to the extinguishment of rights on SU land. It states that an order may include a provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus only if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purposes of carrying out the development to which it relates. For the proposed development, this

section of the PA2008 is relevant to SUs with land and equipment interests within the order limits.

- 6.2.6. TP powers are also capable of being within the scope of a DCO by virtue of paragraph 2, part 1 of schedule 5 to the PA2008. This allows for, amongst other things, the suspension of interests in or rights over land compulsorily or by agreement. The PA2008 and the associated 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 permanently deprive or amend a person's interests in land. Further, such powers tend to be ancillary and contingent to the application proposal as a whole and only capable of proceeding if the primary development is justified.

Neighbourhood Planning Act 2017

- 6.2.7. The Neighbourhood Planning Act 2017 includes a number of provisions related to the TP of land including notice requirements, the service of counter notices and compensation. These provisions have not been brought into force and are described as technical changes in the explanatory notes that accompany the Act. Article 45(1) of the recommended DCO (rDCO) disapplies the provisions of the Act insofar as they relate to TP of land under articles 30 (temporary use of land for carrying out the authorised development) and 31 (temporary use of land for maintaining the authorised development).

The CA Guidance

- 6.2.8. In addition to the legislative requirements set out above, the CA Guidance sets out a number of general considerations which also need to be addressed. Namely that:
- all reasonable alternatives to CA must have been explored
 - the applicant must have a clear idea of how it intends to use the land subject to CA powers and demonstrate that there are funds available
 - the decision-maker must be satisfied that the purposes stated for the CA are legitimate and sufficiently justify the inevitable interference with the human rights of those affected
- 6.2.9. The Examining Authority (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.

6.3. THE REQUEST FOR CA AND TP POWERS

- 6.3.1. Articles in the application draft DCO (dDCO) [[APP-014](#)] and all subsequent versions included both permanent and temporary powers to construct and maintain the proposed development.
- 6.3.2. The order limits of the dDCO established the extent of the land that would be affected by the CA and TP powers sought.
- 6.3.3. The application was accompanied by:
- a Statement of Reasons (SoR) [[APP-018](#)]
 - a Funding Statement [[APP-019](#)]
 - a BoR [[APP-020](#)]
 - Land Plans [[APP-006](#)]
 - Works Plans [[APP-007](#)]

6.3.4. Taken together, these documents set out the land and rights sought by the applicant at the time of submission together with the reasons for its requirement and the basis under which compensation would be funded. Where the examination and due diligence processes required changes to this documentation, new versions were submitted. By the close of the examination the most up to-date versions of these documents were as follows:

- SoR [\[REP7-009\]](#)
- Funding Statement [\[APP-019\]](#)
- BoR [\[REP7-011\]](#)
- Land Plans [\[REP7-004\]](#)
- Works Plans [\[REP5-004\]](#)

6.3.5. The ExA was kept updated by the applicant throughout the examination on the progress of negotiations with affected persons (AP) by means of the Schedule of Negotiation of CA, the final version of which was submitted at deadline (DL)7 [\[REP7-015\]](#).

6.3.6. These documents taken together form the basis for analysis for this section. Reference to the documents and plans in this section from this point should be read as reference to the latest versions above.

6.4. THE PURPOSES FOR WHICH THE LAND IS REQUIRED

6.4.1. The application is for development consent for the construction and maintenance of improvements to the motorway (M) 60 junction (J) 18 Interchange which includes widening of the M60 to 5 lanes between J17 and J18. The BoR [\[REP7-011\]](#) identifies all the plots of land required and these are shown on the Land Plans [\[REP7-004\]](#).

6.4.2. The applicant provides justification for the CA and TP of land in chapter 5 of the SoR [\[REP7-009\]](#) on the basis of the CA Guidance which requires interference with the rights of those with an interest in land to be for a legitimate purpose, and that it is necessary and proportionate.

6.4.3. In annex A of the SoR [\[REP7-009\]](#) the applicant sets out why compulsory powers are necessary in relation to each individual parcel of land, with reference to the relevant DCO works numbers, and the nature of the works as set out in schedule 1 of the rDCO. The proposed use of the land is set out in chapter 2 and annex A of the SoR [\[REP7-009\]](#). The applicant considers that the land included in the dDCO [\[REP7-005\]](#) is the minimum land-take required to construct, operate, maintain and mitigate the proposed development necessary to achieve the objectives of the proposed development. The applicant has sought to achieve a balance between minimising land-take and securing sufficient land to deliver the proposed development, noting that the detailed design of the proposed development has yet to be developed. The applicant considers that the limits of deviation have been drawn as tightly as possible, to avoid unnecessary land-take. The applicant confirms that if less land proves to be required in a particular area following the detailed design stage, it would only seek to acquire that part of the land that is required and, in all events, would seek to minimise effects on land interests.

6.4.4. The applicant considers that compulsory acquisition powers are required to override any existing rights and interests in the land, as well as grant the right to temporary possession of land for construction and maintenance purposes. The applicant states

that without these rights over the land, the proposed development cannot be delivered. The applicant is accordingly satisfied that the land to be taken is reasonable and proportionate [\[REP7-009\]](#).

6.5. THE CA AND TP POWERS SOUGHT

- 6.5.1. The powers sought in the rDCO relate to the acquisition of land, rights and temporary possession of land. The BoR [\[REP7-011\]](#) sets out the various categories of rights which are being sought, as described in the table below.

Table 9: Land use power being sought by the applicant

Land use power sought	Wording used in BoR plot description	Colour of plot on Land Plans	Principal relevant DCO article
CA of all interests and rights in land (including as required, subsoil, surface or airspace)	“Permanent acquisition of...”	Pink	Article 21
CA of new rights (including where necessary, a right to impose restrictive covenants)	“...permanent acquisition of new rights over...”	Blue	Article 24
TP and use of land	“Temporary possession of...”	Green	Article 30

- 6.5.2. The land subject to powers comprises approximately 85.69 hectares. Of this, approximately 23.08 hectares would be acquired permanently, 2.41 hectares would be subject to acquisition of permanent rights and TP and 11.09 hectares would be subject to TP. The remaining 49.11 hectares is land within the ownership of the applicant.
- 6.5.3. The powers being sought by the applicant are set out in the SoR [\[REP7-009\]](#) and on the Land Plans [\[REP7-004\]](#).
- 6.5.4. In addition, the Land Plans include areas of land coloured yellow, which is land excluded from the order limits.
- 6.5.5. Annex A of the SoR [\[REP7-009\]](#) includes a table which sets out on a plot by plot basis the nature and purpose of the proposed acquisition of interests in the land or the need for TP.
- 6.5.6. None of the land is National Trust for the purposes of s130 of PA2008. None of the land is special category land for the purposes of s131 or s132 of PA2008.

6.6. EXAMINATION OF THE CA AND TP CASE

The Examination Process

- 6.6.1. The ExA’s approach to the question of whether CA powers should be granted and if so, what we should recommend to the Secretary of State to grant has been to seek

to apply the relevant sections of the PA2008; notably s122 and s123, the CA Guidance and the Human Rights Act 1998. In addition, 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.

- 6.6.2. In examining the application, the ExA considered all written material in respect of CA and TP and asked written questions regarding justification of the need for the CA and TP in the ExA's first written questions (ExQ1) [\[PD-011\]](#), the ExA's second written questions (ExQ2) [\[PD-013\]](#) and the rule 17 requests dated 28 January 2025 [\[PD-015\]](#) and 28 February 2025 [\[PD-017\]](#).
- 6.6.3. In addition, the issues were explored in further detail at compulsory acquisition hearing 1 (CAH1) [\[EV9-001\]](#). With the exception of the Hillary Family and representatives for Joseph Holt Ltd, no other APs chose to attend CAH1.
- 6.6.4. The ExA received objections to the CA and TP of land and rights via relevant representations (RR) and written representations (WR). The applicant responded to CA objections throughout the course of the examination. It actively pursued discussions with objectors to seek to address, where possible, specific issues and concerns. At various points throughout the examination the applicant provided the ExA with an update on progress on negotiations by submitting a Schedule of CA with APs and SUs [\[REP1-021\]](#), [\[REP3-021\]](#), [\[REP5-026\]](#), [\[REP6-008\]](#) and [\[REP7-015\]](#).

The applicant's case

- 6.6.5. The applicant's general case for CA and TP is set out in chapter 5 of the SoR [\[REP7-009\]](#).
- 6.6.6. The applicant concludes that:
- The conditions in s122 of PA2008 are met and the tests in the CA Guidance are satisfied.
 - All of the land subject to CA and TP powers is necessary to construct, operate, maintain and mitigate the proposed development necessary to achieve the objectives of the proposed development. The extent of the land sought is reasonable and proportionate.
 - There is a compelling case in the public interest to include the CA powers sought by the applicant in the rDCO.
 - The CA powers sought are necessary and proportionate to the extent that interference with private land and rights is required.
 - In the absence of compulsory powers, the applicant considers that it would not be possible to proceed with the proposed development, therefore the public benefits of the proposed development would not be realised.
- 6.6.7. Overall, the ExA agrees with the applicant's conclusions on the generality of the case. Subject to the ExA's further consideration of individual objections and issues below, the ExA considers the tests set out in s122(2) and s122(3) of the PA2008 to be met.

Alternatives

- 6.6.8. The CA Guidance indicates that the applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to CA (including modifications to the proposed development) have been explored.

- 6.6.9. The applicant sets out the various alternatives considered, and the flexibility requested, in the SoR section 2.5 [REP7-009]. In ES chapter 3 [APP-042] the applicant details the assessment of alternatives undertaken during the development of the proposed development design.
- 6.6.10. The ExA has reported on its findings with regards to alternatives in section 3 of this report. The ExA does not intend to repeat it here, only to report that the ExA is satisfied that at a strategic level the applicant has adequately considered alternatives to the proposed development and that there are no matters relating to alternatives that would weigh for nor against the order being made.
- 6.6.11. In light of the above, the ExA considers that the applicant has satisfactorily demonstrated that all reasonable alternatives to CA have been explored.

Funding

- 6.6.12. The Funding Statement [APP-019] confirms that the proposed development would be funded by the Department for Transport and consequently it is not dependent on funding contributions from other parties. Accordingly, the applicant's view is that there is no impediment to the delivery of the proposed development, or the payment of compensation to persons affected by CA, TP or a blight claim.
- 6.6.13. Through ExQ1 CA.1.11 and CA.1.12 [PD-011], CAH1 [EV9-001] and ExQ2 CA.2.1 [PD-013] the ExA sought confirmation that funds would remain available for the proposed development considering that no Road Investment Strategy (RIS) has been published for a period beyond 2025. The applicant responded confirming that the Secretary of State for Transport had commissioned a review of the Department for Transport's spending portfolio, including current and future road schemes and whilst this review was ongoing, the commitment to the proposed development remained [REP3-023]. The applicant also confirmed that the outcome of the review was expected in spring 2025 [REP5-033]. The review remained outstanding at the close of the examination.
- 6.6.14. As the Secretary of State is both the funder and arbiter of this proposed development, they will need to be satisfied that the funds are in place if they are minded to make the order.

6.7. CONSIDERATION OF INDIVIDUAL OBJECTIONS AND ISSUES

- 6.7.1. The ExA has considered all objections received. Some of the issues raised by objectors have been considered in section 3 of this report when considering the planning issues. As a result, the objections considered here are only considered in the context of the application for the grant of CA and TP powers. Therefore, unless an AP who is listed in the BoR has specifically objected to the CA or TP of land or rights they are assumed to have no objection to the CA or TP of land in which they have an interest and will not be reported below.
- 6.7.2. Although this section considers objections and representations raised, the ExA appreciates that these represent only a proportion of the plots that would be affected. Even though a specific objection or representation 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 the powers of CA or TP in reaching its overall conclusions.

6.7.3. The schedule of negotiation of CA submitted at DL7 [\[REP7-016\]](#) identified the following APs had not signed an agreement with the applicant by the close of the examination (in order of the relevant representation (RR) submitted):

- Joseph Holt Limited
- National Grid Electricity Transmission plc (NGET)
- The Trustees of Pike Fold Golf Club
- The Hillary Family
- The Massey Family
- Plot 1/1a
- Plots 2/1av and 2/1aw

Joseph Holt Limited

6.7.4. The applicant has requested powers for:

- The CA of rights at plot 1/33b for access to the M60 for future maintenance.
- The TP at plot 1/33a for access to enable work to improve the eastbound M60 carriageway (works number 02).

6.7.5. Joseph Holt Limited own the Frigate Public House located on the corner of Thatch Leach Lane and Sandgate Road. Joseph Holt Limited set out their concerns in [\[RR-007\]](#) and [\[REP1-033\]](#) regarding the justification for the temporary use of plot 1/33a and the permanent acquisition of rights on plot 1/33b to allow access to existing motorway communication and technology cabinets located north of the M60 eastbound carriageway. Joseph Holt Limited considered that the temporary use of the Frigate Public House car park would have an adverse impact on the business. Joseph Holt Limited considered that the permanent acquisition of rights over land, which would affect future business and ownership plans, was without adequate justification and consideration of alternatives.

6.7.6. In [\[REP2-007\]](#) the applicant clarified that because the existing technology and street lighting buried infrastructure and above ground assets were located very close to the existing boundary fencing it was envisaged that plot 1/33a would be temporarily used in the event that any fence panels need to be temporarily removed to undertake works to the technology and street lighting infrastructure. The applicant stated that plot 1/33b was required for the permanent acquisition of rights for future maintenance of the proposed development. The applicant confirmed that there would be no temporary access required for construction works taking place within the car park of the Frigate Public House during the construction of the proposed development. The applicant also confirmed that the access required for future maintenance would likely be infrequent and ad-hoc. The applicant therefore considered that there would not be any “temporary loss” of the car park.

6.7.7. Representatives for Joseph Holt Limited attended CAH1 [\[EV9-001\]](#). During their oral submission it was confirmed that an agreement in principle with the applicant had been reached. [\[REP7-015\]](#) confirmed that solicitors for the applicant had provided a draft agreement to solicitors representing Joseph Holt Limited and that both parties were continuing dialogue to finalise the terms and conclude that agreement. However, this had not been agreed at the close of the examination and Joseph Holt Limited had not withdrawn its representation. The ExA has no obvious reason to believe that a signed agreement would not be in place by the time the Secretary of State considers their decision.

6.7.8. The Secretary of State may wish to seek an update as to whether an agreement has been signed and whether Joseph Holt Limited would therefore withdraw its

representation. However, should this remain unsigned, the ExA, considering the detail above, are satisfied that the impact to Joseph Holt Limited's land is necessary, proportionate and justified and that there is a compelling case in the public interest for the proposed CA of rights. The fact that an agreement in principle is in place further satisfies the ExA that the applicant has sought to obtain the land voluntarily.

National Grid Electricity Transmission plc (NGET)

6.7.9. The applicant has requested powers for:

- The TP at plot 1/9 for access to enable work to improve the westbound M60 carriageway and associated utilities diversions (works numbers 03, 48 and 49).

6.7.10. NGET own the freehold of plot 1/9 which the applicant is seeking TP for the purposes of access during construction to carry out widening of the M60 westbound carriageway. In [\[RR-008\]](#) NGET confirmed that it was in the early stages of liaising with the applicant in relation to bespoke protective provisions (PP).

6.7.11. The applicant confirmed that it had met with representatives from NGET and discussed all interfaces between the scheme and NGET assets and land interests. The applicant has included PP in favour of NGET in the dDCO [\[REP7-005\]](#) which mirror the form of PP accepted by NGET on other approved DCOs promoted by the applicant. At the end of the examination the applicant informed the ExA that it had reached an agreement with NGET and was in the process of executing and concluding terms [\[AS-017\]](#). The applicant confirmed that the agreement reached meant no changes were required to the PP in favour of NGET in part 4 of schedule 9 of the dDCO [\[REP7-005\]](#). However, at the close of the examination NGET had not withdrawn its representation. The ExA has no obvious reason to believe that a signed agreement would not be in place by the time the Secretary of State considers their decision.

6.7.12. The ExA recommends that the Secretary of State may wish to seek an update as to whether NGET is now content to withdraw its representation. Having considered the wording in the PP in the dDCO [\[REP7-005\]](#) (as discussed in section 7, the draft DCO and related matters) the ExA is satisfied that it provides adequate protection for NGET's assets which provides that the applicant may not acquire or take TP of any land interest or apparatus, extinguish, interfere with or override any easement or other interest, right, or apparatus of NGET otherwise than by agreement.

6.7.13. Given the above the ExA is satisfied that the PP in favour of NGET included in the rDCO are sufficient to ensure there would be no serious detriment. The ExA is satisfied that the land is required for the proposed development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the TP powers sought.

The Trustees of Pike Fold Golf Club

6.7.14. The applicant has requested powers for:

- The CA of land at plots 2/17a, 2/17b, 4/2a, 4/4 for the improvement to the M66 southbound carriageway and the creation of a new M66 southbound off-slip and link road on embankment and associated works (works numbers 30, 33, 39 and 40).

- The CA of rights and TP at plot 4/2c for access to enable work to improve the southbound M66 carriageway and future maintenance (works number 30, 39 and 43).

6.7.15. The Trustees of Pike Fold Golf Club set out their concerns in [\[RR-013\]](#) which were related to the continued operation of the golf club during construction, reducing play to a 14-hole golf course, and the reduction of safety margins and screening as a result of the permanent works. The Trustees of Pike Fold Golf Club stated that without agreement they considered that there was a significant risk to their business, its income and future sustainability. The Trustees of Pike Fold Golf Club requested to be heard at a CAH [\[REP1-042\]](#). However, this request was withdrawn in advance of the November hearings.

6.7.16. The applicant stated that it has been actively engaged with the Trustees of Pike Fold Golf Club for several years to ensure any impacts on the golf club would be satisfactorily addressed. The applicant confirmed that heads of terms had been agreed, and a legal agreement had been drafted and was under consideration. The applicant stated that it and the Trustees of Pike Fold Golf Club were positively engaged to reach an agreement. However, this had not been agreed at the close of the examination and the Trustees of Pike Fold Golf Club had not withdrawn their representation [\[REP7-020\]](#). The ExA has no obvious reason to believe that a signed agreement would not be in place by the time the Secretary of State considers their decision.

6.7.17. The Secretary of State may wish to seek an update as to whether an agreement has been signed and whether the Trustees of Pike Fold Golf Club would therefore withdraw their representation. However, should this remain unsigned, the ExA are satisfied, considering the detail above, that the impact to Pike Fold Golf Club is necessary, proportionate and justified and that there is a compelling case in the public interest for the CA and TP powers sought. The fact that an agreement in principle is in place further satisfies the ExA that the applicant has sought to obtain the land voluntarily.

The Hillary Family

6.7.18. The applicant has requested powers for:

- The CA of land at plots 2/16a, 2/16b, 2/16d for the construction of the Northern Loop, attenuation pond 1 and maintenance access track, and the creation of environmental mitigation areas (EMA(s)) (works number 05, 33, 34, 35, 36, 37, 38, 39, 40 and 59).
- The CA of rights and TP at plots 2/16c and 2/16e to enable access for construction and future maintenance of the Northern Loop, attenuation pond 1 and EMAs (works number 05, 34, 35, 36, 37, 38, 39, 40 and 59).
- The TP at plot 2/16f for access to enable the creation of EMA (works number 38).

6.7.19. In [\[REP7-015\]](#) the applicant confirmed that it had written to the Hillary Family inviting them to enter into discussions for the acquisition of their land by voluntary agreement. The applicant spoke to the Hillary Family at the time of the section 56 notification and acknowledged the Hillary Family's willingness to enter negotiations (albeit only for the land necessary for the construction of the Northern Loop) as reflected by their relevant representation [\[RR-031\]](#). The applicant has responded in writing to all matters raised by the Hillary Family and has maintained lines of communication throughout the examination [\[REP7-015\]](#).

- 6.7.20. The Hillary Family has, throughout the examination, objected to the extent of the CA, including the location and extent of attenuation pond 1 (work number 37) and the extent of land for environmental mitigation (work numbers 36 and 38). However, the Hillary Family did accept the CA of their land for the road infrastructure (principally the Northern Loop, work number 05), albeit subject to appropriate compensation. This is reflected in their representations [\[RR-031\]](#), [\[REP1-040\]](#), [\[REP4-031\]](#), [\[REP5-039\]](#) and [\[REP7-024\]](#). At CAH1 [\[EV9-001\]](#) the Hillary Family detailed their concerns in relation to the extent of the EMAs and location of attenuation pond 1 which the applicant responded to in [\[REP4-028\]](#), [\[REP5-031\]](#) and [\[REP5-033\]](#).
- 6.7.21. Through CAH1 [\[EV9-001\]](#), ExQ2 CA.2.4 [\[PD-013\]](#) and rule 17 letters [\[PD-015\]](#) and [\[PD-017\]](#) the ExA sought to understand the Hillary Family's concerns in more detail and obtain justification from the applicant with respect to the amount and location of the proposed environmental mitigation and attenuation pond 1. This consideration is detailed within section 3.3 (alternatives), section 3.5 (biodiversity) and section 3.11 (landscape and visual impacts) of this report and is not be repeated here, however in summary the ExA concluded that:
- The ExA understand the Hillary Family's reasoning for why the proposed attenuation pond should be located within the Northern Loop or drawn closer to it to reduce land take. However, the ExA agrees with the applicant that to do so would be impractical because of the environmental, safety and engineering constraints discussed in section 3.3.
 - We agree with the Hillary Family that some of the applicant's listed commitments in the Register of Environmental Actions and Commitments [\[REP6-006\]](#) were arguably not directly relevant to biodiversity purposes situated in the EMA. However, we are nevertheless satisfied that the mitigation proposed within the EMA would contribute to avoiding significant adverse effects in respect of species and habitat loss and would contribute to maximising opportunities in and around developments for beneficial biodiversity in accordance with the National Policy Statement for National Networks (NPSNN). We also agree with the applicant that there is a need to maximise the value of habitats through siting larger areas of habitat creation rather than multiple smaller fragments.
 - Whilst the ExA notes the comments from the Hillary Family regarding the Northern Gateway site allocation that would screen views of the proposed development over time, due to the uncertainty of how that development may be built out in the future and any timescales involved the ExA gives very limited weight to this as a consideration. Overall, as discussed in section 3.11, the ExA finds that the embedded and essential mitigation measures to avoid or reduce significant adverse landscape and visual effects are appropriate.
- 6.7.22. The ExA is satisfied that the applicant has been actively seeking to achieve voluntary agreements with the Hillary Family and, as set out in the final CA schedule [\[REP7-015\]](#) and Summary Statement [\[REP7-020\]](#), will continue to going forward. However, a voluntary agreement had not been secured by the close of the examination. The ExA is not persuaded, by the evidence before us at the close of the examination, that an agreement is close or likely to be signed by the time the Secretary of State makes their decision.
- 6.7.23. The ExA is satisfied that the proposed attenuation pond would need to be positioned within plot 2/16d and cannot be positioned within the Northern Loop or be drawn closer to it due to the engineering and environmental constraints discussed in section 3. Furthermore, the ExA consider that the level of environmental mitigation proposed by the applicant within plots 2/16b and 2/16d is proportionate and

necessary to mitigate the effects of the proposed development in accordance with the NPSNN. Both Natural England [[RR-009](#)] and Bury Metropolitan Borough Council (BMBC) [[REP1A-001](#)] and [[REP3-031](#)] concur this to be the case. Accordingly, we consider that the land required from the Hillary Family to necessitate the environmental mitigation is equally justified. The Hillary Family do not contest the use of their land for the construction of the Northern Loop. The ExA is satisfied that the Northern Loop would need to be positioned within plots 2/16a, 2/16b and 2/16d. Likewise, we are satisfied that the rights for plots 2/16c and 2/16e would be required to enable future maintenance of the Northern Loop, attenuation pond and EMAs. The ExA consider that TP powers would be required at plot 2/16f for the creation of the EMA (works number 38).

6.7.24. Based on the above, we are satisfied that the rights sought for the CA of land at plots 2/16a, 2/16b, 2/16d, and the CA of rights at plots 2/16c and 2/16e 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. We do not find that the matters raised by the Hillary Family preclude the exercise of those CA powers should the Secretary of State decide to grant development consent for the proposed development.

6.7.25. We are satisfied that the rights sought for the TP of plots 2/16c, 2/16e and 2/16f are for identified legitimate purposes and are compatible with human rights tests. The ExA is satisfied that the matters raised do not preclude the exercise of the relevant TP powers should the Secretary of State decide to grant development consent for the proposed development.

The Massey Family (plots 4/8a and 4/8b)

6.7.26. The applicant has requested powers for:

- The CA of land at plot 4/8a for construction of attenuation pond 2, a new maintenance track and realigned public right of way 7WHI (works number 43, 44 and 47).
- The TP at plot 4/8b for access to enable the construction of attenuation pond 2, a new maintenance track and realignment of public right of way 7WHI (works numbers 43, 44 and 47).

6.7.27. In [[REP7-015](#)] the applicant confirmed that it had written to the Massey Family inviting them to enter into discussions for the acquisition of their land by voluntary agreement. The applicant spoke to the Massey Family at the time of the section 56 notification. The applicant has responded in writing to all matters raised by the Massey Family and has maintained lines of communication throughout the examination [[REP7-015](#)].

6.7.28. The Massey Family has maintained an objection to the extent of their land to be acquired compulsorily in order to deliver the proposed development, as reflected in their representations [[RR-038](#)], [[REP1-035](#)], [[REP1-039](#)] and [[REP3-041](#)]. The Massey Family consider that it is not in the public interest to locate attenuation pond 2 on their land in light of the Heywood/Pilsworth (Northern Gateway) site allocation which allocates the land for residential development. The Massey Family suggested that the pond could be rotated along the southern boundary with Pike Fold Golf Club.

6.7.29. In [[REP1-020](#)] the applicant confirmed that pond locations, including attenuation pond 2, had been optimised in terms of land take and through a combination of the hydraulic modelling of the drainage design as well as the location of the existing

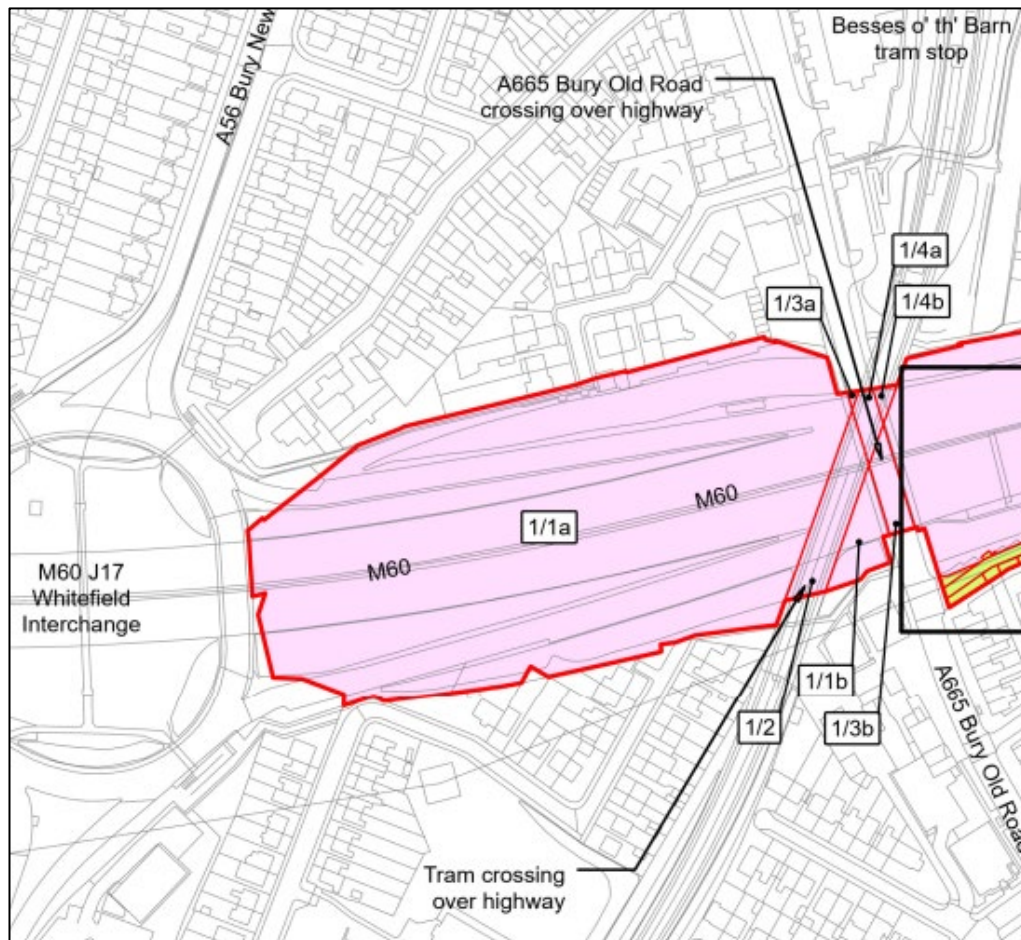
outfalls (watercourses or existing culverts). The applicant noted that it was important that the drainage and water from the highway could reach the ponds and outfalls efficiently, without the need for pumping stations which would require increased permanent land take, additional construction costs and long-term maintenance. In relation to the rotation of the pond the applicant stated that this would require construction of a new outfall to Castle Brook and due to the topography of the existing land, require a greater footprint for the pond than the current proposal, due to the cutting and excavation required. The applicant explained that the existing outfall, which presently enables surface water from the M66 to reach Castle Brook, is located northeast of the proposed attenuation pond 2, where the order limits abut Castle Brook. It was for this reason that the pond was orientated and located as it was, so that the pond could connect into that existing network without the need to construct a new outfall and carrier pipe system to Castle Brook from the pond [\[REP2-007\]](#).

- 6.7.30. The ExA is satisfied that the applicant has been actively seeking to achieve voluntary agreements with the Massey Family and, as set out in the final CA schedule [\[REP7-015\]](#) and Summary Statement [\[REP7-020\]](#), will continue to going forward. However, a voluntary agreement had not been secured by the close of the examination. The ExA are not persuaded, by the evidence before us at the close of the examination, that an agreement is close or likely to be signed by the time the Secretary of State makes their decision.
- 6.7.31. The ExA is satisfied that the applicant has justified, through the engineering considerations discussed above, the positioning of attenuation pond 2. The ExA is therefore satisfied that the proposed attenuation pond would need to be positioned within plot 4/8a and cannot be rotated along the southern boundary with Pike Fold Golf Club. Furthermore, the ExA consider TP powers would be required over plot 4/8b for the construction of the attenuation pond, new maintenance track and for the realignment of the public right of way.
- 6.7.32. Based on the above, we are satisfied that the rights sought for the CA of land at plot 4/8a is for a legitimate purpose, that it is necessary and proportionate and that there is a compelling case in the public interest for the power to be granted. We do not find that the matters raised by the Massey Family preclude the exercise of those CA powers should the Secretary of State decide to grant development consent for the proposed development.
- 6.7.33. We are satisfied that the rights sought for the TP of plot 4/8b is for identified legitimate purposes and is compatible with human rights tests. The ExA is satisfied that the matters raised do not preclude the exercise of the relevant TP powers should the Secretary of State decide to grant development consent for the proposed development.

Plot 1/1a

- 6.7.34. Plot 1/1a can be viewed on sheet 1 of the Land Plans [\[REP3-004\]](#) and is shown in the figure below.

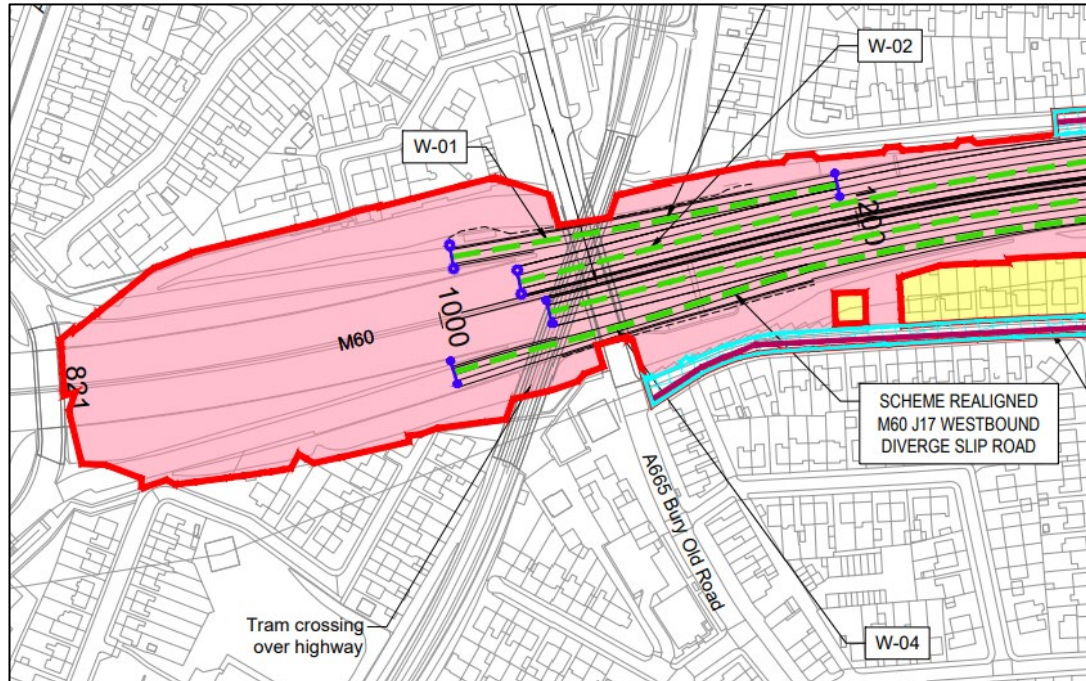
Figure 23: Extract from sheet 1 of the Land Plans [REP3-004] showing plot 1/1a



- 6.7.35. The BoR [REP5-009] indicates that plot 1/1a is owned by the applicant and the following Category 2 persons also hold an interest in the land:
- Openreach Limited
 - Electricity North West Limited
 - UU
 - Cadent Gas Limited
 - H.H.Smith & Sons Co. Limited
 - NGET
- 6.7.36. No AP made any representation during the examination and accordingly did not consent or object to its interests being compulsorily acquired.
- 6.7.37. The ExA were concerned that the order limits for plot 1/1a appeared to be including land outside the highway boundary, including that which was part of residential gardens on North Circle. The ExA sought clarification on this issue in ISH1 [EV5-002]. The applicant stated that it had reviewed the order limits and confirmed that plot 1/1a was drawn to the boundary of its ownership, the extent of which was consistent with HM Land Registry title information. The applicant also confirmed that the title information, as recorded in the BoR, included no interests listed in favour of adjacent properties on North Circle [REP1-024]. The applicant provided further evidence of its ownership of the land within plot 1/1a in [REP4-028].
- 6.7.38. The SoR [REP7-009] states that plot 1/1a is required for realignment of the M60 on-slip and off-slip roads and improvement to the M60 east and west bound

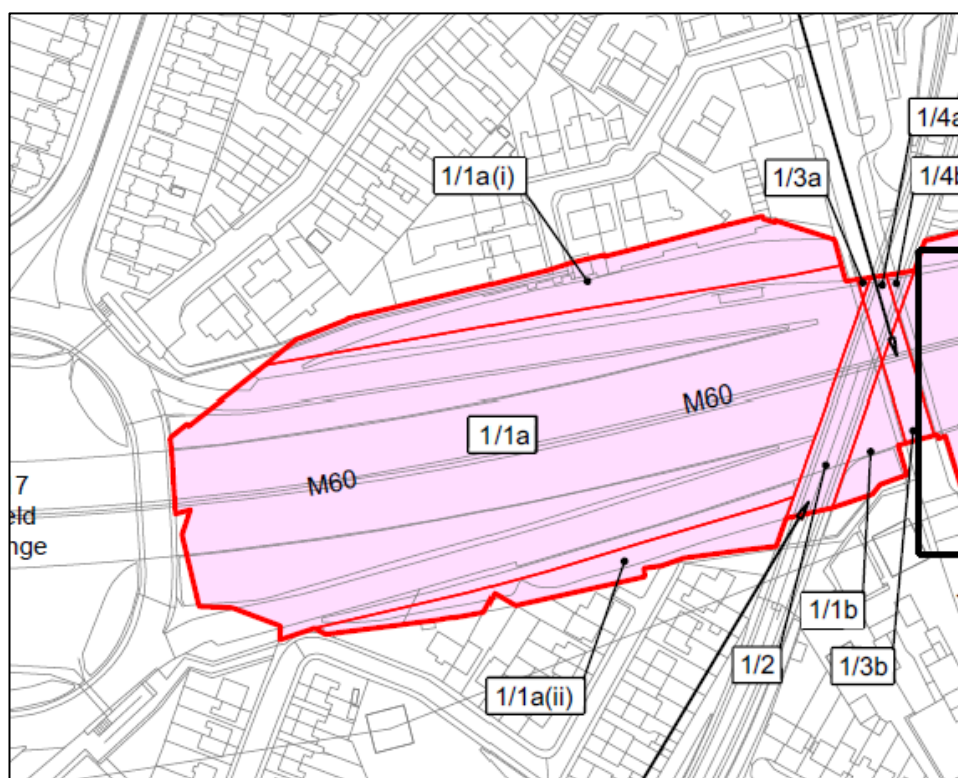
carriageways (works numbers 01, 02, 03 and 04). The Works Plans showed that the plot was required for 'Highway Work Limit of Deviation' (shaded pink). The termination/commencement of the linear works are indicated by blue dumbbells [REP5-004] (extract below).

Figure 24: Extract from sheet 1 of the Works Plans [REP5-004]



- 6.7.39. At CAH1 [EV9-001] and through ExQ2 CA.2.5 [PD-013] the ExA sought justification from the applicant why the entirety of plot 1/1a was required for permanent acquisition when it included carriageway beyond the termination of the linear works, and land to the north and south of the M60 outside the existing slip roads and verge. The applicant explained that the existing carriageway could require some remedial work to construct the tie-in and so flexibility was required at each location where the new highway ties into the existing. The applicant stated that the land was also required for temporary traffic management (which would extend beyond the permanent works and possibly encroach the existing hard shoulder) and subsequent potential reinstatement of pavements once that traffic management is removed. In conclusion, the applicant confirmed that the reason for the northern and southern extents of plot 1/1a were to align with the applicant's existing land ownership [REP5-033].
- 6.7.40. The ExA informed the applicant [PD-015] that it was minded to take the view that the entirety of plot 1/1a was not required because the work described could be confined to the running lanes, hard strips/shoulders and verges. The ExA asked the applicant to consider if plot 1/1a could be reduced in size to only include the areas of motorway required for the works as described in response to ExQ2 CA.2.5 [REP5-033] removing land to the north and south of the M60. Alternatively, the ExA asked the applicant to consider if plot 1/1a could be split into three plots so the Secretary of State could decide if land to the north and south of M60 should remain or be removed from the order limits.
- 6.7.41. The applicant decided to split plot 1/1a into three and updated the BoR [REP7-011] and Land Plans [REP7-004] accordingly. The figure below shows the split.

Figure 25: Extract from Land Plans [REP7-004] showing plot 1/1a split

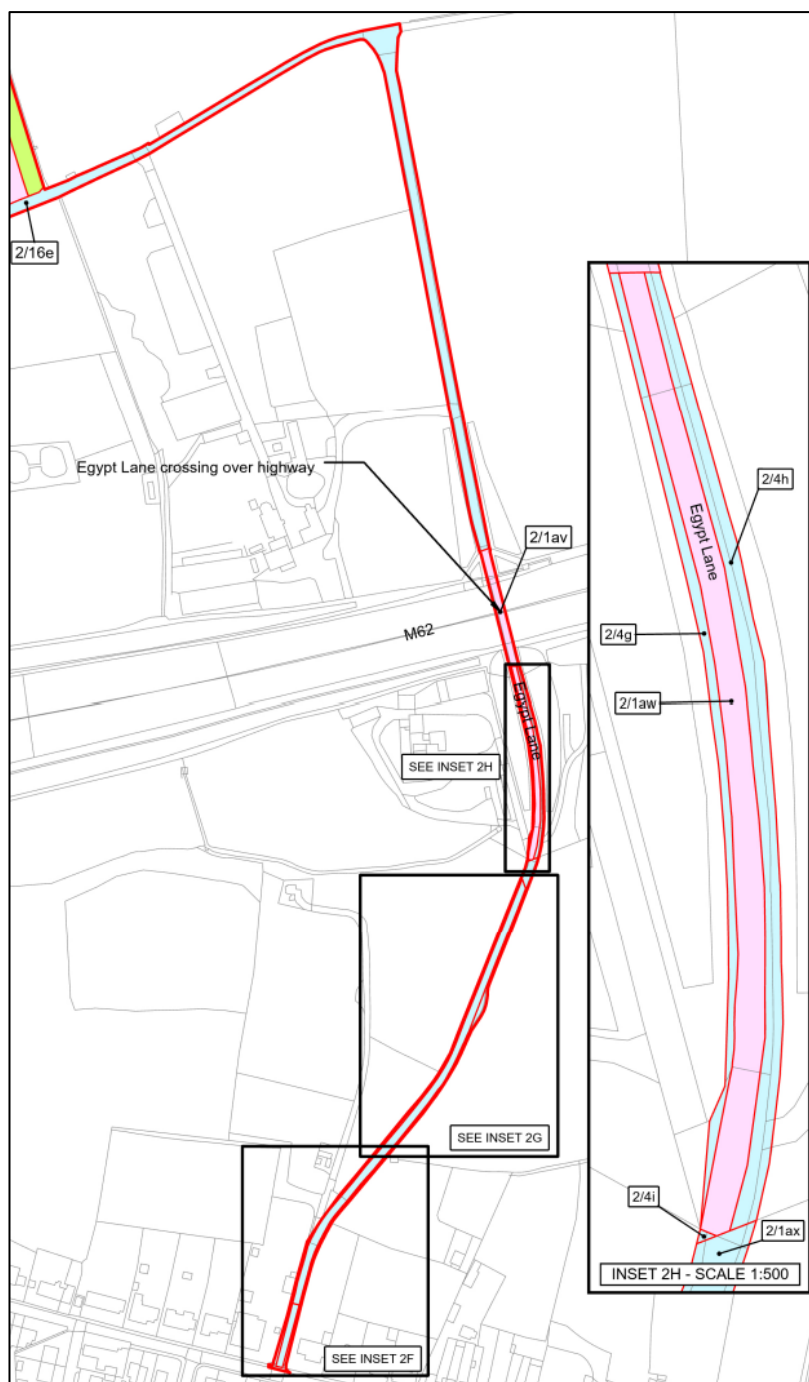


- 6.7.42. Plots 1/1a(i) and 1/1a(ii) include land which is within the back gardens of residential properties. The occupiers of these properties have not been consulted as part of this proposed development. Considering the work required in this location is to tie in the proposed development to the existing carriageway and associated temporary traffic management the ExA can see no operational reason for works numbers 01, 02, 03 and 04 to extend into plots 1/1a(i) and 1/1a(ii). In any event, the applicant has confirmed that the reason for the northern and southern extents of work ('Highway Work Limit of Deviation') was to align with the applicant's existing land ownership. The ExA does not consider that the PA2008 permits the Secretary of State to grant CA powers over land to regularise the applicant's land ownership.
- 6.7.43. Therefore, having regard to the tests in the PA2008 and, in particular, the test on proportionality, the ExA does not consider that any justification exists for the applicant to request, and the Secretary of State to grant, CA powers over the entirety of the said plot for the stated purposes. The ExA consider that the entirety of plot 1/1a as initially proposed by the applicant (as shown in Land Plans [REP3-004] and BoR [REP5-009]) is not required to implement the proposed development.
- 6.7.44. For the reasons given above, the ExA thus recommend that the Secretary of State strike out plots 1/1a(i) and 1/1a(ii) from the BoR [REP7-011] and in so doing, not authorise the CA of these plots. If the Secretary of State disagrees and is minded to retain plots 1/1a(i) and 1/1a(ii) then the Secretary of State may need to decide if the CA regulations need to be engaged and consultation to take place for those landowners who would be affected.

Plots 2/1av and 2/1aw

- 6.7.45. Plots 2/1av and 2/1aw can be viewed on sheet 2 of the Land Plans [REP7-004] and shown in the figure below.

Figure 26: Extract from sheet 2 of the Land Plans [REP7-004] showing plots 2/1av and 2/1aw



6.7.46. The BoR [REP7-011] indicates that plots 2/1av and 2/1aw are owned by the applicant with Bury Metropolitan Borough Council (BMBC) having Category 1 interests. British Gas Limited has Category 2 interest in respect of a restrictive covenant. The following Category 2 persons also hold an interest in the land in respect of rights to pass and repass over the access road known as Egypt Lane:

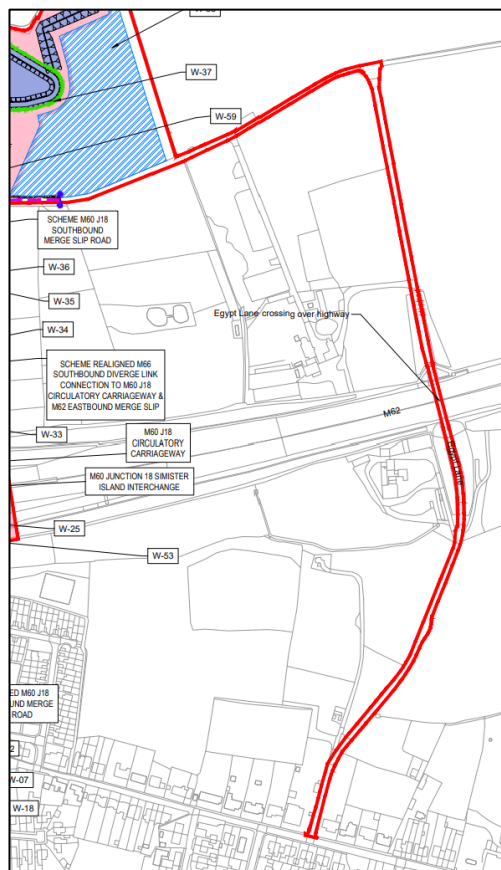
- The occupier of 1 Farm Cottage
- R&G Properties (North West) Limited
- Carole Sutton
- Antony Robinson

- Claire Marie Hillary
- Ian David Hillary
- David Hillary
- John Hillary
- Saira Siddiq Poonawala
- Muhammad Siddiq Poonawala
- Alyson Jane Robinson
- Andrew Wild
- Lesley Phillippa Bridgwater
- Karen Vera Bridgwater
- Michael Charles Crompton
- Anne McGregor McGee
- Gillian Elizabeth Davenport
- Ronald Stuart Davenport

6.7.47. No AP made any representation during the examination specifically in relation to plots 2/1av and 2/1aw and accordingly did not consent or object to its interests being CA.

6.7.48. The SoR [\[REP7-009\]](#) states that plots 2/1av and 2/1aw are required for works numbers 05, 34, 35, 36, 37, 38, 39, 40 and 59. However, the Works Plans show that the plots (and those plots either side for the entirety of Egypt Lane) are white, indicating no work [\[REP5-004\]](#) (extract below). It is the applicant's intention that Egypt Lane be used for access to the north-east quadrant of M60 J18 during the construction of the proposed development and future maintenance including to attenuation pond 1 (work number 37) and the EMAs (work numbers 36, 38 and 59).

Figure 27: Extract from sheet 2 of the Works Plans [\[REP5-004\]](#)



- 6.7.49. At CAH1 [\[EV9-001\]](#) and through ExQ2 CA.2.6 [\[PD-013\]](#) the ExA sought justification from the applicant why plots 2/1av and 2/1aw were required for permanent acquisition when no work was proposed on Egypt Lane. The applicant explained that whilst it had the right to pass and repass over its own land, plots 2/1av and 2/1aw were subject to other third-party Category 1 and 2 interests as identified in the BoR [\[REP7-011\]](#). The applicant stated that to ensure the use of Egypt Lane without constraint from any third-party interests, it had erred on the side of caution and included its own land as being subject to compulsory acquisition. The applicant noted that this approach was consistent with the approach generally adopted by the applicant in respect of the compulsory acquisition of its own land [\[REP4-028\]](#). The applicant also confirmed that it had adopted this approach on all 34 of the highways DCOs it had applied for to date. The applicant stated that this would ensure that, should third party interests exist over land in the applicant's ownership, then it has the ability to compulsorily acquire them to ensure that there are no land ownership impediments to delivery of the proposed development. The applicant stated that this approach had been taken across all schemes and has therefore been endorsed and approved by the Secretary of State by previous made DCOs [\[REP5-033\]](#).
- 6.7.50. The ExA are aware there was a similar issue on the made DCO M25 Junction 28 Improvements Scheme where National Highways (NH) wanted to compulsorily acquire land it owned at plots where no work was proposed. The ExA, for that NSIP, recommended that those plots were struck from the BoR and CA was not authorised. The Secretary of State agreed (paragraph 114 of the Secretary of State decision letter).
- 6.7.51. The ExA does not consider that the PA2008 permits the Secretary of State to grant CA powers over plots 2/1av and 2/1aw simply to err on the side of caution to cleanse or rationalise the applicant's land ownership. Moreover, the applicant did not advance sufficient evidence to suggest that any of the rights held by APs over these plots were inconsistent with the proposed development particularly as none are needed for any works.
- 6.7.52. For the reasons given above, the ExA thus recommends that the Secretary of State strike out plots 2/1av and 2/1aw from the BoR and in so doing, not authorise the CA of these plots.

6.8. OTHER PARTICULAR CONSIDERATIONS

SU Land, Rights or Apparatus

- 6.8.1. Section 7.4 of the SoR [\[REP7-009\]](#) sets out the SUs identified by the applicant that may have land or apparatus belonging to them in the order limits. The SoR confirms that through discussion with affected SUs the applicant has established that the land in which the SU's assets exist are in private ownership. Therefore, none of the land to be acquired for the proposed development is SU land for the purposes of s127(3) of PA2008.
- 6.8.2. The applicant proposes to permanently acquire land with existing permanent rights in favour of SU as described in the BoR [\[REP7-011\]](#) and shown on the Land Plans [\[REP7-004\]](#) and set out in annex C of the SoR [\[REP7-009\]](#).
- 6.8.3. Throughout the examination the applicant has sought to reach agreement with affected SU and, where necessary, to include PP within schedule 9 of the dDCO to protect their interests. At the close of the examination objections from NGET remained outstanding. Therefore, s138 of the PA2008 applies.

- 6.8.4. The ExA has concluded in relation to NGET above. As discussed in section 7 below, the ExA is satisfied that the wording in part 4, schedule 9 of the rDCO provides adequate protection for NGET's assets and that NGET would not suffer serious detriment to carrying on of their undertaking.
- 6.8.5. With regards to those SUs whose rights and apparatus would be interfered with by the delivery and operation of the proposed development but who have not made a representation or withdrawn their representation we are satisfied, on the evidence before us, that part 1 of schedule 9 of the rDCO includes provisions for the protection of all electricity, gas, water and sewage undertakers, and part 2 provides protection for operators of electronic communications code networks. However, as they have not made (or have withdrawn) representations the provisions of s138 are not triggered.
- 6.8.6. Part 3 is a bespoke provision for Cadent Gas Limited. At DL8 Cadent Gas confirmed that it agreed with the wording of the bespoke provision in part 3 and had reached an agreement with the applicant on the terms of a side agreement to secure Cadent's requirements [\[REP8-003\]](#). However, at the close of the examination Cadent had not formally withdrawn its representation. The ExA recommends that the Secretary of State may wish to seek an update as to whether Cadent is now content to withdraw its representation. However having considered the wording in part 3 (as discussed in section 7 below) the ExA is satisfied that it provides adequate protection of Cadent's assets.
- 6.8.7. In accordance with s138(4) the ExA is satisfied that the extinguishment of the SU rights and removal of the SU apparatus is necessary for the purposes of carrying out the development to which the order relates.

Crown Land

- 6.8.8. The application as originally submitted identified plot 4/3 of the Land Plans [\[AS-005\]](#) and BoR [\[APP-020\]](#) as having Crown interest, in the form of the Secretary of State for the Department for Education. In response to ExQ2 CA 2.3 [\[REP5-033\]](#), the applicant stated that its enquiries with the relevant government office in respect of the crown land, had confirmed that the Department for Education was satisfied that it did not hold a Crown interest by virtue of its financial interest in land leased to the Unsworth Academy. A copy of this confirmation was included in [\[REP5-033\]](#) (appendix C)
- 6.8.9. At DL7, the applicant submitted a revised BoR [\[REP7-011\]](#) and Land Plans [\[REP7-004\]](#) in which the Secretary of State for Department for Education had been removed from plot 4/3 as well as the removal of Part 4.
- 6.8.10. On the evidence before us, the ExA accepts that crown land does not form part of any CA for the application. It is therefore not necessary to engage this matter further in this section.

Human Rights Act 1998 and the Equality Act 2010 considerations

- 6.8.11. The European Convention on Human Rights (ECHR) was applied within UK domestic law by the Human Rights Act 1998. The CA Guidance, paragraph 10 states that the Secretary of State 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 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.

- 6.8.12. 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)
- 6.8.13. Friends of Carrington Moss [\[REP1-045\]](#) considered that article 2 of the Human Rights Act (the right to life) should have been included within the applicant's SoR [\[REP7-009\]](#). The applicant explained that article 2 was not referred to because it did not consider that the proposed development would interfere with or infringe on any person's article 2 rights; the proposed development alone would not deprive anyone of their life or affect anyone's life expectancy.
- 6.8.14. No public authority is allowed to interfere with these rights 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. The applicant set out in the SoR [\[APP-018\]](#) (section 6) the considerations that arise in relation to this application and advised that it had carefully considered the balance to be struck between individual rights and the wider public interest. For the reasons set out in section 6.3 of the SoR the applicant concluded that the inclusion of powers for CA would not breach the convention rights of those who would be affected and that it would be appropriate and proportionate to make the DCO, including the grant of powers of CA.
- 6.8.15. The ExA has found above that there is a compelling case in the public interest for all of the land identified to be acquired compulsorily, except for plots 1/1a(i), 1/1a(ii), 2/1av and 2/1aw. Furthermore, the ExA considers that the proposed interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest. The ExA is therefore satisfied that the CA and TP sought is compatible with the Human Rights Act 1998 and the ECHR.
- 6.8.16. 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. The ExA has had regard to this duty throughout the examination and in its consideration of the issues raised in this report. In relation to a concern raised in [\[RR-035\]](#) that elderly neighbours living in the vicinity of the proposed development may have difficulties being involved with the examination the ExA asked the applicant to clarify how it had regard to the Equality Act 2010 in relation to ensuring all those who may be affected could contribute fully (ExQ1 BCG.1.1 [\[PD-011\]](#)). The applicant stated that it undertook an equality impact assessment during the preliminary design stage with the outputs from this assessment found in section 2 of the Equality Impact Assessment [\[APP-152\]](#). The applicant confirmed that it had met with elderly local residents both in-person at consultation events and over the phone and also had arranged online meetings by mutual agreement, facilitated by family members, to assist their relatives. The applicant also noted that during statutory consultation, a local resident attended a consultation event where the applicant agreed that an in-person meeting facilitated by a sign language interpreter, would be appropriate to assist the resident in understanding the proposals. This meeting was held in June 2023 and was

attended by the resident, a sign language interpreter (from Manchester Deaf Centre) and the applicant [\[REP3-023\]](#).

- 6.8.17. Overall, the ExA finds 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. On that basis, the ExA has found no breach of the Public Sector Equality Duty.

6.9. CONCLUSIONS

- 6.9.1. In the event that the Secretary of State is minded to grant development consent for the proposed development, and is satisfied that the funds are in place, the ExA recommends that:

- The CA included in the rDCO be granted, subject to the removal of plots 1/1a(i), 1/1a(ii), 2/1av and 2/1aw from the BoR [\[REP7-011\]](#).
- The TP included in the rDCO be granted.
- The CA of SUs land and rights over land included in the rDCO be granted.
- The powers authorising the extinguishment of rights and removal of apparatus of SUs included in the rDCO be granted.
- The powers included in the rDCO to apply, modify or exclude a statutory provision be granted.

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.1. INTRODUCTION

- 7.1.1. This section provides an overview of the Development Consent Order (DCO). It provides a summary of the draft DCO (dDCO) as applied for, the examination of and changes made to the dDCO during the course of the examination and reports on the more contentious parts of the dDCO where issues arose and disagreement remained at the close of the examination. It then goes on to set out the changes that the Examining Authority (ExA) would recommend to the applicant's final version of the dDCO [\[REP7-005\]](#) should the Secretary of State for Transport decide to grant development consent. The ExA's recommended DCO (rDCO) is contained in [appendix C](#) of this recommendation.
- 7.1.2. This section focuses on the main discussion points and contentious matters raised during the examination and does not report on every change made. This is because many amendments were made as a result of typographical or referencing errors, slight revisions to the drafting as a result of discussion between the applicant and IPs, or as a result of minor changes following discussions at issue specific hearings (ISH)s 1 and 2 or written questions [\[PD-011\]](#) and [\[PD-013\]](#).

7.2. THE ORDER AS APPLIED FOR

- 7.2.1. The applicant submitted a dDCO [\[APP-014\]](#) and an Explanatory Memorandum (EM) [\[APP-015\]](#) as part of the application for development consent. The EM describes the purpose and effect of each article of, and the schedules to, the dDCO and why the applicant considers that they are required. The applicant's final dDCO [\[REP7-005\]](#) was submitted at deadline (DL) 7.
- 7.2.2. The EM explains [\[REP7-007\]](#) that the dDCO draws on model provisions (general and highway) that were contained in the now repealed Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 as well as precedent set by DCOs that have been made to date. A list of such orders is contained in [appendix A](#).
- 7.2.3. The articles within the rDCO are structured as follows:
- Part 1, articles 1 and 2 which deal with preliminary matters including how the order may be cited, when it comes into force and the meaning of various terms used in the order.
 - Part 2, articles 3 to 9 inclusive where articles 3 to 5 contain principal powers including development consent for the proposed development and allow it to be constructed, maintained and operated. Article 6 sets out limits of deviation, articles 7 and 8 set out who has the benefit of the powers of the order and how these powers can be transferred. Article 9 sets provisions where planning permission is granted pursuant to the Town and Country Planning Act 1990.
 - Part 3, articles 10 to 17 inclusive provide powers to carry out works to and within streets, including the construction and maintenance of new, altered or diverted streets, temporarily close streets and restrict their use, permanently stop up and restrict the use of streets, form and lay out means of access, use of private roads and make, modify or revoke traffic regulation orders.

- Part 4, articles 18 to 20 inclusive which contain supplemental powers relating to discharge of water, protective works to buildings and authority to survey and investigate land.
- Part 5, articles 21 to 35 inclusive provide powers for the undertaker to be able to compulsorily acquire the order land and rights over and within it, and to temporarily use parts of the order land for the construction or maintenance of the proposed development. The powers also extend to creating rights over land for statutory undertakers and other persons who require those rights to undertake, operate and maintain the proposed development.
- Part 6, article 36, provides powers to fell or lop trees and remove or manage hedgerows.
- Part 7, articles 37 to 45 inclusive provide various miscellaneous and general provisions including application of landlord and tenant law, specifying operational land for the purposes of the 1990 Act, defence to proceeding in respect of statutory nuisance, the protection of interests, certification of plans and documents, the service of notices, no double recovery, arbitration, and disapplication and modification of legislative provisions.

7.2.4. There are 10 schedules to the rDCO structured as follows:

- Schedule 1 provides the description of the authorised development.
- Schedule 2, split into two parts, sets out the requirements and procedure for their discharge.
- Schedule 3, split into three parts, defines the special roads (part 1) to be classified and the public rights of way (PRoW) (part 2) and private means of access (part 3) to be constructed under article 13.
- Schedule 4, split into two parts, identifies the streets to be stopped up where no substitute would be provided (part 1) and the PRoW to be stopped where a substitute would be provided (part 2) under article 15.
- Schedule 5 lists the plots as shown on the Land Plans [\[REP7-004\]](#) in which only new rights may be acquired.
- Schedule 6 sets out the modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants.
- Schedule 7 lists the plots as shown on the Land Plans [\[REP7-004\]](#) where temporary possession may be taken.
- Schedule 8 lists the hedgerows, including important hedgerows for the purposes of the Hedgerows Regulations 1997, which may be removed or managed under article 36.
- Schedule 9, split into four parts, provides protective provisions (PP) for Statutory Undertakers (SU)s and their apparatus.
- Schedule 10 lists the documents and plans to be certified.

7.2.5. The structure of the dDCO [\[REP7-005\]](#) is set out in the contents and listed on its face. The ExA is satisfied that the structure of the dDCO is fit for purpose and does not recommend any changes to it in its rDCO.

7.3. EXAMINATION OF AND CHANGES MADE TO THE dDCO

ExA's Examination of the dDCO

7.3.1. The ExA held an early issue specific hearing (ISH) on the dDCO (ISH1) [\[EV5-002\]](#) following the preliminary meeting to gain further understanding on the structure and content of the dDCO [\[PD1-005\]](#) and EM [\[APP-015\]](#) and ask questions on the powers sought by the applicant. The agenda of the hearing can be found at [\[EV5-002\]](#) and recording can be found at [\[EV7-001\]](#) and [\[EV7-003\]](#).

- 7.3.2. The hearing agenda [\[EV5-002\]](#) was also accompanied by a detailed supplementary agenda [\[EV5-003\]](#). This raised numerous technical and drafting matters that the ExA did not consider necessary to explore orally in ISH1 but considered desirable and expedient to address early in the examination. Responses to the supplementary agenda were received from the applicant [\[REP1-023\]](#), Bury Metropolitan Borough Council (BMBC) [\[REP1-032\]](#) and the Environment Agency (EA) [\[REP1-031\]](#). The dDCO submitted by the applicant at DL1 [\[REP1-004\]](#) contained a number of changes in response to our questions during ISH1 and the supplementary agenda.
- 7.3.3. Further examination into the dDCO occurred during written questions where the ExA asked 16 questions in the ExA's first written questions (ExQ1) [\[PD-011\]](#) and ten questions in the ExA's second written questions (ExQ2) [\[PD-013\]](#), in addition to those asked verbally during ISH2 [\[EV10-001\]](#). The applicant responded at DL3 [\[REP3-023\]](#), DL4 [\[REP4-028\]](#) and DL5 [\[REP5-033\]](#) to the matters we had sought. The ExA separately sought comments on the wording in respect of PP in rule 17 letters [\[PD-015\]](#) and [\[PD-017\]](#).
- 7.3.4. On 14 February 2025, the ExA issued its consultation dDCO [\[PD-016\]](#) containing a schedule of recommended amendments to the applicant's dDCO submitted at DL5 [\[REP5-005\]](#). Responses to the recommended amendments are considered further in section 7.5 below.

Iterations of the dDCO

- 7.3.5. The applicant updated the dDCO once during the pre-examination period and 4 times during the examination at DLs 1, 3, 5 and 7 responding to matters raised in written and oral questions from the ExA and by IPs. The applicant submitted both clean and tracked changed versions of the dDCO. By the end of the examination, the applicant had submitted 6 iterations of the dDCO. In addition, the EM was updated 3 times from that initially submitted with the application at DL1, DL5 and DL7. The applicant provided a table of amendments to the dDCO with each revision (as requested in the ExA's procedural decision in its rule 6 letter ([\[PD-008\]](#), annex E). The final dDCO was submitted at DL7 [\[REP7-005\]](#).

Table 10: Key DCO documentation submitted into the examination

dDCO version	Deadline (DL)	Examination Library reference
P01	Submission	Application dDCO [APP-014] EM Version 1 [APP-015]
P02	Procedural Deadline A	dDCO (clean) [PD1-005] dDCO (tracked) [PD1-006] Schedule of Changes (version P01) [PD1-008]
P03	DL1	dDCO (clean) [REP1-004] dDCO (tracked) [REP1-005] EM Version 2 (clean) [REP1-006] EM Version 2 (tracked) [REP1-007]

dDCO version	Deadline (DL)	Examination Library reference
		Schedule of Changes (version P02) [REP1-016]
P04	DL3	dDCO (clean) [REP3-006] dDCO (tracked) [REP3-007] Schedule of Changes (version P03) [REP3-020]
P05	DL5	dDCO (clean) [REP5-005] dDCO (tracked) [REP5-006] EM Version 3 (clean) [REP5-007] EM Version 3 (tracked) [REP5-008] Schedule of Changes (version P04) [REP5-025]
P06	DL7	dDCO (clean) [REP7-005] dDCO (tracked) [REP7-006] EM Version 4 (clean) [REP7-007] EM Version 4 (tracked) [REP7-008] Schedule of Changes (version P05) [REP7-021]

Notable changes made to the dDCO

- 7.3.6. The table below provides a summary of the notable changes made throughout the examination, primarily in response to issues raised by the ExA (in written questions and orally in hearings) or submissions by IPs. Many of the changes were made as a result of typographical or referencing errors and slight revisions to improve precision and consistency which are not reported in the interests of conciseness. However, a list of all the changes made to the dDCO since the point of submission can be found in the schedule of changes submitted at DL7 [\[REP7-021\]](#).
- 7.3.7. There were few comments by IPs on the dDCO during the examination. In respect of the statutory parties, BMBC's statement of common ground (SoCG) with the applicant [\[REP5-028\]](#) did not raise any matters of disagreement and their input into the dDCO was primarily through responses to the ExA's questions. Natural England [\[REP1-017\]](#), the EA [\[REP1-018\]](#) and Historic England [\[REP1-019\]](#) did not have any outstanding areas of disagreement in their respective SoCGs with the applicant on DCO matters.
- 7.3.8. As evidenced in [\[REP7-021\]](#) and table 11 below, many of the matters raised by the ExA and IPs were addressed through drafting amendments to the dDCO during the examination. Overall, the applicant was responsive to the matters raised in submissions and questions and sought to revise provisions accordingly. Where changes were not made to the provisions of the dDCO, the applicant explained the reasons for this and in some cases added wording to the EM or relevant management plans secured by the dDCO to achieve the desired outcome.

Table 11: Notable changes made to the dDCO throughout the examination

dDCO version / Deadline	Summary of Notable Changes Made
P02 / PDA1	<ul style="list-style-type: none"> ▪ Inclusion of EA as a consultee in Schedule 2 requirement 4(4) following their request in [RR-004].
P03 / DL1	<ul style="list-style-type: none"> ▪ Articles 14, 17, 18 and 20: Insertion of new paragraphs requiring notification to relevant bodies of the time period for responding. ▪ Schedule 1: Additional text added to various work numbers to improve the description of the proposed works. ▪ Schedule 2 requirement 1: Deletion of 'remedial work in respect of any contamination or other adverse ground conditions' in the definition of 'commence' at the request of the EA [REP1-018]. ▪ Schedule 2: Inclusion of new requirement 13 setting out details for consultation.
P04 / DL3	<ul style="list-style-type: none"> ▪ Article 8: Insertion of new paragraph (4) to clarify that the undertaker would be liable for any compensation payable to another party where the benefit of the order is transferred or granted to a transferee or grantee. ▪ Schedule 2, requirement 6: Amendment to provide clarity on when a written scheme and programme for remedial measures would be required. ▪ Schedule 8: Addition of new column (5) to the table detailing the works to be undertaken to each hedgerow to provide clarity.
P05 / DL5	<ul style="list-style-type: none"> ▪ Article 45: Deletion of paragraph (3) which sought to modify Regulation 6(1)(e) of the Hedgerows Regulations 1997. ▪ Schedule 2, requirement 3: Inclusion of reference to the detailed design being compatible with 'the design principles set out in the design principles report'. ▪ Schedule 2, requirement 5: Updates to sub-paragraph (3) for the landscaping scheme to include: <ul style="list-style-type: none"> ○ sub-paragraph (c): compliance with the aboricultural impact assessment [REP6-004] in respect retaining trees ○ sub-paragraph (d): additions to provide clarity on details to submit in respect of finished ground levels ○ new sub-paragraph (f) requiring details of hard landscaping ○ new sub-paragraph (g) requiring details of the proposed ball stop netting (Work No. 40) ▪ Schedule 2, requirement 6: Update to require work operations on or under any identified contaminated land to cease until remedial measures have been approved by the Secretary of State. ▪ Schedule 9: Insertion of new part 4 setting PP for the protection of National Grid as electricity undertaker.
P06 / DL7	<ul style="list-style-type: none"> ▪ Amendments throughout the dDCO to remove reference to 'different significant adverse' and replacement with 'worse'. ▪ Article 16: Insertion of new paragraphs providing provisions for the undertaker in respect of private roads. ▪ Article 30(9)(a): Insertion of "...relating to the retention and protection of any permanent works which are not removed from

dDCO version / Deadline	Summary of Notable Changes Made
	<p>the land pursuant to paragraph (4)(b) to (e)” to limit the extent to which the undertaker can acquire new rights or impose restrictive covenants over the temporary possession plots.</p> <ul style="list-style-type: none"> ▪ Schedule 2, requirement (4): Insertion of new provisions requiring a construction lighting plan and for the third iteration Environmental Management Plan (EMP) to include provision for the retention of the environmental mitigation areas for the life of the authorised development. ▪ Schedule 2, requirement (7): Insertion of new sub-paragraph (5) requiring BMBC to be notified of the approved protection and mitigation measures in respect of protected species. ▪ Schedule 2, requirement 14: Insertion of new sub-paragraph (5) requiring the undertaker to inform the Secretary of State of the time period for requesting further information. ▪ Schedule 9, part 3: Amendments to various paragraphs in respect of PP for Cadent Gas Limited. ▪ Schedule 10: Removal of reference to Crown Land plans.

7.4. MAIN ISSUES OF THE dDCO SUBJECT TO EXAMINATION AND OUTSTANDING ISSUES

7.4.1. This section considers the main issues arising in the examination in relation to the dDCO [\[REP7-005\]](#). It focuses on the issues the ExA considers to be significant because they gave rise to several questions or submissions or were outstanding matters of disagreement. The section does not report on every change or any questions that we consider have been adequately justified by the applicant.

7.4.2. Based on the ExA’s review of dDCO, the key issues considered during the examination were:

- Use of ‘significant adverse’
- Articles 24(5) and 27(4)
- Article 30(9)(a)

Use of ‘significant adverse’

7.4.3. In the definition of ‘maintain’, article 6(2), schedule 1, and schedule 2 paragraphs 3, 8 and 12 of the dDCO, the words ‘significant adverse’ had been included as a tailpiece to allow the undertaker flexibility to carry out works without requiring additional approvals. For example, in respect of ‘maintain’ the undertaker would be entitled to undertake certain works so long as the works would not “... give rise to any materially new or materially different significant adverse effects in comparison with those reported in the environmental statement” (underlining added).

7.4.4. Through ISH1 [\[EV5-002\]](#), ISH2 [\[EV10-001\]](#) and ExQ2 DCO.2.1 [\[PD-013\]](#), the ExA examined this drafting further to better understand why the applicant had included the proposed drafting as opposed to ‘materially new or materially different effects’ that was common on other made DCO’s. The ExA also wished to understand the implications for including this drafting and whether any greater flexibility could arise.

- 7.4.5. During ISH1 [\[EV10-001\]](#), the applicant explained that the drafting was intended to strike a balance between flexibility and precision and ensure that any works undertaken would not result in any significant adverse effects which haven't been assessed in the environmental statement (ES). The applicant considered that adding 'significant' was consistent with the principle and approach to environmental assessment. The applicant also did not want to be restricted from undertaking any beneficial changes [\[EV7-002\]](#). In its response to the ExA's query through ISH1 action point 3 [\[EV7-005\]](#), the applicant did not identify any other made order that had used identical wording to that proposed [\[REP1-024\]](#).
- 7.4.6. During further discussions in ISH2 [\[EV10-001\]](#), the applicant explained that the drafting could be broken down into 'adverse' and significant'. 'Adverse' was intended to restrict adverse effects not considered as part of the ES and not prevent any beneficial effects from being undertaken. 'Significant' would relate to a matter that required additional mitigation not previously assessed that should be put before a decision maker. In response to the ExA's query whether the outcome of the wording would result in greater flexibility than if the drafting only referred to a 'materially new or materially worse effect', the applicant acknowledged that in simple terms it would provide greater flexibility [\[EV10-014\]](#).
- 7.4.7. Noting its response in ISH2, the ExA asked the applicant in ExQ2 DCO.2.1 [\[PD-013\]](#) why greater flexibility was necessary and reasonable for the proposed development. The applicant stated that it considered the omission of the term 'significant' would decrease precision and the ability to undertake changes that would remain within the scope of the ES [\[REP5-033\]](#).
- 7.4.8. In its schedule of changes [\[PD-016\]](#), the ExA recommended that 'materially new or materially different significant adverse effects' be replaced with 'materially new or materially worse effects' (underlining added for emphasis). The ExA considered that the use of the term 'significant' would add ambiguity rather than clarity and was concerned how it would be interpreted in practice. In particular, the ExA was concerned that the drafting could allow for greater flexibility of changes, the extent of which was unclear. The ExA also remained unclear why the proposed development required different wording to that used in other made DCOs.
- 7.4.9. In its response to the ExA's schedule of changes [\[REP7-019\]](#), the applicant agreed to the ExA's suggested change and this has been incorporated into the rDCO.

Articles 24(5) and 27(4) – Compulsory acquisition of rights and vesting declarations

- 7.4.10. Article 24(5) of the dDCO [\[REP7-005\]](#) would allow the undertaker to acquire rights for the benefit of a SU or any other person and be treated for all purposes as though it was vested in the SU or other person directly. The EM [\[REP7-007\]](#) explains that the power would reduce the land the undertaker might have to acquire in order to grant a right for the benefit of a SU or other body.
- 7.4.11. Article 27(4) of the dDCO, which would give effect to article 24(5), seeks to modify section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 to allow the undertaker to vest the land in themselves or for the benefit of a SU or any other person. Paragraphs 5.74 and 5.75 of the EM [\[REP7-007\]](#) provides further detail on vesting declarations and why it is preferred by the applicant over the notice to treat method.

- 7.4.12. The ExA sought clarification of the extent of powers in these articles and whether there was any precedent for them through the supplementary agenda to ISH1 [\[EV5-003\]](#) (ISH1.A.46 and ISH1.A.51), Compulsory Acquisition Hearing (CAH) 1 [\[EV9-001\]](#) and ExQ2 DCO.2.3 [\[PD-013\]](#).
- 7.4.13. The applicant advised in its responses to [\[EV5-003\]](#) and in CAH1 [\[EV9-001\]](#) that the proposed development requires the diversion and laying of apparatus in the ownership or control of various SUs [\[REP1-023\]](#). It was explained that the vast majority of plots within schedules 5 and 7 of the dDCO were required for utility diversions which would be undertaken by the relevant SU as opposed to the applicant. The applicant also stated that SUs would need the benefit of new rights to install and retain their apparatus on third party land and also impose restrictive covenants to protect their apparatus. The applicant explained that article 27(4) would allow them to vest rights for the benefit of the SU as opposed to themselves and having to acquire the land on a permanent basis [\[EV9-008\]](#). However, the applicant was not aware of any precedent for amending the 1981 Act [\[REP1-023\]](#).
- 7.4.14. The ExA asked the applicant, as part of CAH1 action point 12 [\[EV9-002\]](#), to confirm if there was any precedent for vesting rights for the benefit of SUs or any other person in any other made DCO. In response, the applicant referred to the powers sought under article 24(1) and advised that creating new rights for the benefit of third parties (as sought in article 24(1)) had precedent in the M25 Junction 10/A3 Wisley Interchange Development Consent Order 2022 (article 22) and the Lake Lothing (Lowestoft) Third Crossing Order 2020 (article 26). The applicant explained that if they could not secure the necessary rights for SUs and other persons who require those rights to undertake, operate and maintain the proposed development, then its delivery could be compromised and they would have no alternative but to acquire the land permanently [\[REP4-028\]](#).
- 7.4.15. The ExA considered the applicant's comments although noted that neither of the two referred to orders included the provision for rights to be acquired on behalf of SUs and any other person by way of a vesting declaration. The ExA therefore asked the applicant in ExQ2 DCO.2.3 [\[PD-013\]](#) why acquiring rights on behalf of SUs and any other person by way of vesting declarations is necessary and reasonable for the proposed development. The applicant advised that the proposed amendment to the 1981 Act would provide a mechanism, the making of a vesting declaration, for the acquisition of required rights for SUs and other persons. The applicant considered that as creating new rights for the benefit of third parties had precedent, there would be no further burden or detriment placed on the landowner by amending the 1981 Act. The applicant further advised that it was aware that the (then) dDCO for the Lower Thames Crossing DCO application proposed to amend the 1981 Act through article 31(5) of that dDCO and would not object to amending its dDCO so that it was on the same terms (in the event it was consented) [\[REP5-033\]](#).
- 7.4.16. In its schedule of changes to the dDCO [\[PD-016\]](#) the ExA recommended removal of articles 24(5) and 27(4). In particular, it was unclear to the ExA what engagement the applicant had with landowners on the inclusion of the provision and whether they would consent to it. The ExA also advised that an identical provision was proposed in article 31(5) of the rDCO for the M25 Junction 28 Improvement Project which was subsequently removed by the Secretary of State in its decision on the grounds that insufficient justification had been provided for its inclusion. Whilst the ExA understood the need to acquire rights on behalf of SUs for the proposed development, it considered that insufficient justification had been provided to demonstrate that it is necessary and reasonable to acquire those rights by way of the vesting declaration.

- 7.4.17. The applicant responded that it did not agree with the deletion of the second sentence of article 24(5) and article 27(4). It noted that the ExA had appeared to accept the need for the undertaker to acquire rights on behalf of SUs. The applicant considered that article 27(4) did not extend the power sought in article 24(1) but merely provided a mechanism to acquire those rights. In respect of engagement with landowners, the applicant considered that vesting of rights would be no different to land or rights being acquired for other purposes. It was therefore unclear to the applicant what further justification they could provide and why it was necessary to do so. The applicant also considered that a vesting declaration would be advantageous to the landowner by providing documented rights at an early stage of land acquisition, providing certainty to the landowner as well as to the SU and the undertaker [\[REP7-019\]](#).

ExA reasoning - Articles 24(5) and 27(4)

- 7.4.18. The ExA has considered the applicant's responses to its questions on this matter. We understand the need to acquire rights for SUs based on the applicant's response in CAH1 [\[EV9-008\]](#) which advised that the vast majority of plots in schedules 5 and 7 of the dDCO are required for utility diversions which would be undertaken by the relevant SUs. As such, noting that the ExA has not received any specific objections from affected persons on the proposed mechanism for acquiring rights, the ExA is minded to accept the applicant's justification provided in [\[REP7-019\]](#).
- 7.4.19. However, the ExA does not consider that the applicant has justified why the vesting declaration process should be extended to 'any other person'. The ExA has considered the applicant's responses to its questions but remains concerned that inclusion of this provision could give the applicant wide powers to acquire rights by way of the vesting declaration process for unidentified third parties without any compelling justification. This is also pertinent noting that numerous highway DCOs have been successfully implemented without inclusion of this provision.
- 7.4.20. As such, the ExA considers reference to 'any other person' in articles 24(5) and 27(4) should be removed from the rDCO.

Article 30(9)(a) - Temporary use of land for carrying out the authorised development

- 7.4.21. The effect of paragraph (9)(a) would allow the undertaker to acquire new rights over any part of land that was subject to temporary possession. In ExQ1 DCO.1.10 [\[PD-011\]](#), the ExA sought justification from the applicant why this provision was necessary, why it was reasonable with regard to justifying interfering with human rights and how the provision would meet the tests for compulsory acquisition in the PA 2008.
- 7.4.22. The applicant explained that the provision would relate only to the plots specified in column 1 of schedule 7 of the dDCO for the purposes listed in column 2. The applicant explained the power is necessary to allow the undertaker to acquire land temporarily but impose new rights on specified temporary plots only for the purposes of facilitating relevant works. The applicant considered that without this provision, they would have to permanently acquire more land to secure rights. As such, the applicant considered that the proposed interference with the rights of those with an interest in the land would be for a legitimate purpose, is necessary and proportionate. The applicant considered that section 122 of the Planning Act 2008 (PA2008) would be met as the dDCO identifies the required works and the

power to impose a new right is required to facilitate or is incidental to that development and there is a compelling case in the public interest [\[REP3-023\]](#).

- 7.4.23. The ExA asked further questions during CAH1 [\[EV9-001\]](#) to understand whether the applicant was seeking temporary or permanent rights and specifically which plots listed in schedule 7 of the dDCO required acquisition of rights. The applicant clarified that article 30 would allow them to take possession of the plots listed in schedule 7 of the dDCO, identified in green on the land plans [\[REP7-004\]](#), and paragraph 9(a) would provide for taking new permanent rights and impose restrictive covenants over the plots. The applicant confirmed in its response to CAH1 action point 13 [\[EV9-002\]](#) that permanent rights were required over all of the plots associated with the purposes stated in column 2 of schedule 7 of the dDCO. The applicant further advised that it required the provision to account for unforeseen circumstances, such as finding unknown drainage infrastructure and required flexibility to respond to such situations [\[REP5-031\]](#). The applicant also considered that the provision would benefit landowners as it would provide them with certainty over the responsibility of rights relating to any structures or apparatus [\[REP5-031\]](#).
- 7.4.24. The ExA advised the applicant during CAH1 [\[EV9-008\]](#) that it was aware a similar provision had been proposed in the A1 Birtley to Coal House dDCO and M3 Junction 9 Improvements dDCO but subsequently removed. The applicant was asked to provide further justification for including paragraph 9(a) in light of those cases in CAH1 action point 14 [\[EV9-002\]](#). The applicant considered the burden on landowners would be limited because rights would be restricted to that sought in the dDCO and landowners affected by temporary possession would be aware that utilities diverted through their land for the proposed development would be retained thereafter. The applicant stated that landowners could request further clarity on the rights although considered they would be aware of the provisions as it had always been in the dDCO and would also be aware of the provisions in article 30(4). The applicant considered landowners had been appropriately consulted and given adequate opportunity to comment. They also did not consider the power sought in paragraph 9(a) would allow them to create undefined rights over land. However, the applicant advised that if further drafting was considered necessary to limit the rights created then they would have no objection [\[REP5-031\]](#).
- 7.4.25. In its schedule of changes to the dDCO [\[PD-016\]](#) the ExA recommended removal of sub-paragraph (a) of paragraph (9) (but retaining part (b)). The ExA did not agree that including the provision would benefit landowners and did not consider that it could be justified on the grounds that it had always been in the dDCO. The ExA considered that the full extent of rights should be clearly set out in the dDCO and it was not sufficient to justify inclusion to capture any unknown situations. The ExA advised in its comments however that it would be amenable to considering drafting changes to the article to narrow the scope of any rights required for specific plots.
- 7.4.26. In its response [\[REP7-019\]](#), the applicant stated that it did not agree with the suggested deletion although having reviewed each plot in schedule 7 of the dDCO, considered that it could limit the scope of the paragraph. It believed this would likely be confined to rights and restrictive covenants relating to utility diversions only, consistent with provisions in article 30(4). The applicant maintained its position that any affected landowner would have had sight of the provisions within the articles and therefore the powers sought. The applicant suggested that paragraph 9(a) be expanded with the following underlined text:

“(a) acquiring new rights over any part of that land under article 24 (compulsory acquisition of rights and imposition of restrictive covenants) relating to the retention

and protection of any permanent works which are not removed from the land pursuant to paragraph (4)(b) to (e); or..."

ExA reasoning - Article 30(9)(a)

- 7.4.27. The ExA has considered the applicant's additional wording to paragraph 9(a) in its response to the ExA's schedule of changes [\[REP7-019\]](#) although does not consider it adequately addresses the ExA's concerns. The restriction imposing new rights only related to the purposes of paragraph 4 would go further than being confined to the imposition of new rights and restrictive covenants relating to utility diversions only, which the applicant's comments in [\[REP7-019\]](#) essentially confirmed was the main reason for proposing its drafting. As such, the ExA remains concerned that the applicant's proposed wording in its dDCO [\[REP7-005\]](#) would still allow for the imposition of undefined new rights over all the plots listed in schedule 7 where temporary possession is sought.
- 7.4.28. Whilst the ExA notes that a number of the plots subject to temporary possession in schedule 7 of the dDCO are required for utilities diversions, there are a number where this is not the case, such as plot 2/5b which is a large plot only required for a temporary construction compound. The ExA does not consider it reasonable for plots of this nature, where utility diversions are not listed as a reason for taking temporary possession, to be potentially subject to the imposition of new rights where the exact purposes are unclear.
- 7.4.29. Paragraph 10 of annex D of the 'Guidance related to procedures for the compulsory acquisition of land' states "Where it is proposed to create and acquire new rights compulsorily they should be clearly identified". As such, the ExA considers that where plots are required for utility diversions that require new rights or restrictive covenants to be imposed these should be fully set out in schedule 5 of the dDCO rather than through a 'catch all' provision within article 30(9)(a). The ExA is of the opinion that retaining this paragraph would allow a situation whereby the undertaker would be authorised to compulsorily acquire rights over land without proper scrutiny against the tests in the PA2008. We remain concerned that affected persons whose land is subject to temporary possession may not be fully aware of the potential implications of the inclusion of this paragraph were it to remain.
- 7.4.30. For the reasons above, the ExA considers that paragraph 9(a) should be removed from article 30 in its rDCO.

Schedule 2, Part 1 Requirements

- 7.4.31. In section 3 above, recommendations have been made to expand requirement 3 in terms of an additional design review process in respect of Pike Fold Viaduct and Pike Fold Bridge. New requirements are also recommended in respect of noise barriers and improvements to the footpath through the Haweswater underpass. These matters are considered further in section 7.6 and table 13 below.
- 7.4.32. The third iteration EMP would not be subject to an approval mechanism under requirement 4 sub-paragraph (6) of the dDCO [\[REP7-005\]](#). In response to the ExA's question on this matter in ExQ2 DCO.2.6 [\[PD-013\]](#), the applicant explained that the third iteration EMP represents a distillation of the matters relevant to future operation and maintenance of the authorised development contained in the first and second iteration EMPs which would both require approval by the Secretary of State and relevant public bodies [\[REP5-033\]](#). In its response to the ExA as to whether an approval mechanism was required, BMBC did not consider it necessary as the third iteration EMP would need to be substantially in accordance with the first and second

iterations which would have been subject to consultation with the appropriate public bodies [\[REP5-037\]](#). No other IP responded to the ExA's question requesting the third iteration EMP to be subject to an approval mechanism. Whilst the ExA considers it would be good practice for documents of this nature to be subject an approval mechanism in the interests of enforceability, noting that no IP has requested this the ExA has not recommended the need for the third iteration EMP to be approved by the Secretary of State in its rDCO for this reason.

Schedule 9 Protective Provisions

- 7.4.33. At the close of the examination, neither Cadent Gas [\[REP8-003\]](#) nor United Utilities [\[REP6-017\]](#) disagreed with the wording in schedule 9 of the dDCO in respect of their interests. Except for National Grid Electricity Transmission plc (NGET), no other party that would be affected by PP specifically requested any alternative wording to schedule 9 of the dDCO (in response to ExQ2 DCO.2.10 [\[PD-013\]](#)).
- 7.4.34. The dialogue through the examination between the applicant and NGET is largely summarised in section 6 above and is not repeated here. However, in terms of wording for the dDCO, NGET advised in response to the ExA's rule 17 letter [\[PD-015\]](#) that it was seeking two additional sub-paragraphs to the end of paragraph 44 in schedule 9 part 4 of the dDCO providing insuring provisions. NGET also advised that similar provisions had been included on the Hynet Carbon Dioxide Pipeline Development Consent Order 2024 [\[REP6-016\]](#).
- 7.4.35. The ExA asked NGET in a further rule 17 letter [\[PD-017\]](#) why the provisions were necessary, specifically for a highway project, and the implications if they were not included. NGET advised that it required insuring provisions so that the undertaker provides acceptable security and holds acceptable insurance for the construction period to protect NGET's interests [\[REP7-023\]](#). NGET reiterated its request for the wording to be added to the dDCO in its DL8 submission [\[REP8-004\]](#) and in the absence of an agreement with the applicant, could not withdraw its objection. On the last day of the examination, the applicant advised that it had reached agreement with NGET and that no changes were required to the PP in part 4 of schedule 9 of the dDCO [\[AS-017\]](#).

ExA Reasoning – Schedule 9 Protective Provisions

- 7.4.36. In the absence of formal confirmation from NGET that their objection has been withdrawn, the ExA is required to consider whether the wording they are seeking to the dDCO is necessary notwithstanding the applicant's submission in [\[AS-017\]](#). It remained unclear to the ExA why the wording NGET was seeking was necessary for a highways scheme, particularly as the applicant had stated in [\[REP7-018\]](#) that it had advised NGET that it is a self-indemnifying body such that the insuring provisions now requested by them were not applicable.
- 7.4.37. As a result, and noting that the provisions proposed in the dDCO have been used in other made highway DCO orders, the ExA is not minded to make any changes in the rDCO.

7.5. ExA's CONSULTATION DRAFT DCO

- 7.5.1. The ExA issued its schedule of recommended amendments to the applicant's draft DCO on 14 February 2025 [\[PD-016\]](#). This set out 31 recommended changes in a table format which were drafted in light of matters arising out of hearings, written questions and comments from IPs.

- 7.5.2. The applicant responded at DL7 [\[REP7-019\]](#) accepting and amending some of the suggested changes, whilst rejecting others with an explanation. BMBC responded confirming they had no comments to make [\[REP7-022\]](#). No responses were received from any other IP on the ExA's recommended changes.
- 7.5.3. Table 12 below considers the applicant's responses to matters where it has rejected the ExA's recommendations. The number in the left hand column correlates to that in the ExA's table [\[PD-016\]](#). Table 12 does not consider matters concerning articles 24, 27 and 30 and proposed new requirements which are discussed above and considered further in table 13 below where applicable. It also does not include matters where the applicant has accepted the ExA's suggested amendments but with alternative wording (row numbers 5, 15, 24, 26, 29 and 30 [\[PD-016\]](#)). In these cases, the ExA is satisfied with the applicant's suggested wording and has incorporated these within its rDCO.

Table 12: Summary of the applicant's responses to the ExA's Consultation Draft DCO where it has rejected the ExA's suggestions and the ExA's recommendation

No.	Article / Schedule	ExA's Recommended Amendment	Summary of Applicant's Response	ExA's Response
17	Schedule 2, requirement 1 Interpretation	<p>"commence" means beginning to carry out any material operation (as defined in section 56(4) (time when development begun) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations and mitigation works, ecological surveys and mitigation works, investigations for the purpose of assessing ground conditions, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment, treatment of any invasive species and the temporary display of site</p>	<p>The applicant has not made the change in respect of commence. The definition of 'commence' follows other made orders including the M54 to M6 Link Road Development Consent Order 2022 and the M3 Junction 9 Development Consent Order 2024.</p>	<p>The ExA has agreed with not including a definition for "preliminary works" in subparagraph (1) of requirement 4 as detailed below.</p>

No.	Article / Schedule	ExA's Recommended Amendment	Summary of Applicant's Response	ExA's Response
		notices or advertisements preliminary works , and "commencement" is to be construed accordingly;		
18	Schedule 2, requirement 1 Interpretation	<p>Addition of new definitions in respect of</p> <ul style="list-style-type: none"> ▪ "Design Council", ▪ "design review panel", ▪ "environmental mitigation areas" ▪ "preliminary works", and ▪ "substantially in accordance with". 	<p>The applicant has included the new definition of "environmental mitigation areas".</p> <p>The applicant has not included the other definitions because the associated changes they relate to have not been made.</p> <p>In relation to 'substantially in accordance with' the applicant remains of the view that the words should be given their ordinary meaning. The applicant is not aware that it has been deemed necessary to provide a definition of this widely recognised and understood term in other made orders.</p>	<p>The ExA notes and welcomes the inclusion of a definition for "environmental mitigation areas".</p> <p>The ExA has included definitions for "Design Council" and "design review panel" following its recommended changes to requirement 3 as detailed in table 13 below.</p> <p>Following the retention of "authorised development" in requirement 4 sub-paragraph (1), a definition for "preliminary works" is not necessary.</p> <p>The ExA has recommended removal of "substantially" in sub-paragraphs (1), (5) and (8) of requirement</p>

No.	Article / Schedule	ExA's Recommended Amendment	Summary of Applicant's Response	ExA's Response
				4 which has reduced the number of occasions it would be referred to in the rDCO. The ExA is therefore satisfied that a definition is not required and the terminology can be taken on its ordinary meaning.
20	Schedule 2, requirement 4 Environmental Management Plan	(1) The authorised development preliminary works must be carried out substantially in accordance with the first iteration EMP.	Change not accepted. The proposed definition of 'preliminary works' is only used on one occasion in this requirement. It is an unnecessary change because the definition of 'commence', which has been successfully included in other made orders, already clearly records works which are not to be treated as a material operation for the purposes of the Town and Country Planning Act 1990. Works which do form part of the authorised development but do not constitute a material operation can commence prior to the second iteration EMP.	Accept in part. The ExA has noted the applicant's response in respect of preliminary works and is satisfied that no change is required. However, the ExA does not agree with the retention of "substantially". In the interests of enforceability and precision, pre-development works associated with the authorised development should be carried out "in accordance" with the approved

No.	Article / Schedule	ExA's Recommended Amendment	Summary of Applicant's Response	ExA's Response
			The applicant has not deleted "substantially" in recognition that the authorised development will include elements which are to be governed by the second and third iteration EMPs.	<p>details in the first EMP. Similar wording has been included in other requirements in the applicant's final dDCO whereby compliance is required with other approved documents, such as requirements 5, 8, 9 and 10.</p> <p>For similar reasons, whilst not initially recommended in its schedule of changes, the ExA also considers that "substantially" should be removed from sub-paragraphs (5) and (8) of requirement 4 as further detailed in table 13 below.</p>

7.6. EXA'S RECOMMENDED CHANGES TO THE DRAFT DCO

- 7.6.1. The table below sets out the ExA's recommended changes to the final version of the dDCO submitted by the applicant [\[REP7-005\]](#) taking into account the findings above. Text highlighted in **bold** identifies insertion of new recommended text, while text shown with a ~~strike through~~ is recommended for deletion. The recommended changes are incorporated in the rDCO at [appendix C](#) of this recommendation.

7.6.2. The ExA has also incorporated minor changes, such as addressing double spacing between words or typographical changes, in its rDCO which are not reported in the table below.

Table 13: The ExA's recommended changes to the final draft DCO [REP7-005]

No.	Article / Schedule in final dDCO [REP7-005]	ExA's recommended change	ExA reasons
1	Article 24(5) Compulsory acquisition of rights and imposition of restrictive covenants	(5) Where a right is acquired pursuant to this article for the benefit of a statutory undertaker or any other person that right shall on the exercise of the power of compulsory acquisition have effect for that party's benefit and be treated for all purposes as though it was vested in the statutory undertaker or other person directly.	As detailed in paragraphs 7.4.18 to 7.4.20 above.
2	Article 27(4) Application of the 1981 Act	(4) In section 4 (execution of declaration) for "vesting the land in themselves" substitute "vesting the land or any interest in land in themselves or for the benefit of a statutory undertaker or any other person ".	As detailed in paragraphs 7.4.18 to 7.4.20 above.
3	Article 30(9) Temporary use of land for carrying out the authorised development	(9) 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— (a) acquiring new rights over any part of that land under article 24 (compulsory acquisition of rights and imposition of restrictive covenants) relating to the retention and protection of any permanent works constructed on the land pursuant to paragraph (4)(b) to (e); or (b) acquiring any part of the subsoil or airspace over (or rights in the subsoil of or airspace over) that land under article 28 (acquisition of subsoil or airspace only).	As detailed in paragraphs 7.4.27 to 7.4.30 above.
4	Schedule 1, requirement 1 Interpretation	Addition of new definitions as follows: "Design Council" means the UK's national strategic advisor for	Consequential additions as a result of changes to

No.	Article / Schedule in final dCO [REP7-005]	ExA's recommended change	ExA reasons
		<p>design who is a Royal Charter charity (registered charity number 279099);</p> <p>“design review panel” means a panel appointed by the Design Council to conduct an independent review of certain elements of the proposed design of the authorised development;</p>	requirements as detailed below.
5	Schedule 2, requirement 3 Detailed design	<p>(1) The authorised development must be designed in detail and carried out so that it is compatible with:</p> <p>(a) the preliminary scheme design shown on the general arrangement plans, works plans and the engineering section drawings; and</p> <p>(b) the design principles set out in the design principles report; and</p> <p>(c) the report mentioned in sub-paragraph (3)</p> <p>unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority and local highway authority on matters related to their functions and provided that the Secretary of State is satisfied that any amendments to the general arrangement plans, works plans and the engineering section drawings showing departures from the preliminary scheme design or the design principles would not give rise to any materially new or materially worse effects in comparison with those reported in the environmental statement.</p> <p>(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 general arrangement plans, works plans or engineering section drawings and</p>	To include provisions for a further design review process for the detailed design of Pike Fold Viaduct and Pike Fold Bridge, as detailed in paragraphs 3.7.31 to 3.7.34 above.

No.	Article / Schedule in final dCO [REP7-005]	ExA's recommended change	ExA reasons
		<p>the undertaker must make those amended details available in electronic form for inspection by members of the public.</p> <p>(3) The report mentioned in sub-paragraph (1), is a report to be prepared by the undertaker of its findings following a review of the detailed design of Pike Fold Viaduct and Pike Fold Bridge; the review to be carried out in consultation with the design review panel, the relevant planning authority and the relevant highway authority.</p>	
6	Schedule 2, requirement 4 Environmental Management Plan	removal of "substantially" where it appears in sub-paragraphs (1), (5) and (8)	As detailed in table 12 above, the ExA considers that the authorised development must be carried out "in accordance with" the approved measures set out in the first, second and third iteration EMPs. Such wording would be more precise and enforceable than "substantially in accordance with", which in the ExA's opinion would introduce ambiguity as to the extent the authorised development would be required to accord with the approved documents. The ExA is also aware that the use of "in accordance with" has been used on similar requirements in other highway made DCOs and would therefore not be without precedent.

No.	Article / Schedule in final dCO [REP7-005]	ExA's recommended change	ExA reasons
7	Schedule 2, Part 1	<p>Insert new requirement 11 as follows:</p> <p>Noise barriers</p> <p>11.—(1) No part of the authorised development is to commence until a scheme of noise barrier mitigation in respect of the use and operation of 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.</p> <p>(2) The scheme prepared under sub-paragraph (1) must incorporate the noise barriers in the locations identified in the environmental statement and must include details of:</p> <p>(a) the continuation of noise barrier EB03 to the crossing of Sandgate Road;</p> <p>(b) the continuation of noise barrier EB04 to the crossing of Sandgate Road;</p> <p>(c) the continuation of noise barrier EB05 to noise barrier EB07; and</p> <p>(d) implementation timetables and future maintenance.</p> <p>(3) The noise barrier mitigation must be implemented in accordance with the scheme approved under sub-paragraph (1) and must be retained thereafter for the life of the authorised development.</p>	<p>To include provision for a scheme of additional noise mitigation for residential properties as detailed in paragraphs 3.13.44 to 3.13.46 above.</p>
8	Schedule 2, Part 1	<p>Insert new requirement 12 as follows:</p> <p>Footpath passing through Haweswater underpass</p> <p>12.—(1) No part of the authorised development is to commence until a scheme detailing improvements</p>	<p>To include provision for a scheme of improvements to the footpath between Heybrook Close and Parrenthorn Road which passes through the Haweswater</p>

No.	Article / Schedule in final dCO [REP7-005]	ExA's recommended change	ExA reasons
		<p>to the footpath passing through Haweswater underpass has been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority.</p> <p>(2) The scheme prepared under sub-paragraph (1) must incorporate details of improvements to the path between Heybrook Close and Parrenthorn Road which passes through the underpass, details of any lighting, a timescale for implementation and details of future maintenance.</p> <p>(3) The scheme approved under sub-paragraph (1) must be implemented in accordance with the approved details prior to bringing into use the authorised development and thereafter must be retained for the life of the authorised development.</p>	underpass, as detailed in paragraphs 3.16.51 to 3.16.53 above.
9	Schedule 2, requirements 11 to 16 inclusive	Change numbering of requirements 11 to 16 inclusive to 13 to 18.	Consequential amendments to the numbering of current requirements 11 to 16 inclusive to 13 to 18 inclusive following the addition of new requirements.
10	Schedule 2, requirement 12	<p>Amend sub-paragraph (1)(b) as follows:</p> <p>(1)(b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 14 16 (further information); or</p>	Consequential amendments following the addition of new requirements 11 and 12.
11	Schedule 2, requirement 14 (Further information)	<p>Amend sub-paragraph (4) as follows:</p> <p>(4) Where further information is requested under this paragraph in relation to part only of an application,</p>	Consequential amendments following the addition

No.	Article / Schedule in final dDCO [REP7-005]	ExA's recommended change	ExA reasons
		that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 12 14 (applications made under requirements) and in this paragraph.	of new requirements 11 and 12.

7.6.3. As explained in section 3.4 above, BMBC requested additional wording to requirement 4 to incorporate a scheme of monitoring of air quality during operation. For the reasons explained in that section, the ExA does not consider such a provision is necessary and has therefore not incorporated BMBC's request as part of its rDCO.

7.6.4. With respect to the ExA's new requirement 11 requiring additional noise barriers, the applicant requested in its response to the ExA's schedule of changes [\[REP7-019\]](#) that if the ExA was minded to proceed with this requirement that it must incorporate reference to requirement 3 (detailed design) or ensure any departures from the preliminary scheme design do not give rise to any materially new or materially worse environmental effects in comparison with those reported in the ES.

7.6.5. The applicant did not provide exact wording for how its request could be accommodated. Nevertheless, the ExA has considered the applicant's comments. Given that the scheme of additional noise barriers can be prepared in isolation, the ExA does not see why it is necessary to refer to the detailed design required under requirement 3. The ExA also considers that adding reference for such a scheme not to give rise to any materially new or materially worse environmental effects in comparison with those reported in the ES would be unnecessary as the decision maker would be able to consider this matter before approving any scheme. The ExA is also concerned that it could unduly restrict the delivery of the noise barrier scheme. For those reasons, the ExA has not incorporated the applicant's request.

7.7. CONCLUSIONS

7.7.1. The ExA has considered all iterations of the dDCO as provided by the applicant, from the submission version [\[APP-014\]](#) to the final version [\[REP7-005\]](#) and has considered the degree to which the applicant's final version has addressed the matters raised. A number of matters are the subject of recommendations in this section and are included in the rDCO in [appendix C](#) of this report.

7.7.2. Overall, the ExA considers that the rDCO ([appendix C](#)) only includes requirements that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects. On that basis we are of the view that paragraph 4.9 of the NPSNN is satisfied.

7.7.3. Taking all of this into account, if the Secretary of State is minded to make the DCO, it is recommended in the form as set out in [appendix C](#) of this report.

8. SUMMARY OF FINDINGS AND RECOMMENDATION

8.1. CONSIDERATION OF FINDINGS

- 8.1.1. This is an application where a national policy statement (NPS) has effect and accordingly falls to be determined under section (s) 104 the Planning Act 2008 (PA2008). As required by s104(2), in making this recommendation, the ExA has had full regard to the NPS for National Networks 2015 (NPSNN). The making of the recommended development consent order (rDCO) would be in accordance with the said policy documents. Accordingly, s104(3) is satisfied. The ExA has concluded that s104(4), s104(5) and s104(6) do not apply.
- 8.1.2. The proposed development would also accord with the development plans when taken as a whole; and other relevant policies, all of which have been taken into account in this report. The ExA has had regard to the local impact report (LIR) produced by Bury Metropolitan Borough Council (BMBC) [\[REP1A-001\]](#) listed in sections 2 and 3 of this report in making this recommendation.
- 8.1.3. With regard to all other matters and representations received in the examination, there are no important and relevant matters that would individually or collectively lead to a different recommendation to that below.
- 8.1.4. The ExA concludes that the weight to be attached to the compelling need for the proposed development, as set out in NPSNN, outweighs the negative effects caused as identified in section 3 and summarised in section 5 of this report. In so doing, the ExA is satisfied that the paragraph 215 test in the National Planning Policy Framework with respect to heritage assets and the public benefits test have been discharged. Equally, the ExA is satisfied that very special circumstances exist to justify inappropriate development in the Green Belt.
- 8.1.5. While not the governing NPSs for this proposed development, the ExA considers that the National Networks NPS (NNNPS (2024)) can be considered as important and relevant to the determination of this proposal. Accordingly, the ExA considers that the proposed development would have no adverse effects that would outweigh its benefits and as such s104(7) of the PA2008 does not apply.
- 8.1.6. Section 4 of this report sets out the ExA's analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). The ExA has had regard to the findings of the HRA Report [\[APP-103\]](#) that, subject to the mitigation measures secured in the dDCO, Adverse Effects on Integrity (AEoI) on the Rochdale Canal Special Area of Conservation from the proposed development when considered alone or in combination with other plans or projects can be excluded from the impact-effect pathways assessed. In our view, there are no HRA matters that we consider would prevent the making of the DCO. However, we recognise that the Secretary of State is the competent authority under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) and will make the definitive assessment.
- 8.1.7. As assessed in section 3 and summarised in section 5 of this report, the ExA concludes that the proposed development accords with the policies in the designated NPSNN.

- 8.1.8. Under the transitional provisions, policy compliance with NNNPS (2024) is not required. However, the ExA considers that the broad thrust of policies in NNNPS (2024) are not dissimilar to those to NPSNN. Consequently, there is nothing to indicate that the application should be decided other than in accordance with the NPSNN, and s104(3) is therefore satisfied.
- 8.1.9. In relation to the application for compulsory acquisition (CA) and temporary possession (TP) powers within the rDCO, the ExA concludes that the proposed development for which the land and rights are sought would be in accordance with national policy as set out in the NPSNN, and that it identifies a national need for road improvement schemes.
- 8.1.10. The need to secure the land and rights required, and to construct the proposed development within a reasonable commercial timeframe, represent a significant public benefit. The private loss to those affected is mitigated through the fact that the construction period would be limited, and the applicant is seeking to acquire the minimum possible rights and interests that they would need to construct and maintain the proposed development. This view is caveated on the removal of plots 1/1a, 2/1av and 2/1aw from the Book of Reference (BoR) [\[REP7-011\]](#).
- 8.1.11. The applicant has explored all reasonable alternatives to the CA of land, rights and interests sought and there are no alternatives that ought to be preferred. As the Secretary of State is both the funder and arbiter of this proposed development, they will need to be satisfied that adequate and secure funding would be available to enable CA within the statutory period following the order being made.
- 8.1.12. The proposed interference with the human rights of individuals would be for legitimate purposes that would justify such interference in the public interest and to a proportionate degree. Furthermore, throughout the examination the ExA has had due regard to the Public Sector Equality Duty (PSED).
- 8.1.13. Considering all of the above factors together, there is a compelling case in the public interest for the CA and TP powers sought in respect of the plots listed in the BoR [\[REP7-011\]](#). The ExA concludes that the proposed development would comply with s122(2) and s122(3) of PA2008.
- 8.1.14. The ExA concludes that the Order be made subject to the changes as prescribed in the rDCO, which would overcome any final concerns with the proposed development.

8.2. RECOMMENDATION

- 8.2.1. For all of the above reasons and in the light of our findings and conclusions on important and relevant matters set out in this report, the ExA recommends that the Secretary of State for Transport makes the M60/M62/M66 Simister Island Interchange Order in the form recommended at [appendix C](#) to this report.

8.3. MATTERS FOR THE SECRETARY OF STATE

- 8.3.1. As prescribed in Sections 3, 4, 6 and 7 in this report, the ExA considers the evidence before the Secretary of State at the close of the Examination is sufficient for them to determine the application.
- 8.3.2. However, there are some further important areas set out below in which the Secretary of State may wish to seek further information as to whether respective

positions have been updated or advanced since the close of the examination, where such updated information may assist in the Secretary of State in making their decision. They are:

Table 14: Matters drawn to the attention of the Secretary of State

Party	Reason	Paragraphs in this report
Applicant	<p><u>Places For Everyone (PfE)</u></p> <p>The ExA was aware during the examination that PfE was the subject of a legal challenge by Save Greater Manchester Green Belt Limited. At the close of the examination, no final decision had been made on the outcome of the legal challenge. The Secretary of State may wish to obtain an update on the status of the challenge, and whether any decision handed down by the courts would have any bearing on the case, prior to issuing a decision on this application.</p>	2.1.17 to 2.1.20
Applicant	<p><u>Environment Agency (EA) new data</u></p> <p>The ExA were made aware that new data would be published by the EA on 25 March 2025 following the close of the examination. Amongst other things the EA stated the new data, relevant to planning, would include updated flood zones and river flood risk extents with, and without defences, for both present day and climate change scenarios. The ExA recommends that the Secretary of State seek an update from the applicant on the implications in respect of the new EA data and whether the updated flood mapping would have any bearing on the case, prior to making their decision.</p>	3.15.22 and 3.15.29
National Grid Electricity Transmission plc and Cadent Gas Limited	<p><u>Voluntary Agreement</u></p> <p>The Secretary of State may wish to ask for an update from the applicant as to whether an agreement on all matters including protective provisions has been reached and signed.</p>	6.7.9 to 6.7.13 and 6.8.6
Affected landowners	<p><u>Plot 1/1a</u></p> <p>If the Secretary of State disagrees with the ExA and is minded to retain plots 1/1a(i) and 1/1a(ii) then the Secretary of State may need to decide if the CA regulations need to be engaged and consultation to take place for those landowners who would be affected.</p>	6.7.34 to 6.7.44

APPENDIX A: REFERENCE DOCUMENTS

Table A15: Summary of relevant legislation for the proposed development

Relevant Legislation
<ul style="list-style-type: none"> ▪ Animal Welfare Act 2006 ▪ Acquisition of Land Act 1964 ▪ Acquisition of Land Act 1981 ▪ Carbon Budget Order 2011, Carbon Budget Order 2016 and Carbon Budget Order 2021 ▪ Climate Change Act 2008 ▪ Commons Act 2006 ▪ Communications Act 2003 ▪ Community Infrastructure Levy Regulations 2010 ▪ Compulsory Purchase Act 1965 ▪ Compulsory Purchase (Vesting Declarations) Act 1981 ▪ Control of Asbestos Regulations 2012 ▪ Control of Pollution (Oil Storage) (England) Regulations 2001 ▪ Control of Pollution Act 1974 ▪ Countryside and Rights of Way Act 2000 (as amended) ▪ Electricity Act 1989 ▪ Environment Act 1995 (as amended) ▪ Environment Act 2021 ▪ Environmental Damage (Prevention and Remediation) (England) Regulations 2015 ▪ Environmental Protection Act 1990 (as amended) ▪ European Landscape Convention, 2000 ▪ Equality Act 2010 ▪ Flood and Water Management Act 2010 ▪ Flood Risk Regulations 2009 (as amended) ▪ Floods and Water (Amendment, etc) (EU Exit) Regulations 2019 ▪ Gas Act 1986 ▪ Health and Safety at Work etc. Act 1974 ▪ Health and Social Care Act 2012 (as amended by the Health and Care Act 2022) ▪ Highways Act 1980 ▪ Human Rights Act 1998 ▪ Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 ▪ Infrastructure Planning (Decisions) Regulations 2010 ▪ Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ▪ Infrastructure Planning (Interested Parties and Miscellaneous Provisions) Regulations 2015 ▪ Interpretation Act 1978 ▪ Land Compensation Act 1961 ▪ Land Compensation Act 1973 ▪ Land Drainage Act 1991 (as amended) ▪ Natural Environment and Rural Communities Act 2006 (NERC) ▪ Neighbourhood Planning Act 2017 ▪ New Roads and Street Works Act 1991 ▪ Nitrate Pollution Prevention Regulations 2015 (as amended) ▪ Planning Act 2008 ▪ Planning (Listed Buildings and Conservation Areas) Act 1990

Relevant Legislation

- Protection of Badgers Act 1992
- Reservoirs Act 1975
- Road Traffic Regulation Act 1984
- The Air Quality (England) Regulations 2000 and The Air Quality (England) Amendment Regulations 2002
- The Air Quality Standards Regulations 2010
- The Conservation of Habitats and Species Regulations 2017 (as amended)
- The Control of Pollution (Applications, Appeals and Registers) Regulations 1996
- The Control of Substances Hazardous to Health Regulations 2002
- The Controlled Waste (England and Wales) Regulations 2012 (as amended)
- The Construction (Design and Management) Regulations 2015
- The Environment (Miscellaneous Amendments) (EU Exit) Regulations 2020
- The Environmental Noise (England) Regulations 2006 (as amended 2008, 2009)
- The Environmental Permitting (England and Wales) Regulations 2016 (as amended)
- The Environmental Targets (Fine Particulate Matter) (England) Regulations 2023
- The Groundwater (England and Wales) Regulations 2009
- The Hazardous Waste (England and Wales) Regulations 2005 (as amended)
- The Hedgerows Regulations 1997
- The Invasive Alien Species (Enforcement and Permitting) Order 2019
- The Landfill (England and Wales) Regulations 2002 (as amended)
- The Landfill Tax Regulations 1996 (as amended)
- The Noise Insulation Regulations 1975 (as amended 1988)
- The Non-Road Mobile Machinery (Type-Approval and Emission of Gaseous and Particulate Pollutants) Regulations 2018
- The Private Water Supplies (England) Regulations 2016 (as amended)
- The Provision and Use of Work Equipment Regulations 1998
- The Waste (England and Wales) Regulations 2011 (as amended)
- The Waste Electrical and Electronic Equipment Regulations 2013 (as amended)
- The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017
- The Water Resources (Abstraction & Impounding) Regulations 2006
- The Water Supply (Water Quality) Regulations 2016
- Traffic Management Act 2004
- Town and Country Planning Act 1990
- Urban Wastewater Treatment (England and Wales) Regulations 1994
- Water Act 2003 (as amended)
- Water Act 2014
- Water Industry Act 1991 (as amended)
- Water Resources Act 1991 (as amended)
- Wild Mammals (Protection) Act 1996
- Wildlife and Countryside Act 1981 (as amended)

Table A16: Relevant government policy and publications for the proposed development

Relevant government policy, publications and guidance
<ul style="list-style-type: none"> ▪ National Policy Statement for National Networks (2015) ▪ National Networks National Policy Statement (2024) ▪ The National Planning Policy Framework (2024) and associated Planning Practice Guidance ▪ The National Infrastructure Strategy (2020) ▪ The Road Investment Strategy 2 (2020 – 2025) ▪ Clean Air Strategy (2019) ▪ The Noise Policy Statement for England ▪ The Net Zero Strategy: Build Back Greener ▪ Decarbonising Transport: A Better, Greener Britain

Table A17: Relevant Development Plan Policies

Development Plan	Relevant Policies
Places for Everyone Joint Development Plan [REP3-032]	<ul style="list-style-type: none"> ▪ JP-Strat6: Northern Areas ▪ JP-Strat7: North-East Growth Corridor ▪ JP-S4: Flood Risk and the Water Environment ▪ JP-S5: Clean Air ▪ JP-J1: Supporting Long-Term Economic Growth ▪ JP-G1: Landscape Character ▪ JP-G8: A Net Enhancement of Biodiversity and Geodiversity ▪ JP-P6: Health ▪ JP-C4: The Strategic Road Network ▪ JP-C5: Streets for All ▪ JP Allocation 1.1: Heywood / Pilsworth (Northern Gateway) ▪ JP Allocation 1.2: Simister and Bowlee (Northern Gateway) ▪ JP Allocation 2: Stakehill ▪ JP-D1: Infrastructure Implementation
Bury Unitary Development Plan (Saved policies) [REP3-033]	<ul style="list-style-type: none"> ▪ Policy EN6/4 – Wildlife Links and Corridors

Table A18: Made Development Consent Orders

Other made DCOs identified by the applicant
<ul style="list-style-type: none"> ▪ A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016 ▪ A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016 ▪ M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016 ▪ A19/A184 Testo's Junction Alteration Development Consent Order 2018 ▪ Silvertown Tunnel Development Consent Order 2018 ▪ A63 (Castle Street Improvement, Hull) Development Consent Order 2020 ▪ Windy Harbour to Skippool Improvement Scheme Development Consent Order 2020 ▪ M42 Junction 6 Development Consent Order 2020 ▪ A428 Black Cat to Caxton Gibbet Development Consent Order 2022 ▪ A14 Order and the M20 Junction 10a Development Consent Order ▪ A57 Link Roads Development Consent Order 2022 ▪ A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016 ▪ A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 ▪ M20 Junction 10a Development Consent Order 2017 ▪ M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016 ▪ M20 Junction 10a Development Consent Order 2017 ▪ M54 to M6 Link Road Order 2022

APPENDIX B: ABBREVIATIONS

Abbreviations	
	<i>Keep Blank</i>
AA	appropriate assessment (for the purposes of The Conservation of Habitats and Species Regulations 2017)
AADT	average annual daily traffic flow
ADB	ash dieback
AEoI	adverse effects on integrity
ALC	agricultural land classification (in England and Wales)
AQMA	air quality management area
AQO	air quality objectives
AP	affected person
ARN	affected road network
BCR	benefit to cost ratio
BMBC	Bury Metropolitan Borough Council
BMV	best and most versatile (agricultural land)
BNG	biodiversity net gain
CA	compulsory acquisition
CAH	compulsory acquisition hearing
CEA	cumulative effects assessment
CEPP	Climate Emergency Planning and Policy
CO ₂	carbon dioxide
dB	decibel
DBA	cultural heritage desk-based assessment
DCO	Development Consent Order
dDCO	draft Development Consent Order
DEFRA	Department for Environment, Food and Rural Affairs
DfT	Department for Transport
DL	deadline
DM	do minimum (without scheme)
DMRB	Design Manual for Roads and Bridges
DPR	design principles report
DRP	design review panel
DS	do something (with scheme)
rDCO	recommended Development Consent Order
EA	Environment Agency
ECHR	European Convention on Human Rights
EIA	environmental impact assessment
EIA Regs	The Infrastructure Planning (EIA) Regulations 2017
EL	examination library
EM	Explanatory Memorandum
EMA(s)	environmental mitigation area(s)
EMP	environmental management plan
EPR	The Infrastructure Planning (Examination Procedure) Rules 2010
ES	Environmental Statement
ExA	Examining Authority
ExQ1	ExA's First Written Questions
ExQ2	ExA's Second Written Questions
FoCM	Friends of Carrington Moss
FRA	flood risk assessment
GHG	greenhouse gas

APPENDIX B: ABBREVIATIONS

M60/M62/M66 Simister Island Interchange – TR010064
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(B:V)

GM	Greater Manchester
GMCA	Greater Manchester Combined Authority
GMLCSA	Greater Manchester landscape character and sensitivity assessment
GWDTE	groundwater dependent terrestrial ecosystems
HA(s)	heritage asset(s)
ha	hectare(s)
HRA	habitats regulations assessment
The Habitats Regulations	The Conservation of Habitats and Species Regulations 2017
IEMA	Institute of Environmental Management and Assessment
IP	interested party
ISH	issue specific hearing
the Inspectorate	Planning Inspectorate
J	junction
km	kilometres
KPIs	key performance indicators
LCA	landscape character area
LIR	local impact report
LNR	local nature reserve
LNS	low noise surfacing
LRN	local road network
LSE	likely significant effects
LV	limit values
LVIA	landscape and visual impact assessment
M	motorway
m	metres
MCC	Manchester City Council
NE	Natural England
NGET	National Grid Electricity Transmission plc
NH	National Highways
NIA	noise important area
NIC	National Infrastructure Commission
NIR	The Noise Insulation Regulations 1975
NNNPS (2024)	National Networks National Policy Statement (2024)
NPPF	National Planning Policy Framework
NPS	national policy statement
NO ₂	nitrogen dioxide
NO _x	nitrogen oxide
NPSNN	National Policy Statement for National Networks (2015)
NSIP	Nationally Significant Infrastructure Project
oAQDMP	outline and air quality dust management plan
OFH	open floor hearing
PA2008	the Planning Act 2008
PfE	Places for Everyone Joint Development Plan Document for Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Tameside, Trafford and Wigan
PIA	personal injury accidents
PM	preliminary meeting
PM _{2.5}	particulate matter which is 2.5 micrometres or less in diameter
PM ₁₀	particulate matter which is 10 micrometres or less in diameter
PP	protective provisions
PRoW	public rights of way

APPENDIX B: ABBREVIATIONS

M60/M62/M66 Simister Island Interchange – TR010064
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(B:VI)

RBC	Rochdale Borough Council
rDCO	recommended Development Consent Order
RDWE	road drainage and water environment
REAC	register of environmental actions and commitments, contained within the first iteration EMP
RGD	The Road to Good Design (Highways England) 2018
RIES	Report on the Implications for European Sites
RIS	Road Investment Strategy
RIS1	2015-2020 Road Investment Strategy 1
RIS2	2020-2025 Road Investment Strategy 2
RPG	registered park and garden
RR	relevant representation
RSA	road safety audit
Rule 6	The Rule 6 Letter of the Infrastructure Planning (Examination Procedure) Rules 2010
Rule 8	The Rule 8 Letter of the Infrastructure Planning (Examination Procedure) Rules 2010
s	Section of the Planning Act 2008
SAC	special areas of conservation
SBI	site of biological interest
SDR	scheme design report
SLA	special landscape area
SOAEL	significant observed adverse effect level
SoCG	statement of common ground
SoR	statement of reasons
SPA	special protection areas
SRN	strategic road network
SSSI	site of special scientific interest
SU	statutory undertakers
SuDS	sustainable drainage systems
TA	transport assessment
TAG	Transport Analysis Guidance
TCA	townscape character area
TP	temporary possession
tCO ₂ e	tonnes of carbon dioxide equivalent
UDP	unitary development plan
USI	unaccompanied site inspection
UU	United Utilities Water Limited
VDM	variable demand model
VSC	very special circumstances
VP(s)	viewpoint(s)
WCH	walkers, cyclists and horse riders
WFD	Water Framework Directive
WHO	World Health Organisation
µg/m ³	micrograms per metres cubed

APPENDIX B: ABBREVIATIONS

M60/M62/M66 Simister Island Interchange – TR010064
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(B:VII)

APPENDIX C: THE RECOMMENDED DCO

202[] No. []

INFRASTRUCTURE PLANNING

The M60/M62/M66 Simister Island Interchange Development Consent Order

Made - - - -

Coming into force

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008^(a) (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009^(b) for an Order granting development consent.

The application was examined by a panel of two members (“the Panel”) appointed by the Secretary of State pursuant to section 61 and 65 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010^(c).

The panel, having examined the application with the documents that accompanied the application, and considered the representations made and not withdrawn, has, in accordance with section 74(2) of the 2008 Act, 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

(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. 2010/439, 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. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/572, S.I. 2018/378 and S.I. 2019/734, S.I. 2020/764, S.I. 2020/1534, S.I. 2021/978, S.I. 2022/634, S.I. 2023/1071, S.I. 2024/332.

(c) S.I. 2010/103, amended by S.I. 2012/635, S.I. 2024/317.

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, 115, 117, 120, 122 and 123 of, and paragraphs 1 to 3, 10 to 15, 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 M60/M62/M66 Simister Island Interchange Development Consent Order 20[] and comes into force on [] 20[].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(a);

“the 1965 Act” means the Compulsory Purchase Act 1965(b);

“the 1980 Act” means the Highways Act 1980(c);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(d);

“the 1984 Act” means the Road Traffic Regulation Act 1984(e);

“the 1990 Act” means the Town and Country Planning Act 1990(f);

“the 1991 Act” means the New Roads and Street Works Act 1991(g);

“the 2004 Act” means the Traffic Management Act 2004(h);

“the 2008 Act” means the Planning Act 2008(i);

“address” includes any number or address for the purposes of electronic transmission;

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

“authorised development” means the development and associated development described in Schedule 1 (authorised development), and any other development authorised by this Order, which is development within the meaning of section 32 (meaning of development) of the 2008 Act;

“book of reference” means the document listed in Schedule 10 (certification of plans and documents, etc.) and certified by the Secretary of State as the book of reference for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“bridleway” has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act and for the purposes of this Order includes a right of way on pedal cycles within the meaning of section 30(1) of the Countryside Act 1968;

“building” includes any structure or erection or any part of a building, structure or erection;

-
- (a) 1961 c. 33.
(b) 1965 c. 56.
(c) 1980 c. 66.
(d) 1981 c. 66.
(e) 1984 c. 27.
(f) 1990 c.8.
(g) 1991 c. 22.
(h) 2004 c.18.
(i) 2008 c. 29.

“carriageway” has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act;

“classification of road plans” means the plans listed in Schedule 10 (certification of plans and documents, etc.) and certified by the Secretary of State as the classification of road plans for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“crown land plans” means the plans listed in Schedule 10 (certification of plans and documents, etc.) and certified as the crown land plans by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“cycle track” has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

and in this definition “electronic communications network” has the same meaning as in section 32(1) (meaning of electronic communications networks and services)(a) of the Communications Act 2003;

“engineering section drawings” means the drawings and sections listed in Schedule 10 (certification of plans and documents, etc.) and certified as the engineering section drawings by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“environmental statement” means the document listed in Schedule 10 (certification of plans and documents, etc.) and certified as the environmental statement by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“footway” and “footpath” have the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act;

“highway”, “highway authority” and “local highway authority” have the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act;

“important hedgerow plans” means the document listed in Schedule 10 (certification of plans and documents, etc.) and certified as the important hedgerow plans by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“the land plans” means the plans listed in Schedule 10 (certification of plans and documents, etc.) and certified as the land plans by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“limits of deviation” means the limits of deviation referred to in article 6 (limits of deviation) and shown on the works plans;

“main river” means watercourses as defined under section 113(1) of the Water Resources Act 1991 and shown as such on the statutory main river maps held by the Environment Agency and the Department for Environment, Food and Rural Affairs;

“maintain” in relation to any part of the authorised development includes to inspect, repair, adjust, alter, improve, preserve, remove, reconstruct, refurbish or replace, provided such works do not give rise to any materially new or materially worse effects in comparison with those reported in the environmental statement, and any derivative of “maintain” is to be construed accordingly;

“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 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;

(a) 2003 c. 21. Section 32(1) was amended by S.I. 2011/1210.

“owner”, in relation to land, has the same meaning as in section 7(a) (interpretation) of the Acquisition of Land Act 1981;

“relevant planning authority” means in any given provision of this Order, the planning authority for the area to which the provision relates;

“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;

“statutory undertaker” means any statutory undertaker for the purposes of sections 127(8) (statutory undertakers’ land) and 138(4A) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act;

“street” means a street within the meaning of section 48(b) (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”, in relation to a street, has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

“streets, rights of way and access plans” means the plans listed in Schedule 10 (certification of plans and documents, etc.) and certified as the streets, rights of way and access plans by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“traffic authority” has the same meaning as in section 121A(c) (traffic authorities) of the 1984 Act;

“trunk road” means a highway which is a trunk road by virtue of—

- (a) section 10(d) (general provisions as to trunk roads) or 19(1)(e) (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;

“undertaker” means National Highways Limited (Company No. 09346363), whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ;

“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

“works plans” means the plans listed in Schedule 10 (certification of plans and documents, etc.) and certified as the works plans by the Secretary of State for the purposes of this Order under article 41 (certification of plans and documents, etc.).

(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) References in this Order to the creation and acquisition of rights over land include references to rights to oblige a party having an interest in land to grant those rights referenced in this Order, at the direction of the undertaker, either—

-
- (a) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1992 (c. 34). There are other amendments to section 7 which are not relevant to the Order.
 - (b) Section 48 was amended by section 124(1) and (2) of the Local Transport Act 2008 (c. 26).
 - (c) Section 121A was inserted by section 168(1) of, and paragraph 70 of Schedule 8 to, the 1991 Act (c. 22). It was amended by section 1 of, and paragraph 95(2) and (3) of Schedule 1 to the Infrastructure Act 2015 (c. 7). There are other amendments which are not relevant to this Order.
 - (d) Section 10 was amended by section 22(2) of the 1991 Act, by section 36 of, 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).
 - (e) Section 19 was amended by section 1 of, and Schedule 1 to, the Infrastructure Act 2015. There are other amendments to section 19 that are not relevant to this Order.

- (a) to an affected person directly, whether that person's land or rights over land have been adversely affected by this Order, and, where that is the case, the rights referenced in this Order are to be granted for the benefit of the land in which that affected person has an interest at the time of the making of this Order; or
 - (b) to any statutory undertaker for the purpose of its undertaking.
- (4) All distances, directions 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.
- (5) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.
- (6) References in this Order to any statutory body include that body's successor body or bodies as from time to time having jurisdiction over the authorised development.
- (7) 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 streets, rights of way and access plans.
- (8) References in this Order to numbered works are references to works as numbered in Schedule 1 (authorised development).
- (9) In this Order, the expression "includes" is to be construed without limitation.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by this Order

3.—(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

4. 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.

Maintenance of drainage works

5.—(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(a).

Limits of deviation

6.—(1) In carrying out the authorised development the undertaker may, so far as the undertaker considers it necessary or convenient—

- (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

(a) 1991 c. 59. The definition of "drainage" was substituted by section 100(2) of the Environment Act 1995 (c. 25).

- (b) deviate vertically from the levels of the authorised development shown on the engineering section drawings, to a maximum of 0.5 metres upwards or downwards.

(2) The maximum limits of deviation set out in paragraph (1) 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 and, in respect of the authorised development comprising highways other than a special road or a trunk road, the relevant local highway authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially worse effects in comparison with those reported in the environmental statement.

Benefit of Order

7.—(1) Subject to paragraph (2) and article 8 (consent to transfer benefit of Order), 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 the 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

8.—(1) Subject to paragraph (5), the undertaker may—

- (a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person ("the grantee") for a period agreed between the undertaker and the grantee any or all of the benefit of the provisions of this Order 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 grantee.

(3) The exercise by any 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 by or 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 grantee pursuant to this article and the transferee or grantee exercises those powers then the undertaker alone is liable for any compensation that is payable to another party as a consequence of the exercise of those powers by the transferee or grantee.

(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) Cadent Gas Limited (company number 10080864) whose registered office is at Pilot Way, Ansty, Coventry, England, CV7 9JU for the purposes of undertaking Works No. 45;
- (b) Electricity North West Limited (company number 2366949) whose registered office is at Borron Street, Stockport, Greater Manchester, SK1 2JD for the purposes of undertaking Works Nos. 14, 15 and 33;
- (c) Openreach Limited (company number 10690039) whose registered office is at Kelvin House, 123 Judd Street, London WC1H 9NP for the purposes of undertaking Works Nos. 14 and 15;
- (d) United Utilities PLC (company number 2366616) whose registered office is at Haweswater House, Lingley Mere Business Park, Lingley Green Avenue, Great Sankey, Warrington, WA5 3LP for the purposes of undertaking Works Nos. 30 and 41; and
- (e) Virgin Media Limited (company number 2591237) whose registered office is at 500 Brook Drive, Reading, RG2 6UU for the purposes of undertaking Works No. 45.

Planning permission

9. If planning permission is issued pursuant to 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; and
- (b) required to complete or enable the construction, use or operation of any part of the authorised development,

then the carrying out of such development, under the terms of the planning permission does not breach the terms of this Order and does not prevent the remainder of the authorised development from being implemented.

PART 3

STREETS

Street works

10.—(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 within or under it;
- (b) tunnel or bore under the street or carry out works to strengthen or repair the carriageway;
- (c) place or keep apparatus in the street;
- (d) maintain, renew or alter apparatus in the street or change its position;
- (e) demolish, remove, replace and relocate any street furniture;
- (f) execute any works to provide or improve sight lines;
- (g) execute and maintain any works to provide hard and soft landscaping;
- (h) carry out re-lining and placement of road markings;
- (i) remove and install temporary and permanent signage; and
- (j) execute any works required for, or incidental to, any works referred to in subparagraphs (a) to (i).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Subject to article 11 (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).

Application of the 1991 Act

11.—(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) (which defines what highway authority works are major highway works) of that Act; or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64(a) (dual carriageways and

(a) Section 64 was 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 1991 Act.

roundabouts) of the 1980 Act or section 184(a) (vehicle crossings over footways and verges) of that Act.

(2) In Part 3 of the 1991 Act, in relation to works which are major highway works by virtue of paragraph (1), references to the highway authority concerned are to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers of this Order—

- section 56(b) (power to give directions as to timing of street works);
- section 56A(c) (power to give directions as to placing of apparatus);
- section 58(d) (restrictions on works following substantial road works);
- section 58A(e) (restriction on works following substantial street works);
- section 73A(f) (power to require undertaker to re-surface street);
- section 73B(g) (power to specify timing etc. of re-surfacing);
- section 73C(h) (materials, workmanship and standard of re-surfacing);
- section 78A(i) (contributions to costs of re-surfacing by undertaker); and
- Schedule 3A(j) (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 14 (temporary closure 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(k) referred to in paragraph (4) are—

- section 54(l) (advance notice of certain works), subject to paragraph (6);
- section 55(m) (notice of starting date of works), subject to paragraph (6);
- section 57(n) (notice of emergency works);
- section 59(o) (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 75 (inspection fees);
- section 76 (liability for cost of temporary traffic regulation); and
- 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.

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- (a) Section 184 was amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48); by section 4 of, and paragraph 45(11) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11); and section 168 of, and paragraph 9 of Schedule 8 and Schedule 9 to, the 1991 Act.
 - (b) Section 56 was amended by section 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
 - (c) Section 56A was inserted by section 44 of the Traffic Management Act 2004.
 - (d) Section 58 was amended by section 51 of, and Schedule 1 to, the Traffic Management Act 2004.
 - (e) Section 58A was inserted by section 52 of the Traffic Management Act 2004.
 - (f) Section 73A was inserted by section 55 of the Traffic Management Act 2004.
 - (g) Section 73B was inserted by section 55 of the Traffic Management Act 2004.
 - (h) Section 73C was inserted by section 55 of the Traffic Management Act 2004.
 - (i) Section 78A was inserted by section 57 of the Traffic Management Act 2004.
 - (j) Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the Traffic Management Act 2004.
 - (k) Sections 54, 55, 57, 60, 68 and 69 were amended by sections 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004.
 - (l) Section 54 was amended by section 49(1) of the Traffic Management Act 2004.
 - (m) Section 55 was amended by section 49(2) and 51(9) of the Traffic Management Act 2004.
 - (n) Section 57 was amended by section 52(3) of the Traffic Management Act 2004.
 - (o) Section 59 was amended by section 42 of the Traffic Management Act 2004.

(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 12 (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 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 maintenance works which are street works within the meaning of the 1991 Act to which the provisions of Part 3 of the 1991 Act apply.

Construction and maintenance of new, altered or diverted streets and other structures

12.—(1) Any street (other than a special road or a trunk road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the street lies and, unless otherwise agreed in writing with the local highway authority, the street including any culverts or other structures laid under it, must be maintained by and at the expense of the local highway authority from its completion.

(2) Where a street (other than a special road or a trunk road) is altered or diverted under this Order, the altered or diverted part of the street must be completed to the reasonable satisfaction of the street authority in whose area the street lies and, unless otherwise agreed in writing with the street authority, that part of the street, including any culverts or other structures laid under it, must be maintained by and at the expense of the street authority from its completion.

(3) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street or other structure 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 had taken such care as in all the circumstances was reasonably required to secure that the part of the street or structure to which the action relates was not dangerous to traffic.

(4) For the purposes of a defence under paragraph (3), the court must in particular have regard to the following matters—

- (a) the character of the street or structure and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street or structure 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 or structure;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street or structure to which the action relates was likely to cause danger to users of the street or structure; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street or structure 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 had arranged for a competent person to carry out or supervise the maintenance of the part of the street or structure to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street or structure and that the competent person had carried out those instructions.

Classification of roads etc.

13.—(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(a) (classes of traffic for purposes of special roads) 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 (classification of roads, etc.) have been completed and are open for traffic—
- (a) the undertaker 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.
- (3) The public rights of way set out in Part 2 (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 on—
- (a) the date on which the authorised development is open for traffic; or
 - (b) such date as soon as reasonably practicable following completion of the construction of the public right of way as may be agreed in writing between the undertaker and the local highway authority.
- (4) The maintenance accesses and private means of access specified in column (2) of Part 3 (private means of access) 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.
- (5) The application of paragraphs (1) to (5) 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 closure and restriction of use of streets

14.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily close, alter, divert or restrict the use of any street or public right of way and may for any reasonable time—

- (a) divert the traffic, or a class of 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 which has been temporarily closed, altered, diverted 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 closure, alteration, diversion or restriction of a street under this article if there would otherwise be no such access.

(4) The undertaker must not temporarily close, alter, divert or restrict any street without the consent of the relevant street authority in whose area the street lies, 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, as if it were a 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.

(7) An application for consent under paragraph (4) must be accompanied by a letter informing the street authority—

(a) Schedule 4 was amended by section 4 of, and paragraph 21(3) of Schedule 3 to, the Road Traffic (Consequential Provisions) Act 1988 (c.54).

- (a) of the period mentioned in paragraph (6); and
- (b) that if they do not respond before the end of that period, consent will be deemed to have been granted.

Permanent stopping up, restriction of use of streets and public rights of way

15.—(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 public rights of way specified in column (1) of Parts 1 and 2 of Schedule 4 (permanent stopping up of streets and public rights of way) to the extent specified and described in column (2) of those Parts of that Schedule.

(2) No public right of way specified in column (1) of Part 2 of Schedule 4 (being a public right of way to be stopped up and for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

- (a) the new public right of way to be constructed and substituted for it, which is specified in column (3) of Part 2 of that Schedule, is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the public right of way to be stopped up is first provided between the commencement and termination points for the stopping up of the public right of way until the completion and opening of the new public right of way in accordance with sub-paragraph (a).

(3) Where a street specified in column 1 of Part 1 of Schedule 4 has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(4) This article is subject to article 33 (apparatus and rights of statutory undertakers in stopped up streets).

Access to works

16.—(1) 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.

(2) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction and maintenance of the authorised development.

(3) The undertaker must compensate the person liable for the repair of a road to which paragraph (2) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (2).

(4) Any dispute as to a person's entitlement to compensation under paragraph (3), or as to the amount of such compensation, is to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

Traffic regulation

17.—(1) This article applies to roads in respect of which the undertaker is not the traffic authority.

(2) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development or for the purposes set out in sections 1(1)(d) (preventing the use of the road) or (f) (preserving or improving amenity) of the 1984 Act—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;

- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(3) The power conferred by paragraph (2) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (2) may have effect both before and after the expiry of that period.

(4) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).

(5) The undertaker must not exercise the powers conferred by paragraph (2) unless it has—

- (a) given not less than—
 - (i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
 - (ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,

to the chief officer of police and to the traffic authority in whose area the road is situated; and

- (b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of the receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of the receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by the undertaker under paragraph (2)—

- (a) has effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
 - (ii) the local authority in whose area the road is situated, as an order under section 32(a) (power of local authorities to provide parking places) of the 1984 Act,
 and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and
- (b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the 2004 Act(b).

(7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers of paragraph (2) within a period of 24 months from the opening of the authorised development.

(8) Before exercising the powers conferred by paragraph (2), the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.

(9) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

(10) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

(11) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.

(a) Section 32 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and by section 168(1) of, and paragraph 39 of Schedule 8 to, the 1991 Act.

(b) 2004 c. 18.

(12) Any application for consent under paragraph (2) must be accompanied by a letter informing the traffic authority—

- (a) of the period mentioned in paragraph (11); and
- (b) that if they do not respond before the end of that period, consent will be deemed to have been granted.

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 or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) 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(a).

(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; 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 pursuant to paragraph (1) 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) Save where permitted by this Order, the undertaker must not, in carrying out or maintaining works under this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(b).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to 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(c) have the same meaning as in that Act.

(9) 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.

(a) 1991 c. 56. Section 106 was amended by section 35(1) and (8) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(b) S.I. 2016/1154.

(c) 1991 c. 57.

(10) Any application to which this article applies must include a statement that the provisions of paragraph (3) must be accompanied by a letter informing the person who receives the application—

- (a) of the period mentioned in paragraph (9); and
- (b) that if they do not respond before the end of that period, consent will be deemed to have been granted.

Protective work 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
- (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, and place on, leave on and remove from the land any apparatus and equipment for use in connection with the survey.

(4) For the purpose of carrying out protective works under this article to a building 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 a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and 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), (c) or (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 44 (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) Subject to article 43 (no double recovery) 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) Subject to paragraph (6), section 13(b) (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(c) (application of compulsory acquisition provisions) of the 2008 Act.

(11) Any compensation payable under paragraph (7) or (8) is to be determined, as if it were a dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(12) 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.

Authority to survey and investigate the land

20.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development including, where reasonably necessary, any land which is outside the Order limits, and—

- (a) survey or investigate the land;
- (b) without limitation on the scope of sub-paragraph (a), make any excavations or trial holes and 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 on to 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 and boreholes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless no less than 14 days’ notice has been served on every owner and occupier of the land giving details of the nature of the surveys and investigations to be undertaken on 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 and boreholes.

(4) No trial holes or boreholes are to be made under this article—

- (a) in land located within a highway boundary without the consent of the highway authority;
or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(a) Section 152 was amended by S.I. 2009/1307.

(b) Section 13 was amended by sections 62(3) and 139(4) to (9) 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).

(c) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

(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, as if it were a dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (4)(a) in the case of a highway authority; or
- (b) under paragraph (4)(b) in the case of a street authority,

that authority will be deemed to have granted consent.

(7) Any application for consent under paragraph (4) must be accompanied by a letter informing the local highway authority or street authority—

- (a) of the period mentioned in paragraph (6); and
- (b) that if they do not respond before the end of that period, consent will be deemed to have been granted.

(8) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to 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 AND POSSESSION OF LAND

Compulsory acquisition of land

21.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or is incidental to it.

(2) This article is subject to article 22 (compulsory acquisition of land – incorporation of the mineral code), article 23 (time limit for exercise of authority to acquire land compulsorily), paragraph (2) of article 24 (compulsory acquisition of rights and imposition of restrictive covenants), paragraph (9) of article 30 (temporary use of land for carrying out the authorised development), paragraph (1)(a) of article 32 (statutory undertakers) and article 34 (crown rights).

Compulsory acquisition of land – incorporation of the mineral code

22.—(1) Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(a) are incorporated in 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 5 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 (compulsory purchase under the Acquisition of Land Act 1946) of the 1965 Act as modified by article 26 (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 27 (application of the 1981 Act).

(a) 1981 c. 67.

(2) The authority conferred by article 30 (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) Subject to paragraphs (2) to (4), the undertaker may acquire such rights over the Order land, or impose such restrictive covenants affecting the Order land, including rights and restrictive covenants for the benefit of a statutory undertaker or any other person, 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) Subject to section 8 (other provisions as to divided land) of, and 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 affecting land under paragraphs (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) 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.

(5) Where a right is acquired pursuant to this article for the benefit of a statutory undertaker that right shall on the exercise of the power of compulsory acquisition have effect for that party's benefit and be treated for all purposes as though it was vested in the statutory undertaker directly.

Private rights over land

25.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished from whichever is the earlier of—

- (a) the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) the date of entry on the land by the undertaker under section 11(1)(a) (powers of entry) of the 1965 Act.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of the 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 the burden of the restrictive covenant from whichever is the earlier of—

- (a) 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) the date of entry on the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker that are within the Order limits are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(a) Section 11(1) was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981, section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1), and sections 186 (1) and (2), 187 and 188 of the Housing and Planning Act 2016 (c. 22).

(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(a) (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, as if it were a dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138(b) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 32 (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 right or the imposition of the restrictive covenant over or affecting the land;
- (ii) the undertaker's appropriation of the land;
- (iii) the undertaker's entry onto the land; or
- (iv) the undertaker's taking temporary possession of the land,

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,

the agreement 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

26.—(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act, as applied to this Order by section 125(c) (application of compulsory acquisition provisions) of the 2008 Act is modified as follows.

(2) In section 4A(1)(d) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118(e) (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 M60/M62/M66 Simister Island Interchange Development Consent Order 20[]”.

(3) In section 11A(f) (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”.

(a) Section 152 was amended by S.I. 2009/1307.

(b) Section 138 was amended by section 23(1) and (4) of the Growth and Infrastructure Act 2013 (c. 27) and S.I. 2017/1285.

(c) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

(d) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016.

(e) Section 118 was 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).

(f) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 23 (time limit for exercise of authority to acquire land compulsorily) of the M60/M62/M66 Simister Island Interchange Development Consent Order 20[]”.

(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 28(3) (acquisition of subsoil or airspace only) of the M60/M62/M66 Simister Island Interchange Development Consent Order 20[], which excludes the acquisition of subsoil or airspace only from this Schedule.”; and

(b) after paragraph 29, insert—

“PART 4 INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under articles 19 (protective work to buildings), 20 (authority to survey and investigate land), 30 (temporary use of land for carrying out the authorised development) or 31 (temporary use of land for maintaining the authorised development) of the M60/M62/M66 Simister Island Interchange Development Consent Order 20[].”.

Application of the 1981 Act

27.—(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 4 (execution of declaration) for “vesting the land in themselves” substitute “vesting the land or any interest in land in themselves or for the benefit of a statutory undertaker”.

(5) In section 5(a) (earliest date for execution of declaration), in subsection (2), omit the words from “; and this subsection” to the end.

(6) Omit section 5A(b) (time limit for general vesting declaration).

(7) In section 5B(1)(c) (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 three year period mentioned in section 5A” substitute “section 118 (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 M60/M62/M66 Simister Island Interchange Development Consent Order 20[].”.

(8) 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”.

(9) In section 7(f) (constructive notice to treat) in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(10) In Schedule A1(g) (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

(a) Section 5 was amended by paragraphs 4 and 6 of Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(b) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.

(c) Section 5B(1) was inserted by section 202(2) of the Housing and Planning Act 2016.

(d) Section 6 was amended by section 4 of, and 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.

(e) Section 134 was amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011(c. 11) and S.I. 2017/16.

(f) Section 7(1) was substituted by paragraphs 1 and 3 of Schedule 18 to the Housing and Planning Act 2016.

(g) Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016.

(11) 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 26 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace only

28.—(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 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 (as modified by article 26 (modification of Part 1 of the 1965 Act)) of this Order;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153 (4A)(a) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(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

29.—(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, will be entitled to compensation to be determined, as if it were a dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

30.—(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) Subsection (4A) of section 153 was inserted by section 200(1) and (2) of the Housing and Planning Act 2016 (c. 22).

(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 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any electric line, electrical plant, structures, apparatus, buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings or structures on that land; and
- (d) construct any works on that land as are specified in Schedule 1 (authorised development) or undertake any other mitigation works in connection with the authorised development.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land 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) 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 (execution of declaration) 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 condition it was in on the date on which possession of the land was first taken by the undertaker or such other condition as may be agreed with 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 have been constructed under paragraph (1)(d);
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development;
- (d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development; or
- (e) remove or reposition any apparatus belonging to statutory undertakers or necessary mitigation works.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of 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 (determination of questions of disputed compensation) of the 1961 Act.

(7) Any dispute as to the removal of temporary works and restoration of land under paragraph (4) does not prevent the undertaker giving up possession of the land.

(8) Subject to article 43 (no double recovery), 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).

(9) 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 or airspace over (or rights in the subsoil of or airspace over) that land under article 28 (acquisition of subsoil or airspace only).

(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(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.

(12) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in paragraph (1).

Temporary use of land for maintaining the authorised development

31.—(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.

(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 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 condition it was in on the date on which possession of the land was first taken by the undertaker or such other condition as may be agreed with the owners of the land.

(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).

(7) Any dispute as to the removal of temporary works and restoration of land under paragraph (6) does not prevent the undertaker giving up possession of the land.

(8) 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.

(9) Any dispute as to a person's entitlement to compensation under paragraph (8), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(10) Subject to article 43 (no double recovery), 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 (8).

(11) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(12) Section 13 (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to 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.

(13) 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

32.—(1) Subject to the provisions of Schedule 9 (protective provisions), article 24 (compulsory acquisition of rights and imposition of restrictive covenants) 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, and remove or reposition 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 33 (apparatus and rights of statutory undertakers in stopped up streets).

Apparatus and rights of statutory undertakers in stopped up streets

33.—(1) Where a street is stopped up under article 15 (permanent stopping up and restriction of use of streets, public rights of way 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 15 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the statutory utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the statutory utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of 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 statutory 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).

Crown rights

34.—(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 to take, use, enter upon or in any manner interfere with any land or rights of any description (including any river, channel, creek, bay or estuary)—

(a) 2003 c. 21. There are amendments to section 151 which are not relevant to this Order.

- (a) 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;
- (b) belong to His Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) 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.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) 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.

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 32 (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 32, 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 sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 33 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(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 or management of hedgerows

36.—(1) Subject to paragraph (3), the undertaker may fell or lop any tree or shrub (except for any tree or shrub in ancient woodland) within or overhanging land within the Order limits, or cut back its roots, 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) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (3), remove, cut back or manage any hedgerow within the Order limits as specified in column (5) of Schedule 8 (hedgerows to be removed or managed) that is required to be removed or managed.

(3) In carrying out any activity authorised by paragraphs (1) or (2), the undertaker must do no unnecessary damage to any tree, shrub or hedgerow and must pay compensation to any person for any loss or damage arising from such activity.

(4) Any dispute as to a person's entitlement to compensation under paragraph (3), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

(5) In this article "hedgerow" includes a hedgerow to which the Hedgerow Regulations 1997(a) apply and includes important hedgerows.

PART 7

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

37.—(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) 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

38. Development consent granted by this Order is to be treated as a specific planning permission for the purposes of section 264(3) (cases in which land is to be treated as not being operational land for the purposes of that Act) of the 1990 Act.

Defence to proceedings in respect of statutory nuisance

39.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(b) in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be

(a) S.I. 1997/1160.

(b) 1990 c. 43. There are amendments to this subsection which are not relevant to this Order.

prejudicial to health or a nuisance) of that Act no order is to be made, and no fine may be imposed, under section 82(2)(a) 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
- (b) the defendant shows that the nuisance 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.

Protection of interests

40. Schedule 9 (protective provisions) to the Order has effect.

Certification of plans and documents, etc.

41.—(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents set out in Schedule 10 (certification of plans and documents, etc.) to the Secretary of State for certification as true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 10 requires to be amended to accord with the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).

(3) A plan or document so certified will be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

42.—(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 is 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(c) as it applies for the purposes of this article, the proper address of any person in relation to the service

(a) Section 82(2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40). There are other amendments to the subsection that are not relevant to this Order.

(b) 1974 c. 40. Section 61(9) was amended by section 162 of, and paragraph 15(1) and (3) of Schedule 3 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to section 61 which are not relevant to this Order.

(c) 1978 c. 30.

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.

(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 will 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 will be final and will take 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 will not be taken to 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.

No double recovery

43. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

Arbitration

44. 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 Lands Chamber of the Upper 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.

Disapplication and modification of legislative provisions

45.—(1) The provisions of the Neighbourhood Planning Act 2017^(a), insofar as they relate to temporary possession of land under articles 30 (temporary use of land for carrying out the authorised development) and 31 (temporary use of land for maintaining the authorised development) of this Order, 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 the maintenance period defined in article 31(13), any maintenance of any part of the authorised development.

Signed

Date

Title
Department

^(a) 2017 c. 20.

SCHEDULES

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

In the administrative areas of Simister, Kirkhams, Besses o' th' Barn and Unsworth

A nationally significant infrastructure project as defined in sections 14 (nationally significant infrastructure projects: general) and 22 (highways) of the 2008 Act, and associated development as defined in section 115 of the 2008 Act, comprising:

Work No. 01 – shown on sheet 1 of the works plans as being the construction of a re-aligned M60 on-slip road in cutting (183m in length) comprising 1 lane that merges onto the improved M60 eastbound (Work No. 02) from Junction 17 of the M60.

Work No. 02 – shown on sheets 1 and 2 of the works plans as being the widening from 4 lanes to 5 lanes of the eastbound carriageway of the M60 between Junction 17 and 18 (1586m in length) and incorporating the small section within the Order limits near Sandgate Road, such works including -

- (a) the alteration of 1 no. portal gantry above the M60 Motorway within the gantry siting location shown as Gantry Type 1 on sheet 1 of the works plans, including the installation of new signs, signals, sign illumination, control cabinets, power and communication cable connections;
- (b) the construction of 2 no. portal gantries above the M60 Motorway within the gantry siting locations shown as Gantry Type 3 on sheets 1 and 2 of the works plans, including the installation of new gantry foundations, gantry structures, earthwork retaining structures, signs, signals, sign illumination, control cabinets, power and communication cable connections; and
- (c) the construction of 1 no. cantilever gantry above the M60 Motorway within the gantry siting locations shown as Gantry Type 4 on sheet 1 of the works plans, including the installation of new gantry foundation, gantry structure, earthwork retaining structure, signals, control cabinets, power and communication cable connections.

Work No. 03 – shown on sheets 1 and 2 of the works plans as being the widening from 4 lanes to 5 lanes of the westbound carriageway of the M60 between Junction 18 and 17 (1523m in length). The works include the construction of 2 no. portal gantries above the M60 Motorway within the gantry siting locations shown as Gantry Type 3 on sheets 1 and 2 of the works plans, including the installation of new gantry foundations, gantry structures, earthwork retaining structures, signs, signals, sign illumination, control cabinets, power and communication cable connections.

Work No. 04 – shown on sheet 1 of the works plans as being the construction of a re-aligned M60 off-slip road in cutting (311m in length) comprising 1 lane that widens to 2 lanes and that diverges off the improved M60 westbound (Work No. 03) and connects to Junction 17 of the M60.

Work No. 05 – shown on sheets 1 and 2 of the works plans as being the construction of a new M60 off-slip road on embankment (1911m in length) comprising 2 lanes that diverges from the improved M60 eastbound (Work No. 02), the construction of a new 3-span viaduct structure (Pike Fold Viaduct) and the construction of a re-aligned M60 on-slip road on embankment that merges onto the improved M60 southbound (Work No. 22), commencing from a point 118m east of Sandgate Road overbridge and terminating at a point 20m north of M60 Junction 18. Works include removal of Important Hedgerow (HG_08) as described in Schedule 8 of this Order.

Work No. 06 – shown on sheets 1 and 2 of the works plans as being the construction of a temporary haul route (298m in length), required to enable the construction of Work Nos. 02 and 05.

Work No. 07 – shown on sheets 1, 2 and 3 of the works plans as being the construction of a re-aligned M60 off-slip road in cutting (1123m in length) comprising 2 lanes that diverges from the improved M60 northbound (Work No. 18) and construction of a re-aligned M60 on-slip road on

embankment that merges onto the improved M60 westbound (Work No. 03), commencing from a point 120m south of Simister Lane overbridge and terminating at a point 250m east of Sandgate Road overbridge. The works include the alteration of 2 no. portal gantries above the M60 Motorway within the gantry siting locations shown as Gantry Type 1 on sheet 2 of the works plans, including the installation of new signs, signals, sign illumination, control cabinets, power and communication cable connections.

Work No. 08 – shown on sheet 1 of the works plans as being the construction of a temporary haul route (135m in length), required to enable the construction of Work Nos. 03 and 07.

Work No. 09 – shown on sheet 2 of the works plans as being the construction of a re-aligned M60 off-slip road in cutting (684m in length) comprising 1 lane that diverges from the improved M60 eastbound (Work No. 02) and construction of a re-aligned M66 on-slip road in cutting comprising 1 lane that connects directly with the existing M66 northbound on-slip, commencing from a point 416m west of M60 Junction 18 and terminating at a point 100m north of M60 Junction 18.

Work No. 10 – shown on sheet 2 of the works plans as being the construction of a temporary haul route (268m in length), required to enable the construction of Work Nos. 02, 05, 27 and 29. Works include removal of Important Hedgerow (HG_08) as described in Schedule 8 of this Order.

Work No. 11 – shown on sheet 2 of the works plans as being the construction of a temporary haul route (571m in length), required to enable the construction of Work Nos. 03, 07, 12, 13 and 14.

Work No. 12 – shown on sheet 2 of the works plans as being the construction of a re-aligned M60 on-slip road in cutting (554m in length) comprising 2 lanes that merges onto the improved M60 westbound (Work No. 03) from the improved Junction 18 of the M60 (Work No. 25).

Work No. 13 – shown on sheet 2 of the works plans as being the installation of a drainage attenuation pond and swales, 236m southwest from M60 Junction 18, including excavations, embankments, cuttings, environmental mitigation, and fencing necessary for its construction and operation. Work No. 13 is adjacent to the re-aligned M60 northbound to M60 westbound link (Work No. 07) and is accessed via a new maintenance access track (Work No. 14).

Work No. 14 – shown on sheet 2 of the works plans as being the construction of a new maintenance access track (184m in length) from Corday Lane to the new attenuation pond (Work No. 13). Works to include diversion and/or protection of buried statutory undertaker equipment (Work No. 51).

Work No. 15 – shown on sheet 2 of the works plans as being the construction of a temporary haul route (245m in length), for construction of Work Nos. 03, 07, 09, 14, 16 and 17. Works to include diversion and/or protection of buried statutory undertaker equipment (Work No. 51) to enable construction of a new maintenance access track (Work No. 14).

Work No. 16 – shown on sheet 2 of the works plans as being the construction of a temporary haul route (200m in length), for construction of Work Nos. 03, 07, 13, 14, 15 and 17.

Work No. 17 – shown on sheet 2 of the works plans as being the construction of a re-aligned M60 off-slip road in cutting and on embankment (187m in length) comprising 1 lane that widens to 2 lanes and that diverges from the improved M60 northbound (Work No. 18) and merges with the improved M60 Junction 18 circulatory carriageway (Work No. 25), commencing from a point 10m north of Simister Lane overbridge.

Work No. 18 – shown on sheets 2, 3 and 4 of the works plans as being the improvement of the northbound carriageway of the M60 comprising 5 lanes, commencing at the re-aligned M60 northbound off-slip (Work No. 07) and terminating at the M66 northbound on-slip. The works include the alteration of 1 no. portal gantries shown as Gantry Type 1 on sheet 3 of the works plans.

Work No. 19 – shown on sheet 3 of the works plans as being the construction of a new maintenance access track (231m in length) from the improved M60 northbound carriageway (Work No. 18) to the new attenuation pond (Work No. 21). Works to Important Hedgerow (HG_80) as described in Schedule 8 of this Order.

Work No. 20 – shown on sheet 3 of the works plans as being the establishment of environmental mitigation area(s) to the west of the improved M60 northbound carriageway (Work No. 18) including ecology pond creation, hedgerow planting and species rich grassland seeding to mitigate for biodiversity loss and integrate the authorised development into the surrounding landscape. Works to Important Hedgerow (HG_80) as described in Schedule 8 of this Order.

Work No. 21 – shown on sheet 3 of the works plans as being the installation of a drainage attenuation pond, to the west of the improved M60 northbound carriageway (Work No. 18), including excavations, embankments, cuttings, environmental mitigation, and fencing necessary for its construction and operation. Work No. 21 is adjacent to the improved M60 northbound carriageway (Work No. 18) and is accessed via a new maintenance access track (Work No. 19).

Work No. 22 – shown on sheets 2 and 3 of the works plans as being the widening from 2 lanes to 4 lanes of the southbound carriageway of the M60, commencing at a point 20m north of M60 Junction 18 and terminating 338m south of Simister Lane overbridge. The works include the construction of 1 no. cantilever gantry above the M60 Motorway within the gantry siting locations shown as Gantry Type 4 on sheet 2 of the works plans, including the installation of new gantry foundation, gantry structure, earthwork retaining structure, signals, control cabinets, power and communication cable connections.

Work No. 23 – shown on sheets 2 and 3 of the works plans as being the construction of a re-aligned M62 off-slip road in cutting and on embankment (585m in length) comprising 1 lane that diverges from the M62 westbound and construction of a re-aligned M60 on-slip road in cutting that connects directly with the improved M60 southbound carriageway (Work No. 22), commencing from a point 192m east of M60 Junction 18 and terminating at a point 132m south of Simister Lane overbridge.

Work No. 24 – shown on sheet 2 of the works plans as being the creation of a new emergency service and traffic officer service access road (78m in length) from the improved M60 Junction 18 circulatory carriageway (Work No. 25) to the re-aligned M60 southbound on-slip (Work No. 23).

Work No. 25 – shown on sheet 2 of the works plans as being the modification of the M60 Junction 18 circulatory carriageway (585m in length) including the provision of new wearing course to the pavement, amendment of the road markings and replacement of traffic signals and associated infrastructure.

Work No. 26 – shown on sheet 2 of the works plans as being the creation of a new emergency service and traffic officer service access road (101m in length) from the re-aligned M60 off-slip (Work No. 09) to the improved Junction 18 circulatory carriageway (Work No. 25).

Work No. 27 – shown on sheet 2 of the works plans as being the installation of a drainage attenuation pond, to the north of the new M60 eastbound off-slip carriageway (Work No. 05), including excavations, embankments, cuttings, environmental mitigation, and fencing necessary for its construction and operation. Work No. 27 is adjacent to the new M60 eastbound off-slip carriageway (Work No. 05) and is accessed via a new maintenance access track (Work No. 29).

Work No. 28 – shown on sheet 2 of the works plans as being the re-alignment of the exit road (84m in length) from the improved Junction 18 circulatory carriageway (Work No. 25) to the re-aligned M66 northbound on-slip (Work No. 09).

Work No. 29 – shown on sheet 2 of the works plans as being the construction of a new maintenance access track (535m in length) from Mode Hill Lane to the new attenuation pond (Work No. 27) including the continuation of the temporary haul route (Work No. 10). Works include the removal of Important Hedgerow (HG_80) as described in Schedule 8 of this Order.

Work No. 30 – shown on sheets 2, 4 and 5 of the works plans as being the widening of the southbound carriageway of the M66 (951m in length) comprising of 2 lanes commencing from the new M66 southbound off-slip (Work No. 39) and terminating at a point 20m north of M60 Junction 18 including the alteration of an existing portal gantry and the construction of a new cantilever gantry, comprising -

- (a) the construction of 1 no. cantilever gantry above the M66 Motorway within the gantry siting locations shown as Gantry Type 4 on sheet 4 of the works plans, including the installation of new gantry foundation, gantry structure, earthwork retaining structure, signals, control cabinets, power and communication cable connections.
- (b) shown on sheet 5 of the works plans as being the construction of 2 no. cantilever gantries above the M66 Motorway within the gantry siting locations shown as Gantry Type 4 on sheet 5 of the works plans, including the installation of new gantry foundations, gantry structures, earthwork retaining structures, signs, signals, sign illumination, control cabinets, power and communication cable connections.

Work No. 31 – shown on sheet 2 of the works plans as being the establishment of environmental mitigation area(s) on Mode Hill Lane/Pole Lane including hedgerow planting and species rich grassland seeding.

Work No. 32 – shown on sheet 2 of the works plans as being the establishment of environmental mitigation area(s) to the west of the improved M66 northbound carriageway (Work No. 18) and north of Mode Hill Lane/Pole Lane including hedgerow planting and species rich grassland seeding.

Work No. 33 – shown on sheets 2 and 4 of the works plans as being the construction of a new temporary haul route (966m in length), which commences from the M66 southbound verge and terminates south of the loop towards M60 Junction 18.

Work No. 34 – shown on sheet 2 of the works plans as being the construction of a new link road on embankment (301m in length) connecting the new M66 southbound off-slip and link road (Work No. 39) to the M62 eastbound on-slip.

Work No. 35 – shown on sheet 2 of the works plans as being the construction of a new maintenance access track (722m in length) from Egypt Lane to the new attenuation pond (Work No. 37), the new M60 eastbound off-slip road and link to M60 southbound (Work No. 05) and new M66 southbound off-slip and link road (Work No. 39).

Work No. 36 – shown on sheet number 2 of the works plans as being the establishment of environmental mitigation area(s) to the north east of M60 Junction 18 and south of Egypt Lane, including woodland planting, hedgerow and species rich grassland.

Work No. 37 – shown on sheet 2 of the works plans as being the installation of a drainage attenuation pond and swales, 500m north east from M60 Junction 18, including excavations, embankments, cuttings, environmental mitigation, and fencing necessary for its construction and operation. Work No. 37 is adjacent to the new M60 eastbound to M60 southbound link (Work No. 05) and is accessed via a new maintenance access track (Work No. 35).

Work No. 38 – shown on sheet number 2 of the works plans as being the establishment of environmental mitigation areas to the north east of M60 Junction 18 and north of Egypt Lane, including woodland planting, hedgerow planting and species rich grassland. Works to Important Hedgerow (HG_23) as described in Schedule 8 of this Order.

Work No. 39 – shown on sheets 2 and 4 of the works plans as being the construction of a new M66 southbound off-slip and link road on embankment (944m in length) comprising 2 lanes, and the construction of a new single span bridge structure (Pike Fold Bridge), connecting the improved M66 southbound carriageway (Work No. 30) with the improved Junction 18 circulatory carriageway (Work No. 25) and the new link road to the M62 eastbound on-slip (Work No. 34).

Work No. 40 – shown on sheets 2 and 4 of the works plans as being works to realign the existing Public Right of Way (footway) 9WHI, due to the construction of the new M60 eastbound off-slip road and link to M60 southbound (Work No. 05), connecting Egypt Lane to existing public right of way (ref. 9WHI), adjacent to the new M66 southbound off-slip and link road (Work No. 39), approximately 200m south of Hills Lane (approximately 673m in length). Works also include mitigation measures comprising netting up to a maximum height of 25 metres on the boundary between the highway and golf course.

Work No. 41 – shown on sheet 4 of the works plans as being the diversion of a buried water main and associated infrastructure due to the construction of the improved M66 southbound carriageway (Work No. 30) and the new M66 southbound off-slip and link road (Work No. 39) (approximately 100m in length).

Work No. 42 – not used.

Work No. 43 – shown on sheet 4 of the works plans as being the installation of a drainage attenuation pond, 200m east of the M66 southbound carriageway, including excavations, embankments, cuttings, environmental mitigation, and fencing necessary for its construction and operation. Work No. 43 is adjacent to the M66 southbound and is accessed via a new maintenance access track (Work No. 44).

Work No. 44 – shown on sheet 4 of the works plans as being the construction of a new maintenance access track (152m in length) from Griffie Lane to the new attenuation pond (Work No. 43). Works to Important Hedgerows (HG_21, HG_22 and HG_39) as described in Schedule 8 of this Order.

Work No. 45 – shown on sheet 1 of the works plans as being the diversion of a low and high voltage electricity cables, low pressure gas main, communications / telephone cables and a water main and associated infrastructure due to the construction of the improved M60 eastbound carriageway (Work No. 02) (approximately 30m in length).

Work No. 46 – shown on sheet 3 of the works plans as being works to realign the existing Public Rights of Way (footway) 28aPRE and 29aPRE to accommodate the construction of the new drainage attenuation pond (Work No. 21) and new maintenance access track (Work No. 19) (approximately 90m in length).

Work No. 47 – shown on sheet 4 of the works plans as being works to realign the existing Public Right of Way (footway) 7WHI to accommodate construction of the new drainage attenuation pond (Work No. 43) and new maintenance access track (Work No. 44) (approximately 90m in length).

Work No. 48 – shown on sheet 1 of the works plans as being the diversion of low and high voltage electricity cables, telecommunications cables and a water main and associated infrastructure due to the construction of the improved M60 eastbound carriageway (Work No. 02) and the improved M60 westbound carriageway (Work No. 03) (approximately 250m in length).

Work No. 49 – shown on sheet 1 of the works plans as being the diversion of low voltage electricity cables, combined sewer, telecommunications cables and a water main and associated infrastructure due to the construction of the improved M60 westbound carriageway (Work No. 03) (approximately 300m in length).

Work No. 50 – shown on sheet 1 of the works plans as being the diversion of low voltage electricity cables and associated infrastructure due to the construction of the improved M60 westbound carriageway (Work No. 03) (approximately 40m in length).

Work No. 51 – shown on sheet 2 of the works plans as being the diversion of low voltage electricity cables and telecommunications cables and associated infrastructure due to the construction of the new maintenance access track (Work No. 14) (approximately 180m in length).

Work No. 52 – shown on sheet 2 of the works plans as being the diversion of low voltage electricity cables, telecommunications cables and a water main and associated infrastructure due to connections required into the main site compound, northwest of M60 Junction 18 (approximately 275m in length).

Work No. 53 – shown on sheet 2 of the works plans as being the construction of maintenance access track (174m in length), which runs parallel to the Junction 18 circulatory carriageway.

Work No. 54 – shown on sheet 1 of the works plans as being the establishment of an environmental mitigation area, north of M60 eastbound carriageway (Work No. 02) and west of Sandgate Road, including woodland planting, hedgerow planting and species rich grassland.

Work No. 55 – shown on sheet 1 of the works plans as being the establishment of an environmental mitigation area, north of M60 eastbound carriageway (Work No. 02) and west of Sandgate Road including woodland planting, hedgerow planting and species rich grassland.

Work No. 56 – shown on sheet 1 of the works plans as being the establishment of an environmental mitigation area, south of M60 westbound carriageway (Work No. 03) west of utilities works (Work No. 50), and west of Sandgate Road, including woodland planting, hedgerow planting and species rich grassland.

Work No. 57 – shown on sheet 2 of the works plans as being the establishment of an environmental mitigation area, north of M60 eastbound to M60 southbound interchange link (Work No. 05) situated between a maintenance access (Work No. 29) and a drainage attenuation pond (Work No. 27), including woodland planting, hedgerow planting and species rich grassland.

Work No. 58 – shown on sheet 2 of the works plans as being the establishment of an environmental mitigation area, southwest of a slip road between the M60 northbound and the M60 westbound (Work No. 07) and southeast of utilities work (Work No. 51), including woodland planting, hedgerow planting and species rich grassland.

Work No. 59 – shown on sheet 2 of the works plans as being the establishment of an environmental mitigation area, inside of the northern loop included in interchange link of M60 eastbound and M60 southbound (Work No. 05) east of a maintenance access (Work No. 35), including woodland planting, hedgerow planting and species rich grassland.

Work No. 60 – shown on sheet 3 of the works plans as being the establishment of an environmental mitigation area, west of the M60 northbound carriageway (Work No. 18) north of a drainage attenuation pond (Work No. 21), including woodland planting, hedgerow planting and species rich grassland.

For the purposes of or in connection with the construction of any of those works, further development within the Order limits which does not give rise to any materially new or materially worse effects in comparison with those reported in the environmental statement, consisting of—

- (a) alteration of the layout of any street permanently or temporarily, including but not limited to increasing or reducing the width of the carriageway of the street by increasing or reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footpath, footway, cycle track or verge; and reducing the width of the carriageway of the street;
- (b) works required for the strengthening, improvement, repair, maintenance, or reconstruction of any street;
- (c) ramps, steps, means of access, private means of access, non-motorised user routes or links, footpaths, footways, bridleways, equestrian tracks, cycle tracks, byways open to all traffic, restricted byways, laybys and crossing facilities;
- (d) embankments, cuttings, excavations, viaducts, bridges, aprons, abutments, shafts, foundations, retaining walls, drainage works, drainage treatment areas, ponds, lagoons, outfalls, ditches, pollution control devices, pumping stations, wing walls, firefighting system water tanks and associated plant and equipment, highway lighting, fencing, noise barriers and culverts;
- (e) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; and tunnelling or boring under a street;
- (f) works to place, alter, divert, relocate, protect, remove or maintain the position of apparatus (including statutory undertakers' apparatus), services, plant and other equipment in, under or above a street, or in other land, including mains, sewers, drains, pipes, lights, cables, cofferdams, fencing and other boundary treatments;
- (g) works to alter the course of, or otherwise interfere with a watercourse;
- (h) landscaping, re-grading, re-profiling, contouring, works associated with the provision of ecological, archaeological and environmental mitigation (such as noise and visual bunds

and barriers) and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;

- (i) works comprising ground improvement, settlement monitoring and mitigation measures for the benefit or protection of, or in relation to, any land, building or structure, including monitoring and safeguarding of existing infrastructure, utilities and services affected by the authorised development;
- (j) works to place, alter, remove or maintain road furniture;
- (k) refurbishment works to any existing bridge;
- (l) site preparation works, site clearance (including fencing and other boundary treatments, vegetation removal, demolition of existing structures and the creation of alternative highways or footpaths); earthworks (including soil stripping and storage and site levelling);
- (m) the felling of trees and hedgerows;
- (n) establishment of site construction compounds and working sites, temporary structures, storage areas (including storage of excavated material and other materials), temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, office facilities, other ancillary accommodation, construction lighting, haulage roads and other buildings, machinery, apparatus, processing plant, works and conveniences;
- (o) the provisions of other works including pavement works, kerbing and paved areas works, signing, signals, highways technology, gantries, street lighting, road restraints, road markings works, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development;
- (p) pumping for the purposes of dewatering excavations and the management of surface water flows and temporary storage, settlement and treatment of surface water flows; and
- (q) such other works, working sites, storage areas, works of demolition or works of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the construction, operation or maintenance of the authorised development.

SCHEDULE 2

REQUIREMENTS

Article 3

PART 1

REQUIREMENTS

Interpretation

1. In this Schedule—

“arboricultural impact assessment” means the assessment at appendix 7.5 of the environmental statement figures listed in Schedule 10 (certification of plans and documents, etc.) and certified by the Secretary of State as the environmental statement appendices for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“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;

“commence” means beginning to carry out any material operation (as defined in section 56(4) (time when development begun) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations and mitigation works, ecological surveys and mitigation works, investigations for the purpose of assessing ground conditions, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment, treatment of any invasive species and the temporary display of site notices or advertisements, and “commencement” is to be construed accordingly;

“contaminated land” has the same meaning as that given in section 78A of the Environmental Protection Act 1990(a);

“Design Council” means the UK’s national strategic advisor for design who is a Royal Charter charity (registered charity number 279099);

“design principles report” means the design principles report listed in Schedule 10 (certification of plans and documents, etc.) and certified by the Secretary of State as the design principles report for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“design review panel” means a panel appointed by the Design Council to conduct an independent review of certain elements of the proposed design of the authorised development;

“drainage strategy report” means the report at Appendix 13.7 of the environmental statement appendices listed in Schedule 10 (certification of plans and documents, etc.) and certified by the Secretary of State as the environmental statement appendices for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“ECoW” means the ecological clerk of the works appointed to ensure competence and quality in ecological matters whose responsibilities are defined in the first iteration EMP;

“environmental masterplan” means the environmental masterplan at figure 2.3 of the environmental statement figures listed in Schedule 10 (certification of plans and documents, etc.) and certified by the Secretary of State as the environmental statement figures for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“environmental mitigation areas” means each of the environmental mitigation areas identified on the works plans comprising Work Nos. 20, 31, 32, 36, 38, 54, 55, 56, 57, 58, 59 and 60;

“first iteration EMP” means the outline environmental management plan referred to in Schedule 10 (certification of plans and documents, etc.) and certified by the Secretary of State as the first

(a) 1990 c. 43. Section 78A was inserted by section 57 of the Environment Act 1995 (c. 25) and amended by section 86(2) of the Water Act 2003 c. 37.

iteration environmental management plan for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“general arrangement plans” means the plans listed in Schedule 10 (certification of plans and documents, etc.) and certified by the Secretary of State as the general arrangement plans for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“ISO 14001” means the international standards on designing and implementing environmental management systems published by the International Standards Organisation;

“outline traffic management plan” means the document listed in Schedule 10 (certification of plans and documents, etc.) and certified by the Secretary of State as the outline traffic management plan for the purposes of this Order under article 41 (certification of plans and documents, etc.);

“second iteration EMP” means the second revision of the first iteration EMP which is refined in advance of construction;

“third iteration EMP” means the third revision of the first iteration EMP, which builds upon the second iteration EMP and is refined at the end of the construction stage to support future management and operation;

“the Manual of Contract Documents for Highway Works” means the document of that name published electronically by the strategic highway authorities for England, Scotland, Wales and Northern Ireland, or any equivalent replacement published for that document; and

“REAC” means the register of environmental actions and commitments set out in section 3 of the first iteration EMP.

Time limits

2. The authorised development must commence no later than the expiration of 5 years beginning with the date that this Order comes into force.

Detailed design

3.—(1) The authorised development must be designed in detail and carried out so that it is compatible with:

- (a) the preliminary scheme design shown on the general arrangement plans, works plans and the engineering section drawings;
- (b) the design principles set out in the design principles report; and
- (c) the report mentioned in sub-paragraph (3)

unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority and local highway authority on matters related to their functions and provided that the Secretary of State is satisfied that any amendments to the general arrangement plans, works plans and the engineering section drawings showing departures from the preliminary scheme design or the design principles would not give rise to any materially new or materially worse 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 general arrangement plans, works plans or engineering section drawings and the undertaker must make those amended details available in electronic form for inspection by members of the public.

(3) The report mentioned in sub-paragraph (1) is a report to be prepared by the undertaker of its findings following a review of the detailed design of Pike Fold Viaduct and Pike Fold Bridge; the review to be carried out in consultation with the design review panel, the relevant planning authority and the relevant highway authority.

Environmental Management Plan

4.—(1) The authorised development must be carried out in accordance with the first iteration EMP.

(2) No part of the authorised development is to commence until a second iteration EMP, substantially in accordance with the first iteration EMP, has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and, to the extent that it relates to a matter relevant to their function, the Environment Agency.

(3) The undertaker must make the second iteration EMP and the third iteration EMP, in each case substantially in accordance with the first iteration EMP available in an electronic form suitable for inspection by members of the public.

(4) The second iteration EMP must be written in accordance with ISO 14001 and must—

- (a) be in accordance with the mitigation measures set out in the REAC;
- (b) contain a record of all sensitive environmental features that have the potential to be affected by the construction of the proposed development;
- (c) require adherence to any working hours set out in the REAC or, where no such hours are set, to working hours of 07:00–19:00 on Mondays to Fridays and 07:00–13:00 on Saturday except for—
 - (i) installation, maintenance and removal of traffic management layouts;
 - (ii) demolition of existing structures, construction of new structures, and any potential movements of large transporters to deliver bridge superstructures and gantry steel sections to their permanent locations;
 - (iii) piling works for structures and retaining walls;
 - (iv) removal, modification and installation of new signage/technology to existing gantries and traffic signs;
 - (v) central reservation works where daytime working is not suitable due to existing carriageway widths or proximity to existing slip merges or diverges;
 - (vi) works on slip roads and designated free flow links where carriageway widths are unsuitable for daytime works;
 - (vii) online works within the verges which cannot be safely completed as daytime working behind a temporary vehicle restraint barrier;
 - (viii) cross carriageway duct crossings;
 - (ix) installation and removal of street lighting and traffic signals;
 - (x) resurfacing and white lining of the existing carriageway and surfacing works to tie-in the existing carriageway to the new carriageway;
 - (xi) the use of compounds to facilitate off-peak working;
 - (xii) emergency and planned carriageway maintenance and repair works;
 - (xiii) maintenance of plant and equipment requiring continuous operation such as pumps; and
 - (xiv) as otherwise agreed by the relevant planning authority in advance in writing.
- (d) include the following management plans—
 - (i) Air Quality and Dust Management Plan;
 - (ii) Noise and Vibration Management Plan;
 - (iii) Site Waste Management Plan;
 - (iv) General Ecology Management Plan;
 - (v) Invasive Species Management Plan;
 - (vi) Soil Management Plan;
 - (vii) Materials Management Plan;

- (viii) Surface and Groundwater Management Plan;
- (ix) Construction Compound Management Plan;
- (x) Contaminated Land Management Plan;
- (xi) Energy and Resource Use Management Plan;
- (xii) Emergency Procedures and Record of any Environmental Incidents;
- (xiii) Environmental Constraints Map;
- (xiv) Landscape and Ecology Management Plan;
- (xv) Carbon Management Plan; and
- (xvi) Construction Lighting Plan.

(5) The construction of the authorised development must be carried out in accordance with the approved second iteration EMP.

(6) A third iteration EMP must be developed and completed by the end of construction, commissioning and handover stage of the authorised development, substantially in accordance with the process set out in the approved second iteration EMP.

(7) The third iteration EMP must address the matters set out in the approved second iteration EMP that are relevant to the operation and maintenance of the authorised development, and must 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;
- (c) provision for the retention of the environmental mitigation areas for the life of the authorised development; and
- (d) a record of the consents, commitments and permissions resulting from liaison with statutory bodies.

(8) The authorised development must be operated and maintained in accordance with the third iteration EMP.

Landscaping

5.—(1) No part of the authorised development is to commence until a landscaping scheme applicable to that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its functions.

(2) The landscaping scheme prepared under sub-paragraph (1) must be in accordance with the mitigation measures set out in the REAC and the environmental masterplan.

(3) The landscaping scheme prepared under sub-paragraph (1) must include details of—

- (a) location, number, species mix, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) existing trees to be retained, with measures for their protection during the construction period in accordance with the arboricultural impact assessment;
- (d) proposed finished ground levels including details of changes to existing land levels, gradients for areas of permanent earthworks and cross sections to illustrate slope profiles where embankments are formed;
- (e) implementation timetables for all landscaping works;
- (f) hard landscaping and materials including colour and boundary treatment of any fences, walls and structures; and

- (g) details showing the extent and form of ball stop netting adjacent to Pike Fold Golf Course.
- (4) The authorised development must be carried out in accordance with the landscaping scheme approved under sub-paragraph (1).
- (5) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised standards and codes of good practice, as specified in the third iteration EMP.
- (6) 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, unless the Secretary of State, following consultation with the relevant planning authority on matters related to its function, gives consent to a variation.

Previously unidentified contaminated land and groundwater

- 6.—(1) In the event that contaminated land, including groundwater, is found at any time when carrying out the authorised development which was not previously identified in the environmental statement, it must be reported as soon as reasonably practicable to the Secretary of State, the relevant planning authority and the Environment Agency, and the undertaker must complete a risk assessment of the contamination in consultation with the relevant planning authority and the Environment Agency.
- (2) Where the completed risk assessment determines that remediation of the contaminated land is necessary, work on or under the contaminated land must cease and must not recommence until a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function and the Environment Agency.
- (3) Remediation must be carried out in accordance with the written scheme approved under sub-paragraph (2).

Protected species

- 7.—(1) In the event that any protected species which were not previously identified in the environmental statement or pre-construction surveys prepared to inform the second iteration EMP are found at any time when carrying out the authorised development the undertaker must cease the relevant parts of the relevant works and report it immediately to the ECoW.
- (2) The relevant parts of the relevant works must not recommence until a written scheme of protection and mitigation measures (including their design and management) has been submitted to and approved in writing by the Secretary of State following consultation with Natural England.
- (3) The written scheme must provide for the implementation of appropriate measures to avoid harm to protected species under the supervision of the ECoW.
- (4) The undertaker must implement the written scheme approved 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.
- (5) Within 5 business days of receiving written approval from the Secretary of State to the written scheme approved under sub-paragraph (2), the undertaker must provide to the relevant planning authority—
- (a) the approved written scheme of protection and mitigation measures; and
 - (b) any responses provided by Natural England to the consultation undertaken under sub-paragraph (2).

Surface and foul water drainage

8.—(1) No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, in accordance with the mitigation measures set out in the REAC and drainage strategy report including means of pollution control, have been submitted and approved in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its function.

(2) The surface and foul water drainage system must be carried out in accordance with the approved details, unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority.

(3) The Secretary of State may only agree to amendments to the approved details under sub-paragraph (2) if the Secretary of State is satisfied that the amendments would not give rise to any materially new or materially worse effects in comparison with those reported in the environmental statement.

Archaeological remains

9.—(1) No part of the authorised development is to commence until for that part a written scheme for the investigation of areas of archaeological interest incorporating the mitigation measures set out in the environmental statement and the REAC has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.

(2) The authorised development must be carried out in accordance with the scheme approved under sub-paragraph (1).

Traffic Management

10.—(1) No part of the authorised development is to commence until for that part a traffic management plan, which is substantially in accordance with the outline traffic management plan for that part of the authorised development, has been submitted to and approved in writing by the Secretary of State, following consultation with the local highway authority on matters related to its function.

(2) The authorised development must be carried out in accordance with the traffic management plan approved under sub-paragraph (1).

Noise barriers

11.—(1) No part of the authorised development is to commence until a scheme of noise barrier mitigation in respect of the use and operation of 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.

(2) The scheme prepared under sub-paragraph (1) must incorporate the noise barriers in the locations identified in the environmental statement and must include details of:

- (a) the continuation of noise barrier EB03 to the crossing of Sandgate Road;
- (b) the continuation of noise barrier EB04 to the crossing of Sandgate Road;
- (c) the continuation of noise barrier EB05 to noise barrier EB07; and
- (d) implementation timetables and future maintenance.

(3) The noise barrier mitigation must be implemented in accordance with the scheme approved under sub-paragraph (1) and must be retained thereafter for the life of the authorised development.

Footpath passing through Haweswater underpass

12.—(1) No part of the authorised development is to commence until a scheme detailing improvements to the footpath passing through Haweswater underpass has been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority.

(2) The scheme prepared under sub-paragraph (1) must incorporate details of improvements to the path between Heybrook Close and Parrenthorn Road which passes through the underpass, details of any lighting, a timescale for implementation and details of future maintenance.

(3) The scheme approved under sub-paragraph (1) must be implemented in accordance with the approved details prior to bringing into use the authorised development and thereafter must be retained for the life of the authorised development.

Amendments to approved details

13. With respect to any requirement which requires the authorised development to be carried out in accordance with the details or schemes approved under this Schedule, the approved details or schemes are taken to include any amendments that may subsequently be approved in writing by the Secretary of State.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

14.—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement (including consent, 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 16 (further information); or
- (c) such longer period as may be agreed between the undertaker and the Secretary of State.

(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 from a body required to be consulted under the requirement that considers it likely that the subject matter of the application would give rise to any materially new or materially worse 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.

Consultation

15.—(1) In relation to any provision of this Schedule requiring details to be submitted to the Secretary of State for approval following consultation by the undertaker with another party, the undertaker must provide such other party with not less than 15 business days for any response to the consultation and thereafter the details submitted to the Secretary of State for approval must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted including copies of any representations made by a consultee about the proposed application and the undertaker's response to those representations.

Further information

16.—(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.

(3) In the event that the Secretary of State does not give such notification within that 21 business 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.

(4) 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 14 (applications made under requirements) and in this paragraph.

(5) When making an application for consent under sub-paragraph (1), the undertaker must include a letter informing the Secretary of State of the period mentioned in sub-paragraph (2) and the effect of sub-paragraph (3).

Register of requirements

17.—(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

18. If, before the coming into force of this Order, the undertaker or any other person has taken 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 13

CLASSIFICATION OF ROADS, ETC

PART 1

SPECIAL ROADS

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
M60 mainline (eastbound)	Between point 1/01 on Sheet 1 and 2/02 on Sheet 2 of the classification of roads plans, for a distance of 1587 metres
M60 mainline (westbound)	Between point 1/04 on Sheet 1 and 2/13 on Sheet 2 of the classification of roads plans, for a distance of 1523 metres
M60 slip road (eastbound) to M66 (northbound)	Between point 1/02 on Sheet 1 and 2/03 on Sheet 2 of the classification of roads plans, for a distance of 1032 metres
M60 (northbound) to M60 slip road (westbound)	Between point 2/12 on Sheet 2 and 1/03 on Sheet 1 of the classification of roads plans, for a distance of 952 metres
M60 (northbound) to M60 slip road (westbound) (via Junction 18)	Between point 2/12 on Sheet 2 and 1/03 on Sheet 1 of the classification of roads plans, for a distance of 932 metres
Northern Loop	Between point 2/01 on Sheet 2 and 2/06 on Sheet 2 of the classification of roads plans, for a distance of 1454 metres
Junction 18	Located at point 2/10 on Sheet 2 of the classification of roads plans, for a distance of 573 metres
M60 mainline (northbound) to M66 (northbound)	Between point 3/03 on Sheet 3 and 2/04 on Sheet 2 of the classification of roads plans, for a distance of 792 metres
M66 mainline (southbound) to M60 mainline (southbound)	Between point 4/01 on Sheet 4 and 3/02 on Sheet 3 of the classification of roads plans, for a distance of 1676 metres
M66 slip road (southbound) to M62 (eastbound)	Between point 4/02 on Sheet 4 and 2/07 on Sheet 2 of the classification of roads plans, for a distance of 798 metres
M66 slip road (southbound) to M62 (eastbound) (via Junction 18)	Between point 4/02 on Sheet 4 and 2/08 on Sheet 2 of the classification of roads plans, for a distance of 851 metres
M62 Slip Road (westbound) to M66 (southbound)	Between point 2/09 on Sheet 2 and 3/01 on Sheet 3 of the classification of roads plans, for a distance of 574 metres

PART 2

PUBLIC RIGHTS OF WAY

<i>(1)</i> <i>Public right of way</i>	<i>(2)</i> <i>Extent</i>
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Footpath 28aPRE and 29aPRE, Simister/Heaton Park (Work No. 46)	91 metres of footpath (174 metres including retained) between points 3/1 and 3/A on Sheet 3 of the streets, rights of way and access plans
Footpath 9WHI, Simister (Work No. 40)	673 metres of footpath (757 metres including retained) around the Northern Loop between points 4/4 on Sheet 4 and 2/E on Sheet 2 of the streets, rights of way and access plans
Footpath 7WHI, Unsworth (Work No. 47)	91 metres of footpath (110 metres including retained) between points 4/2 and 4/B on Sheet 4 of the streets, rights of way and access plans

PART 3

PRIVATE MEANS OF ACCESS

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
Maintenance Access Track MA1, Simister (Work No. 29)	As shown between points 2/2 and 2/A on Sheet 2 of the streets, rights of way and access plans for a distance of 535 metres
Maintenance Access Track MA2, Simister (Work No. 35)	As shown between points 2/3 and 2/D on Sheet 2 of the streets, rights of way and access plans for a distance of 722 metres
Maintenance Access Track MA3, Simister (Work No. 53)	As shown between points 2/4 and 2/F on Sheet 2 of the streets, rights of way and access plans for a distance of 174 metres
Maintenance Access Track MA4, Simister (Work No. 14)	As shown between points 2/6 and 2/H on Sheet 2 of the streets, rights of way and access plans for a distance of 184 metres
Maintenance Access Track MA5, Simister/Heaton Park (Work No. 19)	As shown between points 3/2 and 3/B on Sheet 3 of the streets, rights of way and access plans for a distance of 231 metres
Maintenance Access Track MA6, Unsworth (Work No. 44)	As shown between points 4/1 and 4/A on Sheet 4 of the of the streets, rights of way and access plans for a distance of 152 metres

SCHEDULE 4

Article 15

PERMANENT STOPPING UP OF STREETS AND PUBLIC RIGHTS OF WAY

PART 1

STREETS TO BE STOPPED UP AND FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Street to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>
M60 (eastbound) to M60 Junction 18 signalised junction	Existing section of 339 metres of public road, to be stopped up between points 2/1 to 2/B shown on Sheet 2 of the streets, rights of way and access plans
M62 (westbound) to M60 (southbound) (via Junction 18)	Existing section of 252 metres of public road, to be stopped up between points 2/5 to 2/G shown on Sheet 2 of the streets, rights of way and access plans
M66 (southbound) to M62 (eastbound) (via Junction 18)	Existing section of 661 metres of public road, to be stopped up between points 4/3 on Sheet 4 to point 2/C shown on Sheet 2 of the streets, rights of way and access plans

PART 2

PUBLIC RIGHTS OF WAY TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Public right of way to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New public right of way to be substituted or provided</i>
Footpath 28aPRE and 29aPRE, Simister/Heaton Park (Work No. 46)	198 metres of Footpath PR2 to be stopped up shown on Sheet 3 of the streets, rights of way and access plans	91 metres of footpath (174 metres including retained) between points 3/1 and 3/A on Sheet 3 of the streets, rights of way and access plans
Footpath 9WHI, Simister (Work No. 40)	757 metres of Footpath PR1 to be stopped up shown on Sheet 2 of the streets, rights of way and access plans	673 metres of footpath (757 metres including retained) around the Northern Loop between point 4/4 on Sheet 4 and point 2/E shown on Sheet 2 of the streets, rights of way and access plans
Footpath 7WHI, Unsworth (Work No. 47)	60 metres of Footpath PR3 to be stopped up shown on Sheet 4 of the streets, rights of way and access plans	91 metres of footpath (110 metres including retained) between points 4/2 and 4/B shown on sheet 4 of the streets, rights of way and access plans

SCHEDULE 5

Article 24(2)

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

<i>(1)</i> <i>Plot Reference Number shown on Land Plans</i>	<i>(2)</i> <i>Purpose for which rights and restrictive covenants over land may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
Land Plans – Sheet 1		
1/6b	Required to operate, access and maintain the authorised development. Right to pass and repass with or without plant and vehicles and access highways. To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult	Work No. 02
1/6c	Required to operate, access and maintain the authorised development. Right to pass and repass with or without plant and vehicles and access highways. To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult	Work No. 02
1/33b	Required to operate, access and maintain the authorised development. Right to pass and repass with or without plant and vehicles and access highways. To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult	Work No. 02
1/34	Required for maintenance and access for utilities diversions. Rights to install, maintain and use ducts, cables and apparatus for utilities and electronic communications operators.	Work No. 50

	<p>Right to pass and repass with or without plant and vehicles and access highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	
Land Plans – Sheet 2		
2/1at	<p>Required to construct, operate, access and maintain the authorised development.</p> <p>Rights to maintain and to pass and repass with or without plant and vehicles and access highways.</p> <p>To include the imposition of restrictive covenants to prevent works and mitigation features being removed or maintenance being made materially more difficult</p>	Work No. 35, 36, 37, and 38
2/1au	<p>Required to construct, operate, access and maintain the authorised development.</p> <p>Rights to maintain and to pass and repass with or without plant and vehicles and access highways.</p> <p>To include the imposition of restrictive covenants to prevent works and mitigation features being removed or maintenance being made materially more difficult</p>	Work No. 35, 36, 37, and 38
2/1ax	<p>Required to construct, operate, access and maintain the authorised development.</p> <p>Rights to maintain and to pass and repass with or without plant and vehicles and access highways.</p> <p>To include the imposition of restrictive covenants to prevent works and mitigation features being removed or maintenance being made materially more difficult</p>	Work No. 35, 36, 37, and 38
2/4b	<p>Required to construct, operate, access and maintain environmental mitigation areas and the authorised development.</p>	Work Nos. 31 and 32

	<p>Rights to maintain and to pass and repass with or without plant and vehicles and access highways.</p> <p>To include the imposition of restrictive covenants to prevent works and mitigation features being removed or maintenance being made materially more difficult</p>	
2/4e	<p>Required to construct, operate, access and maintain the authorised development.</p> <p>Rights to maintain and to pass and repass with or without plant and vehicles and access highways.</p> <p>To include the imposition of restrictive covenants to prevent works and mitigation features being removed or maintenance being made materially more difficult</p>	Work No. 35, 36, 37, and 38
2/4f	<p>Required to construct, operate, access and maintain the authorised development.</p> <p>Rights to maintain and to pass and repass with or without plant and vehicles and access highways.</p> <p>To include the imposition of restrictive covenants to prevent works and mitigation features being removed or maintenance being made materially more difficult</p>	Work No. 35, 36, 37, and 38
2/4g	<p>Required to construct, operate, access and maintain the authorised development.</p> <p>Rights to maintain and to pass and repass with or without plant and vehicles and access highways.</p> <p>To include the imposition of restrictive covenants to prevent works and mitigation features being removed or maintenance being made materially more difficult</p>	Work No. 35, 36, 37, and 38
2/4h	<p>Required to construct, operate, access and maintain the authorised development.</p> <p>Rights to maintain and to pass and repass with or without plant and vehicles and access highways.</p>	Work No. 35, 36, 37, and 38

	To include the imposition of restrictive covenants to prevent works and mitigation features being removed or maintenance being made materially more difficult	
2/4i	Required to construct, operate, access and maintain the authorised development. Rights to maintain and to pass and repass with or without plant and vehicles and access highways. To include the imposition of restrictive covenants to prevent works and mitigation features being removed or maintenance being made materially more difficult	Work No. 35, 36, 37, and 38
2/5d	Required for maintenance and access for utilities diversions. Rights to install, maintain and use ducts, cables and apparatus for utilities and electronic communications operators. Right to pass and repass with or without plant and vehicles and access highways. To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult	Work No. 52
2/7c	Required for maintenance and access for utilities diversions. Rights to install, maintain and use ducts, cables and apparatus for utilities and electronic communications operators. Right to pass and repass with or without plant and vehicles and access highways. To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult	Work No. 52
2/8c	Rights to install, maintain and use ducts, cables and apparatus for utilities and electronic communications operators.	Work No. 51

	<p>Right to pass and repass with or without plant and vehicles and access highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	
2/8d	<p>Rights to install, maintain and use ducts, cables and apparatus for utilities and electronic communications operators.</p> <p>Right to pass and repass with or without plant and vehicles and access highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	Work No. 51
2/9	<p>Required for maintenance and access for utilities diversions.</p> <p>Rights to install, maintain and use ducts, cables and apparatus for utilities and electronic communications operators.</p> <p>Right to pass and repass with or without plant and vehicles and access highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	Work No. 52
2/10	<p>Required for maintenance and access for utilities diversions.</p> <p>Rights to install, maintain and use ducts, cables and apparatus for utilities and electronic communications operators.</p> <p>Right to pass and repass with or without plant and vehicles and access highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	Work No. 52

2/13a	<p>Required to construct, operate, access and maintain environmental mitigation areas and the authorised development.</p> <p>Rights to maintain and to pass and repass with or without plant and vehicles and access highways.</p> <p>To include the imposition of restrictive covenants to prevent works and mitigation features being removed or maintenance being made materially more difficult</p>	Work Nos. 31 and 32
2/13b	<p>Required to construct, operate, access and maintain environmental mitigation areas and the authorised development.</p> <p>Rights to maintain and to pass and repass with or without plant and vehicles and access highways.</p> <p>To include the imposition of restrictive covenants to prevent works and mitigation features being removed or maintenance being made materially more difficult</p>	Work Nos. 31 and 32
2/16c	<p>Required to construct, operate, access and maintain the authorised development.</p> <p>Right to pass and repass with or without plant and vehicles and access highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	Work No. 37
2/16e	<p>Required to construct, operate, access and maintain the authorised development.</p> <p>Rights to maintain and to pass and repass with or without plant and vehicles and access highways.</p> <p>To include the imposition of restrictive covenants to prevent works and mitigation features being removed or maintenance being made materially more difficult</p>	Work No. 35, 36, 37, and 38

Land Plans – Sheet 4		
4/2b	<p>Required to construct, operate, access and maintain utilities diversions including a water main and the authorised development.</p> <p>Rights to install, maintain and use ducts, cables and apparatus for utilities and electronic communications operators.</p> <p>Right to pass and repass with or without plant and vehicles and access highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	Work No. 41
4/2c	<p>Required to construct, operate, access and maintain attenuation and drainage features and the authorised development.</p> <p>Rights to maintain and to pass and repass with or without plant and vehicles and access highways.</p> <p>To include the imposition of restrictive covenants to prevent works and drainage features being removed or maintenance being made materially more difficult</p>	Work No. 43
4/3	<p>Required to construct, operate, access and maintain attenuation and drainage features and the authorised development.</p> <p>Rights to maintain and to pass and repass with or without plant and vehicles and access highways.</p> <p>To include the imposition of restrictive covenants to prevent works and drainage features being removed or maintenance being made materially more difficult</p>	Work No. 43
4/6	<p>Required to construct, operate, access and maintain attenuation and drainage features and the authorised development.</p>	Work No. 43 and 44

	<p>Rights to maintain and to pass and repass with or without plant and vehicles and access highways.</p> <p>To include the imposition of restrictive covenants to prevent works and drainage features being removed or maintenance being made materially more difficult</p>	
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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 the imposition of a restrictive covenant as they apply in respect of 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—

“(5A) 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) (powers of entry) of the 1965 Act (as modified by paragraph 5(5) of Schedule 6 to the M60/M62/M66 Simister Island Interchange Development Consent Order 20[] (“the 20[] Order”));
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 6 to the 20[] Order) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the 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 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 26 (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 (compulsory acquisition of rights and imposition of restrictive covenants)—

- (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 context) as referring to, or as including references to—

(a) 1973 c. 26.

- (a) the right acquired or to be acquired, or the restrictive covenant imposed or to be imposed;
or
- (b) the land over which the right is or is to be exercisable, or the restrictive covenant 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(a) (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 restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to 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(b) (powers of entry; further notices of entry), 11B(c) (counter-notice requiring possession to be taken on specified date), 12(d) (penalty for unauthorised entry) and 13(e) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) Section 20(f) (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 26(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—

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- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No.1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.
 - (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.
 - (c) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016.
 - (d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
 - (e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15)
 - (f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

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 restrictive covenant affecting, the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 27 (application of the 1981 Act) of the M60/M62/M66 Simister Island Interchange Development Consent Order 20[] in respect of the land to which the notice to treat relates.

(2) But see article 28(3) (acquisition of subsoil or airspace only) of the M60/M62/M66 Simister Island Interchange Development Consent Order 20[] which excludes the acquisition of subsoil or airspace only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The acquiring authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the acquiring authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

8. If the acquiring authority does 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 acquiring authority serves 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 or 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 its 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 proposed use of the right or covenant, 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 withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 7

Article 30

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) <i>Plot reference Number shown on Land Plans</i>	(2) <i>Purpose for which temporary possession may be taken</i>	(3) <i>Relevant part of the authorised development</i>
Land Plans – Sheet 1		
1/1e	Required to provide a working area for improving the carriageway of the M60, installing gantries and utilities diversions	Work Nos. 03, 48 and 49 as shown on sheets 1 and 2 of the works plans
1/1f	Required to provide a working area for widening the carriageway of the M60, installing gantries and utilities diversions	Work Nos. 02, 45 and 48 as shown on sheets 1 and 2 of the works plans
1/1g	Required to provide a working area for widening the carriageway of the M60 and installing gantries	Work No. 03 as shown on sheets 1 and 2 of the works plans
1/1j	Required to provide a working area for improving the carriageway of the M60 and utilities diversions	Work No. 50 as shown on sheet 1 of the works plans
1/3c	Required to provide a working area for improving the carriageway of the M60 and utilities diversions	Work No. 49 as shown on sheet 1 of the works plans
1/3d	Required to provide a working area for improving the carriageway of the M60 and utilities diversions	Work No. 49 as shown on sheet 1 of the works plans
1/3e	Required to provide a working area for widening the carriageway of the M60, installing gantries and utilities diversions	Work Nos. 03, 48 and 49 as shown on sheets 1 and 2 of the works plans
1/3f	Required to provide a working area for widening the carriageway of the M60 and installing gantries	Work No. 03 as shown on sheets 1 and 2 of the works plans
1/3h	Required for utilities diversions	Work No. 50 as shown on sheet 1 of the works plans
1/5a	Required for utilities diversions	Work No. 49 as shown on sheet 1 of the works plans
1/5b	Required for utilities diversions	Work No. 49 as shown on sheet 1 of the works plans
1/5c	Required for utilities diversions	Work No. 49 as shown on sheet 1 of the works plans
1/5d	Required for utilities diversions	Work No. 49 as shown on sheet 1 of the works plans

1/5af	Required for utilities diversions	Work No. 49 as shown on sheet 1 of the works plans
1/5ag	Required to provide a working area for improving the carriageway of the M60, installing gantries and utilities diversions	Work Nos. 02, 45 and 48 as shown on sheets 1 and 2 of the works plans
1/5ah	Required for utilities diversions	Work No. 45 as shown on sheet 1 of the works plans
1/5ai	Required for utilities diversions	Work No. 49 as shown on sheet 1 of the works plans
1/5aj	Required for utilities diversions	Work No. 49 as shown on sheet 1 of the works plans
1/5ak	Required for utilities diversions	Work No. 49 as shown on sheet 1 of the works plans
1/5al	Required for utilities diversions	Work No. 49 as shown on sheet 1 of the works plans
1/5am	Required for utilities diversions	Work No. 49 as shown on sheet 1 of the works plans
1/5an	Required for utilities diversions	Work No. 49 as shown on sheet 1 of the works plans
1/5ao	Required for utilities diversions	Work No. 49 as shown on sheet 1 of the works plans
1/5ap	Required for utilities diversions	Work No. 49 as shown on sheet 1 of the works plans
1/5aq	Required to provide a working area for widening the carriageway of the M60, installing gantries and utilities diversions	Work Nos. 03 and 49 as shown on sheets 1 and 2 of the works plans
1/5ar	Required for utilities diversions	Work No. 49 as shown on sheet 1 of the works plans
1/5as	Required to provide a working area for widening the carriageway of the M60, installing gantries and utilities diversions	Work Nos. 03 and 49 as shown on sheets 1 and 2 of the works plans
1/5at	Required for utilities diversions	Work No. 49 as shown on sheet 1 of the works plans
1/5au	Required for utilities diversions	Work No. 49 as shown on sheet 1 of the works plans
1/5av	Required for utilities diversions	Work Nos. 45 and 48 as shown on sheet 1 of the works plans
1/5aw	Required for utilities diversions	Work Nos. 45 and 48 as shown on sheet 1 of the works plans
1/5ax	Required for utilities diversions	Work No. 49 as shown on sheet 1 of the works plans
1/5ay	Required for utilities diversions	Work Nos. 48 and 49 as shown on sheet 1 of the works plans
1/5az	Required for utilities diversions	Work Nos. 48 and 49 as shown on sheet 1 of the works plans

1/5aaa	Required for utilities diversions	Work No. 49 as shown on sheet 1 of the works plans
1/5aab	Required for utilities diversions	Work No. 49 as shown on sheet 1 of the works plans
1/5aac	Required for utilities diversions	Work No. 49 as shown on sheet 1 of the works plans
1/5aad	Required for utilities diversions	Work No. 49 as shown on sheet 1 of the works plans
1/5aae	Required for utilities diversions	Work No. 49 as shown on sheet 1 of the works plans
1/5aaf	Required for utilities diversions	Work Nos. 48 and 49 as shown on sheet 1 of the works plans
1/6a	Required for utilities diversions	Work No. 49 as shown on sheet 1 of the works plans
1/6d	Required to provide a working area for widening the carriageway of the M60 and installing gantries	Work No. 02 as shown on sheets 1 and 2 of the works plans
1/7	Required for utilities diversions	Work No. 45 as shown on sheet 1 of the works plans
1/8a	Required for utilities diversions	Work Nos. 45 and 48 as shown on sheet 1 of the works plans
1/8b	Required to provide a working area for widening the carriageway of the M60, installing gantries and environmental mitigation	Work Nos. 02, 54 and 55 as shown on sheets 1 and 2 of the works plans
1/9	Required to provide a working area for widening the carriageway of the M60, installing gantries and utilities diversions	Work Nos. 03, 48 and 49 as shown on sheets 1 and 2 of the works plans
1/10	Required to provide a working area for widening the carriageway of the M60 and installing gantries	Work No. 03 as shown on sheets 1 and 2 of the works plans
1/11	Required to provide a working area for widening the carriageway of the M60 and installing gantries	Work No. 03 as shown on sheets 1 and 2 of the works plans
1/12	Required to provide a working area for widening the carriageway of the M60 and installing gantries	Work No. 03 as shown on sheets 1 and 2 of the works plans
1/13	Required to provide a working area for widening the carriageway of the M60 and installing gantries	Work No. 03 as shown on sheets 1 and 2 of the works plans
1/14a	Required to provide a working area for widening the carriageway of the M60 and installing gantries	Work No. 03 as shown on sheets 1 and 2 of the works plans

1/14b	Required to provide a working area for widening the carriageway of the M60 and installing gantries	Work No. 03 as shown on sheets 1 and 2 of the works plans
1/14c	Required to provide a working area for widening the carriageway of the M60 and installing gantries	Work No. 03 as shown on sheets 1 and 2 of the works plans
1/15	Required to provide a working area for widening the carriageway of the M60 and installing gantries	Work No. 03 as shown on sheets 1 and 2 of the works plans
1/16	Required to provide a working area for widening the carriageway of the M60 and installing gantries	Work No. 03 as shown on sheets 1 and 2 of the works plans
1/17a	Required to provide a working area for widening the carriageway of the M60, installing gantries and environmental mitigation	Work Nos. 02, 54 and 55 as shown on sheets 1 and 2 of the works plans
1/17b	Required to provide a working area for widening the carriageway of the M60, installing gantries and environmental mitigation	Work Nos. 02, 54 and 55 as shown on sheets 1 and 2 of the works plans
1/17c	Required to provide a working area for widening the carriageway of the M60, installing gantries and environmental mitigation	Work Nos. 02, 54 and 55 as shown on sheets 1 and 2 of the works plans
1/17d	Required to provide a working area for widening the carriageway of the M60, installing gantries and environmental mitigation	Work Nos. 02, 54 and 55 as shown on sheets 1 and 2 of the works plans
1/17e	Required to provide a working area for widening the carriageway of the M60, installing gantries and environmental mitigation	Work Nos. 02, 54 and 55 as shown on sheets 1 and 2 of the works plans
1/18a	Required to provide a working area for widening the carriageway of the M60, installing gantries and environmental mitigation	Work Nos. 02, 54 and 55 as shown on sheets 1 and 2 of the works plans
1/18b	Required to provide a working area for widening the carriageway of the M60, installing gantries and environmental mitigation	Work Nos. 02, 54 and 55 as shown on sheets 1 and 2 of the works plans
1/18c	Required to provide a working area for widening the carriageway of the M60, installing gantries and environmental mitigation	Work Nos. 02, 54 and 55 as shown on sheets 1 and 2 of the works plans

1/19	Required to provide a working area for widening the carriageway of the M60, installing gantries and environmental mitigation	Work Nos. 02, 54 and 55 as shown on sheets 1 and 2 of the works plans
1/20	Required to provide a working area for widening the carriageway of the M60, installing gantries and environmental mitigation	Work Nos. 02, 54 and 55 as shown on sheets 1 and 2 of the works plans
1/22a	Required to provide a working area for widening the carriageway of the M60, installing gantries and environmental mitigation	Work Nos. 02, 54 and 55 as shown on sheets 1 and 2 of the works plans
1/22b	Required to provide a working area for widening the carriageway of the M60, installing gantries and environmental mitigation	Work Nos. 02, 54 and 55 as shown on sheets 1 and 2 of the works plans
1/23	Required to provide a working area for widening the carriageway of the M60 and installing gantries	Work No. 03 as shown on sheets 1 and 2 of the works plans
1/24	Required to provide a working area for widening the carriageway of the M60, installing gantries and environmental mitigation	Work Nos. 02, 54 and 55 as shown on sheets 1 and 2 of the works plans
1/25	Required to provide a working area for widening g the carriageway of the M60, installing gantries and environmental mitigation	Work Nos. 02, 54 and 55 as shown on sheets 1 and 2 of the works plans
1/26	Required to provide a working area for widening the carriageway of the M60, installing gantries and environmental mitigation	Work Nos. 02, 54 and 55 as shown on sheets 1 and 2 of the works plans
1/27	Required to provide a working area for widening the carriageway of the M60, installing gantries and environmental mitigation	Work Nos. 02, 54 and 55 as shown on sheets 1 and 2 of the works plans
1/28	Required to provide a working area for widening the carriageway of the M60, installing gantries and environmental mitigation	Work Nos. 02, 54 and 55 as shown on sheets 1 and 2 of the works plans
1/29	Required to provide a working area for widening the carriageway of the M60, installing gantries and environmental mitigation	Work Nos. 02, 54 and 55 as shown on sheets 1 and 2 of the works plans

1/30	Required to provide a working area for widening the carriageway of the M60, installing gantries and environmental mitigation	Work Nos. 02, 54 and 55 as shown on sheets 1 and 2 of the works plans
1/31a	Required to provide a working area for widening the carriageway of the M60, installing gantries and environmental mitigation	Work Nos. 02, 54 and 55 as shown on sheets 1 and 2 of the works plans
1/31b	Required to provide a working area for widening the carriageway of the M60, installing gantries and environmental mitigation	Work Nos. 02, 54 and 55 as shown on sheets 1 and 2 of the works plans
1/32	Required to provide a working area for widening the carriageway of the M60, installing gantries and environmental mitigation	Work Nos. 02, 54 and 55 as shown on sheets 1 and 2 of the works plans
1/33a	Required to provide a working area for widening the carriageway of the M60 and installing gantries	Work No. 02 as shown on sheets 1 and 2 of the works plans
Land Plans – Sheet 2		
2/1e	Required for provision of a temporary construction compound	All works
2/2	Required to provide a working and material storage area for widening the carriageway of the M60 and installing gantries, temporary haul routes, drainage attenuation and utilities diversions	Work Nos. 03, 07, 08, 11, 12, 13, 14, 15, and 16 as shown on sheets 1, 2 and 3 of the works plans
2/3a	Required to provide a working and material storage area for widening the carriageway of the M60 and installing gantries, temporary haul routes, drainage attenuation and utilities diversions	Work Nos. 03, 07, 08, 11, 12, 13, 14, 15, and 16 as shown on sheets 1, 2 and 3 of the works plans
2/3c	Required to provide a working and material storage area for widening the carriageway of the M60 and installing gantries, temporary haul routes, drainage attenuation and utilities diversions	Work Nos. 03, 07, 08, 11, 12, 13 and 14 as shown on sheets 1, 2 and 3 of the works plans
2/4a	Required to provide a working and material storage area for widening the carriageway of the M60 and installing gantries, temporary haul routes, drainage attenuation and utilities diversions	Work Nos. 03, 07, 08, 11, 12, 13, 14, 15, and 16 as shown on sheets 1, 2 and 3 of the works plans

2/5a	Required to provide a working and material storage area for widening the carriageway of the M60 and installing gantries, temporary haul routes, drainage attenuation and environmental mitigation	Work Nos. 02, 05, 06, 09, 10, 27, 29 and 57 as shown on sheets 1 and 2 of the works plans
2/5b	Required for provision of a temporary construction compound	All works
2/5e	Required for provision of a temporary construction compound	All works
2/5i	Required for provision of a temporary construction compound	All works
2/6	Required for utilities diversions	Work No. 52 as shown on sheet 2 of the works plans
2/7a	Required for utilities diversions	Work No. 52 as shown on sheet 2 of the works plans
2/7b	Required for utilities diversions	Work No. 52 as shown on sheet 2 of the works plans
2/8b	Required to provide a working and material storage area for widening the carriageway of the M60 and installing gantries, temporary haul routes, drainage attenuation and utilities diversions	Work Nos. 03, 07, 08, 11, 12, 13 and 14 as shown on sheets 1, 2 and 3 of the works plans
2/8e	Required to provide a working and material storage area for widening the carriageway of the M60 and installing gantries, temporary haul routes, drainage attenuation, environmental mitigation and utilities diversions	Work Nos. 03, 07, 08, 11, 12, 13, 14, 15, 16, 17, 25, 51 and 58 as shown on sheets 1, 2 and 3 of the works plans
2/11	Required to provide a working and material storage area for widening the carriageway of the M60 and installing gantries, temporary haul routes, drainage attenuation, environmental mitigation and utilities diversions	Work Nos. 03, 07, 08, 11, 12, 13, 14, 15, 16, 17, 25, 51 and 58 as shown on sheets 1, 2 and 3 of the works plans
2/12	Required for utilities diversions	Work No. 51 as shown on sheet 2 of the works plans
2/16f	Required to provide access for landscaping works drainage attenuation and environmental mitigation	Work Nos. 37 and 38 as shown on sheet 2 of the works plans
Land Plans – Sheet 4		
4/8b	Required for provision of a temporary construction compound and material storage area	Work Nos. 43, 44 and 47 as shown on sheet 4 of the works plans

SCHEDULE 8

Article 36

HEDGEROWS TO BE REMOVED OR MANAGED

The hedgerow identifications in the table below are taken from Appendix 8.1 UK Habitats Survey Report of the Environmental Statement and are within the Order Limits. Volume 2.9 – Important Hedgerow Plans – TR010064/APP/2.9.

<i>(1)</i> <i>Hedgerow identification</i>	<i>(2)</i> <i>Work Numbers</i>	<i>(3)</i> <i>Important hedgerow</i>	<i>(4)</i> <i>Reason for importance</i>	<i>(5)</i> <i>Work to be undertaken</i>
HG_01; Defunct, native species poor	n/a	No	None	Management / Cutting back
HG_05; Defunct, native species poor	n/a	No	None	Management / Cutting back
HG_06; Defunct, native species poor	n/a	No	None	Management / Cutting back
HG_07; Defunct, native species poor	n/a	No	None	Management / Cutting back
HG_08; Defunct, native species poor	Work No. 29	Yes	Ecological	Full removal
HG_09; Defunct, native species poor	n/a	No	None	Management / Cutting back
HG_10; Intact, native species poor	n/a	No	None	Management / Cutting back
HG_11; Defunct, native species poor	n/a	No	None	Management / Cutting back
HG_20; Defunct, native species poor	n/a	No	None	Management / Cutting back
HG_21; Defunct, native species poor	Work No. 44	Yes	Archaeology	Partial removal / Management / Cutting back
HG_22; Defunct, native species poor	Work No. 44	Yes	Archaeology	Management / Cutting back
HG_23; Defunct, native species poor	Work No. 38	Yes	Historical	Management / Cutting back
HG_25; Defunct, native species poor	n/a	No	None	Management / Cutting back
HG_26; Defunct, native species poor	n/a	No	None	Management / Cutting back

HG_29; Intact, native species poor	n/a	No	None	Management / Cutting back
HG_34; Defunct, native species poor	n/a	No	None	Management / Cutting back
HG_36; Defunct, native species poor	n/a	No	None	Management / Cutting back
HG_37; Defunct, native species poor	n/a	No	None	Management / Cutting back
HG_39; Defunct, native species poor	Work No. 44	Yes	Archaeology	Management / Cutting back
HG_41; Intact, native species poor	n/a	No	None	Management / Cutting back
HG_43; Intact, native species poor	n/a	No	None	Management / Cutting back
HG_44; Defunct, native species poor	n/a	No	None	Management / Cutting back
HG_45; Defunct, native species poor	n/a	No	None	Management / Cutting back
HG_47; Intact, native species poor	n/a	No	None	Management / Cutting back
HG_80; Defunct, native species poor	Work No. 20	Yes	Historical	Management / Cutting back

SCHEDULE 9

Articles 32 and 40

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1.—(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) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and the utility undertaker concerned, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of Order), any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between the utility undertaker concerned and the transferee or grantee (as the case may be).

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to the utility undertaker concerned (but see paragraph 11(3)(b)).

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 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 undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the 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 (agreement to adopt sewers, drains or sewage disposal works at a 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;

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- (a) 1989 c. 29. The definition of “electrical plant” (in section 64) was amended by paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c. 27).
 - (b) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).
 - (c) 1991 c. 56.
 - (d) Section 102(4) was amended by section 96(1)(c) of the Water Act 2003 (c. 37). Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003 and section 42(3) of the Flood and Water Management Act 2010 (c. 29) and section 11(1) and (2) of, and paragraphs 2 and 91 of Schedule 7 to the Water Act 2014 (c. 21).

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

“utility undertaker” means—

- (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,

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 15 (permanent stopping up, restriction of use of streets and public rights of way), 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 14 (temporary closure 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 work 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 (6).

(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 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 44 (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 44, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (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.

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 44 (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) 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 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 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) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule 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 44 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to 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 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 pipe or 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.

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), or by reason of any subsidence resulting from such development or 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 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 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—

- (a) 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; or
- (b) any part of the authorised development carried out by a utility undertaker in the exercise of any of functions conferred by this Order pursuant to a transfer or grant under article 8 (consent to transfer benefit of Order).

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Co-operation

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 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 laid or erected 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^(b);

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act^(b);

“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

^(a) 2003 c. 21.

^(b) See section 106 which was amended by section 4(3) to (9) of the Digital Economy Act 2017 (c. 30).

electronic communications code by a direction under section 106 (application of the electronic communications code) 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(2) of that code; and

“operator” means the operator of an electronic communications code network.

16. The exercise of the powers conferred by article 32 (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 the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 44 (arbitration).

(5) This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(6) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF CADENT GAS LIMITED

Application

18. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

Interpretation

19. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of Cadent’s undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of Cadent’s undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“Cadent” means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“Cadent’s undertaking” means the rights, duties and obligations of Cadent Gas Limited as a public gas transporter within the meaning of Section 7 of the Gas Act 1986 (as amended by the Gas Act 1995);

“commence” has the same meaning as in paragraph 1, Part 1 of Schedule 2 (requirements) to the Order and “commencement” shall be construed to have the same meaning save that for the purposes of this Part of this Schedule the terms “commence” and “commencement” include any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground condition, the receipt and erection of construction plant and equipment, and non-intrusive investigations for the purpose of assessing ground conditions;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“facilities and rights” for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Cadent’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” for the purposes of this Part of this Schedule shall have effect as if Cadent’s existing apparatus was authorised development and as if the term maintain includes protect and use;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“rights” includes restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

“specified works” means any of the authorised development or activities (including maintenance) undertaken in association with the authorised development which:

- (a) will or may be situated over, or within, 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 24(2) (removal of apparatus) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 24 (removal of apparatus) or otherwise.

On Street Apparatus

20.—(1) This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act except for—

- (a) paragraphs 21 (apparatus of Cadent in stopped up streets), 26 (retained apparatus: protection of Cadent), 27 (expenses) and 28 (indemnity); and
- (b) where sub-paragraph (2) applies, paragraphs 24 (removal of apparatus) and 25 (facilities and rights for alternative apparatus).

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing adopted public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

(3) Paragraph 27 (expenses) does 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 Cadent in such proportions as may be prescribed by any such regulations.

Apparatus of Cadent in stopped up streets

21.—(1) Where any street is stopped up under article 15 (*permanent stopping up, restriction of use of streets and public rights of way*), if Cadent has any apparatus in the street or accessed via that street Cadent is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Cadent, or procure the granting to Cadent of legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street or highway, but nothing in this paragraph shall affect any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 24 (removal of apparatus).

(2) Notwithstanding the temporary alteration, diversion or restriction of use of any street under the powers of article 14 (*temporary closure and restriction of use of streets*), Cadent will be at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as it would have been entitled to do immediately before such temporary alteration, diversion or restriction of use in respect of any apparatus which at the time of the stopping up or diversion was in that street.

Protective works to buildings

22.—(1) The undertaker must exercise the powers conferred by article 19 (*protective work to buildings*) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent such consent not to be unreasonably withheld or delayed.

Acquisition of land

23.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any interest in land or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out or maintenance of any part of the authorised development (or in such other timeframe as may be agreed between Cadent and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Cadent or affect the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure or secure the consent to and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development or maintenance thereof.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus, including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by Cadent under paragraph 26 (retained apparatus: protection of Cadent) or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement or other interest of Cadent in such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 24 (removal of apparatus) do not apply, the undertaker must, unless Cadent agrees otherwise:

- (a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

Removal of apparatus

24.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 23 (acquisition of land), the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan

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 Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account sub-paragraph 25(1) (facilities and rights for alternative apparatus) below) the necessary facilities and rights:

- (a) for the construction of alternative apparatus; and
- (b) subsequently for the maintenance of that apparatus.

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and the undertaker.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

25.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed then the terms and conditions to which those facilities and rights are subject in the matter may be referred to arbitration in accordance with paragraph 32 (*arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of Cadent

26.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;

- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
 - (f) any intended maintenance regimes.
- (3) The undertaker must not commence any specified works until Cadent has given written approval of the plan so submitted (and the ground monitoring scheme if required).
- (4) Any approval of Cadent given under sub-paragraph (3)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5); and
 - (b) must not be unreasonably withheld or delayed and Cadent must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).
- (5) Cadent may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (6) Specified works must only be executed in accordance with—
- (a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and Cadent; and
 - (b) all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.
- (7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.
- (8) If Cadent, 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 18 to 20 and 23 to 25 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 24(2) (removal of apparatus).
- (9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan (and ground monitoring scheme if required), instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan (and ground monitoring scheme if required).
- (10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development (including such an event attributable to its maintenance)—
- (a) the undertaker must implement an appropriate ground mitigation scheme; and
 - (b) Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 27 (expenses).
- (11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances.
- (12) In this paragraph, “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Expenses

27.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand all charges, costs and expenses reasonably anticipated or reasonably incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under sub-paragraph 24(3) (removal of apparatus) if it elects to do so; or
 - (ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to sub-paragraph 26(6) (retained apparatus: protection of Cadent).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 32 (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Cadent in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

28.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised development (including works carried out under article 19 (protective work to buildings)) by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from Cadent, the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty, compensation or costs properly incurred by, paid by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents;
- (b) any part of the authorised development carried out by Cadent in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 8 (Consent to transfer benefit of Order); and
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable at the commencement of the relevant works referred to in sub-paragraph (1).

(4) Cadent must give the undertaker reasonable notice of any such 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.

Enactments and agreements

29. Except where in this Part of this Schedule provides otherwise or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

30.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or Cadent requires the removal of apparatus under sub-paragraph 24(2) (removal of apparatus) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 26 (retained apparatus: protection of Cadent), 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 Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted by Cadent or the taking of action by Cadent, it must not be unreasonably withheld or delayed.

Access

31. If in consequence of any agreement reached in accordance with sub-paragraph 23(1) (acquisition of land) or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

32. Save for differences or disputes arising under sub-paragraphs 24(2), 24(4) (removal of apparatus) and 26(11) (retained apparatus: protection of Cadent) any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 32 (*arbitration*).

Notices

33. Notwithstanding article 42 (service of notices) the plans submitted to Cadent by the undertaker pursuant to sub-paragraph 26(1) (retained apparatus: protection of Cadent) must be sent via email to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com as well as via post to Plant Protection, Cadent Gas Limited, Brick Kiln Street, Hinckley, Leicestershire, LE10 0NA or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 4

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY UNDERTAKER

Application

34.—(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but see paragraph 44(3)(b)).

Interpretation

35. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in paragraph 42 of this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment,

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission Plc or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 40(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 40(2) or otherwise.

36. Except for paragraphs 37 (*apparatus in stopped up streets*), 42 (*retained apparatus: protection*) and 44 (*indemnity*) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in stopped up streets

37.—(1) Where any street is stopped up under article 15 (*permanent stopping up, restriction of use of streets and public rights of way*), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 40 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 42.

(2) Notwithstanding the temporary alteration, diversion, prohibition or restriction of the use of any highway under the powers of article 14 (*temporary closure and restriction of use of streets*), National Grid is at liberty at all times to take all necessary access across any such altered, diverted, prohibited or restricted 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 alteration, diversion, prohibition or restriction of the use was in that highway.

Protective works to buildings

38.—(1) The undertaker must exercise the powers conferred by article 19 (*protective work to buildings*) so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid (such consent not to be unreasonably withheld)

Acquisition of land

39.—(1) Regardless of any provision in this Order or anything shown on the land plans, the undertaker may not acquire any interest in land or apparatus or override any easement or other interest of National Grid otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires

enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by National Grid under paragraph 42 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

40.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid 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 National Grid in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its reasonable satisfaction (taking into account paragraph 41(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of, or secured by, the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid 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.

Facilities and rights for alternative apparatus

41.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use,

maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker under paragraph 41(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid 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 matter may be referred to arbitration in accordance with paragraph 48 (*Arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

42.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraphs (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) 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 40(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the 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.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances.

(12) In sub-paragraph (11) "emergency works" means works whose execution at the time when they are executed is required in order to put an end to or to prevent the occurrence of circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Expenses

43.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;

- (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 40(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
 - (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
 - (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
 - (d) the approval of plans;
 - (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
 - (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.
- (2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.
- (3) If in accordance with the provisions of this Part of this Schedule—
- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
 - (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 48 (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

- (4) For the purposes of sub-paragraph (3)—
- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
 - (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

44.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him)

in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any part of the authorised works carried out by National Grid in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 8 (consent to transfer benefit of Order).

(4) National Grid must give the undertaker reasonable notice of any such 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.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

Enactments and agreements

45. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

46.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 40(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 42, 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 works and taking into account the

need to ensure the safe and efficient operation of National Grid's undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever the undertaker's or National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted under this schedule, or agreement is required to be reached between the parties under this schedule, it must not be unreasonably withheld or delayed.

Access

47. If in consequence of the agreement reached in accordance with paragraph 39(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

48. Save for differences or disputes arising under paragraph 40(2), 40(4) and 41(1), any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 48 (*arbitration*).

Notices

49. Notwithstanding article 42 (service of notices), any plans submitted to National Grid by the undertaker must be sent to National Grid Plant Protection at plantprotection@nationalgrid.com or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

SCHEDULE 10

Articles 2 and 41

CERTIFICATION OF PLANS AND DOCUMENTS, ETC

The reference to a document in the table with a numbered regulation is a reference to the regulation as numbered in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a)

(1) <i>Document</i>	(2) <i>Document Reference</i>	(3) <i>Version</i>
Book of Reference – Regulation 5(2)(d)	TR010064/APP/4.3	P06
Environmental Statement Chapters 1, 2, 3, 4, 5, 9, 10, 11, 12 and 14 – Regulation 5(2)(a)	TR010064/APP/6.1	P01
Environmental Statement Chapters 6, 7, 13 and 15 – Regulation 5(2)(a)	TR010064/APP/6.1	P02
Environmental Statement Chapters 8 and 16 – Regulation 5(2)(a)	TR010064/APP/6.1	P03
Environmental Statement Figures – Regulation 5(2)(a)	TR010064/APP/6.2	P03
Environmental Statement Appendices – Regulation 5(2)(a)	TR010064/APP/6.3	P02
Environmental Statement Non-Technical Summary – Regulation 5(2)(a)	TR010064/APP/6.4	P03
First iteration Environmental Management Plan (including the Register of Environmental Commitments) – Regulation 5(2)(q)	TR010064/APP/6.5	P06
Location Plan – Regulation 5(2)(o)	TR010064/APP/2.1	P01
General Arrangement Plans – Regulation 5(2)(o)	TR010064/APP/2.2	P02
Land Plans – Regulation 5(2)(i) and 5(4)	TR010064/APP/2.3	P04
Work Plans – Regulation 5(2)(j) and 5(4)	TR010064/APP/2.4	P03
Streets, Rights of Way and Access Plans – Regulation 5(2)(k) and 5(4)	TR010064/APP/2.5	P01
Traffic Regulation Measures Plans – Regulation 5(2)(o)	TR010064/APP/2.6	P01
Classification of Road Plans – Regulation 5(2)(o)	TR010064/APP/2.7	P02

(a) S.I. 2009/2264 amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/572, S.I. 2018/378 and S.I. 2019/734.

Engineering Section Drawings – Regulations 5(2)(o), 5(4) and 6(2)	TR010064/APP/2.8	P01
Important Hedgerow Plans – Regulation 5(2)(i)	TR010064/APP/2.9	P01
Statement of Statutory Nuisances – Regulation 5(2)(f)	TR010064/APP/6.8	P01
Outline Traffic Management Plan – Regulations 5(2)(q)	TR010064/APP/7.5	P02
Design Principles Report	TR010064/APP/7.29	P01

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises National Highways Limited to undertake works to construct the M60/M62/M66 Simister Island scheme and to carry out all associated works.

The Order permits National Highways Limited to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also includes provisions in connection with the maintenance of the authorised development.

A copy of the plans, engineering section drawings, the book of reference, the environmental statement and the first iteration EMP mentioned in this Order and certified in accordance with article 41 (certification of plans and documents, etc.) of this Order may be inspected free of charge during normal working hours at National Highways, Piccadilly Gate, Store Street, Manchester, M1 2WD.